question this condition is usually replaced (or covered) by the condition of an inevitability. However, there can be cases when it is doubtlessly *force majeure* (for example a war conflict) even if the obstacle could have been foreseen (for example in view of certain political situations). Should, in spite of this, unforeseen conditions be left as one of the basic signs of *force majeure,* it would be suitable to state that the time of the origin of obligation is decisive for its consideration. Though the commentary on the draft pre-supposes such interpretation, this conclusion does not clearly follow from the draft.

Article 58

12. It should be reconsidered whether it would be more appropriate for the seller to be entitled to interest charges in the country of the debtor instead of the creditor, or to combine the discount rate of interest valid in both countries in such a way (or manner) that the non-performance of the monetary obligation be advantageous for the debtor (for instance in cases when the rate is higher in his country).

Article 67

13. It is necessary to re-examine whether it is correct that the risk be passed to the buyer also in a case when the delivered goods are defective. Article 67 deals only with cases of fundamental breach of contract, but in accordance with article 30, paragraph 1, letter (*b*) the buyer can, under certain conditions, avoid the contract also in a case of a non-fundamental breach of contract. Here it is also necessary to take into consideration that it is not appropriate that the possibility of avoidance of contract should be limited only on cases of fundamental breach of contract, particularly if its definition contained in article 9 will be preserved.

14. It would be more desirable to have a regulation according to which the risk would be passed to the buyer only in such case if the buyer, in spite of his right to avoid the contract, does not do so without unnecessary delay or does not request a substitute delivery of goods or, if the buyer has no such right at all. In these cases the risk should pass at the time such transition would take place if the goods did not have such defects. Definite consideration on the question of passing of risk is dependent on the solution of the question of legal consequences of the delivery of defective goods and legal claims arising for the buyer in connexion with it.

DENMARK (A/CN.9/125/ADD. 3)*

[*Original: English*]

In the opinion of the Danish Government the Draft Convention on the International Sale of Goods prepared by a working group within UNCITRAL represents an appreciable improvement compared with the Hague Convention of 1964 on the International Sale of Goods.

As the working group has approved the Draft by consensus apart from a very small number of reservations to certain articles it appears that the new convention should be acceptable to states with different legal systems. The Danish Government therefore considers the Draft convention to be an excellent basis for the discussions at UNCITRAL's forthcoming session.

As to the individual articles of the Draft Convention the Danish Government supports the comments made by the Swedish Government.

In addition the Government wishes to submit the following observations.

Article 19

According to paragraph 2 of this article the buyer cannot claim non-conformity of the goods under subparagraphs (*a*) to (*d*) of paragraph 1 if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such non-conformity. This provision seems to be too favourable to the buyer. If the contract provides for specified goods and the buyer has examined the goods at the time of the conclusion of the contract, the seller may reasonably suppose that the buyer has discovered any non-conformity, which could be discovered, and accepted the condition of the goods. The same applies when the seller may reasonably suppose that the buyer has examined the goods before the conclusion of the contract. The wording "knew or could not have been unaware of such non-conformity" should therefore be replaced by "knew or ought to have been aware of such non-conformity".

Articles 26 and 50

The rule of exemption from liability in article 50 paragraph 1 should also apply with regard to an impediment to performance which existed at the time of the conclusion of the contract. In the opinion of the Danish Government there is no reason why the liability of the seller should be more strict in this case than in case of an impediment which has occurred after the conclusion of the contract.

Article 29

As the right of the seller to cure any failure to perform his obligations is limited to cases where no unreasonable inconvenience or unreasonable cost is caused to the buyer and presupposes that the failure can be cured without such delay amounting to a fundamental breach of contract, it is proposed that this right of the seller shall be given priority over the buyer's declaration of avoidance or reduction of the price.

Article 45

Paragraph 2 (*a*) provides that the seller loses his right to declare the contract avoided in case of late performance of the buyer when he becomes aware that the performance has been rendered. If there has been a long delay in the buyer's payment of the price, the performance could be rather surprising to the seller, and it does not seem reasonable that the seller should lose all rights of avoidance when the price is paid. The Government therefore proposes the following wording of subparagraph (*a*):

> "(*a*) In respect of late performance by the buyer, within a reasonable time after the seller has become aware that performance has been rendered;".

* 23 May 1977.