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## American Bar Association Report to the House of Delegates

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# American Bar Association Report to the House of Delegates

## SECTION OF INTERNATIONAL LAW AND PRACTICE

The Section of International Law recommends adoption of the following resolution:

*Be it resolved, that the American Bar Association supports signature and ratification by the United States of the United Nations Convention on Contracts for the International Sale of Goods and urges the Senate to give its advice and consent to ratification of the Convention subject to the following reservation:*

*Reservation: The United States of America declares it will not be bound by subparagraph (1)(b) of article 1 of the Convention.*

### I. Summary of Report

A diplomatic conference convened by the U.N. General Assembly met in Vienna from March 10 to April 11, 1980 and in its Final Act adopted without dissent the United Nations Convention on Contracts for the International Sale of Goods (CISG). The Convention will come into force one year after 10 states have adhered to the Convention. It is anticipated that states from all parts of the world, both developed and less developed, will sign and ratify the Convention.

The CISG text sets out rules governing the formation of international sales contracts and the rights and obligations of parties to such contracts. The Convention will apply to contracts between a seller and a buyer whose places of business are in different states, if these states are both parties to CISG.<sup>1</sup> The Convention does not apply to consumer sales or to claims for death or personal injury caused by the goods to any person.

The emphasis throughout the Convention is on the contract of the parties and the factual context in which rights and obligations arise. The Convention explicitly authorizes the parties to exclude, derogate from or vary all or any part of the Convention.<sup>2</sup> The Convention avoids abstract concepts and makes legal rights and obligations turn on readily observable events such as

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<sup>1</sup>The Convention also applies when the rules of private international law lead to the application of the law of a state party to CISG (art. 1(1)(b)). The Section of International Law recommends that the United States declare it will not be bound by this provision.

<sup>2</sup>The only exception to this right to derogate from or vary CISG is where a State makes a reservation requiring a contract or its modification to be in writing.

“taking over” goods. As a result, many provisions of the Convention are very similar in content and form to those of the Uniform Commercial Code.

The United States would benefit in the following ways if it were to sign and ratify the convention. For U.S. business interests the CISG will:

- avoid the difficulties of reaching agreement with foreign buyers and sellers on choice of forum or applicable law clauses because the CISG text will be a readily available compromise;
- permit the parties to shape their rights and obligations to arrive at results similar to those that could be reached under the Uniform Commercial Code without fear of foreign “mandatory” rules;
- decrease legal costs which might otherwise be incurred in the research of many different foreign laws because it will be easier to research the CISG text and legislative history, which is available in an official English text and will no doubt be extensively annotated; and
- reduce problems of proof of foreign law in domestic or foreign courts.

In addition, the United States will gain political goodwill by its endorsement of the product of UNCITRAL, a broad-based and apolitical arm of the United Nations.

The Convention is open for signature until September 30, 1981. This report recommends that the United States sign the Convention by this date and proceed to ratify it with the advice and consent of the Senate. It should be noted, however, that a state which signs the Convention is not legally bound to ratify it and a state which does not sign the Convention may still accede to it at a later time. Any possible advantages of delay, however, are outweighed by the goodwill the United States would gain in promptly signing and ratifying the convention.

## II. Background

The U.N. Convention on Contracts for the International Sale of Goods represents the culmination of fifty years of study. Civil law experts from West European countries initiated and carried out work before and after World War II which resulted in two conventions adopted at the Hague in 1964. These conventions contained a Uniform Law on the International Sale of Goods (ULIS) and a Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF). The United States participated in the 1964 conference but had not been involved in the preparation of the draft texts submitted to the conference. Following the conference the U.S. delegation submitted a critical report.<sup>3</sup> The 1964 Hague conventions came

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<sup>3</sup>Reprinted in NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAW, 1964 HANDBOOK 237-248.

into force in 1972 but they have not been widely adopted.<sup>4</sup> The United States has not sought ratification of these conventions.

To promote the development of international trade the U.N. General Assembly established the U.N. Commission on International Trade Law (UNCITRAL) in December 1966 with a limited but diversified membership. In 1970 UNCITRAL appointed a working group to revise ULIS and ULF so that they would become more widely acceptable. The working group met seven times to prepare a sales text and an additional two times to draft a formation text. UNCITRAL reviewed these draft texts in 1977 and 1978 and adopted a unified draft convention which was circulated, together with a commentary prepared by the Secretariat, to all governments and interested international organizations for comments and proposals.

On completion of the work by UNCITRAL the U.N. General Assembly convened a diplomatic conference to consider the UNCITRAL draft text at a meeting in Vienna in March-April 1980. Sixty-two states from all parts of the world were represented at the Vienna Conference. The conference adopted without dissent the UNCITRAL text as revised by the conference and 53 states signed the Final Act of the conference on April 10, 1980.<sup>5</sup>

The United States participated actively in the preparation and adoption of the CISG text. From its creation the United States has been a member state of UNCITRAL. When the commission established a working group on the International Sale of Goods it appointed the United States as one of the working group's fourteen members. The United States delegation to the Vienna conference included Professor John Honnold and Professor Allan Farnsworth, both of whom had been active in the drafting of the UNCITRAL text. In its report to the U.S. Secretary of State, this delegation recommends that the United States sign and ratify the CISG convention.

### III. Principal Provisions of CISG

The following summary table of contents gives an overview of the Convention's scope:

<i>Part I.</i>	Sphere of Application and General Provisions
	Chapter I. Sphere of Application (arts. 1-6)
	Chapter II. General Provisions (arts. 7-13)
<i>Part II.</i>	Formation of the Contract (arts. 14-24)
<i>Part III.</i>	Sale of Goods
	Chapter I. General Provisions (arts. 25-29)
	Chapter II. Obligations of the Seller (arts. 30-52)

<sup>4</sup>The states adhering to these conventions are Belgium, Federal Republic of Germany, United Kingdom (only if parties choose to have them apply), The Gambia, Israel (ULIS only), Italy, Netherlands, and San Marino.

<sup>5</sup>The Final Act, which includes the CISG text, is conveniently reprinted in 19 INT'L LEGAL MATERIALS 668-99 (1980).

Chapter III.	Obligations of the Buyer (arts. 53-65)
Chapter IV.	Passing of Risk (arts. 66-70)
Chapter V.	Provisions Common to the Obligations of the Seller and of the Buyer (arts. 71-88)

*Part IV.* Final Provisions (arts. 89-101)

The following commentary summarizes these provisions and examines more closely the most important provisions of the Convention.

*A. Part I. Sphere of Application and General Provisions*

1. SPHERE OF APPLICATION (ARTS. 1-6)

Article 1 determines when the Convention will apply. Articles 2 and 3 exclude certain types of goods and transactions, most notably consumer transactions. The following provisions, articles 4 and 5, exclude from the Convention's coverage issues concerning the "validity" of the contract, the ownership claims of third parties, and liability claims for death or personal injury. Article 6 sets out the important principle that the parties to a contract which would otherwise be governed by CISG may agree to exclude, derogate from, or vary the terms of the Convention.

The Convention applies to sales contracts entered into between parties whose place of business are in different contracting states (art. 1(1)(a)). This will be true no matter what the nationality of the parties may be (art. 1(3)). If either party has more than one place of business then the relevant place of business for determining whether the convention applies is the place of business most closely related to the contract and its performance (art. 10(a)).

Article 1(1)(b) states that the convention will also apply "when the rules of private international law lead to the application of the law of a contracting state." The principal impact of this provision on traders of a contracting state appears to be that the Convention would be applicable in a greater number of cases but at the expense of the contracting state's domestic law. The provision also reintroduces the uncertainties of private international law which the CISG was designed to avoid.

Article 95 of the Convention authorizes a state to declare at the time of ratification that it will not be bound by article 1(1)(b). This reservation can be withdrawn at a later time but if a state does not make a reservation at the time of ratification it may not do so later. It is recommended that the United States avoid the uncertainties which article 1(1)(b) would introduce by making the reservation permitted by article 95.

Whether or not the article 95 reservation is made, the CISG's sphere of application is considerably narrower than the scope of the 1964 Hague Sales Convention (ULIS). That Convention required a contracting state to apply ULIS to international transactions with no connection to the contracting state so that parties whose businesses were in non-contracting states

might suddenly discover that ULIS was being applied to their transaction. American commentators were particularly critical of this aspect of ULIS.<sup>6</sup> The CISG provisions on sphere of application are more modest.

## 2. GENERAL PROVISIONS (ARTS. 7-13)

Article 7 sets out guidelines for the interpretation of the Convention. Articles 8 and 9 provide rules of construction of the parties' agreement, with due regard to their intent, course of dealing, and usage of trade. Article 10 defines "place of business" for the purpose of determining when the Convention is applicable. Article 11 provides that a contract for sale need not be in any particular form and may be proved by any means, while article 12 permits a State to make a reservation with respect to article 11 and other CISG provisions requiring formalities. A definition of "writing" to include telegrams and telex is set out in article 13.

These general provisions on interpretation of the Convention and construction of the parties' agreement are similar to those found in U.S. law. Although its content is different, the Uniform Commercial Code also has an introductory article stating its general principles, including the parties' freedom to vary the code rules (U.C.C. § 1-102). The common law rules on interpreting a party's intent are similar to the objective rule stated in CISG 8(2) which will operate in most cases. The emphasis in the Convention on course of dealing and usage of trade (art. 9) corresponds to the same emphasis on these factors in the Uniform Commercial Code (U.C.C. §§ 1-201(3), 1-205).

Article 11 of the Convention does not require an international sales contract to be evidenced by a writing. Article 96 authorizes a contracting state to declare that this and other similar provisions will not apply where any party has his place of business in that state. Article 96 was included in the UNCITRAL text on the insistence of the U.S.S.R. and several East European states whose public policy requires contracts to be properly documented for purposes of state planning accountability.

It is recommended that the United States not make the declaration permitted by article 96. The need to provide for payment, carriage, and customs formalities will generate in most cases sufficient written evidence of a contract without worrying about the theoretical possibility that a contract may be proved "by any means" under the Convention. Moreover, U.S. traders may insist in their offer or acceptance that they will not be bound until a written document is signed.

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<sup>6</sup>See, e.g., Nadelmann, *Uniform Law on the International Sale of Goods: A Conflict of Laws Imbroglia*, 74 *YALE L.J.* 449 (1965).

*B. Part II. Formation of the Contract (Arts. 14-24)*

Part II of the Convention sets out the rules governing the formation of the international sales contract. The first four articles of part II govern the offer. These articles provide for the prerequisites of an offer (art. 14) and the withdrawal, revocation, and termination of an offer (arts. 15-17). The following five articles set out the corresponding rules on the acceptance. They provide for the form an acceptance may take (art. 18), the effect of acceptance which vary the terms of an offer (art. 19), the time allowed for acceptance (arts. 20-21), and withdrawal of an acceptance (art. 22). Article 23 states that a contract is concluded when an acceptance becomes effective, i.e., when it has reached the offeror. A final provision, article 24, defines when a communication "reaches" a party.

These formation provisions embody carefully negotiated compromises between civil law and common law concepts, with several significant concessions to the common law. The Convention rejects the civil law presumption that offers are irrevocable in favor of the common law presumption of revocability with a "firm offer" exception similar to that of the Uniform Commercial Code (U.C.C. § 2-205). Although an acceptance will not be effective until it reaches the offeror (thus rejecting the common law "mailbox rule") the Convention does provide for the most important effect of the common law rule: an offeror may not revoke an offer once an acceptance is dispatched (arts. 16(1), 18(2)).

The effect of the Convention will probably be to enforce somewhat fewer "agreements" than would be the case under U.S. law. The Convention emphasizes the need for definiteness in an offer which may mean, for example, that an "open price" offer will not be effective (art. 14, *but see* art. 55; *cf.* U.C.C. § 2-305). Where exchanged forms do not match, application of the Convention will lead to fewer enforceable contracts because the terms of an acceptance must conform to those of the offer except where alterations are not material (art. 19; *cf.* U.C.C. § 2-207). Although U.S. law is more flexible on these matters, in international trade where parties are dealing with each other at a distance, the Convention's greater conceptualism is desirable because it will force parties to produce more evidence of a concluded agreement.

Article 92 permits a state to declare it will not be bound by part II. It is recommended that the United States not exercise its right under this article.

*C. Part III. Sale of Goods*

Part III is divided into five chapters. It begins with general provisions (ch. 1), followed by chapters on the obligations of the seller and of the buyer (chs. 2-3). A separate chapter is devoted to problems of risk of loss (ch. 4) and a final chapter deals with provisions common to the obligations

of the seller and of the buyer (ch. 5). The general provisions of part I apply to part III.

In general terms, from the perspective of U.S. interests, the provisions of part III represent a considerable improvement on the 1964 Sales Convention (ULIS). The ULIS provisions were criticized for their complexity and their use of abstract concepts to determine the rights and obligations of parties. The CISG text has reduced the number of substantive provisions and eliminated considerable complexity by consolidating remedy provisions. The CISG text has also eliminated several abstract concepts which the draftsmen of ULIS had found difficult to translate from the original French. Instead of having risk of loss turn on *délivrance* (which cannot be translated into English as "delivery"), for example, the CISG provisions look to verifiable physical events such as "handing over" goods. In this emphasis on the factual context in which rights and obligations arise the CISG closely resembles the approach and content of the Uniform Commercial Code.

Article 92 permits a state to declare that it will not be bound by part III. As the discussion in the following paragraphs will indicate, the provisions of part III are compatible with U.S. interests and it is recommended that the United States not exercise this right under article 92.

## 1. GENERAL PROVISIONS (ARTS. 25-29)

Chapter I of part III collects a disparate group of provisions. Article 25 defines when a breach of contract is "fundamental" for the benefit of articles in later chapters which permit a party to avoid a contract or reject goods only when there has been a fundamental breach. Article 26 requires a party who is avoiding a contract to notify the other party, while article 27 states the general rule that the addressee of a communication bears the risk of delay or error in the transmission. Article 28 states, as a general exception to later rules contemplating specific performance of contract obligations, that a court is not required to order specific performance unless the court would do so under domestic law. Article 29 deals with modification and termination of contracts in terms which closely resemble the substance of the Uniform Commercial Code (U.C.C. § 2-209).

Article 28 represents part of a compromise on the troublesome question of specific performance of the sales contract. By virtue of this provision common law courts are only required to order specific performance when they would do so in similar cases governed by domestic law. In later chapters of part III the buyer is given the right to require the seller to deliver (art. 46) and the seller has an analogous right to require the buyer to pay for the goods (art. 62). These later provisions are consistent with the doctrinal preference of the civil law for specific performance, which is considered important for the security of obligations.

Several considerations limit the impact of the specific performance provisions. Article 28 itself limits the fora in which decrees of specific performance may be obtained. Traders from the United States may protect themselves by contracting for a choice of forum in a common law jurisdiction or, indeed, by excluding the remedy of specific performance by an appropriate clause in the contract itself. In addition, the CISG provision on mitigation (art. 77) may be interpreted to require a party to cover (i.e., enter into a substitute transaction) before seeking specific performance. It should also be noted that specific performance will not often be a useful remedy for the non-breaching party, especially when the parties are dealing with each other from considerable distances. Even in civil law countries parties do not often seek specific enforcement.

## 2. OBLIGATIONS OF THE SELLER (ARTS. 30-52)

Chapter II has three sections which deal respectively with the obligation to deliver goods or documents, the conformity of the goods and third party claims, and remedies (other than damages) for seller's breach of contract. Additional obligations of the seller and rights of the buyer are set out in chapter V, which also spells out the content of the damage remedies.

Seller's obligation to deliver goods or documents under CISG closely resembles the rules of the Uniform Commercial Code (U.C.C. §§ 2-503, 2-504). Where, how and when the seller must deliver goods are governed by articles 31-33 respectively. Article 34 sets out rules on the delivery of documents.

Rules on conformity of goods also are similar in content to the Uniform Commercial Code. Article 35 combines in one article the several warranties of the UCC (U.C.C. §§ 2-313 to 2-315) and the following provision, article 36, spells out when a seller will be liable for non-conformity. A seller is permitted, subject to specific limitations, to cure a non-conforming tender (art. 37; U.C.C. § 2-508). The buyer must inspect delivered goods promptly (art. 38; U.C.C. § 2-513) and must give notice of non-conformity within at least two years from delivery (art. 39). A seller who knew or could not have been unaware of a non-conformity may not rely on buyer's failure to inspect or to notify (art. 40). Moreover, a buyer with a reasonable excuse for giving notice will still have limited remedies (art. 44; *cf.* U.C.C. § 2-607(3)).

A seller also warrants title of the goods sold (art. 41) and that the goods are free from claims based on industrial property rights (art. 42). These provisions are similar in substance to the Uniform Commercial Code warranty of title (U.C.C. § 2-312). Rules on notice of breach of warranty and estoppel of the seller when notice has not been given are similar to those for non-conformity of goods (arts. 43-44).

The remedies for seller's breach of contract include not only damages but also specific performance and avoidance of the contract. By virtue of articles 46 and 47 the buyer may require the seller to perform his obligations or fix an additional period for the seller to perform. The seller himself may cure, even after the date for delivery, within narrower limits than for cure before the time for delivery (art. 48; U.C.C. § 2-508(2)). The buyer has a right to avoid the contract if there has been a fundamental breach or if seller does not deliver goods within any additional period of time fixed by the buyer (art. 49). Article 50 permits the buyer to reduce the price when non-conforming goods are delivered. This remedy has origins in the civil law but its formula has been amended so much that it resembles the common law right to deduct damages from the price (U.C.C. § 2-717). Two final articles set out buyer's rights to reject where there has been partial or premature delivery or delivery of excess goods (arts. 51-52).

As was noted under C.1 above, the buyer's right to require seller to perform goes beyond the common law, which has traditionally been reluctant to order specific performance although the Uniform Commercial Code seeks to make specific performance more readily available (U.C.C. § 2-716). As discussed above, a seller in his contract may limit the availability of this remedy and it is a remedy that will seldom be useful to the buyer.

The buyer's right to reject the goods under the Convention appears to be more limited than under the Uniform Commercial Code. In practice this apparent difference will probably be minimal. The code gives the right to reject for any defect in tender or delivery (U.C.C. § 2-601) but then limits this right in installment contracts, shipment contracts, in the context of revocation of acceptance, and by the right to cure (U.C.C. §§ 2-612, 2-504, 2-607, 2-508). In any case, to the extent the CISG limits a buyer's right to reject for non-fundamental defects the distant seller is protected to some extent from sharp practices.

### 3. OBLIGATIONS OF THE BUYER (ARTS. 53-65)

As with the chapter on seller's obligations, chapter III divides the articles dealing with buyer's obligations into three sections: payment of the price, taking delivery, and seller's remedies for buyer's breaches.

Buyer's principal obligation is to pay the price. The CISG text provides for the scope of the obligation (art. 54), the manner of determining the price (arts. 55-56), where payment is to take place (art. 57), and when it must be done (art. 58). A final article notes that buyer's obligation arises without the need for seller to request payment (art. 59). The obligation to take delivery is stated simply in a single short article (art. 60). The elaboration of buyer's obligations is consistent with U.S. law.

Seller's remedies for breach by the buyer parallel the provisions on buyer's remedies in chapter II. Seller can seek "specific performance" of

buyer's obligations (art. 62) or fix an additional period of time for buyer to perform (art. 63). If the buyer commits a fundamental breach or does not perform within the additional period of time fixed by the seller then the seller may avoid the contract (art. 64). A final article gives the seller the right to determine reasonable specifications as to his performance where the contract leaves the specifications to the buyer and the buyer has not acted (art. 65).

The remarks set out above (C.2) with respect to buyer's remedies are equally applicable to seller's remedies. Article 62 of the Convention which permits the seller to recover the price goes beyond the equivalent provision in the Uniform Commercial Code (U.C.C. § 2-709). To the extent that the seller has or is able to enter into a substitute transaction he may be required to do so by the requirement that he mitigate damages (art. 77). In addition, as discussed under C.1 above, a common law court presumably will not be required to allow the action for the price if it would not do so under domestic law (art. 28). In any case, a concerned buyer may always limit or exclude this remedy in the sales contract.

#### 4. PASSING OF RISK (ARTS. 66-70)

Performance of an international sales contract will usually involve carriage of goods with the consequent problem of determining when the risk of loss or damage passes. Five articles spell out the passing of risk under CISG. An initial provision states that once the risk passes to the buyer he is obligated to pay the price (art. 66). The following articles deal with passage of the risk for conforming goods when the sale involves carriage, the special case of goods sold in transit, and the residual rules for cases not covered by the other articles (arts. 67-69). A final article deals with the effect of a fundamental breach on buyer's remedies (art. 70).

These provisions on risk of loss deal with the problem in much the same way as the equivalent provisions of the Uniform Commercial Code (U.C.C. §§ 2-509, 2-510). Unless otherwise agreed the allocation of the risk turns on who controls the goods and who can be expected to insure them. In international trade, however, customary trade terms such as F.O.B. and C.I.F. which the parties may adopt will incorporate the risk of loss allocation associated with those terms. *See* U.C.C. §§ 2-319 to 2-324.

#### 5. PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER (ARTS. 71-88)

This final chapter of part III is divided into six sections. The first section deals with anticipatory breach and instalment contracts (arts. 71-73). The next two sections spell out a party's right to damages (arts. 74-77) and the recovery of interest (art. 78). A fourth section covers the problem of when a party is excused or "exempted" from liability (arts. 79-80), while the follow-

ing section states the effects of avoidance (arts. 81-84). The final section sets out the scope of a non-breaching party's obligation to preserve the goods (arts. 85-88).

Although the articles on anticipatory breach were a sensitive issue at the Vienna conference the final CISG text permits a party to suspend performance if "it becomes apparent that the other party will not perform a substantial part of his obligations. . . ." (art. 71(1)) The result is similar to that of the Uniform Commercial Code (U.C.C. § 2-610). The installment contract provision is also similar in form and content to a similar provision of the Code (U.C.C. § 2-612).

The damage provisions, which are common to both the seller and the buyer, conform with the basic tenets of the common law.<sup>7</sup> These articles provide money compensation for expectation damages to the non-breaching party. Recovery is limited to foreseeable losses which the non-breaching party could not avoid by taking reasonable steps to mitigate the losses. The damage formulae look to market-contract price and cover-contract price differentials in much the same way that the Uniform Commercial Code does (U.C.C. §§ 2-706, 2-708, 2-712, 2-713). Interest on payments in arrears may also be recovered—a sensitive issue much debated at the Vienna conference.

The exemption or "commercial impracticability" articles (arts. 79-80) provide a satisfactory answer to a difficult question.<sup>8</sup> A party is relieved from liability for failure to perform if it was due "to an impediment beyond his control" which he could not reasonably have foreseen at the time of contracting or have avoided or overcome at a later time. The 1964 Sales Convention (ULIS) substituted the word "circumstances" for "impediment" with the result that a party was more frequently excused under ULIS (ULIS art. 74). Restricting excuse in CISG brings the rule more closely in line with developing U.S. law in this area (U.C.C. §§ 2-613 to 2-616).

The effect of avoidance is to relieve both parties from their obligations under the contract, subject to the payment of damages. The parties must make restitution unless specifically excused. The result is similar to that which would occur upon "cancellation" under the Uniform Commercial Code (U.C.C. §§ 2-106(4), 2-703, 2-711).

The Convention articles governing the rights and obligations of a buyer or seller to preserve the goods when the other party has breached the contract also have their analogues in the Uniform Commercial Code and are compatible with the needs of parties dealing in international trade. (See U.C.C. §§ 2-603, 2-604, 2-706, 2-711(3)).

<sup>7</sup>See generally Farnsworth, *Damages and Specific Relief*, 27 AM. J. COMP. L. 247 (1979).

<sup>8</sup>See generally Nicholas, *"Force Majeure" and Frustration*, 27 AM. J. COMP. L. 231 (1979).

*D. Part IV. Final Provisions (Arts. 89-101)*

Part IV contains the provisions governing the implementation, declarations, reservations and other final clauses of the convention. Most of the provisions are ministerial and non-controversial as they deal with such questions as naming the depository (art. 89), signing and adopting the convention (arts. 99, 100), and denouncing it (art. 101).

This final part also sets out the five declarations and reservations which a state may make to the convention. They include:

—the right to declare that a state declines to adopt either part II or part III of CSIG (art. 92, discussed above);

—the right to declare that the Convention will apply to some but not all territorial units of a federal state (art. 93);

—the right to declare that the Convention will not apply between parties whose places of business are in states whose legal rules are the same or closely related to matters governed by CISG (art. 94);

—the right to declare that a state will not be bound by article 1(1)(b) (art. 95), discussed above; and

—the right to declare that any provision of the Convention which permits a legal act (such as an offer or the contract itself) to be in any form other than writing will not apply where a party has his place of business in that state (art. 96, discussed above).

A state is not permitted to make reservations other than those specifically provided for (art. 98).

The two permitted reservations not already discussed in this report are not relevant to the United States. The “federal state” provision of article 93 is designed for such states as Australia and Canada with their very different problems of constitutional authority of the federal government with respect to foreign affairs. The United States may make this reservation, however, if it is determined that the Convention should not extend to certain territories, such as Micronesia.

**IV. Conclusion**

The U.N. Convention on Contracts for the International Sale of Goods was prepared over many years with considerable care, drawing on the technical advice of experts from all parts of the world. The United States participated extensively and effectively in the drafting process. Although on a number of points differing national law solutions are replaced with compromise provisions, many of the CISG provisions are similar in approach and content to the Uniform Commercial Code. The major objections to the 1964 Hague conventions made by the United States have been resolved by the 1980 CISG text. The convention will promote U.S. business interests

and the United States will gain political goodwill by prompt signature and ratification of the convention.

It is recommended that the United States sign and ratify the convention with a declaration that it will not be bound by article 1(1)(b).

Respectfully submitted,

LYON L. BRINSMADE, *Chairman*  
Section of International Law

August, 1981

