

ANNEX XV

Articles 52 and 53 of ULIS

Comments and proposals of the representative of the USSR

[Original: Russian]

Section III of ULIS, entitled "Transfer of property", actually does not define either the time or the other modalities of the transfer of property rights in the goods. It is essentially limited to the regulation in Article 52 of the situation arising when any third person has rights or claims with respect to the goods which are inconsistent with the rights of the buyer. The expression "a right or claim of a third person" may be assumed to mean legally valid rights and claims, although this is not explicitly stated in ULIS.

According to Article 53, the rights conferred on the buyer by Article 52 "exclude all other remedies...". If "other remedies" means those which are prescribed for similar cases under the national law of some country, the provisions of Article 53 can scarcely give rise to any objection. However, the wording of this article, particularly in comparison with the other articles of ULIS, is so categorical that it may create the impression, at least among businessmen, i.e. those for whose use the Law is chiefly being drafted, that the Law prohibits the parties to the contract themselves from establishing by mutual agreement any other remedies (e.g. the exaction of a forfeit or a reduction in price, the right or obligation of the buyer to settle independently the claims of third parties, etc.) supplementary to, or different from, those provided for in Article 52 of ULIS. For that reason, should a majority of the members of the Working Group on Sales consider it expedient to retain in the Uniform Law the principle embodied in Article 53, it would be necessary, in our opinion, to add at the end the following words: "except those provided for by agreement between the parties or by any usage." Although the suggested amendment is imply a restatement of a general rule laid down in Article 3 of ULIS, we think that such a repetition - which, incidentally, occurs in a number of other articles of the Law as well - would be fully justified in this case.