

erning the formation and validity of contracts in general, to the extent that they were relevant to international trade.

13. The Working Group, after deliberation, was of the unanimous view that, at its next session, it should begin work on uniform rules governing the formation of contracts and should make an attempt to formulate such rules on a broader basis than the international sale of goods. If, in the course of its work, it should prove that the principles underlying contracts of sale and other types of contract could not be treated in the same text, the Group would direct its work towards contracts of sale only. The Working Group was further of the view that it should consider whether some or all of the rules on validity could appropriately be combined with rules on formation. The Working Group decided to place these conclusions before the ninth session of the Commission. In this connexion, the Group requested the Secretariat to inform representatives on the Commission of its proposed work programme so as to obtain their views thereon at the ninth session of the Commission.

14. In preparation of its next session, the Working Group requested the Secretariat, to prepare, in consultation with UNIDROIT, one or more studies that would:

(a) Submit to a critical analysis the 1964 Hague Uniform Law on the Formation of Contracts for the International Sale of Goods and the UNIDROIT draft law on the validity of contracts of international sale of goods, and

(b) Examine the feasibility and desirability of dealing with both subject-matters in a single instrument.

III. FUTURE WORK

15. The Working Group gave consideration to the timing of its eighth session. The Group decided to request the Commission to schedule the eighth session to start on Tuesday, 4 January 1977 and to continue until Friday, 14 January 1977 in New York.

2. Draft Convention on the International Sale of Goods (A/CN.9/116, annex I)*

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Part I. Substantive provisions

CHAPTER I. SPHERE OF APPLICATION

Article 1

(1) This Convention applies to contracts of sale of goods entered into by 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.

Article 2

This Convention does not apply to sales:

- (a) Of goods bought for personal, family or household use, unless the seller, at the time of the conclusion of the contract, did not know and had no reason to know 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 or aircraft;
 (f) Of electricity.

* 17 March 1976.

Article 3

(1) This Convention does not apply to contracts in which the preponderant part of the obligations of the seller consists in the supply of labour or other services.

(2) 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.

Article 4

This Convention also applies where it has been chosen as the law of the contract by the parties.

Article 5

The parties may exclude the application of this Convention or derogate from or vary the effect of any of its provisions.

Article 6

For the purposes of this Convention:

(a) If a party to a contract of sale of goods 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 the time of 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;

(c) 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.

Article 7

[(1) This Convention governs only the rights and obligations of the seller and the buyer arising from a contract of sale. In particular this Convention is not, except as otherwise expressly provided therein, concerned with the formation of the contract, nor with the effect which the contract may have on the property in the goods sold, nor with the validity of the contract or of any of its provisions or of any usage.

[(2) This Convention does not govern the rights and obligations which might arise between the seller and the buyer because of the existence in any person of rights or claims which relate to industrial or intellectual property or the like.]¹

CHAPTER II. GENERAL PROVISIONS

Article 8

(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 a usage of which the parties knew or had reason to know and which in international trade is

¹The Working Group left this paragraph in square brackets to indicate that it was a matter which it considered should be decided by the Commission.

widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

Article 9

A breach committed by one of the parties to the contract is fundamental if it results in substantial detriment to the other party and the party in breach foresaw or had reason to foresee such a result.

Article 10

(1) Notices provided for by this Convention must be made by the means appropriate in the circumstances.

(2) A declaration of avoidance of the contract is effective only if notice is given to the other party.

(3) If a notice of avoidance or any notice required by article 23 is sent by appropriate means within the required time, the fact that the notice fails to arrive or fails to arrive within such time or that its contents have been inaccurately transmitted does not deprive the sender of the right to rely on the notice.

[Article 11]

A contract of sale need not be evidenced by writing and is not subject to any other requirements as to form. It may be proved by means of witnesses.]²

Article 12

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 providing for specific performance unless this could be required by the court under its own law in respect of similar contracts of sale not governed by this Convention.

Article 13

In the interpretation and application of the provisions of this Convention, regard is to be had to its international character and to the need to promote uniformity.

CHAPTER III. OBLIGATIONS OF THE SELLER

Article 14

The seller must deliver the goods, hand over any documents relating thereto 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 15

If the seller is not required to deliver the goods at a particular place, delivery is made:

(a) If the contract of sale involves carriage of the goods, by handing the goods over to the first carrier for transmission to the buyer;

(b) If, in cases not within the preceding paragraph, the contract relates to

²The Working Group left this article in square brackets to indicate that it was a matter which it considered should be decided by the Commission.

- (i) Specific goods, or
- (ii) 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, by placing the goods at the buyer's disposal at that place;

(c) In other cases by 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 16

(1) If the seller is required to hand the goods over to a carrier and if the goods are not clearly marked with an address or are not otherwise identified to the contract, the seller must send the buyer a notice of the consignment which specifies the goods.

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

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

Article 17

The seller must deliver the goods:

(a) If a date is fixed or determinable by agreement or usage, on that date; or

(b) If a period (such as stated month or season) is fixed or determinable by agreement or usage, at any time within that period unless circumstances indicate the buyer is to choose a date; or

(c) In any other case, within a reasonable time after the conclusion of the contract.

Article 18

If the seller is required 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.

SECTION II. CONFORMITY OF THE GOODS

Article 19

(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. Except where otherwise agreed, 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 circum-

stances 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.

(2) The seller is not liable under subparagraphs (a) to (d) of paragraph (1) of this article for any non-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 non-conformity.

Article 20

(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 paragraph (1) of this article and which is due to a breach of any of his obligations, including a breach of any express guarantee that the goods will remain fit for their ordinary purpose or for some particular purpose, or that they will retain specified qualities or characteristics for a specific period.

Article 21

If the seller has delivered goods before the date for delivery, up to that date he may deliver any missing part or quantity of the goods or deliver other conforming goods or cure 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 in article 55.

Article 22

(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 the place of destination.

(3) If the goods are 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 redispach, examination may be deferred until after the goods have arrived at the new destination.

Article 23

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller a notice 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 such

time-limit is inconsistent with a contractual period of guarantee.

Article 24

The seller is not entitled to rely on the provisions of articles 22 and 23 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 25

The seller must deliver goods which are free from the right or claim of a third person, unless the buyer agreed to take the goods subject to such right or claim.

SECTION III. REMEDIES FOR BREACH OF CONTRACT
BY THE SELLER

Article 26

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

(a) Exercise the rights provided in articles 27 to 33;

(b) Claim damages as provided in articles 55 to 59.

(2) The buyer is not deprived of any right he may have to claim damages even though he resorts to other remedies.

(3) If the buyer resorts to a remedy for breach of contract, the seller is not entitled to apply to a court or arbitral tribunal to grant him a period of grace.

Article 27

(1) The buyer may require performance by the seller unless he has resorted to a remedy which is inconsistent with such 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 and a request for substitute goods is made either in conjunction with notice given under article 23 or within a reasonable time thereafter.

Article 28

The buyer may request performance within an additional period of time of reasonable length. In such a case, the buyer cannot during such period resort to any remedy for breach of contract, unless the seller has declared that he will not comply with the request.

Article 29

(1) The seller may cure, even after the date for delivery, any failure to perform his obligations, if he can do so without such delay as will amount to a fundamental breach of contract and without causing the buyer unreasonable inconvenience or unreasonable expense, unless the buyer has declared the contract avoided in accordance with article 30 or has declared the price to be reduced in accordance with article 31.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply within a reasonable time, the seller may perform within the time indicated in his request or, if no time is indicated, within a reasonable time. The buyer cannot, during either 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 or within a reasonable period of time is assumed to include a request, under paragraph (2) of this article, that the buyer make known his decision.

Article 30

(1) The buyer may declare the contract avoided:

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

(b) If the seller has been requested to make delivery under article 28 and has not delivered the goods within the additional period of time fixed by the buyer in accordance with that article or has declared that he will not comply with the request.

(2) However, in cases where the seller has made delivery, the buyer loses his right to declare the contract avoided unless he has done so within a reasonable time:

(a) In respect of late delivery, after he has become aware that delivery has been made; or

(b) In respect of any breach other than late delivery, after he knew or ought to have known of such breach or, if the buyer has requested the seller to perform under article 28, after the expiration of the additional period of time or after the seller has declared that he will not comply with the request.

Article 31

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may declare the price to be reduced in the same proportion as the value of the goods at the time of the conclusion of the contract has been diminished because of the non-conformity.

Article 32

(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, the provisions of articles 27 to 31 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 and in conformity with the contract amounts to a fundamental breach of the contract.

Article 33

(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 IV. OBLIGATIONS OF THE BUYER

Article 34

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 35

The buyer must take the necessary steps to enable the price to be paid or to procure the issuance of documents assuring payment, such as a letter of credit or a banker's guarantee.

Article 36

When a contract has been concluded but does not state the price or expressly or impliedly make provision for the determination of the price of the goods, the buyer must pay the price generally charged by the seller at the time of the conclusion of the contract. If no such price is ascertainable, the buyer must pay the price generally prevailing at the aforesaid time for such goods sold under comparable circumstances.

Article 37

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 38

(1) The buyer must pay the price to the seller at the seller's place of business. However, if the payment is to be made against the handing over of the goods or of documents, the price must be paid 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 the place of business of the seller subsequent to the conclusion of the contract.

Article 39

(1) The buyer must pay the price when the seller places either the goods or a document 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 document.

(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 at the place of destination except against payment of the price.

(3) The buyer is not required 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 such opportunity.

Article 40

The buyer must pay the price on the date fixed or determinable by the contract or this Convention without the need for any formalities.

SECTION II. TAKING DELIVERY

Article 41

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 42

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

(a) Exercise the rights provided in articles 43 to 46;

(b) Claim damages as provided in articles 55 to 59.

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

(3) If the seller resorts to a remedy for breach of contract, the buyer is not entitled to apply to a court or arbitral tribunal to grant him a period of grace.

Article 43

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

Article 44

The seller may request performance within an additional period of time of reasonable length. In such a case, the seller cannot during such period resort to any remedy for breach of contract, unless the buyer has declared that he will not comply with the request.

Article 45

(1) The seller may declare the contract avoided:

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

(b) If the buyer has been requested under article 44 to pay the price or to take delivery of the goods and has not paid the price or taken delivery within the additional period of time fixed by the seller in accordance with that article or has declared that he will not comply with the request.

(2) However, in cases where the buyer has paid the price, the seller loses his right to declare the contract avoided if he has not done 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, within a reasonable time after the seller knew or ought to have known of such breach or, if the seller has requested the buyer to perform under article 44, within a reasonable time after the expiration of the additional period of time or after the buyer has declared that he will not comply with the request.

Article 46

(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 expressly or impliedly 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 any 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 submit a different specification. If the buyer fails to do so, the specification made by the seller is binding.

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

SECTION I. ANTICIPATORY BREACH

Article 47

(1) A party may suspend the performance of his obligations if it is reasonable to do so because, after the conclusion of the contract, a serious deterioration in the capacity to perform or creditworthiness of the other party or his conduct in preparing to perform or in actually performing the contract gives grounds to conclude that the other party will not perform a substantial part of his obligations.

(2) If the seller has already dispatched the goods before the grounds described in paragraph (1) of this article 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. This 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 to the other party thereof and must continue with performance if the other party provides adequate assurance of his performance. If the other party fails to provide such assurance within a reasonable time after he has received the notice, the party who suspended performance may avoid the contract.

Article 48

(1) If, in the case of a contract for delivery of goods by instalments, the failure of one party to perform any of his obligations in respect of any instalment gives the other party good reason to fear a fundamental breach in respect of future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

(2) A buyer, avoiding the contract in respect of future deliveries, may also, provided that he does so at the same time, declare the contract avoided in respect of deliveries already made if, by reason of their interdependence, deliveries already made could not be used for the purpose contemplated by the parties in entering the contract.

Article 49

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

SECTION II. EXEMPTIONS

Article 50

(1) If a party has not performed one of his obligations, he is not liable in damages for such non-performance if he proves that it was due to an impediment which occurred without fault on his part. For

this purpose there is deemed to be fault unless the non-performing party proves that he could not reasonably have been expected to take into account or to avoid or to overcome the impediment.

(2) If the non-performance of the seller is due to non-performance by a subcontractor, the seller is exempt from liability only if he is exempt under the provisions of paragraph (1) of this article and if the subcontractor would be so exempt if the provisions of that paragraph were applied to him.

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

(4) The non-performing party must notify the other party of the impediment and its effect on his ability to perform. If he fails to do so within a reasonable time after he knew or ought to have known of the impediment, he is liable for the damage resulting from this failure.

SECTION III. EFFECTS OF AVOIDANCE

Article 51

(1) Avoidance of the contract releases both parties from their obligations thereunder, subject to any damage which may be due. Avoidance does not affect provisions for the settlement of disputes.

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

Article 52

(1) The buyer loses his 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) Paragraph (1) of this article 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 he received them is not due to an act of the buyer; or

(b) If the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 22; 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 the lack of conformity or ought to have discovered it.

Article 53

The buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 52 retains all other remedies.

Article 54

(1) If the seller is required to refund the price, he must also pay interest thereon, at the rate fixed in accordance with article 58, as 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 IV. DAMAGES

Article 55

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 cannot 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 which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 56

(1) 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, if he does not rely upon the provisions of articles 55 or 57, recover the difference between the contract price and the price in the substitute transaction.

(2) Damages under paragraph (1) of this article may include additional loss, including loss of profit, if the conditions of article 55 are satisfied.

Article 57

(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he does not rely upon the provisions of articles 55 or 56, recover the difference between the price fixed by the contract and the current price on the date on which the contract is avoided.

(2) In calculating the amount of damages under paragraph (1) of this article, the current price to be taken into account 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 another place which serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

(3) Damages under paragraph (1) of this article may include additional loss, including loss of profit, if the conditions of article 55 are satisfied.

Article 58

If the breach of contract consists of delay in the payment of the price, the seller is in any event entitled to interest on such sum as is in arrears at a rate equal to the official discount rate in the country where he has his place of business, plus 1 per cent, but his entitlement is not to be lower than the rate applied to unsecured short-term commercial credits in the country where the seller has his place of business.

Article 59

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

SECTION V. PRESERVATION OF THE GOODS

Article 60

If the buyer is in delay in taking delivery of the goods 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 may retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 61

(1) If the goods have been received by the buyer and he intends to reject them, he must take such steps as are reasonable in the circumstances to preserve them. He may retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been put at his disposal at the place of destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that he can do so 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.

Article 62

The party who is under an obligation 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 63

(1) 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 cost of preservation and notice of his intention to sell has been given, the party who is under an obligation to preserve the goods in accordance with articles 60 or 61 may sell them by any appropriate means.

(2) If the goods are subject to loss or rapid deterioration or their preservation would involve unreasonable expense, the party who is under an obligation to preserve the goods in accordance with articles 60 or 61 must take reasonable efforts to sell them. To the extent possible he must give notice of his intention to sell.

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

CHAPTER VI. PASSING OF RISK

Article 64

If the risk has passed to the buyer, he must pay the price notwithstanding loss of or damage to the goods, unless the loss or damage is due to an act of the seller.

Article 65

(1) If the contract of sale involves carriage of the goods and the seller is not required to hand them over at a particular destination, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer.

(2) If at the time of the conclusion of the contract the goods are already in transit, the risk passes as from the time the goods were handed over to the first carrier. However, the risk of loss of goods sold in transit does not pass to the buyer if, 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, unless the seller had disclosed such fact to the buyer.

Article 66

(1) In cases not covered by article 65 the risk passes to the buyer as from the time when the goods were placed at his disposal and taken over by him.

(2) If the goods have been placed at the disposal of the buyer but they have not been taken over by him or have been taken over belatedly by him and this fact constitutes a breach of the contract, the risk passes to the buyer at the last moment he could have taken over the goods without committing a breach of the contract. If the contract relates to the sale of goods not then identified, the goods are deemed not to be placed at the disposal of the buyer until they have been clearly identified to the contract.

Article 67

If the seller has committed a fundamental breach of contract, the provisions of articles 65 and 66 do not impair the remedies available to the buyer on account of such breach.

3. Commentary on the draft Convention on the International Sale of Goods (A/CN.9/116, annex II)*

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Part I. Substantive provisions

CHAPTER I. SPHERE OF APPLICATION

Article 1

(1) This Convention applies to contracts of sale of goods entered into by 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.

PRIOR UNIFORM LAW

Uniform Law on the International Sale of Goods (ULIS), articles 1 and 2.

* 17 March 1976.