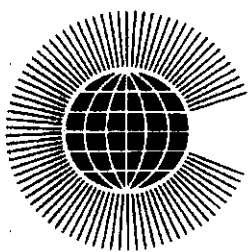


# **The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)**

Explanatory Documentation prepared for  
Commonwealth Jurisdictions



Commonwealth Secretariat

# **The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)**

Explanatory Documentation prepared for  
Commonwealth Jurisdictions by Muna Ndulo  
in association with the Commonwealth Secretariat

*October 1991*

Commonwealth Secretariat, Marlborough House, Pall Mall, London SW1Y 5HX

© Copyright 1991

Printed and published by  
The Commonwealth Secretariat

May be purchased from  
Commonwealth Secretariat Publications  
Marlborough House  
London SW1Y 5HX

ISBN 0 85092 382 4

Price £4.50

# Contents

	Page
1. PREFACE .....	v
2. INTRODUCTORY NOTE .....	vi
<b>CHAPTER I</b>	
3. THE CONVENTION .....	1
(a) Origins of the Convention .....	1
(b) Entry into force .....	5
(c) Aims of the Convention .....	6
4. SPHERE OF APPLICATION OF THE CONVENTION .....	8
(a) Scope .....	8
(b) Applicability of the Convention to international contracts of sale of goods .....	9
(c) Excluded matters .....	10
1. Validity and passing of property .....	10
2. Products liability .....	11
3. Consumer contracts, auctions, stocks and securities excepted .....	11
5. GENERAL PROVISIONS OF SPECIAL IMPORTANCE .....	11
(a) Interpretation and gap-filling .....	11
(b) Usage .....	12
6. FORMATION OF CONTRACT .....	13
(a) Form .....	13
(b) Offer and revocation of an offer .....	14
(c) Acceptance .....	15
7. RIGHTS AND DUTIES OF THE BUYER AND SELLER .....	17
(a) Obligations of the seller .....	17
1. Delivery of goods and handing over of documents .....	17
2. Conformity of the goods .....	17
(b) Obligations of the buyer .....	19
(c) Remedies for breach of contract by the buyer and the seller .....	20
1. Specific performance .....	20
2. Delivery of substitute goods or cure of defects .....	21

	<b>Page</b>
3. Partial of excessive performance .....	21
4. Damages .....	22
5. Reduction of price .....	24
6. Avoidance .....	24
 8. GENERAL PROVISIONS ON RIGHTS AND DUTIES OF PARTIES	 26
(a) Passing of risk .....	26
(b) Provisions common to the seller and buyer ....	27
(1) Suspension of obligations .....	27
(2) Exemptions .....	28
(3) Preservation of the goods .....	29
 <b>CHAPTER II</b>	
9. ACCESSION PROCEDURE .....	31
(a) Depository .....	31
(b) Reservations .....	31
(c) Authorised declarations .....	32
(d) Legislative provisions .....	36
 10. ANNEX: DRAFT SALE OF GOODS (UNITED NATIONS SALES CONVENTION) ACT, 199 ...	 37
 11. TEXT OF UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS .....	 39

## Preface

This accession kit has been prepared primarily to assist Governments of Commonwealth Countries in acceding to the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). It provides information on the background to the Convention and its essential features. It also includes the text of the Convention and a draft bill based on the Australian legislation implementing the Sales Convention in the State of Queensland.

The Commonwealth Secretariat is grateful to Muna Ndulo of the Office of Legal Affairs of the United Nations Commission on International Trade Law (UNCITRAL) for undertaking the preparation of this kit on its behalf. The Secretariat stands ready to provide to governments whatever further assistance it can.

Legal Division  
Commonwealth Secretariat  
Marlborough House  
London SW1Y 5HX

October 1991

## Introductory Note

This document is one of a series of occasional papers by way of explanatory documentation prepared for the Commonwealth Secretariat which seeks to provide Commonwealth Governments with information about multilateral treaties to which accession may be considered to be desirable.

This document contains information about the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). In addition to the English language version of the text of the Convention (the Arabic, Chinese, French, Russian and Spanish versions are equally authentic), it includes comments on the text of the Convention and guidance as to the decisions required prior to accession and as to possible implementing legislation for which a model bill has been provided.

The depository is the Secretary-General of the United Nations (article/89). The Commonwealth Secretariat will endeavour to supply further information on points of detail at the request of any Government.

# CHAPTER I

## The Convention

### (a) Origins of the Convention

1.01 The United Nations Convention on Contracts for the International Sale of Goods (hereafter cited as the United Nations Sales Convention), which was adopted by a diplomatic Conference in 1980,<sup>1</sup> was elaborated under the auspices of the United Nations Commission on International Trade Law (UNCITRAL). The United Nations Sales Convention is the outcome of a long process of unification whose origins go back to the early days of the movement in respect of the unification of international trade law<sup>2</sup>. In April 1930 the International Institute for the Unification of Private Law (UNIDROIT) decided to undertake the preparation of a uniform law on the international sale of goods. Drafts were prepared and submitted for comments to Governments through the League of Nations prior to the cessation of work on this project in 1939 on account of the Second World War.

1.02 In 1951 the Government of the Netherlands organized a diplomatic conference on the international sale of goods in order to consider the draft prepared by UNIDROIT and to determine the means by which the work could be brought to a successful conclusion. The conference decided that the work should be continued and appointed a special committee to prepare a new draft on the basis of the suggestions made at the conference. The special committee prepared a revised draft in 1956, which was circulated by the Government of the Netherlands to interested Governments. On the basis of replies a modified draft was prepared by the special committee in 1963. In 1964 the Government of the Netherlands convened a diplomatic conference at The Hague to which the 1963 draft of the Uniform Law on the International Sale of Goods (ULIS) was submitted for consideration.

1.03 In the meantime UNIDROIT had prepared a draft of the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF). The Government of the Netherlands also circulated that draft to interested Governments for their

-----

1 Final Act of the United Nations Conference on Contracts for the International Sale of Goods. (A/CONF.97/18) [United Nations Commission on International Trade Law Yearbook 1980, part three, chapter I, section C] (reproduced in Official Records of the United Nations Conference on Contracts for the International Sale of Goods, United Nations publication, Sales No. E.81.IV.3, part one).

2 See historical introduction to the draft Convention on Contracts for the International Sales of Goods, prepared by the Secretariat (reproduced in Official Records of the United Nations Conference on Contracts for the International Sale of Goods, part one, sec. B) (originally published as the introduction to document A/CONF.97/5).



comments. The draft and the comments thereon were also submitted to the 1964 Hague Conference. The 1964 Hague Conference adopted the two Uniform Laws as well as two Conventions to which the Uniform Laws were annexed, i.e. the Convention Relating to a Uniform Law on the International Sale of Goods (1964 Hague Sales Convention) and the Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (1964 Hague Formation of Contracts Convention) and opened them for signature on 1 July 1964<sup>3</sup>.

1.04 The 1964 Hague Sales Convention entered into force on 18 August 1972. It has been ratified, or acceded to by two Commonwealth States Gambia and the United Kingdom of Great Britain and Northern Ireland, and by Belgium, the Federal Republic of Germany, Luxemburg, Israel, Italy, the Netherlands and San Marino. The 1964 Hague Formation of Contracts Convention entered into force on 23 August 1972. It has been ratified, or acceded to, by the States listed above, with the exception of Israel. Both conventions have been denounced by Italy as of 1 January 1988 and the Federal Republic of Germany as of 1 January 1991 as a result of their adherence to the United Nations Sales Convention. Since the substantive provisions on the formation of contracts and on the law of sales were embodied in the uniform law annexed to the conventions, and States that ratified or acceded to either of the conventions were obligated to enact the uniform law into their domestic legal system, further reference will be made either to ULIS or ULF or to the conventions depending on the context.

1.05 In 1966 the United Nations General Assembly created UNCITRAL and entrusted it with the objective of furthering the progressive harmonization and unification of the law of international trade<sup>4</sup>. The Commission was charged with carrying out that objective by, among other means, preparing new or promoting the adoption of existing international conventions, model laws and uniform laws<sup>5</sup>. At the first session of UNCITRAL held in 1968, it was decided that, in respect of the two 1964 Hague Conventions, which were then not yet in force, the Commission should determine whether States intended to become party to them. Accordingly, the Commission requested the Secretary-General to send a questionnaire to States Members of the United Nations and Member States of any of its specialized

-----

3 The text of the ULIS may be found in the Convention Relating to a Uniform Law on the International Sale of Goods, 834 U.N.T.S., p.107, reprinted in 3 I.L.M., p.855 (1964) and of the ULF may be found in the Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, 834 U.N.T.S. p.169, reprinted in 3 I.L.M., p.864 (1964).

4 General Assembly resolution 2204 (XXI) (Yearbook 1968-1970, part one, chap. II, sec. E).

5 Ibid.

agencies<sup>6</sup>. The replies and an analysis of the replies were submitted to the second session of the Commission in 1969<sup>7</sup>.

1.06 An analysis of the answers revealed that the existing texts of ULIS and ULF were unlikely to command a wide acceptance by many countries of different legal, social and economic systems. Among the objections raised were the following:

- (a) the 1964 Hague Conference, at which ULIS and ULF had been adopted, had been attended by only twenty-eight States, mainly market-economy industrialized countries, and the developing countries and socialist countries had not been adequately represented<sup>8</sup>. That encouraged a belief that the ULIS and ULF favoured the sellers of manufactured goods in the industrialized nations. In any case, without the adequate participation of the developing countries and socialist countries, the hope that the two Uniform Laws would become generally accepted on a worldwide basis could not be fulfilled;
- (b) ULIS used abstract and complex concepts taken from the civil Law which could easily result in ambiguity and error and could not be easily understood either by businessmen or by common law lawyers;
- (c) ULIS pointed more to external trade between common boundary nations geographically near to each other; insufficient attention had been given to international trade problems involving overseas shipments and
- (d) the scope of application of the two uniform laws was considered by many as too broad as they were to apply regardless of conflict of laws rules<sup>9</sup>.

-----

6 Report of the United Nations Commission on International Trade Law on the work of its first session (1968), Official Records of the General Assembly, Twenty-third session, Supplement 16 (A/7216), paragraphs 16 and 17.

7 "Replies and studies by States concerning the Hague Conventions of 1964: note by the Secretary-General" (A/CN.9/11 and corr. 1 and add. 4). See also the analyses of those replies and studies prepared by the Secretariat: "International Sale of Goods: The Hague Conventions of 1964: Analysis of the replies and studies received from governments: report of the Secretary-General" (A/CN.9/17); "Analysis of the Studies and Comments by Governments on the Hague Conventions of 1964: report of the Secretary-General" (A/CN.9/31) [Yearbook 1968-1970, part three Chap. I, sect. A.1].

8 Only Egypt and Yugoslavia participated from the developing countries.

9 See ULIS article 2.

1.07 After consideration of the replies, the Commission decided to create a Working Group on the International Sale of Goods consisting of 14 States Members of the Commission, later increased to 15 States, which was instructed to ascertain "which modifications of the existing texts might render them capable of wider acceptance by countries of different legal, social and economic systems, or whether it will be necessary to elaborate a new text for the same purpose ... ."10. The Working Group in both cases eventually recommended the adoption of new texts.

1.08 UNCITRAL at its tenth session in 1977 adopted the draft Convention on International Sale of Goods<sup>11</sup> based on the text submitted by the Working Group. In 1978 at its eleventh session it adopted the provisions on the Formation of Contracts for the International Sale of Goods and merged the two together into the draft Convention on Contracts for the International Sale of Goods<sup>12</sup>. The draft Convention was submitted by the General Assembly to a diplomatic conference convened in Vienna from 10 March to 11 April 1980. The Conference was attended by representatives of 62 States and of 8 international organisations. The main work was done by two Committees, one charged with the preparation of the substantive provisions of the Convention (articles 1-88), the other with the preparation of the final clauses (articles 89-101). At the end of the Conference the texts prepared by the two Committees were voted on in Plenary session article by article; the Convention as a whole was then submitted to a roll-call vote and was approved without dissent<sup>13</sup>.

-----

10 Report of the United Nations Commission on International Trade Law on the work of its second session (1969), Official Records of the General Assembly, Twenty-fourth session, Supplement No.18 (A/7618), paragraph 38.

11 Report of the United Nations Commission on International Trade Law on the work of its tenth session (1977), Official Records of the General Assembly, Thirty-second session, Supplement No.17 (A/32/17).

12 Report of the United Nations Commission on International Trade Law on the work of its eleventh session (1978), Official Records of the General Assembly, Thirty-third session, Supplement No.17 (A/33/17).

13 Final Act of the United Nations Conference on Contracts for the International Sale of Goods (A/CONF. 97/18) [Yearbook 1980, part three, chap. 1, sect. A]. The Convention is set forth in Annex I of the Final Act. The Conference also adopted a protocol amending the Convention of the Limitation Period in the International Sale of Goods (New York, 1974) in order to harmonise the provisions of that Convention in respect of the sphere of application, with those of the Convention on Contracts for the International Sale of Goods. protocol amending the Convention on the Limitation Period in the International Sale of Goods, Final Act of the United Nations Conference on Contracts for the International Sale of Goods (A/CONF.97/18), Annex II) [Yearbook 1980, part three, chap. I, sect. C].

(b) Entry into force

1.09 In accordance with article 99(1) the Convention entered into force on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession. The numerical requirement was satisfied on 11 December 1986 with the simultaneous deposit of the requisite instruments of ratification of the Convention by the Peoples Republic of China, Italy and the United States of America. In consequence the Convention came into force on 1 January 1988.

1.10 As of 1 November 1990 the Convention had been ratified, or acceded to, by the following States (Commonwealth States being underlined): Argentina, Australia (1988), Austria, Bulgaria, Byelorussian S.S.R., Chile, China, Czechoslovakia, Denmark, Egypt, Finland, France, Germany (the Convention was signed by the former German Democratic Republic on 13 August 1981, ratified on 23 February 1989 and entered into force on 1 March 1990), Hungary, Iraq, Italy, Lesotho/(1981), Mexico, Norway, Spain, Sweden, Switzerland, Syrian Arab Republic, Ukrainian S.S.R., United States of America, U.S.S.R., Yugoslavia, Zambia (1986).

1.11 Although the United Nations Sales Convention does not formally represent a revision of the two 1964 Hague Conventions and the Uniform Laws annexed to them, it is clearly intended to replace them by becoming in the near future the only instrument governing international sales contracts at a world-wide level. For that reason it expressly provided that States which were parties to the 1964 Hague Conventions were required to denounce them when adhering to the new Convention (article 99(3), (4) and (6)).

1.12 On the other hand, article 94(1) allows two or more contracting States which have the same or closely related legal rules on matters governed by the Convention to declare at any time that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations. Also by article 94(2) a Contracting State which has the same or closely related legal rules on matters governed by the Convention as one or more non-contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Upon ratifying the Convention the Governments of Denmark, Finland, Norway and Sweden declared, pursuant to articles 94(1) and 94(2), that the Convention would not apply to contracts of sale where the parties have their place of business in Denmark, Finland, Iceland, Norway, Sweden. If a State which is the object of a declaration under the preceeding articles subsequently becomes a contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State have the effect of a declaration made under article 94(1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration (article 94(3)).

1.13 In terms of States covered, this multilateral Convention has proved to be an outstanding success. Already the diversity of the list of States that are now parties to the Convention indicates worldwide acceptance. The States represent every region, and every socio-economic, legal and major linguistic system of the world. Indications are that it will become the world sales law.

(c) Aims of the Convention

1.14 The Convention's main purpose is to bring about uniformity at a worldwide level in the law of international sales contracts. The Convention deals only with contracts of an international character for the sale of goods. Sales contracts of a purely domestic nature will still be governed by national laws. The principal reason for which the Convention has been limited solely to international transactions rests in the impossibility, at the present time, of agreeing, with respect to sales contracts no less than to other commercial contracts, on uniform rules intended to replace entirely the different national laws. It is significant that the only examples of such a total unification of law have so far been achieved only at a regional level, i.e. among countries with legal traditions and economic and political structures which are sufficiently homogenous. At a universal level, the only realistic approach is that of limiting the attempts at unification to international transactions, leaving States free to continue regulating purely domestic relations according to their own special needs.

1.15 Contracts across frontiers inevitably raise problems of conflict of laws, in the sense that in each case it is necessary to establish which of the various legal systems having contacts with the contract will ultimately regulate it. The uncertainties and the inconveniences that derive from this are too well known: suffice it to recall that because of the different national rules of private international law parties risk remaining uncertain of the law applicable to the contract until the competent forum is established. Until then, the same contract may be held to be subject to the law of State X or to the law of State Y depending on the forum in which a dispute arises and the conflicts rules of that forum are applied. The choice facing policy makers in a given country is not, therefore, whether their traders should be faced with the Convention rather than the domestic law of their country but, very often, whether they should be faced with the Convention rather than the law of a foreign country, difficult to understand and costly to translate.

1.16 In addition, the adoption of the United Nations Sales Convention aims at offering rules that will be more responsive than the traditional national laws to the effective needs of international trade. The Convention in this regard has a particular advantage in that a number of articles of the Convention have been tailored according to the special needs of international trade. It encourages the parties to preserve the contract by offering them less drastic means than litigation to resolve disputes (articles 46(2), 47(1), 48(1), 50, 63(1) and 65(1)). The Convention requires parties to give prompt notice of nonconformity in goods or of a third party claim to the goods (articles 39(1), (2) and 43(1), (2)). It requires parties to

preserve goods in their possession belonging to the other party (articles 85 and 86). A party can under the Convention suspend his performance of a contract if it becomes apparent that the other party will not perform a substantial part of his obligations (article 71(1)(a) and (b), but must continue with performance if the other party gives adequate assurance of his performance (article 71(3)). The Convention uses nonconceptual language which is comprehensible to both traders and lawyers. Also the legal rules that the Convention elaborates provide a standard which helps indicate the type of trading conduct that is internationally acceptable.

1.17 One should not ignore the fact that the Convention has not resolved all issues that may arise in connection with the conclusion or the performance of an international sales contract, and that with respect to questions that fall within its scope it does not always provide for direct and clear-cut solutions. When levelling these criticisms it is important to remember that even in an area as technical as sales law, the attempt to reach unification at a universal level today encounters objective limits. In part, this stems from the difficulty of reconciling diverse legal traditions. Suffice it to consider the contrary solutions, that at least in principle, follow the civil law and common law systems in regard to the revocability of the offer, specific performance and the basis of contractual liability. In part, the reasons lie in the particular structure and/or in the differing degrees of economic development of individual States or groups of States. A typical example may be found in the different positions taken as far as the relevance of usage in the interpretation and implementation of the contractual agreement is concerned or the possibility of concluding a sales contract without explicitly or implicitly determining the price or the time-limit within which the buyer must give notice of the non-conformity of the goods. In the circumstances the Convention represents a major achievement and is as good as can be expected.

1.18 The Convention is not intended to constitute the only legal source in the field of international sales contracts. There exist a number of ancillary uniform laws, such as the Convention on the Limitation Period in the International Sale of Goods (New York 1974) as amended by the 1980 protocol, also prepared by UNCITRAL, and the Convention on Agency in International Sale of Goods (Geneva 1983), prepared by UNIDROIT. The Hague Conference of Private International Law has revised the Convention on the Law applicable to International Contracts for the Sale of Goods (Hague 1955) with a view to making it consistent with the United Nations Sales Convention. The new Hague Convention was adopted in 1985 by a Diplomatic Conference.

1.19 The Convention contains a number of features that are innovations in the law of sales in common law legal systems. Several go to the formation of contracts, such as that in contrast to the Statute of Frauds, which requires signed writing for the enforcement of sales contracts whenever the price exceeds a certain amount, no writing is required by the Convention (article 11); no consideration is required to support an offeror's promise not to revoke the offer (article 16(2)(a)) or an agreement to modify the contract by increasing or reducing the obligations of any one of the parties (article 29(a)). Another

innovation for common law systems is the elimination of the traditional distinction between conditions and warranties in respect of the seller's obligation to deliver conforming goods (article 35). These innovations in regard to the common law represent the acceptance of concepts that are well known in civil law countries. There are, of course, many concepts in the Convention taken from the common law that are innovations to the civil law. This balancing of ideas from different legal systems represents both an effort to effect compromises that would make the Convention acceptable to all States and an effort to choose from the competing legal rules those that seemed advantageous for international sales transactions.

1.20 There are also a number of solutions that represent an authentic innovation of the uniform law insofar as they are as such virtually unknown to most, if not all, traditional sales laws. These include the unified approach to the parties' obligations and, correspondingly, to the remedies for breach of contract (articles 30 and 53, 45 and 61); the sellers right to cure defects in his or her performance not only up to the date for delivery, but even thereafter, provided that he can do so without causing the buyer unreasonable inconvenience (articles 34, 37 and 48); the limitation of the right to avoid the contract to breaches that are fundamental (articles 25, 49(1)(a), 64(1)(a) and 73), except in the case of non-delivery, non-payment or failure to take delivery, where avoidance becomes possible also if the defaulting party does not perform within an additional period of time of reasonable length fixed by the aggrieved party (articles 49(1)(b) and 64(1)(b)); and separation of the passing of risk for loss of or damage to the goods from the passing of property and relating it to the physical acts of transfer of possession of the goods to a carrier or to the buyer (articles 85-88).

#### **4. SPHERE OF APPLICATION OF THE CONVENTION**

##### **(a) Scope**

1.21 As article 1 indicates, the Convention applies to contracts of sale of goods. There is no definition of a sale, but the statements of the obligations of seller (article 30) and buyers (article 53) imply a conventional definition. A contract of sale is first and foremost a contract, i.e. a consensual transaction based on an agreement to buy and an agreement to sell. A contract of sale of goods must be distinguished from several other transactions that are normally quite different from a sale of goods but that, in particular circumstances, may closely resemble such a contract, namely

- (1) a contract of exchange,
- (2) a gift,
- (3) a contract of bailment,
- (4) a contract of hire-purchase,
- (5) a contract of loan on the security of goods,
- (6) a contract of agency and
- (7) a contract for the supply of services.

In its article 3 the Convention deals specifically only with distinction between a contract of sale and a contract for services, leaving the other distinctions to the otherwise applicable local law. A contract in which one party undertakes to supply goods to be manufactured or produced is a sale (article 3(1) unless the other party supplies a substantial part of the material involved in the manufacturing or production. A contract in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services is not a sale (article 3(2)). This leaves scope for interpretation, particularly in the case of large, complex transactions, such as turn-key contracts. Of course, just as the parties may contract out of the Convention, they may agree that it shall apply to a transaction to which it is, or may be, otherwise inapplicable. As regards the meaning of "goods" certain items are excluded from the applicability of the Convention as is shown later.

(b) Applicability of the Convention to international contracts of sale of goods

1.22 The 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 (article 1(1)(a) and (b)).

If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the contract and its performance (article 10(a)). The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract (article 1(2)). It should be noted that for the Convention to apply it is sufficient that the parties' places of business are located in different States. It is not as such relevant whether the formation and the execution of the contract take place in the same State or in different States.

1.23 The Convention applies also when one party or both parties have their places of business in a State which is not a Contracting State if the conflict of laws rules lead to the application of the law of a Contracting State (article 1(1)(b)). If the conflict rules of the forum provide that the law applicable to the contract is that of a contracting State, article 1(1)(b) provides that the law to be applied is the Convention and not the law applicable to domestic sales of goods. Usually a contract is governed by the law chosen by the parties. If the parties choose the law of a Contracting State, the Convention applies automatically to the contract despite the fact that one party or both parties do not have their places of business within a Contracting State. Article 95 permits a State, at the time it becomes a party, to declare it will not be bound by article 1(1)(b), in which case the Convention applies only if both buyer and seller are from contracting States.



1.24 The Convention applies to contracts of sale of goods within its sphere of application unless the parties exclude its application in whole or in part (article 6). This upholds the basic principle of contractual freedom by allowing parties to exclude the application of the Convention or derogate from or vary the effect of any of its provisions. Aside from complete exclusion of the Convention, normally by choosing the law of a non-contracting State or by specifying the domestic law of sales of a contracting State, the most frequent application of article 6 will occur when a provision of the contract covers the same issue as does the Convention but provides a different solution. A provision of little importance to Commonwealth Countries is that the Convention applies irrespective of the civil or commercial character of the parties or the contract (article 1(3))<sup>14</sup>.

(c) Excluded matters

1. Validity and passing of property

1.25 The Convention covers only the relationship between the buyer and the seller. It does not regulate the rights of third parties. It does not cover the passing of property (transfer of ownership) and consequently is not concerned with the rights of a third party who acquires the property or of creditors of a buyer or seller in the event of bankruptcy. All these matters are left to be governed by otherwise applicable local law. The passing of property was excluded because of the difficulty of reconciling national differences and, more especially, because the subject boils over into other areas outside the law of contract. The Convention does, however regulate, as between the parties, a number of related matters, such as the seller's obligation to deliver goods free of third party claims and the passing of risk, as is discussed later.

1.26 The Convention does not cover the validity of the contract or of any of its provisions (article/4(a)). Matters which are thus outside the scope of the Convention include:

- (a) capacity of the parties,
- (b) rules concerning contracts contra bonos mores,
- (c) rules regarding contracts against public policy,
- (d) legislation intended to protect the weaker party and
- (e) questions of fraud, duress, and mistake.

Also excluded are administrative law matters such as

- (a) exchange control legislation,
- (b) price control legislation, and

-----

14 This rule is particularly necessary for those countries that apply commercial law rules to parties characterised as commercial parties and different rules to other parties. To some extent the non-application of the Convention to consumer sales achieves the same purpose.

- (c) legislation requiring export licences for certain goods.

Validity was excluded for several reasons. Questions of illegality and capacity belong fairly obviously to domestic law. Questions of mistake, fraud, unconscionability etc. presented other difficulties. There are wide differences of approach between national systems and especially between common law and civil law, and even if agreement could have been reached on a form of words, interpretations by national courts would almost certainly have destroyed the apparent unity.

## 2. Products liability

1.27 The Convention in addition does not govern product liability. Article 5 provides that the Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person. This exclusion is important for those systems, such as French law, which excludes recourse to tort remedies between parties in a contractual relationship. In such systems the contractual remedy provides greater protection in case of personal injury than is accorded by the Convention, which is drafted with commercial damage in mind.

## 3. Consumer contracts, auctions, stocks and securities excepted

1.28 The United Nations Sales Convention excludes certain types of sales from its ambit (article 2). It excludes consumer sales, defined as sales of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use (article/2(a)). This is because in a number of countries consumer sales are subject to various types of national laws that are designed to protect consumers. Their exclusion avoids any risk of impairing the effectiveness of such national laws. Sales on execution or otherwise by authority of law are excluded as are sales of stocks, shares, investment securities, negotiable instruments or money, sales of ships, aircraft or vessels and sales of electricity (article 2(c),(d), (e)and (f)). The reason for the exclusion of this group of contracts is that sales of these kinds are usually subject to special national rules.

# 5. GENERAL PROVISIONS OF SPECIAL IMPORTANCE

## (a) Interpretation and gap-filling

1.29 In the interpretation of the Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade (article 7(1)). Although good faith may be considered to be a vague concept capable of a wide variety of interpretations, the good faith principle can serve a number of useful purposes. It gives the courts the flexibility that is needed by any law to make it work in practice. This flexibility will allow tribunals to avoid overly literal interpretations of

the Convention that would provide inequitable results unintended by the drafters and could prevent an all too hasty resort to domestic law. Furthermore, the obligation of good faith itself may foster an atmosphere of mutual trust among businessmen.

1.30 Questions not expressly settled by the Convention are to be settled, in the first instance, in conformity with the general principles on which the Convention is based (article 7(2)). But in article 7(2) it adds that in the absence of such principles, such questions are to be settled "in conformity with the law applicable by virtue of the rules of private international law." Thus courts are to make reference to one or more systems of national law to fill in gaps in the Convention. Further, the Convention contains a provision on the interpretation of statements and other conduct of a party, which will be relevant for the interpretation of the contract as distinct from interpretation of the Convention (article 8(1) and (2)).

(b) Usage

1.31 Article 9(1) of the United Nations Sales Convention states that the parties are bound by any usage to which they have agreed and by any practices which they have established between themselves. By practices which the parties have established between themselves is meant a course of dealing adopted by the individual parties unless that course of dealing has been excluded for a specific contract or for their relations in general for the future. Courses of dealing are automatically applicable not only to supplement the terms of the contractual agreement but also, pursuant to article 8(3) to help to determine the parties' intent. In most cases a course of dealing will relate to a minor point, such as a certain tolerance for non-observance of statutory or contractual time requirements or for quantitative or qualitative defects of the delivered goods, the granting of a price reduction, or notice procedures. However, a course of dealing could sometimes affect the entire content of the contract. For example, if the parties in their previous transactions regularly adopted certain general conditions contained in a separate writing, in subsequent contracts they may be bound by those conditions even in the absence of any express reference to them.

1.32 An agreement to apply a usage may be implied. That would be the case where the parties with respect to particular issues related to the formation or the performance of the contract deliberately acted in conformity with a local usage or a usage within a given trade. An implied reference to a usage may also be contained in an express statement of one party, provided that the interpretation of the statement permits such an inference. According to article 8(1) the decisive factor in this respect is the actual intent of the party making the statement, provided that the other party knew or could not have been unaware of that intent. Otherwise the understanding which a reasonable person of the same kind as the other party would have had in the same circumstances is to be considered (article 8(2)).

1.33 In addition to usages to which the parties may have agreed, according to article 9(2) they are considered, unless otherwise agreed, to have impliedly made applicable to their contract

usages of which they knew or ought to have known and which in international trade are widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned. The first requirement is intended to ensure that there will always be an effective link between the application of a particular usage and the parties' intention. The second requirement is an objective one. Its purpose is to avoid that usages, that may now have been confined to domestic sales, will be applied to transactions with foreign traders.

## **6. FORMATION OF CONTRACT**

### **(a) Form**

1.34 This was from the very beginning one of the most difficult and controversial issues. Some State trading countries wished to protect their own rule, which they regarded as vital to the functioning of their foreign trade agreements, that all international trade contracts had to be in writing. That position was, however, unacceptable to most other States. Therefore article 11 states that a sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. This means that any such requirement prescribed by the domestic law of the contracting State does not apply to contracts subject to the Convention irrespective of the nature of the requirement and of the purposes it is supposed to serve. A contract of sale may be proved by any means, including witnesses.

1.35 However, the Convention in article 96 allows a contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing to make a declaration at any time that any provision of article 11, article 29 or Part II of the Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State<sup>15</sup>. Of course, it does not automatically follow that the formal requirements of the declaring State will apply. That will be so only if, under the relevant rules of private international law, the law applicable to the formation of the contract is that of the declaring State. On the other hand the principle of freedom of form does not prevent the parties from agreeing to a writing requirement. This follows from the basic principle of party autonomy, which applies

-----

15 Article 96 was included as laws of a few countries impose strict formal requirements for the making of foreign trade contracts. See J Honnold, Uniform Law for International Sales Under the 1980 United Nations Convention, p.129 (1982). It is not expected that many countries will take advantage of article 96. Of the 29 States that had become party to the Convention as of 22 August 1990, only Argentina, Chile, China, Byelorussian S.S.R., Hungary, Ukrainian S.S.R. and the U.S.S.R had made the declaration under article 96.

as well to the prerequisites for the existence or termination of the obligation and is also reaffirmed in article 29(2). This latter article further makes it clear that a formal writing requirement agreed upon by the parties can be changed or suspended only by a written agreement.

(b) Offer and revocation of an offer

1.36 Article 14(1) of the United Nations Sales Convention defines an offer as a proposal for concluding a contract addressed to one or more specific persons, provided that it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. Article 14(1) is intended to be specific about what constitutes an offer. All the requirements must be present in a proposal for concluding a contract. Other stipulations may also be contained in the proposal. For instance, a proposal purporting to be an offer may also include a clause to the effect that the offer is conditional, depending on whether a future event ensues. Under the Convention a proposal is sufficiently definitive if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price. Consequently, indications of the goods to be bought or sold, and the quantity and price thereof seem to be essential under this article. However, in most jurisdictions if a party insists on an agreement concerning further issues such as the modalities of delivery of payment, such issues also become essential. As such demands emanate from party autonomy they must be respected.

1.37 A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers unless the contrary is clearly indicated by the person making the proposal. The term specific person includes individual legal persons, partnerships and joint ventures carrying out a business in common and capable of suing or being sued in the name of the partnership. In such cases all partners act as each other's agents. Consequently, the offer may be addressed to all or several partners as well as to one of them, since one partner binds all others. What is relevant here is not necessarily the name of the addressee, but it must be clear from the words used which specific person or persons is or are addressed. The number of addressees of an offer is immaterial. Proposals to buy or sell sent in the mail directly to the addressee meets the requirement of specific persons even if thousands of such proposals have been mailed to specific addressees.

1.38 The Convention makes a distinction between withdrawing and revoking an offer. Withdrawal occurs before the offer is effective, revocation afterwards. Withdrawal is effective if it reaches the offeree before or at the same time as the offer (article 15(2)). Revocation is effective if it reaches the offeree before he has dispatched an acceptance (article 16(1)). Article 16(2) deals with the more problematic question of the irrevocable offer. Here different systems give divergent answers. If the offer is expressly stated to be irrevocable, many Commonwealth jurisdictions will require consideration to support a promise not to revoke the offer, whereas civil law systems will normally find an enforceable undertaking not to revoke. Difficulties arise when there is no express undertaking, but, for

example, a fixed time is stated by which the offer must be accepted. In many Commonwealth jurisdictions this will constitute no more than an indication that after that time the offer will lapse unless previously revoked<sup>16</sup>. In civil law systems, however such a statement is in general regarded as indicating that the offer is irrevocable for the period stated. If no such period is stated, an offer is taken to be irrevocable for a reasonable time. The position of the Convention is a compromise. The Convention accepts the general principle that an offer may be revoked at any time (article 16(1)), but makes an offer irrevocable in certain cases (article 16(2)). It cannot be revoked if it indicates, by stating a fixed time for acceptance or otherwise, that it is irrevocable or if it was reasonable for the offeree to rely on its being irrevocable and he has acted in reliance on it. An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror (article 17). Thus if the offer is stated to be open for a specified 10 days, the offeror is free to deal elsewhere if he receives a rejection after 3 days.

(c) Acceptance

1.39 An acceptance is defined in the Convention as a statement made by, or other conduct of, the offeree which indicates assent to an offer. The Convention states that as a general rule silence shall not in itself amount to acceptance (article 18(1)). Silence may amount to acceptance, if it is coupled with other factors giving sufficient assurance of the offeree's intention. For instance, the Convention recognizes that as a result of the offer or practices established between the parties or usage, an offer might be accepted by the offeree performing an act, such as the dispatch of goods or the payment of the price (article 18(3)). The Convention applies the basic rule that an acceptance is effective only when it is communicated. Contrary to the predominant view in common law jurisdictions<sup>17</sup> the Convention allows withdrawal of the acceptance up to the moment when the acceptance reaches the offeror (article 22 and 18(2)). On the question of who bears the risk that an acceptance will be lost or delayed in its transmission to the offeror, the common law rule would be that it passes to the offeror on dispatch of the acceptance. However, the Convention applies the general rule that an acceptance is effective on receipt. It is therefore up to the offeree to make enquiry if he receives no response to his acceptance, whereas under the common law the burden is on the offeror to enquire if he receives no acceptance. An oral offer

-----

16 See M.P. Furmston, *Cheshire and Fifoot's Law of Contract*, 10th edition, London, Butterworths, 1981, p.50 and also *Payne v Care* (1789) 3 Term Rep. 148.

17 At common Law the contract is complete from the moment the letter accepting the offer has been put in the post. See *Adams v Lindsell* 91/L/Q/R.247; *Howell Securities Ltd. v Hughes* [1974] 1 All.E.R.161 and *Byne v Van Tienhoven* (1880) 5 CPD 344. A warning against the assumption that the rule will always be applied was given in the Australian case of *Tallerman v Nathan's Merchandise Ltd.* (1957) 98 C.L.R. 93.

must be accepted immediately unless the circumstances indicate otherwise. Where acceptance takes the form of an act, the act must be performed within the same time limits as if the acceptance had been made by communication (article 18(3)). The Convention however, provides that the acceptance is effective at the moment the act is performed (article 18(3)).

1.40 The period during which the offeree can accept runs in the absence of an indication to the contrary from the day the offeror's letter was dated. The date of the letter is the date shown on it; if no date is shown, it is the date on the envelope (article 20(1)). In the case of an offer made by instantaneous means of communications (e.g. telephone or telex), the time period runs from the moment the offer reaches the offeree (article 20(1)). It is further provided in article 20(2) that if notice of acceptance cannot be delivered to the offeror because the last day of the time period is an official holiday or non-business day, the period is extended to the first business day following. Article 21(1) of the Convention has the effect that a late acceptance is not effective unless, without delay, the offeror so informs the offeree. Article 21(2) deals with an acceptance which, though sent in an appropriate time, is received late because of a delay in transmission. In this case, the acceptance, even though it is late, is considered to be effective unless the offeror otherwise informs the offeree without delay. The burden is on the offeror to inform the offeree without delay that he considers his offer to have lapsed prior to the receipt of the acceptance. To this extent the risk is shifted to the offeror. The question does not, of course, arise in common law, where the acceptance would have been effective from the moment of dispatch<sup>18</sup>.

1.41 The general rule in article 19(1) of the Convention is that an offeree must accept the offer as it stands: if he attempts to add or subtract anything from it, he is not accepting it but making a counter offer. In article 19(2) of the Convention this general rule is qualified in that a reply which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance unless the offeror, without undue delay, objects to the discrepancy. The Convention, in article 19(3) gives examples of some of the types of changes that would amount to materially altering the terms of an offer. It states that additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially. Since article 19(2) is confined to such differences as do not "materially alter" the terms of the offer, its effect is likely to be no more than to put on the offeror the burden of objecting "without undue delay" to merely verbal differences between the offer and reply. An attempt to enlarge the scope of the paragraph by a restrictive interpretation of what constitutes a material alteration would run counter to

-----

18 Adams v Lindsell, (1818), 1 B & Ald. 681 and Bruner v Moore, [1904] 1 CH. 305.

paragraph 3, which is so widely drafted as to include most alterations about which there could be any difference of opinion. Since even within domestic systems any solution to the problem is controversial, it was not to be expected that an international body, dealing with diverse legal systems, would be able to resolve the problem in a radical manner.

## **7. RIGHTS AND DUTIES OF THE BUYER AND SELLER**

### **(a) Obligations of the seller**

#### **(1) Delivery of goods and handing over of documents**

1.42 The general obligations of the seller are summed up in article 30 of the Convention. This provision contains detailed treatment of the seller's obligations in respect of delivery of the goods and their conformity with the contract. The seller must deliver the goods, hand over any documents relating to the goods and transfer the property in the goods. The seller is required to deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim (article 41). The goods must also be free from any right or claim of a third party based on industrial property or other intellectual property of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

- (a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State, or
- (b) in any other case, under the law of the State where the buyer has his place of business (article 42(1)(a) and (b)). The obligation of the seller does not extend to cases where at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim or where the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer (article 42(2)(a) and (b)).

#### **(2) Conformity of the goods**

1.43 Article 35 of the Convention requires the seller to deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract. Except where otherwise agreed, the goods do not conform with the contract unless they

- (a) are fit for the purpose for which goods of the same description would ordinarily be used;



- (b) are fit for any particular purpose expressly or implicitly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skills and judgement;
- (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model; and
- (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a way adequate to preserve and protect the goods.

But the seller is not liable for any lack of conformity if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity. If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in the Convention (article 37).

1.44 The requirement of conformity must be satisfied at the moment that the risk passes, though the lack of conformity may become apparent only later (article 36(1)). The question of how long the conformity must last is dealt with in terms of a lack of conformity which occurs after the passing of the risk (article 36(2)). The seller is liable if this lack of conformity is due to a breach of any of the seller's obligations, including a breach of any guarantee that for a period of time the goods will remain fit. It is not made clear whether the "guarantee" can be implied or whether the "period of time" has to be fixed by the guarantee, but in the ordinary case it should be possible to attribute a failure of durability to a breach of the seller's obligation to deliver goods which are fit as defined in article 35.

1.45 There may be more difficulty with the provisions as to when the buyer will lose (wholly or in part) the right to rely on a lack of conformity. The common law with its complex inter-relationship between acceptance, examination and the doing of an act inconsistent with the ownership of the seller does not offer a persuasive model. Many civil law systems provide that the right to rely on a lack of conformity is lost by the lapse of time (either a fixed period or a reasonable period of time) either measured from delivery or from the moment when the buyer discovered or should have discovered the lack of conformity. Moreover, whereas under common law what is lost is the right to reject and to treat the contract as repudiated, in many civil law systems all remedies arising out of the lack of conformity are barred. Where the period of time in question is quite short and, particularly where the starting point is the moment of delivery, the effect on the buyer can therefore be harsh. On the other hand, the more the period is extended, the more insecure is the

position of the seller, particularly in the event of re-sales of the goods.

1.46 Under article 39(1) of the Convention, the basic rule is that the buyer must examine the goods as soon as is practicable. He loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it. Nevertheless, the buyer may still reduce the price in accordance with article 50 of the Convention or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice (article 44). What is a reasonable time will obviously depend to some extent on the buyer's circumstances. To take advantage of this concession the buyer must therefore be able to show that, although he knew, or should have known, of the lack of conformity he nevertheless had a reasonable excuse for not giving notice. This combination of circumstances is not likely to occur frequently. What is more likely is that the buyer will show that he did not know and, while normally he should have known, in the specific case he had an excuse for not knowing.

1.47 The basic rule that the buyer must examine the goods as soon as is practicable receives some elaboration where the contract involves carriage of the goods and where the goods are redirected in transit or re-dispatched by him. In the first case the examination may be deferred until after the goods have arrived at their destination and in the second case until after they have arrived at the new destination, provided that "at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or re-dispatch" (article 38(2), (3)). However, in any case the buyer loses the right to rely on the lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time is inconsistent with a contractual period of guarantee.

#### (b) Obligations of the buyer

1.48 The provisions as to the buyers obligations are not likely to present difficulties to a common law lawyer as they are similar to those under the common law. The main obligations of the buyer under the Convention are to pay the price and to take delivery of the goods as required by the contract and the provisions of the Convention. The relevant provision is article 53 of the Convention. The buyer's obligation to take delivery consists of two elements. The first element is that he must do all the acts which could reasonably be expected of him in the contract or which are necessary in order to enable the seller to make delivery (article 60). The second element consists of taking over the goods.

1.49 The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made (article 54). Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered,

in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned (article 55). If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight (article 56). If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller at the seller's place of business or if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place. The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract (article 57). If the buyer is not bound to pay the price at any other specific time he must pay it when the seller places either the goods or documents controlling their dispositions at the buyer's disposal in accordance with the contract and the Convention. The seller may make such payment a condition for handing over the goods or documents. Where the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price. The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity (article 58). The buyer may pay the price on the date fixed by or determinable from the contract and the Convention without the need for any request or compliance with any formality on the part of the seller (article 59).

(c) Remedies for breach of contract by the buyer and seller

(1) Specific performance

1.50 Article 46(1) establishes the principle that the seller is expected to perform the contract as he agreed. Specifically, article 46(1) provides that the buyer may require the seller to perform his obligations. The rule extends to all situations of non-performance by the seller. Where as in common law systems the right to require performance is considered to be a discretionary remedy to be requested from the court,<sup>19</sup> in civil law systems generally the right to require the seller to perform is considered to be a natural consequence of the contract. This is the point of view adopted by the Convention. But enforcement of that right by a court is limited by article 28, which states that a court does not have to order specific performance if it would not do so in similar cases governed by domestic law<sup>20</sup>. Therefore, in common law countries the general rules on the granting of specific performance will continue in force. In civil law countries there are also rules that limit the extent to which

19 Paget v Marshall (1884) 28 ChD 225 and Powell v Smith (1872) L.R.14/E/Q.85.

20 Ibid. Under article 28, rules of domestic law on specific performance can prevail over the rules of the Convention.

a court will enforce the buyers right to performance of the contract, and those limitations are also preserved by article 28. The right to specific performance is also limited by the rule that the buyer loses the right to obtain specific performance if he has resorted to a remedy which is inconsistent with this requirement, such as avoidance of the contract or reduction of the price.

## (2) Delivery of substitute goods or cure of defects

1.51 The Convention, in article 46(2) provides that, if the goods do not conform with the contract, the buyer may require delivery of substitute goods if the lack of conformity constitutes a fundamental breach and a request for substitute goods is made either in conjunction with notice of non-conformity under article 39 or within a reasonable time thereafter. The buyer may also require the seller under article 46(3) to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances, but a request for repair must be made either in conjunction with notice of non-conformity of the goods given under article 39(1) or within a reasonable time thereafter. The remedies of repair or delivery of substitute goods are unknown to the common law, although they are common means of remedying the defects in practice. In both cases the buyer's request must be made in conjunction with the notice of lack of conformity that is required by article 39 or within a reasonable time thereafter. The buyer who contemplates resorting to these remedies obviously takes the risk that, if the matter comes to litigation, the court may hold that to require repair was unreasonable or that the lack of conformity was not sufficiently serious to constitute a fundamental breach. The rule is based on the idea that the buyer must not aggravate the seller's circumstances.

1.52 Until the buyer has effectively avoided the contract - even after the deadline for delivery has passed - the seller can subject to article 49, still "cure", that is, deliver the goods, make repairs, or replace parts or goods. However, he may not take an unreasonable time to do so or cause the buyer unreasonable inconvenience or uncertainty about the reimbursement of expenses advanced by the buyer article 48(1). The buyer retains his right to claim damages caused by the delay, even if, as a result of his cure, the seller fully performs his obligations (article 42(2)). In addition to the right to cure under article 48(1), which theoretically could be cancelled by the buyer's avoidance of the contract, article 48(2) permits the seller, by sending a request (which is effective upon receipt) together with an indication of the date by which he intends to fulfill his obligations, to ask for clarification as to whether he the buyer will accept the cure. If the buyer does not respond to this request, he may not resort to any remedies inconsistent with performance by the seller before his deadline (article 48(2) and (3)).

## (3) Partial or excessive performance

1.53 Articles 51 and 52 deal with remedies in cases of partial performance or excessive performance. The cases dealt with here are those in which the seller (a) delivers only part of the

goods, (b) delivers all the goods but some are non-conforming, (c) delivers before the date fixed, (d) delivers more than was contracted for. As far as (a) and (b) are concerned, article 51 provides that the remedies discussed in articles 46 to 50 apply in respect of the undelivered or non-conforming part. In the case of (c) the buyer may refuse to take delivery of the goods (article 52(1)), but, if he does so, he may be obliged to take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense (article 86(2)). If he takes possession, he must take such steps to preserve them as are reasonable in the circumstances (article 86(1)). In case (d), where delivery of more than the contract occurs, the buyer may take delivery of the whole or may reject the excess. If he takes delivery of any part of the excess he must pay for it at the contract rate (article 52). It may be impracticable to take physical possession only of the contract quantity. However, it would be possible for the buyer to take possession of the excess amount in the name of the seller (article 86(1)). If the burden that would be thrown on the buyer if he were to take the entire delivery was substantial, the excess delivery may constitute a fundamental breach.

#### (4) Damages

1.54 Article 45(1)(b) and (2) introduces the important remedy of damages. Sub-paragraph (1)(b) and paragraph (2) go together. The first establishes the legal basis of the claim for damages, and the second clarifies its relationship to the remaining remedies. A claim for damages lies whenever the seller fails to perform one of his obligations under the contract or the Convention. Article 45(1) and (2) raises three issues: the notion of breach of contract in general, the relationship between damages and other remedies, and the absence of any notion of fault in the remedy of damages. The notion of breach of contract, the substantive condition for claiming damages, is identical with the non-fulfillment of any of the seller's obligations. It refers to all obligations no matter whether they be of major or minor importance. Paragraph (2) emphasizes that by resorting to any other remedy the buyer is not precluded from claiming damages. Consequently, the buyer who avoids the contract may both recover the purchase price and claim any additional damages. Damages are available independent of any fault. This is in line with the common law approach whereby an objective failure on the part of the seller to fulfill any of his obligations provides the buyer with a claim for damages<sup>21</sup>.

1.55 Damages are defined in Article 74 as a sum equal to the loss, including loss of profit, suffered by a party in consequence of a breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew, or ought to have known, as a possible consequence of the breach of contract. All the

-----

21 Hadley v Baxendale (1854) 9 Exch.341. See also Bays v Chaplin [1968] 1 Q B.1 and Chaplin v Hick [1911] 2 K.B.788.

circumstances of the case must be taken into account. Where the breach consists in delay in payment of the price, the seller is entitled to interest without prejudice to any claim for damages (article 78). There should be no difficulty with this approach as it embraces the applicable common law principles<sup>22</sup>.

1.56 Where the contract is avoided and the aggrieved party has made a substitute transaction, article 75 of the Convention states that the party claiming damages may obtain the difference between the contract price and the price under the substitute transaction and any further damages recoverable under the general principle. In theory at least, therefore, the law of the convention diverges from the common law in cases to which article 75 applies, i.e. when there has been a substitute transaction<sup>23</sup>. The divergence will, however, be limited by the requirement that the substitute transaction must have been made in a reasonable manner and within a reasonable time. For if the seller resells at less than the market price (or the buyer makes a cover purchase at more than the market price), he will have difficulty in showing that he acted reasonably. On the other hand, if the seller resells at more than the market price, the Convention (article 76(1) debars him from having recourse to the abstract measure. If the substitute transaction cannot be identified, the abstract measure of article 76 will apply. If there is no substitute transaction, article 76(1) lays down the rule that the damages will be equal to the difference between the contract price and the current price at the time when the party obtaining damages declared the contract avoided. Article 76(2) defines current price as the price prevailing at the place where delivery of the goods should have been made or, if there was no current price at that place, the price at another place which serves as a reasonable substitute, making the allowance for differences in the cost of transporting the goods. This abstract method of calculating damages contained in article 76 is applied where the contract has been avoided, but there has been no substitute transaction.

1.57 The moment at which the market price is to be calculated is in general the time of the avoidance of the contract (article 76(1)). To this general rule there is an exception for the case in which the aggrieved party has avoided the contract after taking over the goods. In this case the market price is to be calculated at the time of that taking over (article 76(2)). The purpose of the rule is to prevent the buyer from speculating at the expense of the seller by holding defective goods until a fall in the market makes avoidance advantageous. The risk of such speculation is, however, small in view of the fact that the buyer will lose his right to avoid if he does not do so within a reasonable time after he knew or ought to have known of the breach (article 49(2)). Moreover, if the buyer neither knew nor ought to have known of the breach until some time after the taking over, the value of the goods is to be assessed by

-----  
22 M.P. Furmston. *Cheshire and Fifoots Law of Contract*, supra, p.177.

23 Ibid, p.545.

reference to a time when the buyer could not have avoided the contract. In all the cases governed by articles 75 and 76 further damages may, of course, be recovered under article 74. Article 77 of the Convention imposes a duty to mitigate the damage and as under the common law if the innocent party fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated<sup>24</sup>.

#### (5) Reduction of price

1.58 Where the goods do not conform with the contract, Article 50 of the Convention gives the buyer the right to reduce the price<sup>25</sup>. Whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery to the value that conforming goods would have had at that time. In order to invoke the reduction the buyer need only dispatch notice thereof. Of course, a price reduction is unavailable if the seller completely performs his obligations by curing or if the buyer unjustifiably declines to accept the cure (article 50). This remedy is unfamiliar to common law lawyers. Normally the remedy will be advantageous only if the breach is not fundamental. It has, however, the advantage over damages that (assuming the price not to have been paid in advance) the buyer does not need to resort to a court because he can act unilaterally by proffering the reduced price. A more important, though rarer, situation will arise when the buyer cannot resort to the remedy of damages because the lack of conformity is due to an impediment beyond his control (article 79(5)). In this situation the restitutionary remedy of reduction of price protects the buyer. Resort to the remedy of reduction of price is not an obstacle to a claim for damages (article 45).

#### (6) Avoidance

1.59 The buyer may under article 49(1) declare the contract avoided only if the failure by the seller to perform any of his obligations under the contract or the Convention amounts to a fundamental breach of contract or in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed. A fundamental breach is defined in article 25 as a breach which "results in substantial detriment to the other party unless the party in breach did not foresee and had no reason to foresee such a result". Under article 49(1) of the Convention, when the grounds of avoidance tabulated in article 49 exist and the buyer wishes the contract avoided, he must make a declaration of avoidance. A declaration of avoidance of the contract is

-----  
24 Victoria Laundry (Windsor) Ltd. v Newman Industries Ltd. [1949] 2/K/B/528; The Heron II [1969] A.C. 350 and the Wagon Mound [1961] A.C. 388.

25 See E Bergsten and A.J. Miller, The Remedy of Reduction of Price, 27 Am J. Comp. L.255 (1979).

effective only if made by notice to the other party (article 26). The buyer in article 49(2)(a)(b) loses his right to avoid the contract unless he makes his declaration within a reasonable time after he has become aware that delivery has been made in cases where the seller has delivered the goods and in respect of any other breach other than late delivery, within a reasonable time after he knew or ought to have known of the breach.

1.60 The buyer further loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them (article 82(1)). By virtue of article 82(2), this does not apply if (a) the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission, (b) the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38 of the Convention or (c) the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in normal use before he discovered or ought to have discovered the lack of conformity. There are a number of exceptions to the rule in article 82 of the Convention. For example, even if the buyer who has the right to avoid the contract loses the right to declare the contract avoided because he cannot make restitution, and does not come within any of the exceptions, he may still claim any other remedy such as damages, specific performance or a reduction in the price. This is provided for in Article 83 of the Convention. When restitution is made, article 84(2) of the Convention provides that the party must return what he has received and must also account to the other party for the benefits.

1.61 The seller may under article 64(1)(a) declare the contract avoided if the failure by the buyer to perform any of his obligations amounts to a fundamental breach. The seller or buyer may fix an additional period of time of reasonable length for performance by the other party (articles 47(1), 49(1)(b), 63(1), 64(1)(b)). This procedure will be unfamiliar to common law lawyers. During the period named the party fixing the period cannot resort to any remedy for breach of contract. Apart from this the direct legal effect is confined to cases of failure by the seller to deliver or by the buyer to take delivery or to pay the price. In these three cases, if the failure remains unremedied on the expiry of the additional period, the other party is entitled to avoid the contract regardless of whether the breach is fundamental or not. In other words, the additional period relieves that party from the risk that the original breach might be held not to have been fundamental (or rather substitutes for that risk the smaller risk that the length of the additional period itself may be held to be unreasonable). A party may fix an additional period in other cases also, but the only advantage is to give him time to consider what course of action to adopt in relation to the breach and to encourage the other party to perform.

1.62 Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due (article 81(1)). It does not affect any provision of the contract



for the settlement of disputes governing the respective rights and obligations of the parties consequent upon the avoidance of the contract. A party who has performed in whole or in part may claim restitution of anything supplied or paid. If both parties are bound to make restitution, they must do so concurrently. In form this entitles the seller to the return of goods delivered and is therefore wider than under the common law,<sup>26</sup> but the extent to which this is attainable in practice will be limited by the restriction on specific remedies in article 28 and by the fact that any question of the property in the goods or of the rights of creditors will be governed by domestic law (article 4 and 82(2)(c)).

## **8. GENERAL PROVISIONS ON RIGHTS AND DUTIES OF PARTIES**

### **(a) Passing of risk**

1.63 The general principle in the Convention is that risk passes when goods are taken over by the buyer (article 67(1)). The Convention provides in article 67 a primary rule for cases in which the sale involves carriage of the goods (which is obviously the typical situation in international sales), a special rule for goods sold while in transit (article 68) and, in article 69, a rule for other cases. The passing of property is irrelevant to the passing of risk under the convention.

1.64 Article 67(1) deals only with cases of contracts of sale which involve carriage of goods. In such cases if the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorised to retain documents controlling the disposition of the goods does not affect the passage of the risk. (If the contract of sale involves carriage, but requires the seller to cause the goods to be handed over to the buyer at a particular place, the matter is governed by article 69 and the risk will pass when the buyer takes over the goods.) The policy of the article is that risk should pass at the beginning of the agreed transit, since the buyer is normally in a better position than the seller to assess any damage which has occurred in transit and to pursue claims in respect of it. If the seller is not obliged by the terms of the contract to insure the goods, he is obliged by article 32(3) of the Convention at the buyers request, to provide him with all available information necessary to enable him to effect such insurance. But article 67(2) states that the risk does not pass to the buyer until the goods are clearly identified to the contract.

-----

26 British Westinghouse Electric and Manufacutring Co. v Underground Electric Rly. Co. of London [1912] A.C. 673 and Payzu Ltd. v Saunders [1919] 2 K.B. 581.

1.65 Article 68 deals with goods sold in transit. In respect of such goods, the risk passes to the buyer from the time of the conclusion of the contract. This is qualified in the same article by the provision that if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. One such circumstance would be the inclusion in the contract of sale of a provision requiring the seller to transfer an insurance policy to the buyer. Since contracts for the sale of goods in transit customarily include such a provision, this interpretation would give what is ostensibly the secondary rule a wide application. There is an exception in cases where at the time of the conclusion of the contract the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer. Such loss or damage is at the risk of the seller unless he discloses it to the buyer. The seller is liable only for that loss or damage which he knew or ought to have known (article 68).

1.66 In all other cases not within articles 67 and 68 the Convention provides that the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to deliver (article 69(1)). The general policy in article 69(1) is once again that the seller should bear the risk so long as he has control of the goods. Paragraph (2), however, makes special provision for cases where the buyer is to take over the goods from a place other than a place of business of the seller, most commonly from a public warehouse. In such cases the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place. Here the policy considerations are different. The seller is in no better position than the buyer to protect and insure the goods or to pursue any claims arising from them. The policy is therefore that the buyer should bear the risk as soon as he is in a position to collect the goods. The paragraph also applies to the case in which the contract of sale involves carriage of the goods, but which is not covered by article 67 because the seller is required to hand the goods over to the buyer at a particular place. If the contract relates to goods not then identified, the goods are not considered to be placed at the disposal of the buyer until they are clearly identified to the contract (article 69(3)). If the seller has committed a fundamental breach, the articles on risk do not impair the remedies available to the buyer on account of the breach.

(b) Provisions common to the seller and buyer

(1) Suspension of obligations

1.67 Certain provisions are common to both the seller and buyer. Article 71(1)(a)(b) of the Convention provides that a party may suspend the performance of his obligations under certain circumstances. He may do so if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of either (a) a serious deficiency in his ability to perform or his credit worthiness, or (b) his conduct in preparing to perform or

in performing the contract. Paragraph 2 of article 71 provides for stoppage in transit and paragraph 3 requires a party who suspends performance to immediately give notice of the suspension to the other party and to resume performance if the other party provides adequate assurance of his performance.

1.68 Article 71 provides for the case in which, while it is not clear that one party will commit a fundamental breach of contract so as to justify avoidance for anticipatory breach, nevertheless the other party has reason to fear that the first party will be unable to perform. There is no equivalent rule in common law apart from the tightly circumscribed right of stoppage in transit. There is a comparable provision in the United States Uniform Commercial Code. Apart from the nature of the remedy, there are two main differences between avoidance for anticipatory breach and suspension to secure assurance of performance. First, whereas for the drastic remedy of avoidance it must be clear that the other party will not perform, for the remedy of suspension it is sufficient that it become apparent. Secondly, whereas for avoidance for anticipatory breach the prospective non-performance must amount to fundamental breach, for suspension it need be only of a substantial part of the other party's obligations. Thirdly, once the contract has been avoided, there is no longer the possibility of performing. However, when the contract has been suspended the other party may be able to give adequate assurance of his performance in which case the suspending party must continue with his own performance.

## (2) Exemptions

1.69 Article 79(1) of the United Nations Sales Convention is concerned with the question of when a party may be exempted from liability for failure to perform any of his obligations if he is unable to perform due to circumstances beyond his control. A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences. He is always responsible for impediments when he could have prevented them but failed to do so. Further more, he is liable even for impediments beyond his control as long as they were either reasonably foreseeable or known to him at the conclusion of the contract. In the case of unforeseeable impediments whose origins are not within his control he must take reasonable measures to avoid or overcome the impediment or its consequences in order to claim an exemption. If a party wishes to restrict his liability, he must specify, in the contract, the particular impediments for which he will not be liable.

1.70 Article 79(2) states that if the failure to perform is due to the failure of a third person whom he engages to perform the whole or a part of the contract, the defaulting party is exempt from liability only if two conditions are fulfilled: first, he must himself be exempt under the conditions mentioned above and, secondly, the third person must also be exempt under the rules above. In the application of this provision it should be observed that a party is always responsible for his own personnel as long as he organises and controls their work. Second, where third

persons are involved, the seller's liability depends on whether he engaged those persons in fulfillment of his contractual obligations. If he did so he can be exempted only where the failure was unforeseeable and beyond his control and the third party personally meets the requirements for exemption in article 79(1). Article 79(1) therefore remains the controlling provision in cases where the third party's performance is a mere precondition for the fulfillment of the obligations of the party claiming exemption.

1.71 Article 79(3) of the Convention provides that the exemption applies for the period during which the impediment exists. The Convention in article 79(4) requires the party who fails to perform to give notice to the other party of the impediment and its effect. If the notice is not received within a reasonable time after the party in default knew, or ought to have known, of the impediment, he is liable for damages resulting from such non-receipt. Article 79(5) of the Convention states that nothing in article 79 prevents either party from exercising any right other than to claim damages under the Convention.

1.72 The provisions on exemptions covers what under the common law would fall under the doctrine of frustration (impossibility). Its treatment differs in a number of ways from the common law doctrine of frustration<sup>27</sup>. The effect of paragraph 5 is to provide the non-performing party with a defence against an action for damages, but not against the termination of the contract. The exemption from liability is in relation to the performance of any of his obligations, not just to the performance of the contract as a whole. The non-performing party may therefore advise an impediment within the meaning of paragraph (1) as a defence against an action for damages for partial non-performance. This may arise, for example, where the impediment causes delay in delivery. The other party cannot claim damages but, if the delay amounts to a fundamental breach, he may avoid the contract. The central requirement is that the non-performance be due to an impediment beyond his control. The formulation in terms of an impediment to performance excludes cases of frustration, as opposed to impossibility. Paragraph (5) leaves every remedy except that of damages unaffected. Reduction of price and avoidance pose no problems. It is the right to compel performance that would present a difficulty to common law lawyers of course insofar as the impediment makes performance actually impossible, any court will presumably refuse specific performance on the basis of article 28. If, however, the impediment does not make the performance physically impossible, but it is nevertheless held to fall within paragraph (1), it would seem that paragraph (5) preserves the remedy of specific performance in courts in which it would normally be available.

### (3) Preservation of the goods

1.73 Article 85 of the Convention provides that if the buyer is  
-----

27 For the rule under common law see M.P. Furmston, Cheshire and Fifoot's Law of Contract, supra p.516. See also Krell v Henry [1903] 2 K B.683.

in delay in taking delivery of the goods and the seller is in possession of them or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. The seller's duty to preserve the goods applies especially to those cases in which, even though the seller still has control over the disposition of the goods, the risk of loss has already passed to the buyer. The seller is, however, entitled to be reimbursed for the actions he has taken to preserve the goods and he has the right to keep the goods until he is reimbursed. Similar provisions apply under article 86(1) of the Convention where the goods have been received by the buyer, but he intends to reject them. If the goods have been dispatched to the buyer and placed at his disposal, but he intends to reject them, it is provided by article 86(2) that he must take possession of them on behalf of the seller, provided that he can do so without unreasonable inconvenience and expense. This does not apply where the seller is present at the destination (article 86(2)).

1.74 A party who is under an obligation to take steps to preserve the goods may by the authority of article 87 of the Convention deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable. Under article 88(1) of the Convention, a party who has an obligation to preserve the goods may sell them where there has been an unreasonable delay by the party in paying the cost of preservation. The other party must first give notice of the intention to sell. There is an obligation to resell under Article 88(2) of the Convention where the goods are subject to loss or rapid deterioration and where their preservation would involve unreasonable expense. Article 88(3) of the Convention allows the party selling the goods to retain out of the proceeds of the sale an amount equal to the reasonable expenses of preserving and selling them, but he must account to the other party for the balance.

## CHAPTER II

### Accession Procedure

#### (a) Depository

2.01 The Convention is subject to ratification, acceptance or approval by the signatory States (article 91(2)) and it is open for accession by all States that are not signatory States (article 91(3)). Accession, ratification, acceptance, approval may be effected by an instrument to that effect being deposited with the Secretary-General of the United Nations (article 91(4)). The Convention entered into force on the 1st January 1988, which was the first day of the month following the expiration of twelve months after the deposit of the tenth instrument of ratification, acceptance, approval or accession in accordance with article 99(1). The Convention takes effect with respect to a newly adhering State on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession (article 99(2)). This is subject to the proviso that ratifications, acceptances, approvals and accessions in respect of the Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention are not effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective (article 99(6)).

2.02 A State which becomes party to the Convention and is a party to either or both the Conventions relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods (1964 Hague Sales Convention) is required to denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect. Among the States that have become party to the Convention Italy and Germany were party to both of the Hague Uniform Laws and have denounced them. Among Commonwealth States only the Gambia and the United Kingdom are party to the two 1964 Hague Conventions and are, therefore, subject to the provisions of article 91.

#### (b) Reservations

2.03 Under the Convention no reservations are permitted except those expressly authorized in the Convention (article 98). Article 98 excludes any ambiguity which might otherwise exist in the light of article 19 of the United Nations Convention on the Law of Treaties, which permits the formation of reservations unless:

- (a) the reservation is prohibited by the treaty;
- (b) the treaty provides that only specific reservations, which do not include the reservation in question, may be made; or

- (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 98 brings the Convention squarely within the ambit of article 19(b) of the United Nations Convention on the Law of Treaties and thus avoids the possibility of States making further reservations of the kind contemplated by article 19(c) which are not incompatible with the object and purpose of the treaty. Any such purported reservation by a contracting State to the United Nations Sales Convention would be ineffective.

(c) Authorised declarations

2.04 A contracting State may declare at the time of becoming party to the Convention that it will not be bound by Part II (relating to the formation of the contract) of the Convention or that it will not be bound by Part III (relating to the parties' obligations and remedies for breach of contract) of the Convention (article 92(1)). A contracting State which makes a declaration in accordance with article 92(1) in respect of Part II or Part III of the Convention is not to be considered a contracting State within paragraph (1) of article 1 of the Convention in respect of matters governed by the part to which the declaration applies. The purpose of article 92 is to enable States which may wish to become parties to the United Nations Sales Convention, but which might prefer not to accept part II of the Convention; Formation of the Contract or Part III, Sale of Goods, to do so. Upon ratifying the Convention the Governments of Denmark, Finland, Norway and Sweden declared in accordance with article 92(1) that they would not be bound by Part II of the Convention (formation of the contract). For Commonwealth countries there would be no advantage in limiting the scope of the Convention by making such a declaration.

2.05 The Convention in article 93 permits a contracting State, at the time of becoming party to the Convention to declare that the Convention is to extend to all its territorial units or only to one or more of them and to amend its declaration by submitting another declaration any time. It should, however, be noted that for a State to make the declaration under article 93 it is necessary not only for it to have two or more territorial units but that, according to its constitution, different systems of law are applicable in those units in relation to the matters dealt with in the Convention. The provision permits federal States on one hand to apply the Convention progressively to their territorial units and on the other hand to permit those States which wish to do so to extend its application to all their territorial units from the very outset. The same option is given to a State such as the United Kingdom which, while not a federal State, has different systems of law applicable in Scotland and in the rest of the country.

2.06 Two or more contracting States which have the same or closely related rules on matters governed by the Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations (article

94(1)). A contracting State which has the same or closely related legal rules on matters governed by the Convention as one or more non-contracting States may at any time declare that the Convention is not to apply to Contracts of Sale or to their formation where the parties have their places of business in those States (94(2)). If a State which is the object of a declaration under 94(2) subsequently becomes a contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new contracting State, have the effect of a declaration made under article 94(1), provided that the new contracting State joins in such declaration or makes a reciprocal unilateral declaration. Upon ratifying the Convention the Governments of Denmark, Finland, Norway and Sweden declared pursuant to article 94(1) and 94(2), that the Convention would not apply to contracts of sale where the parties have their places of business in Denmark, Finland, Iceland, Norway, or Sweden.

2.07 The purpose of the declaration in article 94(1) is to permit contracting States which have the same or closely related legal rules on matters governed by the Convention to continue to apply those rules, rather than those of the Convention, to contracts of sale or their formation when the parties have their places of business in such States. Article 94(2) is concerned with a somewhat different situation where a contracting State which has the same or closely related legal rules on matters governed by the Convention as one or more non-contracting States wishes to exclude the application of the Convention to contracts of sale or to their formation when the parties have their places of business in those States. Clearly, since the State which is the object of the declaration is not a contracting State, it is only by way of a unilateral declaration that the contracting State can achieve its aim, a declaration which it may make at any time. The practical effect of such a declaration would seem to be that since the possibility of the Convention's applying under article 1(1)(a) is *ab initio* excluded as both parties do not have their places of business in contracting States, a court in a contracting State which made a declaration under article 94(2) would, if the rules of private international law were to lead it to designate its own law as the applicable law, apply its own national law governing contracts for the sale of goods and their formation, including any special rules of its law which might be applicable to international sales<sup>28</sup>.

Article 94(3) addresses the situation in which a State which is the object of a declaration under 94(2) becomes a contracting State. The Convention provides that a declaration made under article 94(2) will as from the date on which the Convention enters into force in respect of the new contracting State, have the effect of a declaration made under article 94(1), provided that the new contracting State joins in such declaration or makes a reciprocal unilateral declaration. Failure by the new contracting State to make such a declaration will mean that the

-----

28 See C.M. Bianca & M.J. Bonell, *Commentary on the International Sales Law the 1980 Vienna Sales Convention*, Milan, Giuffrè, 1987 p.652.



original declaration, although it continues to exist, will not enjoy the status of a joint or reciprocal unilateral declaration under article 94(1) and will thus have no more practical effect than a unilateral declaration made by a contracting State in relation to another contracting State under article 94(1) to which the latter State fails to respond.

2.08 A contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11 and article 29, or Part II of the Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State. This is intended for States which consider the requirement of a written form for international sales contracts to be indispensable. It permits such contracting States to make a reservation which excludes application of the Convention's provisions contrary to the written form requirement to contracts of any party whose place of business is in that State. Such a reservation may be made at any time that is, not only at the time of signature, ratification of, or accession of interested State to the Convention, but also at any subsequent time. Upon ratifying the Convention the Governments of Argentina, Byelorussian S.S.R., Chile, Hungary, Ukrainian S.S.R. and U.S.S.R. made this reservation and China declared itself not bound by article 11. Many Commonwealth jurisdictions would find this reservation inapplicable as in many countries section 4 of the Statute of Frauds of 1677 has been repealed with the result that nearly all contracts for the sale of goods can now be made by word of mouth, irrespective of the value of goods sold. In States where section 4 has not been repealed it is important to note that article 11 does away with the application of the Statute of Frauds in international sales contracts.

2.09 Any State may declare at the time of becoming party to the Convention that it will not be bound by article 1(1)(b) of the Convention (article 95). A State prior to adhesion should determine whether it wishes the Convention to apply only when both parties to a contract are in Convention countries, or also whenever the contract should be governed by the States' law, even if the other party is in a country not party to the Convention. It will be recalled that in accordance with article 1(1) the Convention applies to Contracts of Sale of goods between parties whose places of business are in different States either (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. If this declaration were made by a State the Convention would apply only to contracts in which one contracting party had its place of business in that State and the other in another State which was also a party to the Convention. The Convention would not apply where one contracting party had its place of business in the Convention State and the other in a State which was not a party to the Convention but where the law of a contracting State was to be applied to the contract by virtue of conflict of law rules. The law of a contracting State which would be applied to the contract in such circumstances is likely to be the Convention State's law. It would not be

advisable to restrict the application of the Convention in this way except where perhaps the State in question has modern special legal rules that govern international commercial transactions. This is often not the case in many Commonwealth countries. In many of them the law of sale of goods is based mainly on the 1893 English Sale of Goods Act, various other statutory provisions of varying importance and a considerable mass of case law interpreting the 1893 Act. It is more often the case that such law is geared to govern domestic sales contracts. The United States of America, China and Czechoslovakia have made declarations under article 95. But the United States, has a relatively modern sales law provided by the Uniform Commercial Code. Germany declared that it would not apply article 1(1)(b), in respect of any State that had made a declaration that that State would not apply article 1(1)(b). The German declaration seems to have little practical effect. In any case, declarations under Article 95 become of increasingly less significances as additional States have become party to the Convention.

2.10 Of the Commonwealth States that have adhered to the Convention, Australia, Lesotho and Zambia, none declared at the time of deposit of the instrument of ratification that it would not be bound by article 1(1)(b) of the Convention. Where a State wishes to make such a declaration the form of the declaration might be as follows:

"[The Contracting State] in accordance with article 95 of the Convention, declares that it will not be bound by article 1 subparagraph (1)(b) of the Convention and will apply the Convention to Contracts of Sale of Goods only between those parties whose places of business are in different States when the States are Contracting States."

2.11 No difficulties would seem to exist with regard to this provision if a court in a State making the reservation under article 95 (State A) finds its own law applicable, but a problem might arise if such a court were to find the law of another contracting State (B) to be applicable to the contract of sale or its formation in a case involving parties with their places of business in (State B) and in a non-contracting State (State C). The problem facing a court in State A would be to determine whether the law of State B, if that country's law is held to be applicable to the contract, is to be regarded as its own internal law or rather the rules of the Convention. The task of the court in State A would be facilitated if State B had also taken a reservation under article 95 since it would be clear that the intention of the legislature was that, apart from the case contemplated by article 1(1)(a), the domestic law of State B, rather than the rules contained in the Convention, should govern international contract of sale of Goods whenever the law of State B is deemed to be applicable. The situation would, however, be less clear if State/B has not taken a reservation under article 95<sup>29</sup>, since it is then clear that the intention of the legislature in State B was that the Convention should apply and the courts in State B would apply the Convention if the litigation were to arise there.

-----  
29. Ibid, pp.656-657.

(d) Legislative provisions

2.12 Legislation will be necessary to give effect to the Convention in most Commonwealth States. In exceptional cases, such as that of Cyprus, the Convention may be self-executing. It is, however, better that even in those States the application of the Convention should be properly resolved by municipal legislation in the interest of certainty.

2.13 A draft bill, drawing in its principal particulars from the Australian Sale of Goods (Vienna Convention) Act 1986 passed to give effect to the Convention in the State of Queensland follows:

# Annex

## 10. DRAFT SALE OF GOODS (UNITED NATIONS SALES CONVENTION) ACT, 199-

An Act to give effect within [contracting State] to the United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna on 11 April 1980.

BE IT ENACTED etc.

### Short title

1. This Act may be cited as the Sale of Goods (United Nations Sales Convention) Act 199-

### Repeals

2. The following provisions of the [those States that are party to the Hague Conventions, i.e., the Gambia and the United Kingdom, should repeal the implementing legislation here] are hereby repealed, that is to say -

### Commencement

3. (1) Sections 1, 2, 3 and 4 shall commence on the day on which this Act receives the [assent]

(2) Except as provided by subsection (1), this Act shall come into operation on such date as the [ ] may by order appoint.

### Interpretation

4. In this Act "Convention" means the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria, on 10 April 1980 and opened for signature and also for accession on 11 April 1980, a text of which is set out in the schedule.

### Application

5. This Act binds the state of [ ].

### Convention to have force of law

6. The provisions of the Convention have the force of law in [ ].

### Convention to prevail in event of inconsistency

7. The provisions of the Convention prevail over any other law in force in [ ] to the extent of any inconsistency.

### Evidence of certain matters

8. A document published in the Government Gazette -

- (a) declaring that the Convention has entered or will enter into force, with effect from a specified date, in respect of a specified country;
- (b) declaring that a specified country has made a declaration under Part IV of the Convention and specifying details of that declaration, including the date the declaration took or will take effect; or
- (c) declaring that a specified country has denounced the Convention or Part II or III of the Convention and specifying the date the denunciation took or will take effect,

is evidence of the matters contained in the document.

[SCHEDULE]

[TEXT OF UNITED NATIONS CONVENTION ON CONTRACTS  
FOR THE INTERNATIONAL SALE OF GOODS]

# **I. United Nations Convention on Contracts for the International Sale of Goods**

## **PREAMBLE**

*The States Parties to this Convention,*

*Bearing in mind* the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

*Considering* that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

*Being of the opinion* that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

*Have agreed* as follows:

## **Part I. Sphere of application and general provisions**

### **CHAPTER I. SPHERE OF APPLICATION**

#### *Article 1*

(1) 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.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

#### *Article 2*

This Convention does not apply to sales:

- (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- (b) by auction;

- (c) on execution or otherwise by authority of law;
- (d) of stocks, shares, investment securities, negotiable instruments or money;
- (e) of ships, vessels, hovercraft or aircraft;
- (f) of electricity.

#### *Article 3*

(1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

#### *Article 4*

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

- (a) the validity of the contract or of any of its provisions or of any usage;
- (b) the effect which the contract may have on the property in the goods sold.

#### *Article 5*

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

#### *Article 6*

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

### CHAPTER II. GENERAL PROVISIONS

#### *Article 7*

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

#### *Article 8*

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

#### *Article 9*

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

#### *Article 10*

For the purposes of this Convention:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

#### *Article 11*

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

#### *Article 12*

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

#### *Article 13*

For the purposes of this Convention "writing" includes telegram and telex.

### **Part II. Formation of the contract**

#### *Article 14*

(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

#### *Article 15*

(1) An offer becomes effective when it reaches the offeree.

(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.



#### *Article 16*

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

#### *Article 17*

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

#### *Article 18*

(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

(2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

#### *Article 19*

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

#### *Article 20*

(1) A period of time of acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

#### *Article 21*

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.

(2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

#### *Article 22*

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

#### *Article 23*

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

#### *Article 24*

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

### **Part III. Sale of goods**

#### **CHAPTER I. GENERAL PROVISIONS**

#### *Article 25*

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

#### *Article 26*

A declaration of avoidance of the contract is effective only if made by notice to the other party.

#### *Article 27*

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

### *Article 28*

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

### *Article 29*

(1) A contract may be modified or terminated by the mere agreement of the parties.

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

## CHAPTER II. OBLIGATIONS OF THE SELLER

### *Article 30*

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

### *Section I. Delivery of the goods and handing over of documents*

### *Article 31*

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

(a) if the contract of sale involves carriage of the goods—in handing the goods over to the first carrier for transmission to the buyer;

(b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place—in placing the goods at the buyer's disposal at that place;

(c) in other cases—in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

### *Article 32*

(1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.

(3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

### *Article 33*

The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date;
- (b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or
- (c) in any other case, within a reasonable time after the conclusion of the contract.

### *Article 34*

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

## *Section II. Conformity of the goods and third party claims*

### *Article 35*

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

- (a) are fit for the purposes for which goods of the same description would ordinarily be used;
- (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;
- (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
- (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

### *Article 36*

(1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

(2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

### *Article 37*

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods

delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

#### *Article 38*

(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

#### *Article 39*

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

#### *Article 40*

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

#### *Article 41*

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

#### *Article 42*

(1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

(a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or

(b) in any other case, under the law of the State where the buyer has his place of business.

(2) The obligation of the seller under the preceding paragraph does not extend to cases where:

(a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or

(b) the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

#### *Article 43*

(1) The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.

(2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

#### *Article 44*

Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

### *Section III. Remedies for breach of contract by the seller*

#### *Article 45*

(1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:

- (a) exercise the rights provided in articles 46 to 52;
- (b) claim damages as provided in articles 74 to 77.

(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

#### *Article 46*

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

#### *Article 47*

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

#### *Article 48*

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without

unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.

(4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

#### *Article 49*

(1) The buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

(a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;

(b) in respect of any breach other than late delivery, within a reasonable time:

(i) after he knew or ought to have known of the breach;

(ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performances.

#### *Article 50*

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

#### *Article 51*

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

#### *Article 52*

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

### CHAPTER III. OBLIGATIONS OF THE BUYER

#### *Article 53*

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

#### Section I. *Payment of the price*

#### *Article 54*

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

#### *Article 55*

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

#### *Article 56*

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

#### *Article 57*

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

- (a) at the seller's place of business; or
- (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

#### *Article 58*

(1) If the buyer is not bound to pay the price at any other specific time he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.



(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

#### *Article 59*

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

### *Section II. Taking delivery*

#### *Article 60*

The buyer's obligation to take delivery consists:

- (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
- (b) in taking over the goods.

### *Section III. Remedies for breach of contract by the buyer*

#### *Article 61*

(1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

- (a) exercise the rights provided in articles 62 to 65;
- (b) claim damages as provided in articles 74 to 77.

(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

#### *Article 62*

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

#### *Article 63*

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

#### *Article 64*

(1) The seller may declare the contract avoided:

- (a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
- (b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or

take delivery of the goods, or if he declares that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:

(a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

(b) in respect of any breach other than late performance by the buyer, within a reasonable time:

(i) after the seller knew or ought to have known of the breach; or

(ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

#### *Article 65*

(1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

(2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

### CHAPTER IV. PASSING OF RISK

#### *Article 66*

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

#### *Article 67*

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

#### *Article 68*

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

#### *Article 69*

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

#### *Article 70*

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

### CHAPTER V. PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

#### Section I. *Anticipatory breach and instalment contracts*

#### *Article 71*

(1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

- (a) a serious deficiency in his ability to perform or in his creditworthiness; or
- (b) his conduct in preparing to perform or in performing the contract.

(2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.

(3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

#### *Article 72*

(1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.

(2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.

(3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

#### *Article 73*

(1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

(2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

(3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

## Section II. *Damages*

### *Article 74*

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

### *Article 75*

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

### *Article 76*

(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

### *Article 77*

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

## Section III. *Interest*

### *Article 78*

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

## Section IV. *Exemption*

### *Article 79*

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

(a) he is exempt under the preceding paragraph; and

(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect for the period during which the impediment exists.

(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.

(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

### *Article 80*

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

## Section V. *Effects of avoidance*

### *Article 81*

(1) Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

(2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

### *Article 82*

(1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

(2) The preceding paragraph does not apply:

(a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;

(b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or

(c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

#### *Article 83*

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

#### *Article 84*

(1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

(a) if he must make restitution of the goods or part of them; or

(b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

### *Section VI. Preservation of the goods*

#### *Article 85*

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

#### *Article 86*

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

#### *Article 87*

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

#### *Article 88*

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the

other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

(3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

## **Part IV. Final provisions**

### *Article 89*

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

### *Article 90*

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

### *Article 91*

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

### *Article 92*

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

### *Article 93*

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or

accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

#### *Article 94*

(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

#### *Article 95*

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 subparagraph (1) (b) of article 1 of this Convention.

#### *Article 96*

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

#### *Article 97*

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by



the depositary. Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

(5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

#### *Article 98*

No reservations are permitted except those expressly authorized in this Convention.

#### *Article 99*

(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

(5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.

*Article 100*

(1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1) (a) or the Contracting State referred to in subparagraph (1) (b) of article 1.

(2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1) (a) or the Contracting State referred to in subparagraph (1) (b) of article 1.

*Article 101*

(1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

## Other Publications in the same series

1. The Hague Convention on the Service of Process, The Taking of Evidence and Legislation
2. International Conventions in the Field of Succession
3. The Hague Convention on the Civil Aspects of International Child Abduction
4. International Conventions concerning Applications for and Awards for Maintenance
5. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
6. Three International Conventions on Hijacking and Offences on Board Aircraft
7. The Hague Convention on International Access to Justice
8. The Hague Convention on the Taking of Evidence Abroad
9. The UN Convention of the Law of the Sea, 1982: Book 1 - General Introduction (first of a series of four books)
10. A Guide to the International Drugs Conventions
11. The Convention on the Elimination of All Forms of Discrimination Against Women
12. Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
13. International Convention Against the Taking of Hostages
14. The Scheme for the Transfer of Convicted Offenders within the Commonwealth
15. The UN Convention on the Law of the Sea, 1982: Book 2 - Maritime Zones: I - Internal Waters to Contiguous Zone
16. International Conventions on the Safety of Civil Aviation.
17. The Hague Convention on the Civil Aspects of International Child Abduction. Revised 1990
18. United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules)
19. The UN Convention on The Law of the Seas 1982: Book 3 - Maritime Zones: II Exclusive Economic Zone, Exclusive Fishing Zone and Continental Shelf.