

G. REPORT OF THE FIRST COMMITTEE

Document A/CONF.97/11

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[7 April 1980]*

I. Introduction

*Meetings, organization of work and structure of
this report*

A. SUBMISSION OF THE REPORT

(i) Meetings

1. The Conference at its first plenary meeting entrusted the First Committee with the consideration of articles 1 to 82 of the draft Convention on Contracts for the International Sale of Goods (A/CONF.97/5), and of draft article "Declarations relating to contracts in writing" in the draft provisions prepared by the Secretary-General concerning implementation, declarations, reservations and other final clauses of the draft Convention (A/CONF.97/6).

4. The First Committee held 38 meetings, between 10 March 1980 and 7 April 1980.

(ii) Organization of work

2. The present document contains the report of the First Committee to the Conference on its consideration of the draft articles referred to it, and of other proposals made to the First Committee during its deliberations.

5. At its first meeting on 10 March 1980, the First Committee adopted as its agenda the provisional agenda contained in A/CONF.97/C./L.1.

6. The First Committee proceeded mainly by way of an article-by-article discussion of the draft articles before it and of the amendments to these draft articles submitted by representatives during the Conference. After initial consideration of an article and amendments by the First Committee and subject to the decisions taken on these amendments, the article was referred to the Drafting Committee.

(iii) Plan of this report

B. ELECTION OF OFFICERS

3. At its second plenary meeting on 10 March 1980, the Conference unanimously elected Mr. R. Loewe (Austria) as Chairman of the First Committee. On 11 March 1980, at the 2nd meeting of the First Committee, Mr. S. Michida (Japan) was elected Rapporteur of the First Committee, and on 12 March 1980 at the 3rd meeting Mr. P. K. Mathanjuki (Kenya) was elected Vice-President.

7. This report describes the work of the First Committee relating to each article before it, in accordance with the following scheme:

- (a) Text of UNCITRAL's draft article;*
- (b) Texts of amendments, if any, with a brief description of the manner in which they are dealt with;*
- (c) Proceedings of the First Committee, subdivided as follows:*
 - (i) Meetings*
 - (ii) Consideration of the article.*

II. Consideration by the First Committee of the draft Convention on Contracts for the International Sale of Goods

ARTICLE 1

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“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.”

B. AMENDMENTS

2. Amendments were submitted to article 1 by the Federal Republic of Germany (A/CONF.97/C.1/L.7 and L.17) and Egypt (A/CONF.97/C.1/L.3).

3. These amendments were to the following effect:

Paragraph (1).

(i) *Federal Republic of Germany* (A/CONF.97/C.1/L.7):

Delete paragraph (1), subparagraph (b)
[Rejected: see Consideration, 5, below.]

(ii) *Federal Republic of Germany* (A/CONF.97/C.1/L.17):

Re-word article 1, subparagraph (b) as follows:

“(b) When the rules of private international law, with regard to the contractual rights and duties of the parties, lead to the application of the law of a Contracting State.”

[Rejected: see Consideration, 5, below.]

Paragraph (2).

Egypt (A/CONF.97/C.1/L.3):

Delete paragraph (2)
[Rejected: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 1 at its 1st meeting on 10 March 1980;

(ii) *Consideration*

5. At the first meeting the amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.7) was rejected by a vote of 7 in favour, 25 against, with 10 abstentions. The amendments by Egypt (A/CONF.97/C.1/L.3) and the Federal Republic of Germany (A/CONF.97/C.1/L.17) were also rejected, and the UNCITRAL text adopted.

ARTICLE 2

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“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 or aircraft;

“(f) of electricity.”

B. AMENDMENTS

2. Amendments were submitted to article 2 by Czechoslovakia (A/CONF.97/C.1/L.2), Canada (A/CONF.97/C.1/L.11), India (A/CONF.97/C.1/L.12).

3. These amendments were to the following effect:

Paragraph (a).

Czechoslovakia (A/CONF.97/C.1/L.2):

Article 2 (a) to read as follows:

“(a) of goods bought for personal, family or household use, if the seller, at any time before or at the conclusion of the contract, knew or ought to have known that the goods were bought for such a use;”

[Withdrawn: see Consideration, 5, below.]

Paragraph (e).

(i) *Canada* (A/CONF.97/C.1/L.11):

Delete article 2 (e)

[Rejected: see Consideration, 6, below.]

(ii) *India* (A/CONF.97/C.1/L.12):

Amend to read as follows:

“(e) of ships, vessels, aircraft or hovercraft.”

[Adopted: see Consideration, 7, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 2 at its 1st and 2nd meetings.

(ii) *Consideration*

5. At the 1st meeting, the amendment by Czechoslovakia (A/CONF.97/C.1/L.2) was withdrawn.

6. At the 2nd meeting, the amendment by Canada was rejected by 11 votes in favour, 28 against, with 6 abstentions.

7. At the 2nd meeting, the amendment by India was adopted by 15 votes in favour, 12 against, with 17 abstentions, and the UNCITRAL text adopted subject to this amendment.

ARTICLE 3

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

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.”

2. Amendments were submitted to article 3 by France (A/CONF.97/C.1/L.9), Norway (A/CONF.97/C.1/L.13), Belgium (A/CONF.97/C.1/L.25), United Kingdom (A/CONF.97/C.1/L.26) and Czechoslovakia (A/CONF.97/C.1/L.27).

3. These amendments were to the following effect:

Paragraph (1).

(i) *Belgium* (A/CONF.97/C.1/L.25):

“This Convention does not apply to contracts in which the supply of goods is accessory to other services by the party upon which the obligation falls.”

[Referred to an *ad hoc* working group: see Consideration, 5, below.]

(ii) *United Kingdom* (A/CONF.97/C.1/L.26):

Revise paragraph (1) to read as follows:

“This Convention does not apply where the supply of labour or other services represents the major part in value of the seller’s obligations.”

[Withdrawn: see Consideration, 5, below.]

(iii) *Czechoslovakia* (A/CONF.97/C.1/L.27):

Delete paragraph (1) of this article.

[Rejected: see Consideration, 5, below.]

Paragraph (2)

(i) *France* (A/CONF.97/C.1/L.9):

That paragraph (2) should read as follows:

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

[Referred to an *ad hoc* working group: see Consideration, 5, below.]

(ii) *Norway* (A/CONF.97/C.1/L.13):

Invert the provisions of paragraphs (1) and (2), and formulate paragraph (2) as follows:

“(2) Contracts for the supply of goods to be manufactured or purchased are to be considered sales where the party who takes the order undertakes to supply all, or the substantial part, of the materials necessary for such manufacture or production.”

[Referred to an *ad hoc* working group: see Consideration, 5, below.]

(iii) *United Kingdom* (A/CONF.97/C.1/L.26):

Revise paragraph (2) to read as follows:

“Contracts for the supply of goods to be manufactured or purchased are to be considered sales unless the party who orders the goods undertakes to supply:

“(a) a substantial part of the materials; or

“(b) the information or expertise necessary for such manufacture or production.”

[Withdrawn: see Consideration, 7, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 3 at its 2nd, 3rd and 8th meetings on 11, 12 and 17 March 1980.

(ii) *Consideration*

5. At the 2nd meeting, the amendment by the United Kingdom with regard to paragraph (1) (A/CONF.97/C.1/L.26) was withdrawn, and the amendment by Czechoslovakia (A/CONF.97/C.1/L.27) was rejected. The amendments by France (A/CONF.97/C.1/L.9), Norway (A/CONF.97/C.1/L.13) and Belgium (A/CONF.97/C.1/L.25) were referred for consideration to an *ad hoc* working group composed of the representatives of Belgium, Egypt, Mexico, France, Hungary, Norway, Kenya and the United States.

6. At the 3rd meeting, the *ad hoc* working group submitted the following text of article 3 (A/CONF.97/C.1/L.72):

“(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 obligation of the party who furnishes the goods consists in the supply of labour or other services.”

7. The amendment by the United Kingdom (A/CONF.97/C.1/L.26) was withdrawn and the Committee adopted the text submitted by the *ad hoc* working group.

ARTICLE 4

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"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 therein, this Convention 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."

B. AMENDMENTS

2. Amendments were submitted to article 4 by Norway (A/CONF.97/C.1/L.14), United States of America (A/CONF.97/C.1/L.4), France (A/CONF.97/C.1/L.20), Finland (A/CONF.97/C.1/L.21), and Finland, France, United States of America (A/CONF.97/C.1/L.51).

3. These amendments were to the following effect:

New paragraph (2).

(i) *Norway* (A/CONF.97/C.1/L.14):

Add the following as a new *paragraph 2*:

"(2) This Convention does not govern the settlement between the parties in cases where the seller exercises his right under a contractual clause reserving the right of property in, or other lien on, the goods for the purpose of securing payments due under the contract." [Withdrawn: see Consideration, 5, below.]

(ii) *United States of America* (A/CONF.97/C.1/L.4):

Add a new paragraph to read as follows:

"(c) claims for damages due to personal injury."

[Consolidated into joint proposal, Finland, France, United States of America (A/CONF.97/C.1/L.51). Adopted and referred to Drafting Committee: see Consideration, 6, below.]

(iii) *France* (A/CONF.97/C.1/L.20):

Insert a new article 4 *bis* reading as follows:

"This Convention does not apply to the liability of the seller for physical injury or death caused by the goods."

[Consolidated into joint proposal, Finland, France, United States of America (A/CONF.97/C.1/L.51). Adopted and referred to Drafting Committee: see Consideration, 6, below.]

(iv) *Finland* (A/CONF.97/C.1/L.21):

Add the following new paragraph to article 4:

"This Convention does not govern the liability of the seller for injury to person or for damage caused by the goods sold to other goods."

[Consolidated into joint proposal, Finland, France, United States of America (A/CONF.97/C.1/L.51). Adopted and referred to Drafting Committee: see Consideration, 6, below.]

(v) *Finland, France, United States of America* (A/CONF.97/C.1/L.51):

Add a new article 4 *bis* to read as follows:

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

[Adopted and referred to Drafting Committee: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 4 at its 3rd meeting on 12 March 1980.

(ii) *Consideration*

5. At the 3rd meeting, the amendment by Norway (A/CONF.97/C.1/L.14) was withdrawn.

6. At the 3rd meeting, the amendments by United States of America (A/CONF.97/C.1/L.4), France (A/CONF.97/C.1/L.20) and Finland (A/CONF.97/C.1/L.21) were consolidated as a joint proposal of Finland, France, United States of America (A/CONF.97/C.1/L.51). The joint proposal (A/CONF.97/C.1/L.51) was adopted and referred to the Drafting Committee, and the UNCITRAL text adopted.

ARTICLE 5

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 5

"The parties may exclude the application of this Convention or, subject to article 11, derogate from or vary the effect of any of its provisions."

B. AMENDMENTS

2. Amendments were submitted to article 5 by the United Kingdom (A/CONF.97/C.1/L.8), Canada (A/CONF.97/C.1/L.10), India (A/CONF.97/C.1/L.30), German Democratic Republic (A/CONF.97/C.1/L.32), Belgium (A/CONF.97/C.1/L.41), Pakistan (A/CONF.97/C.1/L.45) and Italy (A/CONF.97/C.1/L.58).

3. These amendments were to the following effect:

(i) *United Kingdom* (A/CONF.97/C.1/L.8):

Add the following sentence to article 5:

"Such exclusion, derogation or variation may be express or implied."

[Rejected: see Consideration, 6, below.]

(ii) *Canada* (A/CONF.97/C.1/L.10):

Revise article 5 to read as follows:

“(1) The parties may exclude the application of this Convention or, subject to article 11, derogate from or vary the effect of any of its provisions. However, except where the parties have wholly excluded this Convention, the obligations of good faith, diligence and reasonable care prescribed by this Convention may not be excluded by agreement, but the parties may by agreement determine the standards by which the performance of such obligations are to be measured if such standards are not manifestly unreasonable.

“(2) A provision in the contract that the contract shall be governed by the law of the particular State shall be deemed sufficient to exclude the application of this Convention even where the law of that State incorporates the provisions of the Convention.”

[Rejected as orally amended: see Consideration, 5 and 6, below.]

(iii) *India* (A/CONF.97/C.1/L.30):

Revise the article to read as follows:

“Subject to article 11, the parties may exclude the application of this Convention or derogate from or vary the effect of any of its provisions.”

[Referred to Drafting Committee: see Consideration, 5, below.]

(iv) *German Democratic Republic* (A/CONF.97/C.1/L.32):

Article 5 should be amended as follows:

“Even if this Convention is not applicable in accordance with articles 2 or 3, it shall apply if it has been validly chosen by the parties.”

[Rejected as orally amended: see Consideration, 6, below.]

(v) *Belgium* (A/CONF.97/C.1/L.41):

Add a new paragraph (2):

“Such exclusion, derogation or variation must be express or derive with certainty from the circumstances of the case.”

Add a new paragraph (3):

“The application of this Convention shall be excluded if the parties have stated that their contract is subject to a specific national law.”

[Rejected: see Consideration, 6, below.]

(vi) *Pakistan* (A/CONF.97/C.1/L.45):

The word “expressly” may be added after the words “the parties may”.

[Rejected: see Consideration, 6, below.]

(vii) *Italy* (A/CONF.97/C.1/L.58):

Add a new paragraph (2) to article 5 to read as follows:

“(2) The Convention may only be excluded in its entirety where the parties have expressly so agreed or where they have chosen the law of a non-contracting State to govern their contract.”

[Rejected as orally amended: see Consideration, 8, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 5 at its 3rd and 4th meetings on 12 and 13 March 1980 respectively.

(ii) *Consideration*

5. At the 3rd meeting, the amendment by India (A/CONF.97/C.1/L.30) was referred to the Drafting Committee. The first paragraph of the amendment by Canada (A/CONF.97/C.1/L.10) was orally amended by the deletion of the words “by agreement, but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable” and rejected by a vote of 4 in favour, and a greater number against.

6. At the 4th meeting, the amendment by the United Kingdom (A/CONF.97/C.1/L.8) was rejected by a vote of 12 in favour and 19 against; the second paragraph of the amendment by Canada (A/CONF.97/C.1/L.10) was rejected by a vote of 3 in favour, and a greater number against; the amendment by Belgium (A/CONF.97/C.1/L.41) to add a new paragraph (2) was rejected by a vote of 8 in favour, and a greater number against; and the amendment by Pakistan (A/CONF.97/C.1/L.45) was rejected by a vote of 4 in favour, and a greater number against. The amendment by the German Democratic Republic (A/CONF.97/C.1/L.32) as orally amended by the substitution for “2” of “2(b)—2(f)” was rejected by a vote of 9 in favour and 21 against. The amendment by Belgium (A/CONF.97/C.1/L.41) to add a new paragraph (3) was withdrawn.

7. At the 4th meeting, the amendment by Italy (A/CONF.97/C.1/L.58) was orally amended to read as follows:

“Even if this Convention is not applicable in accordance with article 2, sub-paragraphs (b), (c), (d), (e) or (f), or with article 3, it shall apply if it has been validly chosen by the parties, to the extent that it does not affect the application of any mandatory provisions of law which would have been applicable if the parties had not chosen this Convention.”

8. It was rejected, and the UNCITRAL text adopted subject to the reference to the Drafting Committee of the amendment by India (A/CONF.97/C.1/L.30).

ARTICLE 6

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 6

“In the interpretation and application of the provisions of this Convention, regard is to be had to its in-

ternational character and to the need to promote uniformity and the observance of good faith in international trade.”

B. AMENDMENTS

2. Amendments were submitted to article 6 by Bulgaria (A/CONF.97/C.1/L.16), Czechoslovakia (A/CONF.97/C.1/L.15), Italy (A/CONF.97/C.1/L.49 and L.59), the United States of America (A/CONF.97/C.1/L.5), France (A/CONF.97/C.1/L.22) and Norway (A/CONF.97/C.1/L.28).

3. These amendments were to the following effect:
Proposed additional paragraphs for article 6.

(i) *Bulgaria* (A/CONF.97/C.1/L.16):

Add a new paragraph (2) to article 6, reading as follows:

“(2) Questions which cannot be solved according to paragraph (1) of this article shall be settled according to the law of the seller’s place of business. The same applies to the questions mentioned in article 4, paragraph (a), as well as to other questions, governed by the law proper to the contract.”

[Rejected: see Consideration, 5, below.]

(ii) *Czechoslovakia* (A/CONF.97/C.1/L.15):

Add a new paragraph (2) to article 6 to read as follows:

“(2) Questions concerning matters governed by this Convention which are not settled therein shall be settled in conformity with the law applicable by virtue of the rules of private international law.”

[Rejected: see Consideration, 5, below.]

(iii) *Italy* (A/CONF.97/C.1/L.59):

Delete the words “and the observance of good faith in international trade” (cf. in this respect the proposed new article 6 *ter*) and add a new sentence:

“Questions concerning matters governed by this Convention which are not expressly settled therein shall be settled in conformity with the general principles on which this Convention is based or, in the absence of such principles, by taking account of the national law of each of the parties.”

Add a new article 6 *ter* to read as follows:

“In the formation [interpretation] and performance of a contract of sale the parties shall observe the principles of good faith and international co-operation.”

[Rejected: see Consideration, 5, below.]

(iv) *Italy* (A/CONF.97/C.1/L.49):

Insert the following new article after article 6:

“Article 6 bis

“Interpretation of contracts

“For the purposes of this Convention, the contract of sale shall be interpreted in accordance with the common will of the parties, reference being made even to their conduct.”

[Rejected: see Consideration, 5, below.]

Revision of article 6.

(i) *United States of America* (A/CONF.97/C.1/L.5):

Revise article 6 to read as follows:

“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 as well as to ensure the observance of good faith in international trade.”

[Referred to Drafting Committee: see Consideration, 6, below.]

(ii) *France* (A/CONF.97/C.1/L.22):

It is proposed that article 6 should read as follows:

“For 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.”

[Referred to Drafting Committee: see Consideration, 6, below.]

(iii) *Norway* (A/CONF.97/C.1/L.28):

Delete the words:

“and the observance of good faith in international trade”

Article 7

At the end of paragraph 3, add the words:

“having regard to the need to ensure the observance of good faith in international trade”

[Withdrawn: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 6 at its 5th meeting on 13 March 1980.

(ii) Consideration

Proposed additional paragraphs for article 6.

5. At the 5th meeting, the amendment by Czechoslovakia (A/CONF.97/C.1/L.15) was rejected by a vote of 9 in favour and 20 against, and the amendment by Bulgaria (A/CONF.97/C.1/L.16) was also rejected. The amendment by Italy (A/CONF.97/C.1/L.59) was rejected by a vote of 10 in favour and 18 against, and another amendment by Italy (A/CONF.97/C.1/L.49) was also rejected.

The German Democratic Republic submitted the following oral proposal:

“Questions concerning matters governed by this Convention which are not expressly settled therein shall be settled in conformity with the general principles on which this Convention is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.”

This proposal was adopted by 17 votes in favour, 14 against, with 11 abstentions.

Revision of article 6.

6. At the 5th meeting, the amendment of Norway (A/CONF.97/C.1/L.28) was withdrawn. The UNCITRAL text was adopted, subject to consideration by the Drafting Committee of the amendments by the United States (A/CONF.97/C.1/L.5) and France (A/CONF.97/C.1/L.22).

ARTICLE 7

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

Article 7

“(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 would have had in the same circumstances.

“(3) In determining the intent of a party or the understanding a reasonable person would have had in the same circumstances, 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.”

B. AMENDMENTS

2. Amendments were submitted to article 7 by Norway (A/CONF.97/C.1/L.28), India (A/CONF.97/C.1/L.31), United Kingdom (A/CONF.97/C.1/L.33), Egypt (A/CONF.97/C.1/L.43), Italy (A/CONF.97/C.1/L.50), Sweden (A/CONF.97/C.1/L.52) and Pakistan (A/CONF.97/C.1/L.53).

3. These amendments were to the following effect:

Article as a whole.

(i) *Sweden* (A/CONF.97/C.1/L.52):

Delete this article.

[Rejected: see Consideration, 5, below.]

Paragraph (1)

(ii) *India* (A/CONF.97/C.1/L.31):

Revise paragraph (1) to read as follows:

“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 ought to have known what that intent was.”

[Rejected: see Consideration, 6, below.]

(iii) *United Kingdom* (A/CONF.97/C.1/L.33):

Revise paragraph (1) to read as follows:

“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 what that intent was.”

[Rejected: see Consideration, 6, below.]

(iv) *Italy* (A/CONF.97/C.1/L.50):

Delete paragraph (1).

[Withdrawn: see Consideration, 6, below.]

Paragraph (2)

(v) *Egypt* (A/CONF.97/C.1/L.43):

Amend paragraph (2) to read as follows:

“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 acting in the same capacity would have had in the same circumstances.”

[Adopted: see Consideration, 7, below.]

(vi) *Pakistan* (A/CONF.97/C.1/L.53):

Revise paragraph (2) as follows:

“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 would unavoidably have had in the same circumstances.”

[Rejected: see Consideration, 7, below.]

(vii) *Norway* (A/CONF.97/C.1/L.8):

At the end of paragraph (3), add the words:

“having regard to the need to ensure the observance of good faith in international trade.”

[Withdrawn: see Consideration, 8, below.]

(viii) *Pakistan* (A/CONF.97/C.1/L.53):

Revise paragraph (3) to read as follows:

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

[Withdrawn: see Consideration, 8, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 7 at its 6th meeting on 14 March 1980.

(ii) *Consideration*

Article as a whole.

5. At the 6th meeting, the amendment by Sweden (A/CONF.97/C.1/L.52) was rejected by a vote of 6 in favour, and a greater number against.

Paragraph (1).

6. At the 6th meeting, the amendment by India (A/CONF.97/C.1/L.31) was rejected by a vote of 6 in favour and 24 against; and the amendment of the United Kingdom (A/CONF.97/C.1/L.33) was rejected by a vote of 7 in favour and 26 against. The amendment by Italy (A/CONF.97/C.1/L.50) was withdrawn, and the UNCITRAL text adopted.

Paragraph (2).

7. At the 6th meeting, the amendment by Pakistan (A/CONF.97/C.1/L.53) was rejected, and the amendment by Egypt (A/CONF.97/C.1/L.43) was adopted by a vote of 19 in favour and 13 against, and referred to the Drafting Committee.

Paragraph (3).

8. At the 6th meeting, the amendments by Norway (A/CONF.97/C.1/L.8) and Pakistan (A/CONF.97/C.1/L.53) were withdrawn, and the UNCITRAL text adopted.

ARTICLE 8

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"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 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."

B. AMENDMENTS

2. Amendments were submitted to article 8 by China (A/CONF.97/C.1/L.24), Czechoslovakia (A/CONF.97/C.1/L.40), India (A/CONF.97/C.1/L.34), Sweden (A/CONF.97/C.1/L.19), Pakistan (A/CONF.97/C.1/L.64), United States of America (A/CONF.97/C.1/L.6), France (A/CONF.97/C.1/L.23) and Egypt (A/CONF.97/C.1/L.44).

3. These amendments were to the following effect:

Paragraph (2).

(i) *China* (A/CONF.97/C.1/L.24):

Paragraph (2) should be revised by adding "reasonable" before "usage" to read:

"(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract a reasonable usage of which the parties knew or ought to have known . . .".

[Rejected: see Consideration, 6, below.]

(ii) *Czechoslovakia* (A/CONF.97/C.1/L.40):

Add the following words at the end of paragraph (2) of article 8:

"provided the usage is not contrary to this Convention."

[Rejected: see Consideration, 6, below.]

(iii) *India* (A/CONF.97/C.1/L.34):

Revise paragraph (2) of article 8 to read as follows:

"The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract a usage of which the parties knew or ought to have known at the time of the contract."

[Rejected: see Consideration, 6, below.]

(iv) *Sweden* (A/CONF.97/C.1/L.19):

In order to clarify the substance of the Convention on

this point we propose that the words "or an interpretation of a trade term" are inserted in article 8, paragraph (2) between the words "a usage" and "of which the parties knew".

An alternative would be to reintroduce the provision in article 9, paragraph 3 of ULIS 1964.

[Rejected: see Consideration, 6, below.]

(v) *Pakistan* (A/CONF.97/C.1/L.64):

Replace the words "unless otherwise agreed" in paragraph (2) of article 8 by the words "unless their conduct shows otherwise".

[Rejected: see Consideration, 6, below.]

(vi) *United States of America* (A/CONF.97/C.1/L.6):

Revise paragraph (2) of article 8 to read as follows:

"(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".

[Adopted and referred to Drafting Committee: see Consideration, 6, below.]

Drafting proposal to paragraph (2).

France (A/CONF.97/C.1/L.23):

Proposition de rédaction du paragraphe 2:

(2) Sauf convention contraire des parties, celles-ci sont réputées s'être tacitement référées à tout usage dont elles avaient connaissance *ou auraient dû avoir connaissance* et qui, . . . (le reste sans changement).

[Adopted: see Consideration, 7, below.]

New paragraph (3).

Egypt (A/CONF.97/C.1/L.44):

Add a paragraph (3):

"Where expressions, provisions or forms of contract commonly used in commercial practice are employed, they shall be interpreted according to the meaning usually given to them in the trade concerned."

[Rejected: see Consideration, 8, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 8 at its 6th and 7th meetings on 14 March 1980.

(ii) *Consideration**Paragraph (1).*

5. At the 7th meeting, the UNCITRAL text was adopted.

Paragraph (2).

6. At the 6th and 7th meetings, the amendment by China (A/CONF.97/C.1/L.24) was rejected by 9 votes in favour, 17 against, with 15 abstentions; the amendment by India (A/CONF.97/C.1/L.34) was rejected by 9 votes in favour and 25 against; the amendment by Swe-

den (A/CONF.97/C.1/L.19) was rejected by 12 votes in favour, and 23 against; and the amendment by Pakistan (A/CONF.97/C.1/L.64) was rejected by 15 votes in favour and 18 against. The amendment by the United States (A/CONF.97/C.1/L.6) was adopted by 19 votes in favour, 17 against, with 3 abstentions, and referred to the Drafting Committee, and the UNCITRAL text adopted.

Drafting proposal to paragraph (2).

7. At the 7th meeting, the drafting amendment by France (A/CONF.97/C.1/L.23 in the French text only) was adopted, and referred to the Drafting Committee.

New paragraph (3).

8. At the 7th meeting, the amendment by Egypt (A/CONF.97/C.1/L.44) was rejected by 16 votes in favour, and 21 against.

ARTICLE 9

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 9

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.”

B. AMENDMENTS

2. Amendments were submitted by the Federal Republic of Germany (A/CONF.97/C.1/L.18) and Pakistan (A/CONF.97/C.1/L.67).

3. These amendments were to the following effect:

(i) *Federal Republic of Germany* (A/CONF.97/C.1/L.18):

The following sub-paragraph (c) should be added:

“(c) ‘writing’ includes telegram and telex.”

[Adopted: see Consideration, 5, below.]

(ii) *Pakistan* (A/CONF.97/C.1/L.67):

Add to article 9 a definition of the term “party” used therein.

[Withdrawn, subject to the inclusion of a statement in the summary records: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered this article at its 7th meeting on 14 March 1980.

(ii) Consideration

5. At the 7th meeting, the amendment by Pakistan (A/CONF.97/C.1/L.67) was withdrawn subject to a statement being included in the summary records of Committee I, that in the understanding of the Committee, the term “party” included a state agency participating in international trade. The amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.18) was adopted, by 36 votes in favour, and none against, and the UNCITRAL text adopted subject to this amendment.

ARTICLE 10

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 10

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

B. AMENDMENTS

2. An amendment was submitted to article 10 by Canada (A/CONF.97/C.1/L.54/Rev.1).

3. This amendment was to the following effect:

New paragraph (2).

Add a paragraph (2) reading as follows (revised version):

“Between the parties to a contract of sale evidenced by a written document, evidence by witnesses shall be inadmissible for the purposes of confuting or altering its terms, unless there is *prima facie* evidence resulting from a written document from the opposing party, from his evidence or from a fact the existence of which has been clearly demonstrated. However, evidence by witnesses shall be admissible for purposes of interpreting the written document.”

[Rejected: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 10 at its 7th meeting on 14 March 1980.

(ii) Consideration

5. At the 7th meeting, the amendment by Canada (A/CONF.97/C.1/L.54/Rev.1) was rejected.

ARTICLE 11 AND (X)

A. UNCITRAL TEXT AND TEXT OF ARTICLE (X)

1. The Committee considered together article 11 of the text of the United Nations Commission on International Trade Law, and article (X) of the draft articles concerning implementation, declarations, reservations

and other final clauses prepared by the Secretary-General (A/CONF.97/6).

2. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 11

“Any provision of article 10, article 27 or Part II of this Convention that allows a contract of sale or its modification or abrogation 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 (X) of this Convention. The parties may not derogate from or vary the effect of this article.”

3. The text prepared by the Secretary-General provided as follows:

“Article (X)

“Declarations relating to contracts in writing

“A Contracting State whose legislation requires a contract of sale to be concluded in or evidenced by writing may at the time of signature, ratification or accession make a declaration in accordance with article 11 that any provision of article 10, article 27, or Part II of this Convention, which allows a contract of sale or its modification or abrogation or any offer, acceptance, or other indication of intention to be made in any form other than in writing shall not apply where any party has his place of business in a Contracting State which has made such a declaration.”

B. AMENDMENTS

4. Amendments were submitted to article 11 and article (X) by the Union of Soviet Socialist Republics (A/CONF.97/C.1/L.35) and Austria (A/CONF.97/C.1/L.42).

5. An amendment was submitted to article 11 by the Netherlands (A/CONF.97/C.1/L.71).

6. Amendments were submitted to article (X) by the Netherlands (A/CONF.97/C.1/L.76), the United Kingdom (A/CONF.97/C.1/L.88) and the Federal Republic of Germany (A/CONF.97/C.1/L.96).

7. These amendments were to the following effect:

Article 11 and article (X).

(i) *Union of Soviet Socialist Republics* (A/CONF.97/C.1/L.35):

Add a reference to article 24 in article 11 and article (X).

[Withdrawn: see Consideration, 9, below.]

(ii) *Austria* (A/CONF.97/C.1/L.42):

Delete article 11 and amend article (X) to read as follows:

A Contracting State may at the time of signature, ratification or accession make a declaration that it will not apply any provision of this Convention which allows a contract of sale or its modification or abroga-

tion or any offer, acceptance, or other indication of intention to be made in any form other than in writing where any party has his place of business in a Contracting State which has made such a declaration.

Alternative proposal:

Delete articles 11 and (X).

[Rejected: see Consideration, 9, below.]

Article 11.

(iii) *Netherlands* (A/CONF.97/C.1/L.71):

In the first sentence of article 11, insert the words “to this effect” between the words “has made a declaration” and the words “under article (X)”.

[Referred to Drafting Committee: see Consideration, 10, below.]

Article (X).

(iv) *Netherlands* (A/CONF.97/C.1/L.76):

Revise article (X) to read as follows:

A Contracting State whose legislation requires *all or certain types of contracts* of sale to be concluded in or evidenced by writing may at the time of signature, ratification or accession make a declaration in accordance with article 11 that any provision of article 10, article 27, or Part II of this Convention, which allows a contract of sale or its modification or abrogation or any offer, acceptance, or other indication of intention to be made in any form other than in writing shall not apply *to the contracts concerned* where any party has his place of business in a Contracting State which has made such a declaration.

[Rejected: see Consideration, 11, below.]

(v) *United Kingdom* (A/CONF.97/C.1/L.88):

1. Insert after the word “*ratification*” in the second line of article (X) the words “*acceptance, approval*”.

2. Replace the words “a Contracting State” in the last line by the words “the Contracting State”.

[Referred to the Second Committee: see Consideration, 11, below.]

(vi) *Federal Republic of Germany* (A/CONF.97/C.1/L.96):

Insert after the words “*at the time of signature, ratification or accession*” the words “*or at any time thereafter*”.

[Referred to the Second Committee: see Consideration, 11, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

8. The First Committee considered article 11 and article (X) at its 8th meeting on 17 March 1980.

(ii) *Consideration*

Article 11 and article (X).

9. At the 8th meeting, the amendment by the Union of Soviet Socialist Republics (A/CONF.97/C.1/L.35) was withdrawn, and the amendment by Austria (A/CONF.97/C.1/L.42) was rejected.

Article 11.

10. At the 8th meeting, the amendment by the Netherlands (A/CONF.97/C.1/L.71) was referred to the Drafting Committee, and the UNCITRAL text adopted.

Article (X).

11. At the 8th meeting the amendment by the Netherlands (A/CONF.97/C.1/L.76) was rejected by a vote of 11 in favour and 16 against. The amendments by United Kingdom (A/CONF.97/C.1/L.88) and the Federal Republic of Germany (A/CONF.97/C.1/L.96) were referred to the Second Committee for consideration in relation to article (X).

ARTICLE 12

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 12

"(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."

B. AMENDMENTS

2. Amendments were submitted to article 12 by the United Kingdom (A/CONF.97/C.1/L.36), Union of Soviet Socialist Republics (A/CONF.97/C.1/L.37), Finland (A/CONF.97/C.1/L.29), Norway (A/CONF.97/C.1/L.38), Austria (A/CONF.97/C.1/L.46), the United States of America (A/CONF.97/C.1/L.55), an *ad hoc* working group (A/CONF.97/C.1/L.103) and Australia (A/CONF.97/C.1/L.69).

3. These amendments were to the following effect:

Paragraph (1).

(i) *United Kingdom* (A/CONF.97/C.1/L.36):

1. Delete the second sentence of paragraph (1) of article 12.

2. If the above proposal is rejected, revise the second sentence of paragraph (1) of this article to read as follows:

"A proposal is sufficiently definite if it contains terms relating to matters such as the goods, the quantity or the price which enable the offeree to decide whether or not to accept the proposal."

3. If both the proposals at 1. and 2. above are rejected, revise the second sentence of paragraph (1) of this article to read as follows:

"A proposal is sufficiently definite if it indicates the

goods, whether ascertained or not, and expressly or implicitly fixes or makes provision for determining the quantity and the price."

[Rejected: see Consideration, 5, below.]

(ii) *Union of Soviet Socialist Republics* (A/CONF.97/C.1/L.37):

"In paragraph 1, delete the words "or implicitly", or the words "expressly or implicitly", in order to avoid complications that may arise in interpreting the idea of *implicit* fixing of the procedure for determining the quantity and the price, particularly in the light of the examples given in the Secretariat's commentary on article 12 of the draft Convention (paragraphs 14—17).

"It should be borne in mind, where a certain practice has become established between the parties to a contract, deletion of the words in question will not cause any difficulties, in view of the general provisions contained, in particular, in draft articles 7 and 8."

[Rejected: see Consideration, 9, below.]

(iii) *Finland* (A/CONF.97/C.1/L.29):

Revise paragraph 1 to read as follows:

"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 contains terms relating to matters such as the goods, the quantity or the price which enable the offeree to decide whether or not to accept the proposal."

[Referred to *ad hoc* working group: see Consideration, 5, below.]

(iv) *Norway* (A/CONF.97/C.1/L.38):

It is proposed either to delete the sentence or to redraft it for instance as follows:

"A proposal is sufficiently definite if it *contains terms relating to matters such as the goods, the quantity or the price which enable the offeree to decide whether or not to accept the proposal.*"

[Referred to *ad hoc* working group: see Consideration, 5, below.]

(v) *Austria* (A/CONF.97/C.1/L.46):

Delete the second sentence of paragraph (1). Alternative proposal:

Amend this second sentence to read as follows:

"Any proposal is sufficiently definite, in particular, if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price."

[Referred to *ad hoc* working group: see Consideration, 5, below.]

(vi) *United States of America* (A/CONF.97/C.1/L.55):

Revise paragraph (1) of article 12 to read as follows:

"(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."

[Delete sentence two.]

[Referred to *ad hoc* working group: see Consideration, 5, below.]

Paragraph (2).

Australia (A/CONF.97/C.1/L.69):

Add the following words to paragraph (2):

“and the proposal is sufficiently definite in accordance with paragraph (1).”

[Referred to Drafting Committee: see Consideration, 12, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 12 at its 8th and 11th meetings on 17th and 18th March, 1980, respectively.

(ii) *Consideration*

Paragraph (1).

5. At its 8th meeting, the amendment by the United Kingdom (A/CONF.97/C.1/L.36) was rejected by 17 votes in favour and 22 against. The amendments by Finland (A/CONF.97/C.1/L.29), Norway (A/CONF.97/C.1/L.38), Austria (A/CONF.97/C.1/L.46) and the United States of America (A/CONF.97/C.1/L.55) were referred to an *ad hoc* working group. At the 11th meeting, the *ad hoc* working group submitted two proposals (A/CONF.97/C.1/L.103) for consideration:

“1. It is proposed that the second sentence of this article read as follows:

“A proposal is sufficiently definite if its terms relating to such matters as the goods, the quantity or the price are such as to enable the conclusion of a contract by acceptance.”

6. This amendment was rejected by 15 votes in favour and 26 against.

7. The working group also submitted for consideration the proposal of Austria (A/CONF.97/C.1/L.46):

“Any proposal is sufficiently definite, in particular, if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.”

8. This amendment was rejected by 19 votes in favour and 19 against.

9. The amendment by the Union of Soviet Socialist Republics (A/CONF.97/C.1/L.37) was rejected by 9 votes in favour and 24 against.

10. An oral proposal was submitted by Yugoslavia on article 12, paragraph (1) as follows:

“A proposal is sufficiently definite if its terms relating to such matters as the goods and the price are such as to enable the conclusion of a contract by acceptance.”

11. This proposal was rejected by 7 votes in favour and 22 against and the UNCITRAL text was adopted.

Paragraph (2).

12. At the 8th meeting, the amendment by Australia

(A/CONF.97/C.1/L.69) was referred to the Drafting Committee, and the UNCITRAL text adopted.

ARTICLE 13

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 13

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

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

B. AMENDMENTS

2. An amendment was submitted to article 13 by France (A/CONF.97/C.1/L.47).

3. This amendment was to the following effect:

France (A/CONF.97/C.1/L.47):

Amend article 13, paragraph (2) to read as follows:

“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.”

[Referred to Drafting Committee: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The Committee considered article 13 at its 9th meeting on 17 March 1980.

(ii) *Consideration*

5. At the 9th meeting, paragraph (1) of the UNCITRAL text was adopted. The amendment by France (A/CONF.97/C.1/L.47) was referred to the Drafting Committee, and paragraph (2) of the UNCITRAL text adopted.

ARTICLE 14

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 14

“(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 upon the offer as being irrevocable and the offeree has acted in reliance on the offer.”

B. AMENDMENTS

2. Amendments were submitted to article 14 by United Kingdom (A/CONF.97/C.1/L.48) and German Democratic Republic (A/CONF.97/C.1/L.84).

3. These amendments were to the following effect:

Paragraph (1).

(i) *United Kingdom* (A/CONF.97/C.1/L.48):

Revise paragraph (1) of article 14 to read as follows:

“Until a contract is concluded, an offer addressed to one or more specific persons may be revoked if the revocation reaches the offeree before he has dispatched an acceptance. An offer other than one addressed to one or more specific persons is revoked when the revocation is published in the same way as the offer.”

[Rejected: see Consideration, 5, below.]

(ii) *German Democratic Republic* (A/CONF.97/C.1/L.84):

Paragraph (1) should be revised as follows:

“An offer may be revoked if the revocation reaches the offeree before he has either dispatched an acceptance or the contract is concluded by other means.”

[Adopted: see Consideration, 5, below.]

Paragraph (2).

United Kingdom (A/CONF.97/C.1/L.48):

Revise subparagraph (a) of paragraph (2) to read as follows:

“(a) if, and to the extent that, it indicates that it is irrevocable. The stating of a fixed time for acceptance does not of itself indicate that an offer is irrevocable;”

[Rejected: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 14 at its 9th meeting on 17 March 1980.

(ii) *Consideration**Paragraph (1).*

5. At the 9th meeting, the amendment by the United Kingdom (A/CONF.97/C.1/L.48) was rejected. The amendment by the German Democratic Republic (A/CONF.97/C.1/L.84) was adopted and referred to the Drafting Committee, and the UNCITRAL text adopted.

Paragraph (2).

6. At the 9th meeting, the amendment by the United Kingdom (A/CONF.97/C.1/L.48) was rejected by 7 votes in favour and 31 against, and the UNCITRAL text adopted.

ARTICLE 15

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 15

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

B. AMENDMENTS

2. An amendment was submitted to article 15 by Belgium (A/CONF.97/C.1/L.85).

3. This amendment was to the following effect:

Belgium (A/CONF.97/C.1/L.85: for the French text only):

Il est proposé de rédiger en français cette disposition comme suit:

[Caducité de l'offre par refus.]

“Une offre, même irrevocable, devient caduque lorsque son refus parvient à l'auteur de l'offre.”

[Referred to Drafting Committee: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The Committee considered article 15 at its 9th meeting on 17 March 1980.

(ii) *Consideration*

5. At the 9th meeting the amendment by Belgium (A/CONF.97/C.1/L.85) was referred to the Drafting Committee, and the UNCITRAL text adopted.

ARTICLE 16

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 16

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

“(2) Subject to paragraph (3) of this article, 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 with 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 paragraph (2) of this article.”

B. AMENDMENTS

2. Amendments were submitted to article 16 by the United Kingdom (A/CONF.97/C.1/L.56), Belgium

(A/CONF.97/C.1/L.86), Egypt (A/CONF.97/C.1/L.90) and the United States of America (A/CONF.97/C.1/L.57).

3. These amendments were to the following effect:

Paragraph (1).

(i) *United Kingdom* (A/CONF.97/C.1/L.56):

Revise paragraph (1) of article 16 to read as follows:

“A statement made by or other conduct of the offeree indicating unqualified assent to an offer is an acceptance. Silence or inactivity shall not of themselves amount to acceptance.”

[Withdrawn as to the first sentence. Adopted as to the second sentence and referred to Drafting Committee: see Consideration, 5, below.]

(ii) *Belgium* (A/CONF.97/C.1/L.86):

Amend paragraph (1) to read as follows:

“Any conduct of the offeree implying assent to terms which the offeror considered or may have considered, due account being taken of the circumstances, as *material* during the negotiations is an *acceptance* within the meaning of this Convention. In no case shall silence alone on the part of the offeree amount to acceptance.”

[Rejected: see Consideration, 6, below.]

Paragraph (2).

Egypt (A/CONF.97/C.1/L.90):

In the second sentence of article 16, paragraph (2), delete the words:

“including the rapidity of the means of communication employed by the offeror.”

[Rejected: see Consideration, 7, below.]

Paragraph (3).

United States of America (A/CONF.97/C.1/L.57):

Revise paragraph (3) of article 16 to read as follows:

“(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, 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 paragraph (2) of this article. An offeror who is not notified within a reasonable time may treat the offer as having lapsed before acceptance.”

[Withdrawn: see Consideration, 9, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 16 at its 9th and 10th meetings on 17th and 18th March 1980, respectively.

(ii) *Consideration*

Paragraph (1).

5. At the 9th meeting, part of the amendment of the United Kingdom (A/CONF.97/C.1/L.56) (“Silence or

inactivity shall not of themselves amount to acceptance.”) was adopted by 16 votes in favour, 15 against, and referred to the Drafting Committee. The other part of the United Kingdom amendment (“A statement made by or other conduct of the offeree indicating unqualified assent to an offer is an acceptance.”) was postponed for discussion until consideration of article 17. At the 10th meeting on the 18th March this part of the United Kingdom amendment was withdrawn.

6. The amendment submitted by Belgium (A/CONF.97/C.1/L.86) was modified orally by adding the words “and usage.” at the end of the second sentence. The amendment as modified orally was rejected by 12 votes in favour and 13 against, and the UNCITRAL text adopted.

Paragraph (2).

7. At the 10th meeting the amendment by Egypt (A/CONF.97/C.1/L.90) was rejected by 7 votes in favour and 22 against, and the UNCITRAL text adopted.

8. Belgium orally proposed that at the end of the second sentence of paragraph (2) there should be added the words “and usage”. The proposal was rejected by 12 votes in favour and 13 against, and the UNCITRAL text adopted.

Paragraph (3).

9. At the 10th meeting the amendment by the United States of America (A/CONF.97/C.1/L.57) was withdrawn, and the UNCITRAL text adopted.

ARTICLE 17

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 17

“(1) A reply to an offer which purports to be an acceptance containing 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 which contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance unless the offeror objects to the discrepancy without undue delay. 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, *inter alia*, 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, unless the offeree by virtue of the offer or the particular circumstances of the case has reason to believe they are acceptable to the offeror.”

B. AMENDMENTS

2. Amendments were submitted to article 17 by France (A/CONF.97/C.1/L.60), United Kingdom (A/CONF./C.1/L.61), Belgium (A/CONF.97/C.1/L.87), Bulgaria (A/CONF.97/C.1/L.91), Egypt (A/CONF.97/C.1/L.92), United States of America (A/CONF.97/C.1/L.97), Netherlands (A/CONF.97/C.1/L.98) and Federal Republic of Germany (A/CONF.97/C.1/L.157).

3. These amendments were to the following effect:

Paragraphs (2) and (3).

(i) *United Kingdom* (A/CONF.97/C.1/L.61):

Delete paragraphs (2) and (3).

[Rejected: see Consideration, 6, below.]

(ii) *Bulgaria* (A/CONF.97/C.1/L.91):

Delete paragraphs (2) and (3).

[Rejected: see Consideration, 6, below.]

Paragraph (2).

(iii) *Netherlands* (A/CONF.97/C.1/L.98):

A new sentence should be inserted between the first and the second sentence of paragraph (2):

"If the offeror does so object, the offeree can promptly retract the additional or different terms and the terms of the contract are those of the offer."

[Withdrawn: see Consideration, 7, below.]

(iv) *Federal Republic of Germany* (A/CONF.97/C.1/L.157):

Replace in the first sentence of paragraph (2) the words "unless the offeror objects to the discrepancy without undue delay" by the words:

"unless the offeror, without undue delay, objects to the discrepancy orally or dispatches a notice to that effect."

[Adopted: see Consideration, 8, below.]

Paragraph (3).

(v) *France* (A/CONF.97/C.1/L.60):

Amend article 17 (3) to read as follows:

"(3) additional or different terms relating to the price, quality and quantity of the goods are considered to alter the terms of the offer materially, unless . . ."
(the rest remains unchanged).

[Rejected, see Consideration, 8, below.]

(vi) *Bulgaria* (A/CONF.97/C.1/L.91):

If the proposal to delete paragraphs (2) and (3) is rejected, delete the last portion of paragraph (3) reading:

"unless the offeree by virtue of the offer or the particular circumstances of the case has reason to believe they are acceptable to the offeree".

[Adopted: see Consideration, 8, below.]

(vii) *Egypt* (A/CONF.97/C.1/L.92):

Delete paragraph (3).

[Rejected: see Consideration, 8, below.]

(viii) *United States of America* (A/CONF.97/C.1/L.97):

In paragraph (3), delete the words "inter alia" and substitute the words "among other matters".

[Referred to the Drafting Committee: see Consideration, 8, below.]

Additional paragraph (4).

(ix) *Belgium* (A/CONF.97/C.1/L.87):

Add a fourth paragraph reading as follows:

"(4) When the offeror and the offeree have expressly (or implicitly) referred in the course of negotiations to *general conditions* the terms of which are mutually exclusive the conflict clauses should be considered not to form an integral part of the contract."

[Rejected: see Consideration, 9, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 17 at its 10th, 17th and 18th meetings on 18 and 21 March 1980.

(ii) *Consideration*

Paragraph (1).

5. At the 10th meeting, the UNCITRAL text was adopted.

Paragraphs (2) and (3).

6. At the 10th meeting, the amendment by the United Kingdom (A/CONF.97/C.1/L.61) was rejected by 20 votes in favour and 22 against, and the amendment by Bulgaria (A/CONF.97/C.1/L.96) was also rejected.

Paragraph (2).

7. At the 10th meeting, the amendment by Netherlands (A/CONF.97/C.1/L.98) was withdrawn. At the 18th meeting, the amendment of the Federal Republic of Germany (A/CONF.97/C.1/L.157) was adopted by 36 votes in favour and 2 against, and the UNCITRAL text adopted subject to this amendment.

Paragraph (3).

8. At the 10th meeting, the amendment by France (A/CONF.97/C.1/L.60) was rejected, and the amendment by Egypt (A/CONF.97/C.1/L.92) was also rejected by 9 votes in favour and 29 against. The amendment by the United States (A/CONF.97/C.1/L.97) was referred to the Drafting Committee. The amendment by Bulgaria (A/CONF.97/C.1/L.91) was adopted by 28 votes in favour and 13 against, and the UNCITRAL text adopted subject to this amendment.

Additional paragraph (4).

9. At the 10th meeting, the amendment by Belgium (A/CONF.97/C.1/L.87) was rejected by 6 votes in favour and 30 against.

ARTICLE 18

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 18

"(1) A period of time for acceptance fixed by an 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 an offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

“(2) If the notice of acceptance cannot be delivered at the address of the offeror due to an official holiday or a non-business day falling on the last day of the period for acceptance at the place of business of the offeror, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.”

B. AMENDMENTS

2. Amendments were submitted to article 18 by the United Kingdom (A/CONF.97/C.1/L.62), Bulgaria (A/CONF.97/C.1/L.14) and Egypt (A/CONF.97/C.1/L.93).

3. These amendments were to the following effect:

Paragraph (1).

(i) *United Kingdom* (A/CONF.97/C.1/L.62):

It is proposed that the words “*Unless otherwise stated by the offeror to the offeree*” should be inserted before both sentences in *paragraph (1)* of this article.

[Withdrawn: see Consideration, 5, below.]

(ii) *Bulgaria* (A/CONF.97/C.1/L.94):

Amend the first sentence of article 18, paragraph (1) to read as follows:

“A period of time for acceptance fixed by an offeror in a telegram or letter begins to run from the moment the telegram or letter is handed in for dispatch.”

[Withdrawn: see Consideration, 5, below.]

Paragraph (2).

Egypt (A/CONF.97/C.1/L.93):

Amend the last sentence of article 18 (2) to read as follows:

“Official holidays or non-business days occurring during the running of a period of time for acceptance exceeding ten days are included in calculating the period.”

[Withdrawn: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 18 at its 11th meeting on 18 March 1980.

(ii) *Consideration*

Paragraph (1).

5. At the 11th meeting, the amendments by the United Kingdom (A/CONF.97/C.1/L.62) and Bulgaria (A/CONF.97/C.1/L.94) were withdrawn, and the UNCITRAL text adopted.

Paragraph (2).

6. At the 11th meeting, the amendment by Egypt (A/CONF.97/C.1/L.93) was withdrawn, and the UNCITRAL text adopted.

ARTICLE 19

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 19

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

“(2) If the letter or document containing 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 informs the offeree orally that he considers his offer as having lapsed or dispatches a notice to that effect.”

B. AMENDMENTS

2. No amendments were submitted to this article.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

3. The First Committee considered this article at its 11th meeting on 18 March 1980.

(ii) *Consideration*

4. At the 11th meeting, the UNCITRAL text was adopted.

ARTICLE 20

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 20

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

B. AMENDMENTS

2. No amendments were submitted to this article.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

3. The First Committee considered article 20 at its 11th meeting on 18 March 1980.

(ii) *Consideration*

4. At the 11th meeting, the UNCITRAL text was adopted.

ARTICLE 21

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

Article 21

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

B. AMENDMENTS

2. Amendments were submitted to article 21 by Italy (A/CONF.97/C.1/L.70), Czechoslovakia (A/CONF.97/C.1/L.78), Belgium (A/CONF.97/C.1/L.89) and Canada (A/CONF.97/C.1/L.112).

3. These amendments were to the following effect:

(i) *Italy* (A/CONF.97/C.1/L.70):

Revise article 21 to read as follows:

"A contract is concluded at the moment when *and in the place where* an acceptance of an offer is effective in accordance with the provisions of the Convention."
[Rejected: see Consideration, 5, below.]

(ii) *Belgium* (A/CONF.97/C.1/L.89):

First (existing) paragraph (for the French text only):
Remplacer "conclu" par "formé" dans le texte français du paragraphe (1).

Additional paragraph (2).

(iii) *Czechoslovakia* (A/CONF.97/C.1/L.89):

Add a new paragraph (2):

"Where an offer requires to be accepted in writing, the acceptance is effective only if the written form is observed."
[Rejected: see Consideration, 5, below.]

(iv) *Belgium* (A/CONF.97/C.1/L.89):

Add a new paragraph (2) to read as follows:

"Nevertheless, when the contract depends on the granting of *public or administrative authorizations*, the contract is concluded only from the moment these authorizations have been granted."
[Rejected: see Consideration, 5, below.]

(v) *Canada* (A/CONF.97/C.1/L.112):

Add a new paragraph (2) to read as follows:

"A contract may be concluded even though the moment of its conclusion may be undetermined."
[Rejected: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 21 at its 11th meeting on 18 March 1980.

(ii) *Consideration*

5. At the 11th meeting, the amendments by Italy (A/CONF.97/C.1/L.70), Czechoslovakia (A/CONF.97/C.1/L.78) and Canada (A/CONF.97/C.1/L.112) were rejected. The amendment by Belgium (A/CONF.97/C.1/L.89) to add a new paragraph (2) was also rejected. The amendment by Belgium (A/CONF.97/C.1/L.89 relating to the French text only) was referred to the Drafting Committee, and the UNCITRAL text adopted.

ARTICLE 22

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

Article 22

"For the purposes of Part II of this 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, his place of business or mailing address, or, if he does not have a place of business or mailing address, to his habitual residence."

B. AMENDMENTS

2. No amendments were submitted to this article.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

3. The First Committee considered article 20 at its 11th meeting on 18 March 1980.

(ii) *Consideration*

4. At the 11th meeting, the UNCITRAL text was adopted.

ARTICLE 23

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

Article 23

"A breach committed by one of the parties is fundamental if it results in substantial detriment to the other party unless the party in breach did not foresee and had no reason to foresee such result."

B. AMENDMENTS

2. Amendments were submitted to article 23 by the Federal Republic of Germany (A/CONF.97/C.1/L.63), Czechoslovakia (A/CONF.97/C.1/L.81), Pakistan (A/CONF.97/C.1/L.99), the United Kingdom (A/CONF.97/C.1/L.104), Egypt (A/CONF.97/C.1/L.106), Turkey (A/CONF.97/C.1/L.121) and India (A/CONF.97/C.1/L.126).

3. These amendments were to the following effect:

(i) *Federal Republic of Germany* (A/CONF.97/C.1/L.63):

Article 23 should be phrased as follows:

"A breach committed by one of the parties is fundamental if, having regard to all express and implied terms of the contract, the breach results in substantial detriment to the other party unless the party in breach did not foresee and had no reason to foresee such result."

[Referred to *ad hoc* working group: see Consideration, 5, below.]

(ii) *Czechoslovakia* (A/CONF.97/C.1/L.81):

Replace the existing text by the following:

"A breach of contract is fundamental if the party in breach knew or ought to have known, in the light of the reasons for the conclusion of the contract, or any information disclosed at any time before or at the conclusion of the contract, that the other party would not be interested in performance in case of such a breach."

[Rejected: see Consideration, 5, below.]

(iii) *Pakistan* (A/CONF.97/C.1/L.99):

The words "if it results in substantial detriment to the other party" may be replaced by the words "if it results in such detriment to the other party as would basically change the terms of the transaction".

[Referred to *ad hoc* working group: see Consideration, 5, below.]

(iv) *United Kingdom* (A/CONF.97/C.1/L.104):

Revise article 23 to read as follows:

"A breach committed by one of the parties is fundamental if it results in substantial detriment to the other party unless at the time when the contract was concluded the party in breach did not foresee and had no reason to foresee such a result. A breach does not result in substantial detriment to the other party if damages would be an adequate remedy for him."

[Withdrawn: see Consideration, 6, below.]

(v) *Egypt* (A/CONF.97/C.1/L.106):

Amend article 23 to read as follows:

"A breach committed by one of the parties is fundamental if it results in substantial detriment to the other party unless the party in breach *proves that he did not foresee such a result and that a reasonable person of the same kind in the same circumstances would not have foreseen it.*"

[Adopted as orally amended: see Consideration, 5, below.]

(vi) *Turkey* (A/CONF.97/C.1/L.121):

Insert after the words "A breach" the words "of the contract".

[Referred to the Drafting Committee: see Consideration, 6, below.]

(vii) *India* (A/CONF.97/C.1/L.126):

Insert after the words "had no reason" in the third line of article 23 the words "as a reasonable person".

[Referred to the Drafting Committee: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered the article at its 12th, 13th and 18th meetings on 19 and 21 March 1980.

(ii) *Consideration*

5. At the 12th meeting, the amendment by Czechoslovakia (A/CONF.97/C.1/L.81) was rejected by 9 votes in favour and 24 against. The amendment by Egypt (A/CONF.97/C.1/L.106), as orally amended by the deletion of the words "proves that he", was adopted by 26 votes in favour and 14 against, and referred to the Drafting Committee. The amendments by the Federal Republic of Germany (A/CONF.97/C.1/L.63) and Pakistan (A/CONF.97/C.1/L.99) were referred to an *ad hoc* working group consisting of the representatives of Argentina, Czechoslovakia, Germany, Federal Republic of, Ghana, Hungary, Norway, Pakistan, Romania and Spain for the purpose of drafting a text reflecting the ideas contained in these amendments.

6. At the 13th meeting, the amendment by the United Kingdom (A/CONF.97/C.1/L.104) was withdrawn, and the amendments by Turkey (A/CONF.97/C.1/L.121) and India (A/CONF.97/C.1/L.126) were referred to the Drafting Committee.

7. At the 18th meeting, the *ad hoc* working group, with the exception of Hungary, submitted the following text (A/CONF.97/C.1/L.176).

"A breach of contract committed by one of the parties is fundamental *if it results in such detriment to the other party as will substantially impair his expectations under the contract*, unless the party in breach did not foresee and had no reason to foresee such a result."

8. The text of the *ad hoc* working group was adopted by 22 votes in favour and 18 against, and together with the amendment by Egypt (A/CONF.97/C.1/L.106) as orally amended, referred to the Drafting Committee.

ARTICLE 24

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 24

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

B. AMENDMENTS

2. An amendment was submitted to article 24 by Norway (A/CONF.97/C.1/L.100).

3. The amendment was to the following effect:

Norway (A/CONF.97/C.1/L.100):

Replace the word "made" by the word "given".

[Referred to Drafting Committee: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 24 at its 13th meeting on 19th March 1980.

(ii) Consideration

5. At the 13th meeting, the amendment by Norway (A/CONF.97/C.1/L.100) was referred to the Drafting Committee.

ARTICLE 25

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 25

"Unless otherwise expressly provided in Part III of this Convention, if any notice, request or other communication is given by a party in accordance with Part III 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."

B. AMENDMENTS

2. Amendments were submitted to article 25 by the Federal Republic of Germany (A/CONF.97/C.1/L.65) and the German Democratic Republic (A/CONF.97/C.1/L.123).

3. These amendments were to the following effect:

(i) *Federal Republic of Germany* (A/CONF.97/C.1/L.65):

It is suggested that article 25 be inserted in Part I of the Convention and that the first lines of the provision be worded as follows:

"Unless otherwise expressly provided in *this Convention*, if any notice, request or other communication is given by a party in accordance with *this Convention* and by means appropriate in the circumstances . . ."

[Rejected: see Consideration, 5, below.]

(ii) *German Democratic Republic* (A/CONF.97/C.1/L.123).

Replace the words "in accordance with Part III" in the third line of article 25 by the words "*in accordance with articles 37, 39 (2) and 40 (2)*".

[Rejected: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 25 at its 13th meeting on 19 March 1980.

(ii) Consideration

5. At the 13th meeting, the amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.65) was rejected by 7 votes in favour and 25 against, the amendment by the German Democratic Republic (A/CONF.97/C.1/L.123) was rejected by 11 votes in favour and 17 against, and the UNCITRAL text adopted.

ARTICLE 26

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 26

"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 could do so under its own law in respect of similar contracts of sale not governed by this Convention."

B. AMENDMENTS

2. Amendments were submitted to article 26 by the United Kingdom (A/CONF.97/C.1/L.113) and United States of America (A/CONF.97/C.1/L.117). The amendments were identical in substance.

3. These amendments were to the following effect:

(i) *United Kingdom* (A/CONF.97/C.1/L.113):

It is proposed that the word "*would*" be substituted for the word "*could*" in this article.

[Adopted: see Consideration, 5, below.]

(ii) *United States of America* (A/CONF.97/C.1/L.117):

"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."

[Adopted: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 26 at its 13th meeting on 19 March 1980.

(ii) Consideration

5. At the 13th meeting, the amendments by the United Kingdom (A/CONF.97/C.1/L.113), and the United States of America (A/CONF.97/C.1/L.117), which were identical in substance, were adopted by a vote of 26 in favour, 10 against, and the UNCITRAL text adopted, subject to these amendments.

ARTICLE 27

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 27

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

"(2) A written contract which contains a provision requiring any modification or abrogation to be in writing may not be otherwise modified or abrogated. 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."

B. AMENDMENTS

2. Amendments were submitted to article 27 by Norway (A/CONF.97/C.1/L.66), the United States (A/CONF.97/C.1/L.119) and Italy (A/CONF.97/C.1/L.68).

3. These amendments were to the following effect:

Article as a whole.

(i) *Norway* (A/CONF.97/C.1/L.66):

It is proposed that article 27 should be placed in part III on formation of the contract, for instance as article 21.

[Rejected: see Consideration, 5, below.]

Paragraph (1).

(ii) *United States* (A/CONF.97/C.1/L.119):

Replace the word "abrogated" in paragraph (1) of article 27 by the word "terminated".

[Referred to Drafting Committee: see Consideration, 5, below.]

Paragraph (2).

(iii) *United States* (A/CONF.97/C.1/L.119):

In the first sentence of paragraph (2), replace the word "abrogation" by the words "*termination by agreement*" and the word "abrogated" by the words "*terminated by agreement*".

[Referred to Drafting Committee: see Consideration, 5, below.]

New paragraph.

(iv) *Italy* (A/CONF.97/C.1/L.68):

Add a new paragraph (3) to article 27:

"(3) The preceding paragraph shall not apply where the provision requiring modifications or abrogations of the contract to be in writing is contained in general conditions prepared by one party and that party either directly or through an authorized agent orally agrees to modify or abrogate his general conditions."

[Rejected: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered this article at its 13th meeting on 19 March 1980.

(ii) *Consideration*

5. At the 13th meeting, the amendment by Norway (A/CONF.97/C.1/L.66) was rejected by 9 votes in favour and 27 against with 9 abstentions, the amendments by the United States (A/CONF.97/C.1/L.119) were referred to the Drafting Committee, the amendment by Italy (A/CONF.97/C.1/L.68) was rejected, and the UNCITRAL text adopted.

ARTICLE 28

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 28

"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."

B. AMENDMENTS

2. An amendment was submitted to article 28 by Greece (A/CONF.97/C.1/L.130).

3. This amendment was to the following effect:

Article as a whole.

Greece (A/CONF.97/C.1/L.130):

Delete the words "as required by the contract and this Convention" or:

Insert at the end the words "*and the law applicable*".

[Withdrawn: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 28 at its 13th meeting on 19th March 1980.

(ii) *Consideration**Article as a whole.*

5. At the 13th meeting, the amendment by Greece (A/CONF.97/C.1/L.130) was withdrawn, and the UNCITRAL text adopted.

ARTICLE 29

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 29

"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."

B. AMENDMENTS

2. Amendments were submitted to article 29 by Iraq (A/CONF.97/C.1/L.107) and Netherlands (A/CONF.97/C.1/L.120).

3. These amendments were to the following effect:

(i) *Iraq* (A/CONF.97/C.1/L.107):

Re-word article 29, subparagraph (a) as follows:

"(a) if the contract of sale involves carriage of the goods — in handing the goods over to the first carrier for transmission to the place indicated by the buyer, or, if no such place is indicated, to the buyer's place of business."

[Rejected: see Consideration, 5, below.]

(ii) *Netherlands* (A/CONF.97/C.1/L.120):

Insert after the words "carriage of the goods" the words "by sea".

[Withdrawn: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 29 at its 14th meeting on 19 March 1980.

(ii) *Consideration*

5. At the 14th meeting, the amendment by the Netherlands (A/CONF.97/C.1/L.120) was withdrawn. The amendment by Iraq (A/CONF.97/C.1/L.107) was rejected, and the UNCITRAL text was adopted.

ARTICLE 30

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 30

"(1) If the seller is bound 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 bound 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 bound to effect insurance in respect of the carriage of the goods, he must provide the buyer, at his request, with all available information necessary to enable him to effect such insurance."

B. AMENDMENTS

2. An amendment was submitted to article 30 by Australia (A/CONF.97/C.1/L.101).

3. This amendment was to the following effect:

Australia (A/CONF.97/C.1/L.101):

In *paragraph (1)* of article 30, replace the words "If the seller is bound to hand" by the words "*If the seller, pursuant to the contract or this Convention, hands*".

[Adopted and referred to Drafting Committee: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 30 at its 14th meeting on 19 March 1980.

(ii) *Consideration*

5. At the 14th meeting, the amendment by Australia (A/CONF.97/C.1/L.101) was adopted and referred to the Drafting Committee. The UNCITRAL text of article 30 was adopted subject to this amendment.

ARTICLE 31

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 31

"The seller must deliver the goods:

"(a) if a date is fixed by or determinable from the contract, on that date; or

"(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."

B. AMENDMENTS

2. No amendments were submitted to article 31.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

3. The First Committee considered article 31 at its 14th meeting on 19 March 1980.

(ii) *Consideration*

4. At its 14th meeting, the UNCITRAL text was adopted.

ARTICLE 32

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

Article 32

"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."

B. AMENDMENTS

2. An amendment was submitted to article 32 by Yugoslavia (A/CONF.97/C.1/L.114).

3. The amendment was to the following effect:

Yugoslavia (A/CONF.97/C.1/L.114):

At the end of the article add the words "or by usage".
[Withdrawn: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 32 at its 14th meeting on 19 March 1980.

(ii) *Consideration*

5. At the 14th meeting, the amendment by Yugoslavia was withdrawn, and the UNCITRAL text adopted.

ARTICLE 33

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

Article 33

"(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 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.

"(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."

B. AMENDMENTS

2. Amendments were submitted to article 33 by Federal Republic of Germany (A/CONF.97/C.1/L.73), Australia (A/CONF.97/C.1/L.74), Union of Soviet Socialist Republics (A/CONF.97/C.1/L.82), Norway (A/CONF.97/C.1/L.102), Canada (A/CONF.97/C.1/L.115) and Singapore (A/CONF.97/C.1/L.143).

3. These amendments were to the following effect:

- (i) *Canada* (A/CONF.97/C.1/L.115):

Replace article 33 by the following text:

"(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) Unless otherwise agreed, where the seller is a person who deals in goods of the description supplied under the contract, the goods do not conform with the contract unless they:

"(a) are reasonably 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 judgment;

"(c) possess the qualities of goods which the seller has held out to the buyer as a sample or model.

"(3) Paragraph (2) does not apply,

"(a) as regards defects specifically drawn to the buyer's attention before the contract was made;

"(b) if the buyer examined the goods before the contract was made, with respect to any defect that a reasonable examination ought to have revealed; or

"(c) in the case of a sale by sample or model, with respect to any defect that would have been apparent on reasonable examination of the sample or model.

"(4) For the purposes of paragraph (2) (a), the goods are reasonably fit for the purposes for which

goods of the same description would ordinarily be used if,

"(a) they are of such quality and in such condition as it is reasonable to expect having regard to any description applied to them, the price, and all other relevant circumstances;

"and, without limiting the generality of clause (a),

"(b) if the goods,

"(i) are such as pass without objection in the trade under the contract description,

"(ii) in the case of fungible goods, are of fair average quality within the description,

"(iii) within the variations permitted by the agreement, are of even kind, quality and quantity within each unit and among all units involved,

"(iv) are adequately contained, packaged and labeled as the nature of the goods or the agreement require,

"(v) conform to the representations or promises made on the container or label or other material, if any, accompanying the goods, and

"(vi) will remain fit or perform satisfactorily, as the case may be, for a reasonable length of time having regard to all the circumstances."

[Withdrawn: see Consideration, 5, below.]

(ii) *Union of Soviet Socialist Republics* (A/CONF.97/C.1/L.82):

Re-word the first part of *paragraph (1)*: to clearly express that goods do not conform with the contract unless they meet the specifications stated in the contract.

[Referred to an *ad hoc* working group: see Consideration, 7, below.]

(iii) *Federal Republic of Germany* (A/CONF.97/C.1/L.73):

Re-word *paragraph (1), sub-paragraph (b)* as follows:

"(b) are fit for any particular purpose expressly or impliedly *made part of the contract*."

[Rejected: see Consideration, 5, below.]

(iv) *Singapore* (A/CONF.97/C.1/L.143):

1. Re-word *paragraph (1), subparagraph (c)* as follows:

"(c) possess the qualities *and characteristics* of goods which the seller has held out to the buyer as a sample or model."

[Adopted and referred to Drafting Committee: see Consideration, 5, below.]

2. Insert in paragraph (1), after subparagraph (c), a new subparagraph as follows:

"(d) in general, possess the qualities and characteristics contemplated by the contract."

[Withdrawn: see Consideration, 5, below.]

(v) *Australia* (A/CONF.97/C.1/L.74):

1. Add to paragraph (1), subparagraph (d):

"or in a manner which, in the circumstances, would generally afford greater protection than the manner usual for such goods, or where there is no manner usual for such goods, in a manner adequate to preserve and protect the goods."

2. Add a new paragraph (3) as follows:

"(3) No difference in quantity, quality, description or packaging is to be taken into consideration if it is clearly insignificant."

[Rejected: see Consideration, 6, below.]

(vi) *Norway* (A/CONF.97/C.1/L.102):

In paragraph (2), replace the words "subparagraphs (a) to (d) of paragraph (1) of this article" by the words "the preceding paragraph".

[Referred to Drafting Committee: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 33 at its 14th, 15th and 25th meetings, on 19, 20 and 27 March 1980.

(ii) Consideration

5. At the 15th meeting, the amendments by Singapore (A/CONF.97/C.1/L.143) relating to paragraph (1), subparagraph (d), and by Canada (A/CONF.97/C.1/L.115) were withdrawn. The amendment by Singapore relating to subparagraph (c) of paragraph (1) was adopted and referred to the Drafting Committee. The amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.73) was rejected.

6. The amendment by Australia (A/CONF.97/C.1/L.74) relating to paragraph (1), subparagraph (d) was amended orally by restricting the proposed addition to the following words: "or where there is no manner usual for such goods, in a manner adequate to preserve and protect the goods". This amendment was adopted by 22 votes in favour and 19 against. An amendment to the amendment by Australia was proposed orally by Sweden, to the effect that the words to be added read as follows: "or where there is no manner usual for such goods, in a manner necessary to enable the buyer to take delivery of the goods". This amendment was rejected by 15 votes in favour and 18 votes against. The amendment by Australia (A/CONF.97/C.1/L.74) relating to a new paragraph (3) was rejected by 9 votes in favour and 27 against. The amendment by Norway (A/CONF.97/C.1/L.102) was referred to the Drafting Committee.

7. At the 15th meeting, the amendment by the Union of Soviet Socialist Republics (A/CONF.97/C.1/L.82) was referred to an *ad hoc* working group composed of the representatives of Argentina, France, Iraq, Republic of Korea, Singapore, USSR and United Kingdom.

8. At the 25th meeting, the *ad hoc* working group submitted the following proposal (A/CONF.97/C.1/L.214):

Divide paragraph (1) of this article into two paragraphs and modify the introductory language of the sentence so that the corresponding part of the article may read as follows:

"(1) The seller must deliver goods which are of the quantity, quality and description required by the con-

tract and which are contained or packaged in the manner required by the contract.

"(2) *Where the contract does not require otherwise*, the goods do not conform with the contract unless they:

"..... (the rest of the paragraph stays as it is)

"(3) The seller is not liable under *paragraph (2)* 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."

9. The Committee adopted the proposal, subject to the following change: the introductory words of paragraph (2) "Where the contract does not require otherwise" were rejected by 10 votes in favour and 10 against. The corresponding phrase in the UNCITRAL text "Except where otherwise agreed" was thus retained and referred to the Drafting Committee.

10. The UNCITRAL text of article 33 was adopted subject to the amendments adopted noted in paragraphs 5, 6 and 9 above.

ARTICLE 34

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 34

"(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."

B. AMENDMENTS

2. Amendments were submitted to article 34 by Turkey (A/CONF.97/C.1/L.122), Norway (A/CONF.97/C.1/L.105) and Pakistan (A/CONF.97/C.1/L.147).

3. These amendments were to the following effect:

Paragraph (1).

Turkey (A/CONF.97/C.1/L.122):

Replace the words "even though the lack of conformity becomes apparent only after that time" by the words "if the lack of conformity becomes apparent within the time stipulated in the contract or within the customary period of time".

[Rejected: see Consideration, 5, below.]

Paragraph (2).

(i) *Norway (A/CONF.97/C.1/L.105):*

Replace the words "paragraph (1) of this article" by the words "the preceding paragraph".

[Referred to Drafting Committee: see Consideration, 5, below.]

(ii) *Pakistan (A/CONF.97/C.1/L.147):*

Revise paragraph (2) to read:

"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 or *implied warranty* 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 or *reasonable* period as the case may be."

[Rejected: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 34 at its 14th and 15th meetings on 19 and 20 March 1980.

(ii) *Consideration*

5. At the 14th meeting, the amendment by Turkey (A/CONF.97/C.1/L.122) was rejected. The amendment by Norway (A/CONF.97/C.1/L.105) was referred to the Drafting Committee.

6. At the 15th meeting, the amendment by Pakistan (A/CONF.97/C.1/L.147) was amended orally to the effect that the expression "warranty" be replaced by the expression "term". As amended, it was rejected by 15 votes in favour and 22 against. An alternative amendment was proposed orally by Greece to the effect that the word "express" before the word "guarantee" in the UNCITRAL text be deleted. This amendment was adopted by 21 votes in favour and 19 against. The UNCITRAL text, thus amended, was adopted and referred to the Drafting Committee for consideration of an appropriate qualification of the period mentioned at the end of paragraph (2) without the use of the term "reasonable".

ARTICLE 35

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 35

"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. The buyer retains any right to claim damages as provided for in this Convention."

B. AMENDMENTS

2. An amendment was submitted to article 35 by Canada (A/CONF.97/C.1/L.116).

3. This amendment was to the following effect:

Canada (A/CONF.97/C.1/L.116):

Insert after the words "conformity in the goods delivered" the words "or any documents relating thereto".

[Adopted: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 35 at its 14th meeting on 19 March 1980.

(ii) Consideration

5. At the 14th meeting, the amendment by Canada (A/CONF.97/C.1/L.116) was adopted by 20 votes in favour and 11 against. An alternative amendment was proposed orally by the United States to the effect that the words "in the goods delivered" be deleted in the expression "lack of conformity in the goods delivered". This amendment was rejected by 8 votes in favour and 9 against. The UNCITRAL text was adopted, subject to the amendment by Canada.

6. An amendment proposed orally by Mexico to the effect that the title of Section II. be altered to conform with the decision on the amendment by Canada was referred to the Drafting Committee.

ARTICLE 36

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 36

"(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 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."

B. AMENDMENTS

2. Amendments were submitted to article 36 by Canada (A/CONF.97/C.1/L.118), India (A/CONF.97/

C.1/L.144), Australia (A/CONF.97/C.1/L.154) and the Netherlands (A/CONF.97/C.1/L.155).

3. These amendments were to the following effect:

Paragraph (1).

(i) *Canada* (A/CONF.97/C.1/L.118):

Replace *paragraph (1)* by the following text:

"(a) The buyer must examine the goods, or cause them to be examined, within a reasonable period of time following their delivery, and may examine them at any reasonable time and place and in any reasonable manner."

[Rejected: see Consideration, 5, below.]

(ii) *India* (A/CONF.97/C.1/L.144):

Reword *paragraph (1)* as follows:

"The buyer must examine the goods, or cause them to be examined, within a reasonable period in the circumstances."

[Withdrawn: see Consideration, 5, below.]

Paragraph (2).

Canada (A/CONF.97/C.1/L.118):

Substitute the following text:

"(b) Without derogating from the above principle, if the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination."

[Withdrawn: see Consideration, 6, below.]

Paragraph (3).

(i) *Australia* (A/CONF.97/C.1/L.154):

Reword *paragraph (3)* as follows:

"(3) If the goods are *redirected in transit* or redispached, for purposes of resale or otherwise, without the buyer having a reasonable opportunity for examination, 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."

[Part was referred to the Drafting Committee and part was rejected: see Consideration, 6, below.]

(ii) *Netherlands* (A/CONF.97/C.1/L.155):

Replace the words "If the goods" in paragraph (3) by the words "If without [an intervening] transshipment the goods".

[Withdrawn: see Consideration, 6, below.]

(iii) *Canada* (A/CONF.97/C.1/L.118):

Substitute the following text:

"(c) If the goods are redispached by the buyer without a reasonable opportunity for examination by him, or are resold by him in their existing packaging, and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redispach or resale, examination may be deferred until after the goods have arrived at the new destination or the second buyer has had a reasonable opportunity to examine them."

[Withdrawn: see Consideration, 7, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 36 at its 14th and 16th meetings on 19th and 20th March 1980.

(ii) Consideration

Paragraph (1).

5. At the 14th meeting, the amendment by India (A/CONF.97/C.1/L.144) was withdrawn. The amendment by Canada (A/CONF.97/C.1/L.118) was amended orally to the effect that paragraph (1) should read: "(1) The buyer must examine the goods, or cause them to be examined, within a reasonable period of time in the circumstances, following their delivery". This amendment was rejected by 11 votes in favour and 28 against. Also rejected was an amendment proposed orally by Italy to the effect that after the word "goods" the words "or any documents relating thereto" be added, and the UNCITRAL text adopted.

Paragraph (2).

6. At the 16th meeting, the amendment by Canada (A/CONF.97/C.1/L.118) was withdrawn, and the UNCITRAL text adopted.

Paragraph (3).

7. At the 16th meeting, the amendments by Canada (A/CONF.97/C.1/L.118) and the Netherlands (A/CONF.97/C.1/L.155) were withdrawn. The amendment to add the words "*redirected in transit or*" and "*redirection or*" by Australia (A/CONF.97/C.1/L.154) was adopted by 20 votes in favour and 19 against, and was referred to the Drafting Committee, and the UNCITRAL text adopted subject to this amendment. The amendment by Australia to add the words "*for purposes of resale or otherwise, without the buyer having a reasonable opportunity for examination*" was rejected by 15 votes in favour and 24 against.

ARTICLE 37

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 37

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

B. AMENDMENTS

2. Amendments were submitted to article 37 by Czechoslovakia (A/CONF.97/C.1/L.111), Ghana (A/CONF.97/C.1/L.124), Turkey (A/CONF.97/C.1/L.125), German Democratic Republic (A/CONF.97/C.1/L.131), United Kingdom (A/CONF.97/C.1/L.137) and Norway (A/CONF.97/C.1/L.75).

3. These amendments were to the following effect:

Paragraphs (1) and (2).

(i) *Ghana* (A/CONF.97/C.1/L.124):

1. Delete article 37, paragraph (1), and the words "In any event" at the beginning of article 37, paragraph (2).

2. Alternatively, article 37 should be revised to read as follows:

"(1) The buyer must give notice to the seller specifying the nature of a lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

"(2) If the buyer fails to give the notice referred to in paragraph (1) above, such failure shall be regarded as a failure to mitigate loss and the party in breach may rely on article 73 to reduce the damages payable by him.

"(3) [Same text as the present article 37, paragraph 2.]

[1. Rejected: see Consideration, 5, below.]

[2. Withdrawn: see Consideration, 5, below.]

Paragraph (1).

(ii) *Czechoslovakia* (A/CONF.97/C.1/L.111):

Revise article 37 to read as follows:

"(1) *The buyer is not entitled to exercise his 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.*"

[Rejected: see Consideration, 10, below.]

(iii) *Turkey* (A/CONF.97/C.1/L.125):

Insert at the beginning of paragraph (1) the words "Unless otherwise provided in the contract of sale".

[Rejected: see Consideration, 10, below.]

Paragraph (2).

(iv) *Czechoslovakia* (A/CONF.97/C.1/L.111):

Revise article 37 to read as follows:

"(2) In any event, *the buyer is not entitled to exercise his 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 one year 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.*"

[Rejected: see Consideration, 11, below.]

(v) *German Democratic Republic* (A/CONF.97/C.1/L.131):

Revise paragraph (2) of article 37 to read as follows:

"(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 of *delivery*, unless such time-limit is inconsistent with a contractual period of guarantee.”

[Rejected: see Consideration, 11, below.]

(vi) *Turkey* (A/CONF.97/C.1/L.125):

Replace in paragraph (2) the words “a period of two years” by the words “a period of one year”.

[Rejected: see Consideration, 11, below.]

(vii) *United Kingdom* (A/CONF.97/C.1/L.137):

Paragraph (2) of article 37 should be deleted.

[Rejected: see Consideration, 11, below.]

New paragraph (3).

(viii) *Norway* (A/CONF.97/C.1/L.75):

Add the following as a new paragraph (3):

“(3) However, in cases where a commercial buyer has sold the goods to a sub-purchaser, and the seller at the time of the conclusion of his contract knew or ought to have known of the possibility of such a further sale, the period provided in paragraph (2) shall not expire before a reasonable time after the buyer has received notice from the sub-purchaser in accordance with the provisions of this article, if at that time the period would otherwise have expired or be near to expire.”

[Withdrawn: see Consideration, 12, below.]

(ix) *Czechoslovakia* (A/CONF.97/C.1/L.111):

The addition of the following new paragraph (3) may be considered:

“(3) Where the right to rely on a lack of conformity cannot be exercised by the buyer in accordance with paragraphs (1) or (2), it shall not be recognized or enforced in any legal proceedings, if the expiration of the period of time is invoked by the seller.”

[Withdrawn: see Consideration, 12, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered this article at its 16th, 17th and 21st meetings on 20th, 21st and 25th March 1980.

(ii) *Consideration*

Paragraphs (1) and (2).

5. At the 16th meeting, the first alternative in the amendment by Ghana (A/CONF.97/C.1/L.124) was rejected. The second alternative was withdrawn after an indicative vote of 13 in favour and 29 against.

6. At the 17th meeting, by 31 votes in favour and 4 against, it was decided to adjourn the debate on articles 37 and 38.

7. At the 21st meeting, the Committee considered the following joint proposal:

Finland, Ghana, Kenya, Nigeria, Pakistan and Sweden (A/CONF.97/C.1/L.204):

Paragraph (1).

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

Paragraph (2).

Remains unchanged.

New paragraph (3).

Add a new paragraph (3)* to read as follows:

“(3) Notwithstanding the provisions of paragraph (1) of article 37, paragraph (2) of article 39 and paragraph (3) of article 40, the buyer may declare the price reduced in accordance with article 46 or claim damages except for loss of profit if he has a reasonable excuse for his failure to give the required notice. However, the seller shall be entitled to set off, in any claim by the buyer pursuant to this paragraph any foreseeable financial loss caused him by the buyer’s failure to give the notice.”

8. It was agreed by the sponsors of this joint proposal, during its consideration, that paragraph (1) of the proposal should be replaced by paragraph (1) of the UNCITRAL text, and that the joint proposal should therefore consist only of the addition to the UNCITRAL text of the new paragraph (3).

9. An oral amendment was submitted to paragraph (3) deleting the last sentence therein. The joint proposal as unamended was rejected by 18 votes in favour and 22 against. The joint proposal as amended was adopted by 21 votes in favour and 19 against.

Paragraph (1).

10. At the 21st meeting, the amendments by Czechoslovakia (A/CONF.97/C.1/L.111) and Turkey (A/CONF.97/C.1/L.125) were rejected.

Paragraph (2).

11. At the 21st meeting, the amendments by Czechoslovakia (A/CONF.97/C.1/L.111), the German Democratic Republic (A/CONF.97/C.1/L.131), Turkey (A/CONF.97/C.1/L.125) and the United Kingdom (A/CONF.97/C.1/L.137) were rejected. The amendment orally proposed by France to add the phrase “or with the nature of the goods or of the defect” at the end of the UNCITRAL text was rejected.

New paragraph (3).

12. At the 21st meeting, the amendments by Norway (A/CONF.97/C.1/L.75) and Czechoslovakia (A/CONF.97/C.1/L.111) were withdrawn.

13. The UNCITRAL text of article 37 was adopted. It was decided that new paragraph (3) of the joint proposal which had, as orally amended, been adopted (see 9 above) should form a separate article to be placed after article 40.

* This paragraph could also be separated as a new article 40 *bis*.

ARTICLE 38

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 38

"The seller is not entitled to rely on the provisions of articles 36 and 37 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."

B. AMENDMENTS

2. An amendment was submitted to article 38 by the German Democratic Republic (A/CONF.97/C.1/L.132).

3. The amendment was to the following effect:

German Democratic Republic (A/CONF.97/C.1/L.132):

This article should be deleted.

[Withdrawn: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 38 at its 17th and 21st meetings on 21 and 25 March 1980.

(ii) *Consideration*

5. At the 21st meeting, the amendment by the German Democratic Republic (A/CONF.97/C.1/L.132) was withdrawn, and the UNCITRAL text adopted.

ARTICLE 39

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 39

"(1) The seller must deliver goods which are free from any right or claim of a third party, other than one based on industrial or intellectual property, unless the buyer agreed to take the goods subject to that right or claim.

"(2) The buyer does not have the right to rely on the provisions of this article 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 became aware or ought to have become aware of the right or claim."

B. AMENDMENTS

2. Amendments were submitted to article 39 by Finland (A/CONF.97/C.1/L.133), Singapore (A/CONF.97/

C.1/L.145), Nigeria (A/CONF.97/C.1/L.159), Norway (A/CONF.97/C.1/L.127), Norway (A/CONF.97/C.1/L.77) and Canada (A/CONF.97/C.1/L.128).

3. These amendments were to the following effect:

Paragraph (1).

(i) *Finland* (A/CONF.97/C.1/L.133):

Amend the drafting of articles 39 and 40 by replacing the expression "industrial or intellectual property" by the words "industrial property or other intellectual property".

[Withdrawn: see Consideration, 6, below.]

(ii) *Singapore* (A/CONF.97/C.1/L.145):

Revise paragraph (1) of article 39 to read as follows: "(1) Subject to the provisions of article 40, the seller must deliver goods free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim."

[Withdrawn: see Consideration, 6, below.]

(iii) *Nigeria* (A/CONF.97/C.1/L.159):

Paragraph (1) of article 39 and paragraph (1) of article 40 should be remitted to the Drafting Committee with a view to merging both articles into one.

[Withdrawn: see Consideration, 6, below.]

Paragraph (2).

(iv) *Norway* (A/CONF.97/C.1/L.127):

In paragraph (2) of article 39, replace the words "the buyer does not have the right" by the words "*the buyer loses the right*".

[Referred to the Drafting Committee: see Consideration, 7, below.]

New paragraph (3).

(v) *Norway* (A/CONF.97/C.1/L.77):

Add the following as a new paragraph (3):

"(3) If the seller fails to perform any of his obligations under this article, the goods are deemed not to conform with the contract for the purposes of applying the provisions of articles 41 to 47."

[Rejected: see Consideration, 8, below.]

New paragraphs (3) and (4).

(vi) *Canada* (A/CONF.97/C.1/L.128):

Add new paragraphs (3) and (4) as follows:

"(3) Where the buyer gives notice to the seller of such a right or claim of a third party the seller shall have a reasonable opportunity:

"(a) to discharge or settle such right or claim or to provide satisfactory proof that such claim is ill-founded; or

"(b) to offer the buyer a satisfactory form of indemnity against any loss he may incur by reason of such claim, if the delay involved will not cause serious prejudice or inconvenience to the buyer.

"(4) A seller who meets the requirements of paragraph (3) (a) or (b) shall not be deemed to have committed a fundamental breach of contract."

[Withdrawn: see Consideration, 9, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered this article at its 17th meeting on 21 March 1980.

(ii) Consideration

Paragraph (1).

5. At the 17th meeting, the Committee, by 15 votes in favour and 11 against, adopted and referred to the Drafting Committee, an oral amendment by Mexico that a sentence on the following lines should be added to paragraph (1):

“The rights or claims based on intellectual or other industrial property are governed by article 40.”

6. The amendments by Finland (A/CONF.97/C.1/L.133), Singapore (A/CONF.97/C.1/L.145) and Nigeria (A/CONF.97/C.1/L.159) were withdrawn, and the UNCITRAL text adopted subject to the amendment set forth in paragraph 5 above.

Paragraph (2).

7. At the 17th meeting, the amendment by Norway (A/CONF.97/C.1/L.127) was referred to the Drafting Committee with a view to harmonizing the similar language used in this paragraph, in article 37, paragraph (2), and in article 40, paragraph (3). The UNCITRAL text was adopted.

New paragraph (3).

8. At the 17th meeting, the amendment by Norway (A/CONF.97/C.1/L.77) was rejected.

New paragraphs (3) and (4).

9. At the 17th meeting, the amendment by Canada (A/CONF.97/C.1/L.128) was withdrawn.

ARTICLE 40

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 40

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

“(3) The buyer does not have the right to rely on the provisions of this article 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 became aware or ought to have become aware of the right or claim.”

B. AMENDMENTS

2. Amendments were submitted to article 40 by Finland (A/CONF.97/C.1/L.133), Nigeria (A/CONF.97/C.1/L.159), German Democratic Republic (A/CONF.97/C.1/L.134) and the Federal Republic of Germany (A/CONF.97/C.1/L.129).

3. These amendments were to the following effect:

*Article as a whole.**Finland (A/CONF.97/C.1/L.133):*

Amend the *drafting* of articles 39 and 40 by substituting the expression “industrial or intellectual property” by the words “industrial property or other intellectual property”.

[Withdrawn by Finland but reintroduced by Argentina and adopted: see Consideration, 5, below.]

*Paragraph (1).**Nigeria (A/CONF.97/C.1/L.159):*

Paragraph (1) of article 39 and paragraph (1) of article 40 should be remitted to the Drafting Committee with a view to merging both articles into one.

[Withdrawn: see Consideration, 6, below.]

Article 40, paragraph (2).

There were no amendments.

[UNCITRAL text adopted: see Consideration, 7, below.]

*Article 40, paragraph (3).**German Democratic Republic (A/CONF.97/C.1/L.134):*

Revise paragraph (3) of article 40 to read as follows:

“(3) The buyer does not have the right to rely on the provisions of this article 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 became aware or ought to have become aware of the right or claim, *at the latest within two years after the date of delivery.*”

[Rejected: see Consideration, 8, below.]

*New article 40 bis.**Federal Republic of Germany (A/CONF.97/C.1/L.129):*

After article 40, add a new article 40 *bis* reading as follows:

“The seller is not entitled to rely on the provisions of article 39, paragraph (2), and of article 40, paragraph (3), if he already knew of the right or claim of the third party and the nature thereof.”

[Adjourn consideration until after consideration of article 38: see Consideration, 9, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 40 at its 17th and 22nd meetings on 21st and 25th March 1980 respectively.

(ii) Consideration

Article as a whole.

5. At the 17th meeting, the amendment by Finland (A/CONF.97/C.1/L.133) was withdrawn but was re-introduced by Argentina and adopted by a vote of 29 in favour and 3 against, and the UNCITRAL text adopted subject to the amendment.

Paragraph (1).

6. At the 17th meeting, the amendment by Nigeria (A/CONF.97/C.1/L.159) was withdrawn, and the UNCITRAL text adopted.

Paragraph (2).

7. At the 17th meeting, the UNCITRAL text was adopted.

Paragraph (3).

8. At the 17th meeting, the amendment by the German Democratic Republic (A/CONF.97/C.1/L.134) was rejected by a vote of 5 in favour and 11 against, and the UNCITRAL text adopted.

New article 40 bis.

9. At the 17th meeting the Committee decided to postpone consideration of the amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.129) until after consideration of article 38. At the 22nd meeting, the amendment was adopted by a vote of 19 in favour and 4 against, and the UNCITRAL text adopted subject to the amendment.

ARTICLE 41

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 41

"(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 42 to 48;

"(b) claim damages as provided in articles 70 to 73.

"(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."

B. AMENDMENTS

2. No amendments were submitted to this article.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

3. The First Committee considered article 41 at its 17th meeting on 21 March 1980.

(ii) Consideration

4. At the 17th meeting, the UNCITRAL text was adopted.

ARTICLE 42

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 42

"(1) The buyer may require performance by the seller of his obligations unless the buyer 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 37 or within a reasonable time thereafter."

B. AMENDMENTS

2. Amendments were submitted to article 42 by the United States of America (A/CONF.97/C.1/L.180), Norway (A/CONF.97/C.1/L.79), Germany, Federal Republic of (A/CONF.97/C.1/L.135), Denmark (A/CONF.97/C.1/L.138), Finland (A/CONF.97/C.1/L.139), Sweden (A/CONF.97/C.1/L.173), Joint Proposal of Finland, Germany, Federal Republic of, Norway and Sweden (A/CONF.97/C.1/L.199) and Japan (A/CONF.97/C.1/L.161).

3. The amendments were to the following effect:

Paragraph (1).

(i) Norway (A/CONF.97/C.1/L.79):

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

[Withdrawn: see Consideration, 5, below.]

New paragraph (1) (bis).

(ii) United States of America (A/CONF.97/C.1/L.180): After paragraph (1) of article 42 add a new paragraph (1 bis) to read as follows:

"(1 bis) The buyer may not require performance by the seller if the buyer can purchase substitute goods without substantial additional expense or inconvenience."

[Rejected: see Consideration, 6, below.]

Paragraph (2).(iii) *Norway (A/CONF.97/C.1/L.79):*

"(2) Where 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 not reasonably practicable for the seller, or to deliver substitute goods if the lack of conformity constitutes a fundamental breach.

"(3) Any request for repair or substitute goods may be made only in conjunction with notice given under Article 37 or within a reasonable time thereafter."

[Withdrawn in favour of joint proposal of Finland, Germany, Federal Republic of, Norway and Sweden (A/CONF.97/C.1/L.199): see Consideration, 7, below.]

(iv) *Federal Republic of Germany (A/CONF.97/C.1/L.135):*

Revise paragraph (2) of article 42 to read as follows:

"(2) If the goods do not conform with the contract, the buyer may require the seller to remedy a lack of conformity in the goods by repairing them or to deliver substitute goods unless it is reasonably not practicable for the seller to repair the goods or to deliver substitute goods. Any request to repair the goods or to deliver substitute goods may be made only in conjunction with notice given under article 37 or within a reasonable time thereafter."

[Rejected: see Consideration, 8, below.]

(v) *Denmark (A/CONF.97/C.1/L.138):*

Replace paragraph (2) of article 42 by the following text of paragraphs (2) and (3):

"(2) Where 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 not reasonably practicable for the seller, or, if the lack of conformity constitutes a fundamental breach, to deliver substitute goods.

"(3) Any request for repair or substitute goods may be made only in conjunction with notice given under article 37 or within a reasonable time thereafter."

[Withdrawn in favour of amendment of Finland: see Consideration, 7, below.]

(vi) *Finland (A/CONF.97/C.1/L.139):*

Replace paragraph (2) of article 42 by the following text of paragraphs (2) and (3):

"(2) Where the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair if such a repair does not cause the seller unreasonable costs or harm. If the lack of conformity constitutes a fundamental breach, the buyer may require the seller to deliver substitute goods.

"(3) Any request for repair or substitute goods may be made only in conjunction with notice given under article 37 or within a reasonable time thereafter."

[Withdrawn in favour of joint proposal of Finland, Germany, Federal Republic of, Norway and Sweden: see Consideration, 7, below.]

(vii) *Sweden (A/CONF.97/C.1/L.173):*

"(2) The buyer may require the seller to remedy a lack of conformity in the goods by repairing them only if the seller can do so without unreasonable inconvenience or unreasonable expense.

"(3) The buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach and it is reasonably practicable for the seller to supply substitute goods."

[Withdrawn in favour of joint proposal of Finland, Germany, Federal Republic of, Norway and Sweden: see Consideration, 7, below.]

New paragraph (3): addendum to UNCITRAL text paragraph (2).(viii) *Joint Proposal of Finland, Germany, Federal Republic of, Norway and Sweden (A/CONF.97/C.1/L.199):*

"(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 not reasonably practicable for the seller. A request for repair must be made either in conjunction with notice given under article 37 or within a reasonable time thereafter."

[Adopted as jointly modified orally by France, the Union of Soviet Socialist Republics and the United States of America: see Consideration, 9, below.]

New paragraph (2 bis).(ix) *United States of America (A/CONF.97/C.1/L.180):*
After paragraph (2) of article 42 add a new paragraph (2 bis) to read as follows:

"(2 bis) The buyer loses the right to require performance unless he requests and institutes legal action for it within a reasonable time and before changes in market or other conditions make the exercise of the right unfair or oppressive."

[Rejected: see Consideration, 10, below.]

New paragraph (4).(x) *Japan (A/CONF.97/C.1/L.161):*

Add the following paragraph to the proposal in A/CONF.97/C.1/L.139:

"(4) If the buyer has required to remedy the lack of conformity in accordance with paragraphs (2) and (3) of this article, the buyer may not declare the contract avoided unless the seller has declared that he will not comply with the request or a period of time of reasonable length has passed after that request."

[Withdrawn: see Consideration, 11, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 42 at its 18th, 19th and 23rd meetings on 21st, 24th and 25th March 1980 respectively.

(ii) *Consideration**Paragraph (1).*

5. At the 18th meeting, the amendment by Norway (A/CONF.97/C.1/L.79) was withdrawn.

New paragraph (1) (bis).

6. At the 18th meeting, the amendment by the United States of America (A/CONF.97/C.1/L.180) was rejected by 7 votes in favour and 34 against.

Paragraph (2).

7. At the 18th meeting, the amendment by Denmark (A/CONF.97/C.1/L.138) was withdrawn in favour of the amendment by Finland (A/CONF.97/C.1/L.139). An *ad hoc* working group was established composed of the representatives of Finland, Germany, Federal Republic of, Norway and Sweden to prepare a common text. The amendments by Norway (A/CONF.97/C.1/L.79), Finland (A/CONF.97/C.1/L.139) and Sweden (A/CONF.97/C.1/L.173) were withdrawn.

8. At the 19th meeting, the amendment by Germany, Federal Republic of (A/CONF.97/C.1/L.135) was rejected by 17 votes in favour and 17 against, and the UNCITRAL text adopted.

New paragraph (3): addendum to UNCITRAL text paragraph (2).

9. At the 19th meeting, the joint proposal of Finland, Germany, Federal Republic of, Norway and Sweden (A/CONF.97/C.1/L.199) was jointly modified orally by France, the Union of Soviet Socialist Republics and the United States of America, by the addition of the following words: "unless this is not reasonable taking account of all the circumstances." The joint proposal, as modified, was adopted by 31 votes in favour, with no votes against and referred to the Drafting Committee and the UNCITRAL text adopted.

New paragraph (2 bis).

10. At the 19th meeting, the amendment by the United States of America (A/CONF.97/C.1/L.180) was rejected.

New paragraph (4).

11. At the 19th meeting, the amendment by Japan (A/CONF.97/C.1/L.161) was postponed until consideration of articles 43, 44 and 45. At the 23rd meeting the amendment, as modified orally, was withdrawn.

ARTICLE 43

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 43

"(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 the performance."

B. AMENDMENTS

2. Amendments were submitted to article 43 by Turkey (A/CONF.97/C.1/L.136), the United Kingdom (A/CONF.97/C.1/L.156), the United States of America (A/CONF.97/C.1/L.179) and the Netherlands (A/CONF.97/C.1/L.163).

3. These amendments were to the following effect:

Paragraph (1).

(i) *Turkey* (A/CONF.97/C.1/L.136) (for the English version only):

Replace the words "reasonable length" in paragraph (1) of article 43 by the words "reasonable time".

[Referred to the Drafting Committee: see Consideration, 5, below.]

(ii) *United Kingdom* (A/CONF.97/C.1/L.156):

Amend paragraph (1) so that it reads as follows:

"The buyer may *give notice to the seller of* an additional period of time of reasonable length for performance by the seller of his obligations."

[Rejected as orally amended: see Consideration, 6, below.]

(iii) *United States* (A/CONF.97/C.1/L.179):

Revise paragraph (1) of article 43 to read as follows:

"(1) When the buyer has failed to deliver some or all of the goods, the buyer may fix an additional period of time of reasonable length for *the delivery of the missing goods.*"

[Withdrawn: see Consideration, 6, below.]

Paragraph (2).

(iv) *Netherlands* (A/CONF.97/C.1/L.163):

Revise the first sentence of paragraph (2) of article 43 to read as follows:

"(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 *which is inconsistent with the fixation of the additional period for performance by the seller.*"

[Withdrawn: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered this article at its 19th and 20th meetings on 24 March 1980.

(ii) *Consideration*

5. At the 19th meeting, the amendment by Turkey (A/CONF.97/C.1/L.136) was referred to the Drafting Committee.

6. At the 20th meeting, the amendment by the United Kingdom (A/CONF.97/C.1/L.156) was modified orally by adding to that amendment a sentence to the effect that a notice by the buyer under paragraph (1) of this article is not effective unless received by the seller. The amendment by the United Kingdom was rejected by 2 votes in favour and a greater number against, and the proposed

additional sentence was rejected by 10 votes in favour and 27 votes against. The amendments by the Netherlands (A/CONF.97/C.1/L.163) and the United States (A/CONF.97/C.1/L.179) were withdrawn, and the UNCITRAL text adopted.

ARTICLE 44

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 44

"(1) Unless the buyer has declared the contract avoided in accordance with article 45, 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 such delay as will amount to a fundamental breach of contract and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. 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 paragraph (2) of this article, that the buyer make known his decision.

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

2. Amendments were submitted to article 44 by Federal Republic of Germany (A/CONF.97/C.1/L.140), Singapore (A/CONF.97/C.1/L.148), Bulgaria (A/CONF.97/C.1/L.160), Japan (A/CONF.97/C.1/L.164), United States of America (A/CONF.97/C.1/L.203), Norway (A/CONF.97/C.1/L.80), Finland (A/CONF.97/C.1/L.141), Norway (A/CONF.97/C.1/L.142), Turkey (A/CONF.97/C.1/L.146) and Pakistan (A/CONF.97/C.1/L.198).

3. These amendments were to the following effect:

Paragraph (1).

(i) *Federal Republic of Germany* (A/CONF.97/C.1/L.140):

In paragraph (1) of article 44, delete the words "Unless the buyer has declared the contract avoided in accordance with article 45".

[Withdrawn in favour of joint proposal: see Consideration, 8, below.]

(ii) *Singapore* (A/CONF.97/C.1/L.148):

Replace the words "without such delay as will amount

to a fundamental breach of contract" in the first sentence of paragraph (1) by the words "without unreasonable delay".

[Withdrawn in favour of joint proposal: see Consideration, 10, below.]

(iii) *Bulgaria* (A/CONF.97/C.1/L.160):

Delete in paragraph (1) of article 44 the words:

"Unless the buyer has declared the contract avoided in accordance with article 45".

[Withdrawn in favour of joint proposal: see Consideration, 8, below.]

(iv) *Japan* (A/CONF.97/C.1/L.164):

Delete the following words at the beginning of paragraph (1):

"Unless the buyer has declared the contract avoided in accordance with article 45".

[Withdrawn: see Consideration, 10, below.]

(v) *United States* (A/CONF.97/C.1/L.203):

Revise the first sentence of paragraph (1) of article 44 to read as follows:

"(1) Unless the buyer has declared the contract avoided in accordance with article 45 and regardless of any right of the buyer under article 42, 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 such delay as will amount to a fundamental breach of contract and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer."

Alternatively, the first sentence of paragraph (1) may commence as follows:

"(1) Unless the buyer has declared the contract avoided in accordance with article 45, the seller may, even after the date for delivery and regardless of any right of the buyer under article 42, remedy at his own expense . . ."

[Rejected: see Consideration, 10, below.]

Paragraph (2).

(vi) *Norway* (A/CONF.97/C.1/L.80):

Add the following in paragraph (2) at the end of the first full stop sentence:

"or, if no time is indicated, within a reasonable time after the buyer has given notice under article 37."

[Rejected: see Consideration, 11, below.]

(vii) *Finland* (A/CONF.97/C.1/L.141):

Revise paragraph (2) of article 44 to read as follows:

"(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, or, if no time is indicated, within a reasonable time after the buyer has given notice under article 37. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller."

[Rejected: see Consideration, 11, below.]

(viii) *Federal Republic of Germany* (A/CONF.97/C.1/L.140):

Revise paragraph (2) of article 44 to read as follows:

“(2) *Unless the buyer has fixed an additional period of time in accordance with paragraph (1) of article 43, the seller may request the buyer to make known whether he will accept performance within the time indicated in the request. If 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.*”

[Withdrawn in favour of joint proposal: see Consideration, 11, below.]

(ix) *Japan* (A/CONF.97/C.1/L.164):

Delete the last sentence of paragraph (2) and add a new paragraph as follows:

“(2 *bis*) *The buyer may not resort to any remedy which is inconsistent with performance by the seller during the time necessary for the seller to make such a request, if the seller can do so in accordance with paragraph (1) of this article, and during the time indicated in that request if the seller has requested the buyer in accordance with paragraph (2) of this article.*”

[Withdrawn: see Consideration, 11, below.]

Paragraphs (2), (3) and (4).

(x) *Bulgaria* (A/CONF.97/C.1/L.160):

Delete paragraphs (2), (3) and (4) of article 44.

[Withdrawn in favour of joint proposal: see Consideration, 12, below.]

(xi) *Turkey* (A/CONF.97/C.1/L.146):

Delete paragraphs (2), (3) and (4).

[Rejected: see Consideration, 12, below.]

(xii) *Pakistan* (A/CONF.97/C.1/L.198):

Paragraphs (2), (3) and (4) of article 44 may be deleted.

[Rejected: see Consideration, 12, below.]

(xiii) *Norway* (A/CONF.97/C.1/L.142):

Paragraphs (2), (3) and (4) should be transferred to a new article 44 *bis*, to be given the sub-title “Interpellation”.

[Referred to Drafting Committee: see Consideration, 12, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered this article at its 20th and 22nd meetings on 24 and 25 March 1980.

(ii) *Consideration*

5. At the 20th meeting, a motion for the adjournment of the debate on this article was adopted by 19 votes in favour and 15 against.

Paragraph (1).

6. At the 22nd meeting, the Committee considered the following joint proposal:

Bulgaria, Canada, German Democratic Republic, Germany, Federal Republic of, Netherlands, Norway, United States of America (A/CONF.97/C.1/L.213).

Alternative I:

Paragraph (1).

Revise paragraph (1) of article 44 to read as follows:

2 “(1) *The seller may remedy at his own expense the failure to perform his obligations only if this is consistent with the reasonable interests of the buyer, does not cause him unreasonable inconvenience and the resulting delay does not amount to a fundamental breach of contract. The buyer retains any right to claim damages as provided for in this Convention.*”

Alternative II:

Paragraph (1).

Revise paragraphs (1) and (2) of article 44 to read as follows:

“(1) *Subject to article 45 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. The buyer retains any right to claim damages as provided for in this Convention.*

“(2) *The seller may request the buyer to make known whether he will accept a remedy of his failure to perform, unless the buyer has fixed an additional period of time in accordance with article 43 or declared the contract avoided in accordance with article 45. If the buyer does not reply 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.*”

Alternative III:

At the end of article 45 (1) (a), add the following words:

“. . . and the seller does not remedy the failure in accordance with article 44.”

7. It was noted during the consideration of this joint proposal that Alternative III in the proposal formed part of Alternative I.

8. At the 22nd meeting, the amendments of the Federal Republic of Germany (A/CONF.97/C.1/L.140) and Bulgaria (A/CONF.97/C.1/L.160) were withdrawn in favour of the joint proposal (A/CONF.97/C.1/L.213).

9. At the 22nd meeting, Alternative I of the joint proposal (A/CONF.97/C.1/L.213) was rejected by 7 votes in favour and 17 against. Paragraph (1) of Alternative II of the joint proposal (A/CONF.97/C.1/L.213) was adopted in replacement of paragraph (1) of the UNCITRAL text by 19 votes in favour and 7 against. Paragraph (2) of Alternative II of the joint proposal (A/CONF.97/C.1/L.213) was rejected by 10 votes in favour and 16 votes against.

10. At the 22nd meeting, the amendment of Singapore (A/CONF.97/C.1/L.148) was withdrawn in favour of the joint proposal. The amendment of Japan (A/CONF.97/C.1/L.164) was withdrawn, and the amendment of the United States (A/CONF.97/C.1/L.203) was rejected by 10 votes in favour and 10 votes against.

Paragraph (2).

11. At the 22nd meeting, the amendment of the Federal Republic of Germany (A/CONF.97/C.1/L.140) was withdrawn in favour of the joint proposal (A/CONF.97/C.1/L.213). The amendments of Norway (A/CONF.97/C.1/L.80) and Finland (A/C.1/L.141) were orally amended by the deletion of the words "under article 37" from each of the amendments. The amendments, as orally amended, were rejected by 7 votes in favour and 24 against. The amendment by Japan (A/CONF.97/C.1/L.164) was withdrawn.

Paragraphs (2), (3) and (4).

12. At the 22nd meeting the amendment by Bulgaria (A/CONF.97/C.1/L.160) was withdrawn in favour of the joint proposal (A/CONF.97/C.1/L.213), the amendments by Turkey (A/CONF.97/C.1/L.146) and Pakistan (A/CONF.97/C.1/L.198) were rejected, and the amendment by Norway (A/CONF.97/C.1/L.142) was referred to the Drafting Committee.

13. The text of paragraph (1) of Alternative II of the joint proposal (A/CONF.97/C.1/L.213) and paragraphs (2), (3) and (4) of the UNCITRAL text were adopted.

ARTICLE 45

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 45

"(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 not delivered the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 43 or has declared that he will not deliver within the period so fixed.

"(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 the knew or ought to have known of such breach, or after the expiration of any additional period

of time fixed by the buyer in accordance with paragraph (1) of article 43, or after the seller has declared that he will not perform his obligations within such an additional period."

B. AMENDMENTS

2. Amendments were submitted to article 45 by the Netherlands (A/CONF.97/C.1/L.165), Canada (A/CONF.97/C.1/L.150), Norway (A/CONF.97/C.1/L.151), Norway (A/CONF.97/C.1/L.162), Japan (A/CONF.97/C.1/L.161), Australia (A/CONF.97/C.1/L.152), Singapore (A/CONF.97/C.1/L.149) and the Federal Republic of Germany (A/CONF.97/C.1/L.153/Corr.1).

3. These amendments were to the following effect:

Paragraph (1).

(i) *Netherlands* (A/CONF.97/C.1/L.165):

Revise subparagraph (b) of paragraph (1) to read as follows:

"(b) if the seller has not, within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 43, *performed his obligations*, or has declared that he will not *do so* within the period so fixed."

[Rejected as orally amended: see Consideration, 5, below.]

(ii) *Canada* (A/CONF.97/C.1/L.150):

Revise article 45, paragraph (1) (b) to read as follows:

"(b) if the seller has not delivered the goods or performed any other material obligation within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 43 or has declared that he will not deliver within the period so fixed."

[Withdrawn: see Consideration, 5, below.]

(iii) *Norway* (A/CONF.97/C.1/L.151):

Revise subparagraph (b) of paragraph (1) of article 45 to begin as follows:

"(b) *in case of non-delivery, if the seller does not deliver*".

[Referred to Drafting Committee: see Consideration, 6, below.]

(iv) *Norway* (A/CONF.97/C.1/L.162):

It should be made clearer that the provision of paragraph (1) (b) does not apply to cases where the buyer has fixed an additional period for repair or new delivery of substitute goods. The following redraft of subparagraph (b) is suggested (a mere drafting amendment):

"(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 article 43 [paragraph 1] or declares that he will not deliver within the period so fixed."

[Referred to Drafting Committee: see Consideration, 6, below.]

New paragraph (1) (bis).

(v) *Japan* (A/CONF.97/C.1/L.161):

Add a new paragraph to article 45 as follows:

“(1) (*bis*) If the buyer has required the seller to remedy the lack of conformity in accordance with paragraphs (2) and (3) of article 42, he may not declare the contract avoided unless the seller has declared that he will not comply with the request or a period of time of reasonable length has passed after that request.”

[Withdrawn: see Consideration, 7, below.]

Paragraph (2).

(vi) *Australia* (A/CONF.97/C.1/L.152):

1. Delete from paragraph (2) the words:

“in cases where the seller has made delivery”.

2. Insert in subparagraph (2) (*a*), after the word “aware”, the following words:

“or ought to have become aware”.

[Paragraph (1) withdrawn. Paragraph (2) rejected: see Consideration, 8, below.]

(vii) *Singapore* (A/CONF.97/C.1/L.149):

Revise paragraph (2) of article 45 to read as follows:

“(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:

“(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 such breach; or

“(ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 43; or

“(iii) after the seller has declared that he will not perform his obligations within such an additional period.”

[Referred to Drafting Committee: see Consideration, 9, below.]

(viii) *Federal Republic of Germany* (A/CONF.97/C.1/L.153/Corr.1):

At the end of sub-paragraph (*b*) of paragraph (2) of article 45, add the following words:

“, or after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 44, or after the buyer has declared that he will not accept performance.”

[Referred to Drafting Committee: see Consideration, 9, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 45 at its 22nd and 23rd meetings on 25th and 26th March respectively.

(ii) *Consideration*

Paragraph (1).

5. At the 22nd meeting, the amendment by the Netherlands (A/CONF.97/C.1/L.165) was amended

orally by Canada by the insertion of the word “important” immediately before the word “obligations”. The amendment by Canada (A/CONF.97/C.1/L.150) was withdrawn in favour of the amendment by the Netherlands as modified orally by Canada. The amendment by the Netherlands, as orally amended, was rejected by 9 votes in favour and 31 against.

6. At the 23rd meeting, the two amendments by Norway (A/CONF.97/C.1/L.151 and A/CONF.97/C.1/L.162) were referred to the Drafting Committee, and the UNCITRAL text was adopted.

New paragraph (1) (bis).

7. At the 23rd meeting, the amendment by Japan (A/CONF.97/C.1/L.161), as modified orally, was withdrawn.

Paragraph (2).

8. At the 23rd meeting, part of the amendment by Australia (A/CONF.97/C.1/L.152) which dealt with the deletion from paragraph (2) of the words “in cases where the seller has made delivery” was withdrawn. The other part of the amendment “to insert in subparagraph (2) (*a*), after the word “aware”, the following words: “or ought to have become aware” was rejected.

9. The amendments by Singapore (A/CONF.97/C.1/L.149) and the Federal Republic of Germany (A/CONF.97/C.1/L.153/Corr.1) were referred to the Drafting Committee, and the UNCITRAL text was adopted.

ARTICLE 46

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 46

“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 that the goods actually delivered would have had at the time of the conclusion of the contract 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 44 or if he is not allowed by the buyer to remedy that failure in accordance with that article, the buyer’s declaration of reduction of the price is of no effect.”

B. AMENDMENTS

2. Amendments were submitted to article 46 by the Federal Republic of Germany (A/CONF.97/C.1/L.166), Norway (A/CONF.97/C.1/L.167), Argentina, Spain, Portugal (A/CONF.97/C.1/L.168), the United Kingdom (A/CONF.97/C.1/L.169), Finland (A/CONF.97/C.1/L.170) and the United States of America (A/CONF.97/C.1/L.181/Corr.1).

3. These amendments were to the following effect:
(i) *Federal Republic of Germany* (A/CONF.97/C.1/L.166):

Revise the second sentence of article 46 to read as follows:

“However, if the seller remedies any failure to perform his obligations in accordance with article 35 or article 44 or if the buyer refuses to accept performance by the seller in accordance with article 35 or article 44, the buyer’s declaration of reduction of the price is of no effect.”

[Adopted: see Consideration, 5, below.]

(ii) *Norway* (A/CONF.97/C.1/L.167):

1. Revise the first sentence of article 46 to read as follows:

“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 goods conforming with the contract [at the time of delivery] has been diminished because of the non-conformity.”

[Adopted: see Consideration, 6, below.]

(iii) *Argentina, Spain, Portugal* (A/CONF.97/C.1/L.168):

Add at the end of the first sentence the words:

“at the buyer’s place of business or habitual residence.”

[Rejected: see Consideration, 7, below.]

(iv) *United Kingdom* (A/CONF.97/C.1/L.169):

Revise article 46 to read as follows:

“If the goods do not conform with the contract and whether or not the price has already been paid, the buyer is entitled to reduce the price in the same proportion as the value that the goods actually delivered would have had at the time of the conclusion of the contract 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 44 or if he is not allowed by the buyer to remedy that failure in accordance with that article, the buyer may not reduce the price.”

[Referred to Drafting Committee: see Consideration, 9, below.]

(v) *Finland* (A/CONF.97/C.1/L.170):

Revise the first sentence of article 46 to read as follows:

“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 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.”

[Adopted: see Consideration, 6, below.]

(vi) *United States of America* (A/CONF.97/C.1/L.181/Corr.1):

Revise the first sentence of article 46 to read as follows:

“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 to the value that such non-conforming goods would have had at the conclusion of the contract.”

[Withdrawn: see Consideration, 10, below.]

New paragraph (2).

Norway (A/CONF.97/C.1/L.167):

Price reduction may be practicable also in cases of third party claims as described in article 39. This should be referred to either in article 39 (see proposal regarding a new paragraph (3) to that article, set forth in A/CONF.97/C.1/L.77), or in article 46, for instance in a new paragraph to read as follows:

“(2) The provisions of the preceding paragraph apply correspondingly where the value of the goods is diminished because they are subject to a right or claim by a third party as described in article 39.”

[Withdrawn: see Consideration, 11, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 46 at its 23rd meeting on 26th March 1980.

(ii) Consideration

5. At the 23rd meeting, the amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.166) was adopted by 27 votes in favour and no votes against.

6. At the 23rd meeting, the amendments by Norway (A/CONF.97/C.1/L.167) and Finland (A/CONF.97/C.1/L.170) were adopted by 20 votes in favour and 17 against.

7. At the 23rd meeting, the joint amendment by Argentina, Spain, Portugal (A/CONF.97/C.1/L.168) was rejected by 11 votes in favour and 23 against. Argentina submitted orally an alternative amendment by the addition at the end of the first sentence of article 46 of the words “at the place of delivery”. The oral amendment was rejected by 12 votes in favour and 22 against.

8. The UNCITRAL text was adopted subject to the amendments noted at paragraphs 5 and 6 above.

9. At the 23rd meeting, the amendment by the United Kingdom (A/CONF.97/C.1/L.169) was referred to the Drafting Committee.

10. At the 23rd meeting, the amendment submitted by the United States of America (A/CONF.97/C.1/L.181/Corr.1) was withdrawn.

New paragraph (2).

11. At the 23rd meeting, the amendment submitted by Norway (A/CONF.97/C.1/L.167) was withdrawn.

ARTICLE 47

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 47

“(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 42 to 46 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.”

B. AMENDMENTS

2. Amendments were submitted to article 47 by Singapore (A/CONF.97/C.1/L.171) and Australia (A/CONF.97/C.1/L.172).

3. These amendments were to the following effect:

Paragraph (2).

(i) *Singapore* (A/CONF.97/C.1/L.171):

Delete paragraph (2) of article 47.

[Rejected: see Consideration, 5, below.]

(ii) *Australia* (A/CONF.97/C.1/L.172):

Revise paragraph (2) of article 47 to read as follows:

“(2) The buyer may declare the contract avoided in its entirety *if, notwithstanding there has been part performance*, the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract, *or took place notwithstanding the fixing of an additional period of time under article 43 for the performance by the seller of his obligations.*”

[Rejected: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered this article at its 23rd meeting on 26 March 1980.

(ii) *Consideration*

5. At the 23rd meeting, the amendment by Singapore (A/CONF.97/C.1/L.171) was rejected, the amendment by Australia (A/CONF.97/C.1/L.172) was withdrawn, and the UNCITRAL text adopted.

ARTICLE 48

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 48

“(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.”

B. AMENDMENTS

2. Amendments were submitted to article 48 by Norway (A/CONF.97/C.1/L.174), Iraq (A/CONF.97/C.1/L.108) and the Netherlands (A/CONF.97/C.1/L.175).

3. These amendments were to the following effect:

Paragraph (1).

Norway (A/CONF.97/C.1/L.174):

At the end of paragraph (1), add the words

“at that time”.

[Referred to Drafting Committee: see Consideration, 5, below.]

Paragraph (2).

Iraq (A/CONF.97/C.1/L.108):

In paragraph 2, last sentence, replace the words “he must pay for it at the contract rate” by “he must pay for it at *no more than* the contract rate.”

[Rejected: see Consideration, 6, below.]

New article 48a.

Netherlands (A/CONF.97/C.1/L.175):

“When there are available to the buyer both remedies granted under the Convention for lack of conformity on the one hand and remedies deriving from the invalidity of the contract under the applicable national law on the other, he may exercise the latter only under the terms of articles 36 to 38.”

[Rejected: see Consideration, 7, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 48 at its 23rd and 24th meetings on 26th March 1980.

(ii) *Consideration**Paragraph (1).*

5. At the 23rd meeting, the amendment by Norway (A/CONF.97/C.1/L.174) was referred to the Drafting Committee, and the UNCITRAL text adopted.

Paragraph (2).

6. At the 24th meeting, the amendment by Iraq (A/CONF.97/C.1/L.108) was rejected, and the UNCITRAL text adopted.

New article 48a.

7. At the 24th meeting, the amendment by the Netherlands (A/CONF.97/C.1/L.174) was rejected by 6 votes in favour and 24 against.

ARTICLE 49

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 49

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

B. AMENDMENTS

2. No amendments were submitted to article 49.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

3. The First Committee considered article 49 at its 24th meeting on 26 March 1980.

(ii) *Consideration*

4. At the 24th meeting, the UNCITRAL text was adopted.

ARTICLE 50

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 50

"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 relevant laws and regulations to enable payment to be made."

B. AMENDMENTS

2. A joint amendment was submitted to article 50 by Argentina, Spain, Portugal (A/CONF.97/C.1/L.201).

3. The amendment was to the following effect:

Argentina, Spain, Portugal (A/CONF.97/C.1/L.201):

Add the following sentence to article 50:

"If payment in the contractual currency is not possible, the seller may require equivalent payment in the legal currency of the place of the buyer's place of business."

[Rejected: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 50 at its 24th meeting on 26 March 1980.

(ii) *Consideration*

5. At the 24th meeting, the joint amendment by Argentina, Spain, Portugal (A/CONF.97/C.1/L.201) was rejected by 9 votes in favour and 22 against, and the UNCITRAL text adopted.

ARTICLE 51

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 51

"If a contract has been validly 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."

B. AMENDMENTS

2. Amendments were submitted to article 51 by Union of Soviet Socialist Republics (A/CONF.97/C.1/L.83), Byelorussian Soviet Socialist Republic (A/CONF.97/C.1/L.158), Turkey (A/CONF.97/C.1/L.183), Pakistan (A/CONF.97/C.1/L.196), Argentina, Portugal, Spain (A/CONF.97/C.1/L.200), India (A/CONF.97/C.1/L.202), France (A/CONF.97/C.1/L.205) and Italy (A/CONF.97/C.1/L.220).

3. These amendments were to the following effect:

(i) *Union of Soviet Socialist Republics* (A/CONF.97/C.1/L.83):

Delete article 51, on the grounds that in a contract the price must be determined or determinable. It should be borne in mind that in article 12 (1) determinability of the price is recognized as one of the conditions for an offer to be effective.

[Rejected: see Consideration, 5, below.]

(ii) *Byelorussian Soviet Socialist Republic* (A/CONF.97/C.1/L.158):

Delete the article.

[Rejected: see Consideration, 5, below.]

(iii) *Turkey* (A/CONF.97/C.1/L.183):

Replace the words "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" by the words "*the buyer must pay the price current at the time of the conclusion of the contract in the place of delivery for such goods*".

[Withdrawn in favour of text submitted by *ad hoc* working group: see Consideration, 8, below.]

(iv) *Pakistan* (A/CONF.97/C.1/L.196):

Delete in the middle part of the article the words " , 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,".

[Withdrawn in favour of text submitted by *ad hoc* working group: see Consideration, 8, below.]

(v) *Argentina, Spain, Portugal* (A/CONF.97/C.1/L.200):

Amend the beginning of article 51 to read:

"If the price has not been stated and no provision has expressly or impliedly been made for the determination of the price of goods, and if Part II of this Convention is not applicable to the contract and the

applicable law admits in such cases the existence of a contract of sale, the buyer must pay . . .”.

[Withdrawn in favour of text submitted by *ad hoc* working group: see Consideration, 8, below.]

(vi) *India* (A/CONF.97/C.1/L.202):

In the first sentence of article 51 replace the words “If a contract has been validly concluded but does not state the price or expressly or impliedly make provision for the determination of the price of the goods” by the words “*Where a contract does not either expressly or impliedly state the price of the goods . . .*”.

[Withdrawn in favour of text submitted by *ad hoc* working group: see Consideration, 8, below.]

(vii) *France* (A/CONF.97/C.1/L.205):

1. Delete article 51.

2. If the above proposal is rejected, amend article 51 to read as follows:

“Where the contract does not explicitly or implicitly determine the price but merely provides guidelines for determining it, these may consist of an explicit or implicit reference to the price generally charged by the seller at the time of the conclusion of the contract or to the price generally charged at the aforesaid time for such goods sold under comparable circumstances.”

[1. Rejected: see Consideration, 5, below.]

[2. Withdrawn in favour of text submitted by *ad hoc* working group: see Consideration, 8, below.]

(viii) *Italy* (A/CONF.97/C.1/L.220):

Amend article 51 to read as follows:

“Where a contract does not state the price or expressly or otherwise impliedly make provision for the determination of the price of the goods, the parties are considered to have impliedly agreed that the buyer must pay the price generally charged by the seller at the time of the conclusion of the contract, and if no such price is ascertainable, that the buyer must pay the price generally prevailing at the aforesaid time for such goods sold under comparable circumstances.”

[Withdrawn: see Consideration, 10, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 51 at its 24th, 25th and 29th meetings on 26 March, 27 March and 31 March 1980 respectively.

(ii) *Consideration*

5. At the 24th meeting, the amendment by the Union of Soviet Socialist Republics (A/CONF.97/C.1/L.83), the amendment by the Byelorussian Soviet Socialist Republic (A/CONF.97/C.1/L.158) and the first part of the amendment by France (A/CONF.97/C.1/L.205) were rejected by 14 votes in favour and 27 against.

6. At the 24th meeting, a motion to adjourn the debate on this article was adopted by 33 votes in favour and none against, and an *ad hoc* working group composed of the representatives of Argentina, France, Ghana, India, Italy, Pakistan, Portugal, Sweden, Tur-

key and the Union of Soviet Socialist Republics was established to consider the article and submit a proposed text for the article to the Committee.

7. At the 29th meeting, the *ad hoc* working group submitted the following text (A/CONF.97/C.1/L.232):

“Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties shall be deemed, 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 that particular trade.”

8. The amendments by Turkey (A/CONF.97/C.1/L.183), Pakistan (A/CONF.97/C.1/L.196), Argentina, Spain and Portugal (A/CONF.97/C.1/L.200), India (A/CONF.97/C.1/L.202) and the second amendment of France (A/CONF.97/C.1/L.205) were withdrawn in favour of the text submitted by the *ad hoc* working group.

9. The text of the *ad hoc* working group was orally amended twice, firstly by an amendment deleting from the text the word “validly”, and secondly by an amendment adding the words “by the seller” after the words “generally charged”. The text, with each oral amendment, was rejected. The text as unamended was adopted by 29 votes in favour and 4 against.

10. The amendment by Italy (A/CONF.97/C.1/L.220) was withdrawn.

ARTICLE 52

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 52

“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.”

B. AMENDMENTS

2. An amendment was submitted to article 52 by Iraq (A/CONF.97/C.1/L.109) and a joint amendment by Argentina, Portugal, Spain (A/CONF.97/C.1/L.207).

3. These amendments were to the following effect:

(i) *Iraq* (A/CONF.97/C.1/L.109):

Add the following at the end of the article:

“unless otherwise established by usage”.

[Rejected: see Consideration, 5, below.]

(ii) *Argentina, Portugal, Spain* (A/CONF.97/C.1/L.207):

Amend article 52 to read as follows:

“If the price is stated according to the weight of the goods, the net weight is meant unless otherwise agreed.”

[Rejected: see Consideration, 5, below.]

New paragraph (2).

Iraq (A/CONF.97/C.1/L.109):

Add a new paragraph (2) as follows:

"Any loss or increase allowed for by usage shall not be taken into consideration on delivery of the goods."

[Rejected: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 52 at its 24th meeting on 26 March 1980.

(ii) Consideration

5. At the 24th meeting, the amendment by Iraq (A/CONF.97/C.1/L.109) was rejected. The joint amendment by Argentina, Portugal, Spain (A/CONF.97/C.1/L.207) was rejected by 10 votes in favour and 22 against, and the UNCITRAL text adopted.

New paragraph (2).

6. At the 24th meeting, the amendment by Iraq (A/CONF.97/C.1/L.109) was rejected.

ARTICLE 53

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 53

"(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 the place of business of the seller subsequent to the conclusion of the contract."

B. AMENDMENTS

2. An amendment was submitted to article 53 by the Federal Republic of Germany (A/CONF.97/C.1/L.182).

3. This amendment was to the following effect:

Federal Republic of Germany (A/CONF.97/C.1/L.182):
Add the following paragraph (3) to article 53:

"(3) Jurisdiction of the courts at the seller's place of business in proceedings brought against the buyer for payment of the price cannot be derived from the provisions of paragraph (1), subparagraph (a)".

[Rejected: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered this article at its 25th meeting on 27 March 1980.

(ii) Consideration

5. At the 25th meeting, the amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.182) was rejected and the UNCITRAL text adopted.

ARTICLE 54

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 54

"(1) The buyer must pay the price 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."

B. AMENDMENTS

2. A joint amendment was submitted by Argentina, Spain, Portugal (A/CONF.97/C.1/L.189).

3. This amendment was to the following effect:

Paragraph (1).

Argentina, Spain, Portugal (A/CONF.97/C.1/L.189):

Amend the first paragraph of article 54 to read:

"(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 his disposal in accordance with the contract and this Convention. The seller may in this case defer handing over the goods or documents until payment has been made."

[Part adopted and part rejected: see Consideration, 5 and 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 54 at its 25th and 27th meetings on 27th and 28th March 1980 respectively.

(ii) Consideration

Paragraph (1).

5. At the 25th meeting, the first part of the joint amendment by Argentina, Spain and Portugal (A/CONF.97/C.1/L.189) ("*1) If the buyer . . . Con-*

vention.") was adopted by 16 votes in favour and 15 against, and the UNCITRAL text adopted subject to this amendment. The Committee decided to postpone consideration of the second part of the amendment ("The seller . . . made.") until consideration of article 62.

6. At the 27th meeting, the second part of the joint amendment was rejected by 7 votes in favour and 17 against.

Paragraphs (2) and (3).

7. At the 25th meeting, the UNCITRAL text was adopted without change.

ARTICLE 55

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 55

"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 other formality on the part of the seller."

B. AMENDMENTS

2. An amendment was submitted by Argentina, Portugal, Spain (A/CONF.97/C.1/L.206) for the addition of two new articles 55 *bis* and 55 *ter*.

3. This amendment was to the following effect:

Argentina, Portugal, Spain (A/CONF.97/C.1/L.206):
Add new articles to part III, chapter III, section I (Obligations of the buyer, Payment of the price), after article 55:

"Article 55 bis

"Unless the contract so permits, the seller may not be obliged to receive part of the price. If the seller agrees to part payment, the provisions of articles 57 to 60 shall apply in respect of the part which is outstanding.

"Article 55 ter

"If the buyer pays the price before the appointed date, the seller may accept it or refuse it".

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered this article at its 25th meeting on 27 March 1980.

(ii) *Consideration*

5. At the 25th meeting, the amendment by Argentina, Portugal and Spain (A/CONF.97/C.1/L.206) to add article 55 *bis* was rejected. The amendment to add article 55 *ter* was rejected by 20 votes in favour and 21 against. The UNCITRAL text was adopted.

ARTICLE 56

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 56

"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."

2. No amendments were submitted to this article.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

3. The First Committee considered this article at its 25th meeting on 27 March 1980.

(ii) *Consideration*

4. At the 25th meeting, the UNCITRAL text was adopted.

ARTICLE 57

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 57

"(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 58 to 61;

"(b) claim damages as provided in articles 70 to 73.

"(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 or contract."

B. AMENDMENTS

2. No amendments were submitted to this article.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

3. The First Committee considered this article at its 25th meeting on 27 March 1980.

(ii) *Consideration*

4. At the 25th meeting, the UNCITRAL text was adopted.

ARTICLE 58

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 58

"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 such requirement."

B. AMENDMENTS

2. No amendments were submitted to this article.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

3. The First Committee considered this article at its 25th meeting on 27 March 1980.

(ii) *Consideration*

4. At the 25th meeting, the UNCITRAL text was adopted.

ARTICLE 59

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 59

"(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 the performance."

B. AMENDMENTS

2. No amendments were submitted to this article.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

3. The First Committee considered this article at its 25th meeting on 27 March 1980.

(ii) *Consideration*

4. At the 25th meeting, the UNCITRAL text was adopted.

ARTICLE 60

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 60

"(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 not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 59, performed his obligation to pay the price or taken delivery of the goods, or if he has declared 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 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 he knew or ought to have known of such breach, or within a reasonable time after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 59, or the declaration by the buyer that he will not perform his obligations within such an additional period."

B. AMENDMENTS

2. Amendments were submitted to article 60 by Norway (A/CONF.97/C.1/L.185) and Turkey (A/CONF.97/C.1/209).

3. These amendments were to the following effect:

Paragraph (2).

(i) *Norway (A/CONF.97/C.1/L.185):*

Revise paragraph (2) of article 60 to read as follows:

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

"(a) in respect of late performance by the buyer, before the seller has become aware that *payment* has been *made*; 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 after* the expiration of *any additional period of time applicable under article 59.*"

[Withdrawn: see Consideration, 7, below.]

(ii) *Turkey (A/CONF.97/C.1/L.209):*

In line with paragraph (2) of article 45, amend paragraph (2) of article 60 to read as follows:

"However, the seller loses his right to declare the contract avoided if he has not done so *within a reasonable time*:

"(a) in respect of *late payment* by the buyer, after he has become or should have become aware that *payment has been made*; or

"(b) in respect of any breach other than *late payment*, after he knew or ought to have known of such breach, or after expiration of the additional period of time fixed by the seller in accordance with paragraph (1) of article 59 or the declaration by the buyer that he will not perform his obligations within such an additional period."

[Withdrawn: see Consideration, 7, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 60 at its 25th and 26th meetings on 27 March 1980, and its 33rd meeting on 2 April 1980.

(ii) Consideration

Paragraph (1).

5. At the 25th meeting, the UNCITRAL text was adopted.

Paragraph (2).

6. At the 25th and 26th meetings, an *ad hoc* working group composed of Federal Republic of Germany, Ghana, Greece, Norway, Turkey and the United Kingdom was established to consider paragraph (2) and the amendments thereto.

7. At the 33rd meeting, the amendments by Norway (A/CONF.97/C.1/L.185) and Turkey (A/CONF.97/C.1/L.209) were withdrawn. The *ad hoc* working group submitted a joint proposal (A/CONF.97/C.1/L.221) as follows:

Revise paragraph (2) of article 60 to read as follows:

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

"(a) in respect of *late payment* by the buyer, before the seller has become aware that *payment has been made*;

"(b) in respect of *late performance* by the buyer, other than *late payment*, before the seller has become aware that *such performance has been rendered*; or

"(c) 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 after the expiration of *any additional period of time applicable under article 59*."

Paragraph (2) (a) and (b) of the joint proposal (A/CONF.97/C.1/L.221) was rejected by 19 votes in favour and 20 against. Paragraph (2) (c) of the joint proposal (A/CONF.97/C.1/L.221) was withdrawn on the understanding that paragraph (2) (b) of article 60 should

correspond in its wording with article 45, paragraph (2) (b). The UNCITRAL text was adopted.

ARTICLE 61

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 61

"(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 any requirement 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 the buyer fails to do so after receipt of such a communication, the specification made by the seller is binding."

B. AMENDMENTS

2. Amendments were submitted to article 61 by Iraq (A/CONF.97/C.1/L.110), Pakistan (A/CONF.97/C.1/L.197) and Kenya (A/CONF.97/C.1/L.219).

3. These amendments were to the following effect:

(i) *Iraq* (A/CONF.97/C.1/L.110):

In paragraph (1), after the words "any other rights he may have," add the words "declare the contract void or".

[Withdrawn: see Consideration, 5, below.]

(ii) *Pakistan* (A/CONF.97/C.1/L.197):

Delete article 61.

[Rejected: see Consideration, 5, below.]

(iii) *Kenya* (A/CONF.97/C.1/L.219):

1. In the last part of paragraph (1) replace the words "any requirement" by the words "the requirements".

[Adopted: see Consideration, 5, below.]

2. Revise paragraph (2) to read as follows:

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

[Rejected as to the first change and adopted as to second change and referred to Drafting Committee: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 61 at its 26th meeting on 27 March 1980.

(ii) *Consideration*

5. At the 26th meeting, the amendment by Iraq (A/CONF.97/C.1/L.110) was withdrawn. The amendment by Pakistan (A/CONF.97/C.1/L.197) was rejected by 9 votes in favour and 22 against. The amendment by Kenya (A/CONF.97/C.1/L.219) relating to paragraph (1) was adopted. With regard to paragraph (2), the amendment by Kenya was rejected as to the insertion of the words "taking into account the nature and circumstances of the case", and adopted and referred to the Drafting Committee, as to the wording "within a reasonable time". The UNCITRAL text was adopted subject to these amendments.

CHAPTER V. PASSING OF RISK

ARTICLE 78

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 78

"Loss 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."

B. AMENDMENTS

2. An amendment was submitted in regard to Chapter V. No amendments were submitted to article 78.

3. The amendment was to the following effect:

Chapter V — Passing of risk.

Norway (A/CONF.97/C.1/L.230):

Chapter V — Passing of risk should be transferred to a place somewhere in the earlier part of part III, perhaps between the present chapters II and III or immediately after chapter III.

[Referred to Drafting Committee: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered Chapter V — Passing of risk and article 78 at its 31st meeting on 1 April 1980.

(ii) *Consideration*

Chapter V — Passing of risk.

5. At the 31st meeting, the amendment by Norway

(A/CONF.97/C.1/L.230) was referred to the Drafting Committee.

Article 78.

6. At the 31st meeting, the UNCITRAL text was adopted.

ARTICLE 79

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 79

"(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. If the seller is required to hand the goods over to a carrier at a particular place other than the destination, 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 risk.

"(2) Nevertheless, if the goods are not clearly marked with an address or otherwise identified to the contract, the risk does not pass to the buyer until the seller sends the buyer a notice of the consignment which specifies the goods."

B. AMENDMENTS

2. Amendments were submitted to article 79 by the United States (A/CONF.97/C.1/L.233), Pakistan (A/CONF.97/C.1/L.236), United Kingdom (A/CONF.97/C.1/L.238) and Australia (A/CONF.97/C.1/L.241).

3. These amendments were to the following effect:

Paragraph (1).

(i) *United States (A/CONF.97/C.1/L.233):*

Delete the second sentence of paragraph (1).

[Withdrawn: see Consideration, 5, below.]

(ii) *Pakistan (A/CONF.97/C.1/L.236):*

In the first sentence of paragraph (1) of article 79, add after the words "the first carrier" the words "*in accordance with the contract*".

[Referred to Drafting Committee: see Consideration, 5, below.]

(iii) *United Kingdom (A/CONF.97/C.1/L.238):*

Revise paragraph (1) of article 79 to read as follows:

"(1) If the contract of sale involves carriage of the goods and the seller is not required 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. If the seller is required 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 risk."

[Adopted: see Consideration, 5, below.]

Paragraph (2).

(iv) *United States (A/CONF.97/C.1/L.233):*

Amend paragraph (2) to read as follows:

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

[Adopted: see Consideration, 6, below.]

New paragraph.

(v) *Australia (A/CONF.97/C.1/L.241):*

Add the following paragraph:

"(3) If the buyer has requested the seller in accordance with paragraph (3) of article 30 to provide him with all available information necessary to enable him to effect insurance in respect of the carriage of the goods, the risk does not pass to the buyer until the seller provides that information."

[Rejected: see Consideration, 7, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered this article at its 31st meeting on 1 April 1980.

(ii) *Consideration*

Paragraph (1).

5. At the 31st meeting, the amendment by the United States (A/CONF.97/C.1/L.233) was withdrawn, and the amendment by Pakistan (A/CONF.97/C.1/L.236) referred to the Drafting Committee. The amendment by the United Kingdom (A/CONF.97/C.1/L.238) was adopted, and the UNCITRAL text adopted subject to this amendment.

Paragraph (2).

6. At the 31st meeting, the amendment by the United States (A/CONF.97/C.1/L.233) was adopted and referred to the Drafting Committee.

New paragraph.

7. At the 31st meeting, the amendment by Australia (A/CONF.97/C.1/L.241) was rejected.

ARTICLE 80

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 80

"The risk in respect of goods sold in transit is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents controlling their disposition. However, 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 and he has not disclosed such fact to the buyer, such loss or damage is at the risk of the seller."

B. AMENDMENTS

2. Amendments were submitted to article 80 by Canada (A/CONF.97/C.1/L.240), Pakistan (A/CONF.97/C.1/L.237), United States of America (A/CONF.97/C.1/L.231), Norway (A/CONF.97/C.1/L.195) and India (A/CONF.97/C.1/L.244).

3. These amendments were to the following effect:

Article 80.

(i) *Canada (A/CONF.97/C.1/L.240):*

Delete article 80.

[Withdrawn: see Consideration, 5, below.]

(ii) *Pakistan (A/CONF.97/C.1/L.237):*

The first sentence of article 80 may be amended to read as follows:

"The risk in respect of goods sold in transit is assumed by the buyer from the time *the contract is concluded.*"

[Rejected: see Consideration, 6, below.]

(iii) *United States of America (A/CONF.97/C.1/L.231):*

Revise the *first* sentence of article 80 to read as follows:

"The risk in respect of goods sold in transit 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.*"

[Adopted: see Consideration, 7, below.]

(iv) *Norway (A/CONF.97/C.1/L.195):*

Add the following sentence between the first and second sentences of the existing text of article 80:

"*If no such document is issued, the risk is assumed by the buyer from the time when the goods were handed over to the first carrier for transmission to the seller or a consignee from whom the seller derives his right to the goods.*"

[Withdrawn: see Consideration, 8, below.]

Article 80, new paragraph (2).

India (A/CONF.97/C.1/L.244):

Amend article 80 by adding a new paragraph after paragraph (1). The second paragraph reads as follows:

"(2) The provisions of paragraph (1) do not apply where the goods are lost or damaged before the conclusion of the contract."

[Rejected: see Consideration, 9, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 80 at its 32nd meeting on 1 April 1980.

(ii) *Consideration**Article 80.*

5. At the 32nd meeting, the amendment by Canada (A/CONF.97/C.1/L.240) was withdrawn.

6. At the 32nd meeting, the amendment by Pakistan (A/CONF.97/C.1/L.237) was rejected.

7. At the 32nd meeting, the amendment by the United States of America (A/CONF.97/C.1/L.231) was adopted by 15 votes in favour and 13 against, and the UNCITRAL text adopted subject to this amendment.

8. At the 32nd meeting, the amendment by Norway (A/CONF.97/C.1/L.195) was withdrawn.

Article 80, new paragraph (2).

9. At the 32nd meeting, the amendment by India (A/CONF.97/C.1/L.244) was rejected.

ARTICLE 81

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 81

"(1) In cases not covered by articles 79 and 80 the risk passes to the buyer when the goods are taken over by him 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) If, however, the buyer is required to take over the goods at a place other than any 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 a 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."

B. AMENDMENTS

2. Amendments were submitted to article 81 by the Federal Republic of Germany (A/CONF.97/C.1/L.212) and Australia (A/CONF.97/C.1/L.242).

3. These amendments were to the following effect:

(i) *Federal Republic of Germany* (A/CONF.97/C.1/L.212):

After article 81, add a new article 81 *bis* as follows:

"(1) Where the delivery of the goods by the seller is delayed owing to a breach of an obligation of the buyer the risk shall pass to the buyer from the last date when, apart from such breach, delivery of the goods could have been made in accordance with the contract.

"(2) If, however, the contract relates to a sale of goods not then identified, the risk does not pass to the buyer until the goods have been clearly identified to

the contract and the seller has notified the buyer that this had been done."

[Rejected: see Consideration, 5, below.]

(ii) *Australia* (A/CONF.97/C.1/L.242):

Insert a new paragraph following paragraph (2), as follows:

"(3) Goods may be regarded as having been placed at the disposal of the buyer, notwithstanding that pursuant to article 54 they or the documents controlling their disposition have not been handed over to the buyer pending payment of the price."

[Withdrawn: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 81 at its 32nd meeting on 1 April 1980.

(ii) *Consideration*

5. At the 32nd meeting, the amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.212) was rejected, the amendment by Australia (A/CONF.97/C.1/L.242) was withdrawn, and the UNCITRAL text adopted.

ARTICLE 82

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 82

"If the seller has committed a fundamental breach of contract, the provisions of articles 79, 80 and 81 do not impair the remedies available to the buyer on account of such breach."

B. AMENDMENTS

2. An amendment was submitted to article 82 by the United States of America (A/CONF.97/C.1/L.229 Rev.1).

3. The amendment was to the following effect:

United States of America (A/CONF.97/C.1/L.229 Rev.1):

Revise article 82 to read as follows:

"If the seller commits a breach of contract that gives the buyer the right to declare the contract avoided under article 45, the risk of loss does not pass to the buyer as long as he may exercise this right."

[Rejected: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 82 at its 32nd meeting on 1 April 1980.

(ii) *Consideration*

5. At the 32nd meeting, the amendment by the United States of America (A/CONF.97/C.1/L.229/Rev.1) was rejected, and the UNCITRAL text adopted.

ARTICLE 62

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 62

"(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 ability to perform or in the creditworthiness of the other party or his conduct in preparing to perform or in actually performing the contract gives good 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."

B. AMENDMENTS

2. Amendments were submitted to article 62 by the Federal Republic of Germany (A/CONF.97/C.1/L.187), and Canada and Australia (A/CONF.97/C.1/L.224) prior to the 27th meeting.

3. These amendments were to the following effect:

Paragraph (1).

Federal Republic of Germany (A/CONF.07/C.1/L.187):

Revise paragraph (1) of article 62 to read as follows:

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

[Adopted: see Consideration, 5, below.]

Paragraph (3).

Federal Republic of Germany (A/CONF.97/C.1/L.187):

Revise paragraph (3) of article 62 to read as follows:

"(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, by *guarantee, documentary credit or otherwise*, provides adequate assurance of his performance."

[Rejected: see Consideration, 7, below.]

New article 62 bis.

Canada and Australia (A/CONF.97/C.1/L.224):

Add a new article 62 *bis* to read as follows:

"Failure by the other party to provide adequate assurance of performance within a reasonable period of time shall entitle the party requesting the assurance to avoid the contract."

[Rejected: see Consideration, 8, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 62 at its 26th, 27th, 34th and 35th meetings on 27th and 28th March and 3rd and 4th April 1980 respectively, and at its 37th and 38th meetings on 7 April 1980.

(ii) *Consideration**Paragraph (1).*

5. At the 26th meeting, the amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.187) was adopted by 18 votes in favour and 15 against, and the UNCITRAL text adopted, subject to the amendment.

Paragraph (2).

6. At the 26th meeting the UNCITRAL text was adopted.

Paragraph (3).

7. At the 26th meeting, the amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.187) was rejected, and the UNCITRAL text adopted.

New article 62 bis.

8. At the 27th meeting, the amendment by Canada and Australia (A/CONF.97/C.1/L.224) was rejected.

9. At the 34th meeting, the Committee, by 27 votes in favour and 6 against, adopted a motion to consider an amendment by Egypt (A/CONF.97/C.1/L.249) submitted after the close of the deliberations on article 62.

10. This amendment was to the following effect:

Egypt (A/CONF.97/C.1/L.249):

Replace article 62 by the following text:

"(1) If, prior to the date for performance of the contract, it becomes apparent that one of the parties will commit a fundamental breach of contract, the other party may notify him of his intention to suspend performance of his obligations if the first party fails to provide adequate assurances, within a reasonable period of time, of properly performing his obligations.

"(2) If the party which has been notified fails to provide the assurances described under paragraph (1)

of this article, the other party may declare the contract avoided.”

11. An amendment was also submitted by Italy (A/CONF.97/C.1/L.251) which was to the following effect:

Italy (A/CONF.97/C.1/L.251):

Revise paragraph (1) of article 62 to read as follows:

“(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 ability to perform or in the creditworthiness of the other party or his conduct in preparing to perform or in actually performing the contract gives good grounds to conclude that the other party will not perform a substantial part of his obligations.”

12. At the 35th meeting, the Committee considered together the amendments by Egypt to articles 62 and 63 (A/CONF.97/C.1/L.249 and L.250). The amendments were rejected by 19 votes in favour and 19 against.

13. At the 35th meeting, the Committee established an *ad hoc* working group composed of the representatives of Argentina, Egypt, Finland, France, German Democratic Republic, Germany, Federal Republic of, Iraq, Mexico, Republic of Korea and United States of America to consider articles 62 and 63 and submit a proposed text of these articles to the Committee.

14. At the 37th meeting, the *ad hoc* working group submitted the following text for article 62 (A/CONF.97/C.1/L.252):

Replace paragraph (1) by the following:

“(1) A party may, if it is reasonable to do so, suspend the performance of his obligations when, after the conclusion of the contract, it appears 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.”

15. At the 38th meeting, an oral amendment to delete from the text submitted by the *ad hoc* working group the words “if it is reasonable to do so” was adopted by 17 votes in favour and 13 against. A further oral amendment to replace the phrase “when, after the conclusion of the contract” by “if, after the conclusion of the contract” was adopted. A further oral amendment to replace the phrase “it appears” by the phrase “it becomes apparent” was adopted by 20 votes in favour and 5 against. The text submitted by the *ad hoc* working group, subject to the amendments adopted as noted above, was adopted by 31 votes in favour and 4 against. The amendment by Italy (A/CONF.97/C.1/L.251) was withdrawn.

16. At the 38th meeting, paragraphs (2) and (3) of the UNCITRAL text were adopted.

17. At the 38th meeting, articles 62 and 63, as amended, were together adopted by 35 votes in favour and none against.

ARTICLE 63

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

“Article 63

“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.”

B. AMENDMENTS

2. No amendments were submitted to article 63 prior to the 27th meeting.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

3. The First Committee considered this article at its 27th, 34th and 35th meetings on 28 March and 3 and 4 April 1980 respectively, and its 37th and 38th meetings on 7 April 1980.

(ii) Consideration

4. At the 27th meeting, the UNCITRAL text was adopted.

5. At the 34th meeting, the Committee, by 27 votes in favour and 6 against, adopted a motion to consider an amendment by Egypt (A/CONF.97/C.1/L.250) submitted after the close of the deliberations on article 63.

6. This amendment was to the following effect:

Egypt (A/CONF.97/C.1/L.250):

Replace article 63 by the following text:

“(1) If the seller has already dispatched the goods before the grounds described in paragraph (1) of article 62 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.

“(2) The seller who prevents the handing over of the goods to the buyer under paragraph (1) of this article must immediately give notice to the buyer of his intention to declare the contract avoided should the buyer fail, within a reasonable time, to provide adequate assurances of properly performing his obligations.”

7. At the 35th meeting, the Committee considered together the amendments by Egypt to articles 62 and 63 (A/CONF.97/C.1/L.249 and L.250). The amendments were rejected by 19 votes in favour and 19 against.

8. At the 35th meeting, the Committee established an *ad hoc* working group composed of the representatives of Argentina, Egypt, Finland, France, German Democratic Republic, Germany, Federal Republic of, Iraq, Mexico, Republic of Korea and United States of America to consider articles 62 and 63 and submit a proposed text of these articles to the Committee.

9. At the 37th meeting, the *ad hoc* working group submitted the following text for article 63 (A/CONF.97/C.1/L.253):

Add new paragraphs (2) and (3) as follows:

"(2) If time allows, the party intending to declare the contract avoided must give notice reasonably in advance 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."

10. At the 38th meeting an oral amendment to delete from the text submitted by the *ad hoc* working group the words "if time allows" was rejected by 17 votes in favour and 18 against. A further oral amendment to replace the phrase "give notice reasonably in advance" by the phrase "give reasonable notice" was adopted.

11. At the 38th meeting, the UNCITRAL text of paragraph (1) of article 63 was adopted.

12. At the 38th meeting, articles 62 and 63, as amended, were together adopted by 35 votes in favour and none against.

ARTICLE 64

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 64

"(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 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 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, avoiding the contract in respect of any delivery, may, at the same time, declare the contract 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."

B. AMENDMENTS

2. No amendments were submitted to article 64.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

3. The First Committee considered this article at its 27th meeting on 28 March 1980.

(ii) Consideration

4. At the 27th meeting, the UNCITRAL text was adopted.

ARTICLE 70

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 70

"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 which he then knew or ought to have known, as a possible consequence of the breach of contract."

B. AMENDMENTS

2. Amendments were submitted to article 70 by Norway (A/CONF.97/C.1/L.230) and Pakistan (A/CONF.97/C.1/L.235).

3. These amendments were to the following effect:

Articles 70 to 73.

Norway (A/CONF.97/C.1/L.230):

Section IV — Damages, chapter IV (arts. 70 to 73) should be grouped together with *section II — Exemptions* (art. 65) and placed in a separate chapter between present chapters III and IV.

[Referred to Drafting Committee: see Consideration, 5, below.]

Article 70.

Pakistan (A/CONF.97/C.1/L.235):

The second sentence of article 70 may be amended to read as follows:

"Such damages may not exceed the *reasonable expectation* of 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."

[Rejected: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 70 at its 30th meeting on 31 March 1980.

(ii) Consideration

Articles 70 to 73.

5. At the 30th meeting, the amendment by Norway (A/CONF.97/C.1/L.230) was referred to the Drafting Committee.

Article 70.

6. At the 30th meeting, the amendment by Pakistan (A/CONF.97/C.1/L.235) was rejected, and the UNCITRAL text adopted.

ARTICLE 71

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 71

"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 and any further damages recoverable under the provisions of article 70."

B. AMENDMENTS

2. An amendment was submitted to article 71 by Norway (A/CONF.97/C.1/L.193).

3. This amendment was to the following effect:

Norway (A/CONF.97/C.1/L.193):

Revise article 71 to read as follows:

"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, *as part of the damages referred to in article 70*, recover the difference between the contract price and the price in the substitute *transaction*."

[Referred to Drafting Committee: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered this article at its 30th meeting on 31 March 1980.

(ii) *Consideration*

5. At the 30th meeting, the amendment by Norway (A/CONF.97/C.1/L.193) was referred to the Drafting Committee, and the UNCITRAL text adopted.

ARTICLE 72

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 72

"(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 71, recover the difference between the price fixed by the contract and the current price at the time he first had the right to declare the contract avoided and any further damages recoverable under the provisions of article 70.

"(2) For the purposes of paragraph (1) of this article, 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 another place which serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods."

B. AMENDMENTS

2. Amendments were submitted to article 72 by Norway (A/CONF.97/C.1/L.194) and jointly by Australia, Greece, Norway, Republic of Korea (A/CONF.97/C.1/L.245).

3. These amendments were to the following effect:

Paragraph (1).

(i) *Norway (A/CONF.97/C.1/L.194):*

Revise paragraph (1) of article 72 to read as follows:

"(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 71, recover the difference between the price fixed by the contract and the current price at the time of *delivery, or at the time of avoidance, whichever is the earlier*. He may claim any further damages recoverable under article 70."

[Rejected: see Consideration, 5, below.]

(ii) *Australia, Greece, Norway, Republic of Korea (A/CONF.97/C.1/L.245):*

Revise paragraph (1) of article 72 to read as follows:

"(1) If the contract is avoided and there is a current price for goods, the party claiming damages may, if he has not made a purchase or resale under article 71, recover the difference between the *contract price* and the current price at the time of *avoidance* and any further damages *under article 70*. *If, however, the party claiming damages has avoided the contract after receiving the goods or the payment, as the case may be, the current price at the time of such receipt shall be applied instead of the current price at the time of avoidance.*"

[Not considered: see Consideration, 9, below.]

Paragraph (2).

(iii) *Norway (A/CONF.97/C.1/L.194):*

In paragraph (2) of article 72, replace the words "paragraph (1) of this article" by the words

"the preceding paragraph."

[Referred to Drafting Committee: see Consideration, 10, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 72 at its 30th and 33rd meetings on 31 March and 2 April 1980 respectively.

(ii) Consideration

Paragraph (1).

5. At the 30th meeting, the amendment by Norway (A/CONF.97/C.1/L.194) was rejected by 12 votes in favour and 21 votes against.

6. At the 30th meeting, Canada submitted orally the following amendment:

"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 71, recover the difference between the price fixed by the contract and the current price *at the time he declared the contract avoided* and any further damages recoverable under the provisions of article 70."

The amendment by Canada was rejected by 13 votes in favour and 17 against.

7. At the 30th meeting, Australia submitted orally the following amendment:

"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 71, recover the difference between the price fixed by the contract and the current price *at the time of delivery, the time of payment of the price or at the time of avoidance, whichever is the earliest* and any further damages recoverable under the provisions of article 70."

The amendment by Australia was rejected.

8. The UNCITRAL text was adopted.

9. At the 33rd meeting, a motion that the Committee should consider the amendment by Australia, Greece, Norway and Republic of Korea (A/CONF.97/C.1/L.245), which was submitted after the close of the deliberations on article 72, was rejected by 14 votes in favour and 21 against.

Paragraph (2).

10. At the 30th meeting, the amendment by Norway (A/CONF.97/C.1/L.194) was referred to the Drafting Committee, and the UNCITRAL text adopted.

ARTICLE 73

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 73

"The 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 which should have been mitigated."

B. AMENDMENTS

2. An amendment was submitted to article 73 by the United States of America (A/CONF.97/C.1/L.228).

3. This amendment was to the following effect:

United States (A/CONF.97/C.1/L.228):

Revise the second sentence of article 73 to read as follows:

"If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount which should have been mitigated, or a *corresponding modification or adjustment of any other remedy.*"

[Rejected: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered this article at its 30th meeting on 31 March 1980.

(ii) Consideration

5. At the 30th meeting, the amendment by the United States of America (A/CONF.97/C.1/L.228) was rejected by a vote of 8 in favour and 24 against, and the UNCITRAL text adopted.

ARTICLE 65

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 65

"(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 he is exempt under paragraph (1) of this article and if the person whom he has engaged 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 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 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.”

B. AMENDMENTS

2. Amendments were submitted to article 65 by Norway (A/CONF.97/C.1/L.191/Rev.1), Denmark (A/CONF.97/C.1/L.186), Finland (A/CONF.97/C.1/L.190), German Democratic Republic (A/CONF.97/C.1/L.217 and 234), Pakistan (A/CONF.97/C.1/L.223), Turkey (A/CONF.97/C.1/L.210) and Federal Republic of Germany (A/CONF.97/C.1/L.208).

3. These amendments were to the following effect:

Paragraph (1).

Norway (A/CONF.97/C.1/L.191/Rev.1):

Re-word paragraph (1) as follows:

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

[As to first change referred to Drafting Committee, as to second change rejected: see Consideration, 5, below.]

Paragraph (2).

(i) Denmark (A/CONF.97/C.1/L.186):

Reword paragraph (2) as follows:

“(2) If the party’s failure is due to the failure by *his supplier* or 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 he is exempt under paragraph (1) of this article and if *the supplier or the third person* would be so exempt if the provision of that paragraph were applied to him.”

[Withdrawn: see Consideration, 6, below.]

(ii) Finland (A/CONF.97/C.1/L.190):

Re-word paragraph (2) as follows:

“(2) If the party’s failure is due to the failure by *his supplier* or 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 he is exempt under paragraph (1) of this article and if *the supplier or the third person* would be so exempt if the provisions of that paragraph were applied to him.”

[Withdrawn: see Consideration, 6, below.]

(iii) German Democratic Republic (A/CONF.97/C.1/L.217):

Insert, in the above amendments by Denmark and Finland, in both cases after the word “supplier” the word “carrier”.

[Withdrawn: see Consideration, 6, below.]

(iv) Turkey (A/CONF.97/C.1/L.210):

Delete paragraph (2).

[Rejected: see Consideration, 6, below.]

(v) Pakistan (A/CONF.97/C.1/L.223):

At the end of paragraph (2), add the words “provided the contract expressly or impliedly envisaged subcontracting by the party”.

[Rejected: see Consideration, 6, below.]

Paragraph (3).

(i) Norway (A/CONF.97/C.1/L.191/Rev.1):

Re-word paragraph (3) as follows:

“(3) *Where the impediment is temporary*, the exemption provided by this article has *effect for* the period during which the impediment exists. *Nevertheless, the party who fails to perform is permanently exempted to the extent that, after the impediment is removed, the circumstances are so radically changed that it would be manifestly unreasonable to hold him liable.*”

Alternatively, the word “only” should be deleted.

[First alternative rejected and second alternative adopted: see Consideration, 9, below.]

(ii) German Democratic Republic (A/CONF.97/C.1/L.217):

Re-word paragraph (3) as follows:

“(3) The exemption provided by this article has effect only for the period during which the impediment *and its consequences exist.*”

[Referred to Drafting Committee: see Consideration, 9, below.]

Paragraph (4).

(i) Norway (A/CONF.97/C.1/L.191/Rev.1):

Re-word the second sentence of paragraph (4) as follows:

“*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.*”

[Rejected: see Consideration, 10, below.]

(ii) Finland (A/CONF.97/C.1/L.190):

Re-word the second sentence of paragraph (4) as follows:

“*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 *damage* resulting from *this failure.*”

[Rejected: see Consideration, 10, below.]

Paragraph (5).

(i) Norway (A/CONF.97/C.1/L.191/Rev.1):

Re-word paragraph (5) as follows:

“(5) Nothing in this article prevents a party from *avoiding the contract or reducing the price in accordance with the provisions of* this Convention.”

[Rejected: see Consideration, 11, below.]

(ii) Federal Republic of Germany (A/CONF.97/C.1/L.208):

Re-word paragraph (5) as follows and place present paragraph (3) at the end of article 65:

“(5) Nothing in this article prevents either party

from exercising any right other than to claim damages or to require performance under this Convention.”

[Rejected: see Consideration, 11, below.]

(iii) *German Democratic Republic* (A/CONF.97/C.1/L.217):

Re-word paragraph (5) as follows:

“(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention or to claim any penalties or liquidated damages provided for in the contract”.

[Rejected: see Consideration, 11, below.]

New article 65 bis.

(i) *German Democratic Republic* (A/CONF.97/C.1/L.217):

Add a new article 65 bis as follows:

“Neither party may exercise any right under this Convention if he has caused by his own act or omission the failure to perform of the other party.”

[Withdrawn and replaced by another amendment: see Consideration, 13, below.]

(ii) *German Democratic Republic* (A/CONF.97/C.1/L.234):

Add a new article 65 bis or 23 bis as follows:

“A party may not rely on a failure of the other party to perform insofar as the first party by his own act or omission caused the failure to perform.”

[Adopted with additional amendment: see Consideration, 13, below.]

terpretation of that paragraph and its relationship to paragraph (1).

7. At the 32nd meeting, the *ad hoc* working group submitted the following proposal (A/CONF.97/C.1/L.243 as correctly orally):

Variant I:

Revise paragraph (2) of article 65 as follows:

“(2) However, the failure of a third person whom a party has engaged for the performance of the whole or a part of the contract does not exempt that party from liability, unless the said third person also would be so exempt if the provisions of paragraph (1) were applied to him.”

Variant II:

Delete paragraph (2) of article 65.

8. At the 33rd meeting, variant I of the proposal by the *ad hoc* working group was rejected by 16 votes in favour and 21 against. Variant II of that proposal was also rejected, by 22 votes in favour and 23 against. The UNCITRAL text of paragraph (2) was adopted.

Paragraph (3).

9. At the 27th meeting, the amendment by Norway (A/CONF.97/C.1/L.191/Rev.1) was rejected in its first alternative by 12 votes in favour and 25 against, and it was adopted in its second alternative, *i.e.* to delete the word “only”, by 19 votes in favour and 12 against. At the 28th meeting, the amendment by the German Democratic Republic (A/CONF.97/C.1/L.217) was referred to the Drafting Committee. The UNCITRAL text was adopted subject to these amendments.

Paragraph (4).

10. At the 28th meeting, the amendments by Norway (A/CONF.97/C.1/L.191/Rev.1) and Finland (A/CONF.97/C.1/L.190) were rejected by 14 votes in favour and 17 against, and the UNCITRAL text was adopted.

Paragraph (5).

11. At the 28th meeting, the amendment by Norway (A/CONF.97/C.1/L.191/Rev.1) was rejected by 13 votes in favour and 22 against. The amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.208) was rejected by 15 votes in favour and 19 against. The amendment by the German Democratic Republic (A/CONF.97/C.1/L.217) was also rejected. The UNCITRAL text was adopted.

New article 65 bis.

12. At its 28th meeting, the Committee decided to defer consideration of the proposal by the German Democratic Republic (A/CONF.97/C.1/L.217) in order to enable that delegation to redraft its proposal in the light of the discussion in the Committee.

13. At the 30th meeting, the amendment by the German Democratic Republic (A/CONF.97/C.1/L.217) was withdrawn and replaced by another amendment (A/CONF.97/C.1/L.234) to the effect that a new article 65 bis or 23 bis be added as follows: “A party may not

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

4. The First Committee considered article 65 at its 27th, 28th, 30th, 32nd and 33rd meetings on 28, 31 March, 1 and 2 April 1980.

(ii) Consideration

Paragraph (1).

5. At the 27th meeting, the amendment by Norway (A/CONF.97/C.1/L.191/Rev.1) was, as to its first part, referred to the Drafting Committee and, as to its second part, rejected. The UNCITRAL text was adopted.

Paragraph (2).

6. At the 27th meeting, the amendments by Denmark (A/CONF.97/C.1/L.186), Finland (A/CONF.97/C.1/L.190) and German Democratic Republic (A/CONF.97/C.1/L.217) were withdrawn. The amendment by Pakistan (A/CONF.97/C.1/L.223) was rejected. The amendment by Turkey (A/CONF.97/C.1/L.210) was also rejected on the understanding that the Committee would be free to reconsider the issue of the deletion of paragraph (2) in the light of the proposal expected from the *ad hoc* working group to be established. The Committee established an *ad hoc* working group, composed of the representatives of German Democratic Republic, Ghana, Norway, Sweden, Switzerland and Turkey to redraft paragraph (2) so as to avoid ambiguities in the in-

rely on a failure of the other party to perform insofar as the first party by his own act or omission caused the failure to perform". This amendment was amended orally by the Federal Republic of Germany to the effect that the words "insofar as" be replaced by the words "to the extent that". Thus amended, the amendment was adopted by 34 votes in favour and none against and referred to the Drafting Committee in order to decide whether the article should be a new article 65 *bis* or 23 *bis*.

SECTION III. EFFECTS OF AVOIDANCE

ARTICLE 66

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 66

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

"(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 bound to make restitution, they must do so concurrently."

B. AMENDMENTS

2. Amendments were submitted to article 66 by Norway (A/CONF.97/C.1/L.191 and L. 192) and Canada (A/CONF.97/C.1/L.239).

3. These amendments were to the following effect:

(i) *Norway* (A/CONF.97/C.1/L.191):

Title of Section III of Chapter IV.

Revise this title to read as follows:

"Effects of avoidance or request for substitute goods".

[Referred to Drafting Committee: see Consideration, 5, below.]

(ii) *Norway* (A/CONF.97/C.1/L.192):

New paragraph (3).

Add the following new paragraph (3):

"(3) *If the contract is not avoided, but the buyer requires delivery of substitute goods and has paid the price, restitution of the goods he has received must be made concurrently with the new delivery.*"

[Rejected: see Consideration, 5, below.]

(iii) *Canada* (A/CONF.97/C.1/L.239):

Amend article 66 by adding one of the following versions of new paragraph (3):

Alternative 1:

"(3) Notwithstanding paragraph (2), the seller shall not be entitled to claim restitution of his goods where the goods have been delivered to the buyer and the buyer is insolvent or the restitution of the goods would otherwise prejudice the rights of the buyer's creditors."

Alternative 2:

"(3) Notwithstanding paragraph (2), the seller shall not be entitled to claim restitution of the goods where the goods have been delivered to the buyer and, under the applicable municipal law, title in the goods has passed to the buyer."

[Withdrawn: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered this article at its 28th and 33rd meetings on 28 March and 2 April 1980 respectively.

(ii) *Consideration*

5. At the 28th meeting, the amendment by Norway (A/CONF.97/C.1/L.191) was referred to the Drafting Committee. The amendment by Norway (A/CONF.97/C.1/L.192) was rejected by 7 votes in favour and 23 against, and the UNCITRAL text adopted.

6. At the 33rd meeting, the amendment by Canada (A/CONF.97/C.1/L.239), which was submitted after the close of the deliberations on article 66, was withdrawn.

ARTICLE 67

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 67

"(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 or omission by 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 36; 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."

B. AMENDMENTS

2. No amendments were submitted to article 67.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

3. The First Committee considered this article at its 28th meeting on 28 March 1980.

(ii) Consideration

4. At the 28th meeting, the UNCITRAL text was adopted.

ARTICLE 68

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 68

"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 67 retains all other remedies."

B. AMENDMENTS

2. No amendments were submitted to article 68.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) Meetings

3. The First Committee considered this article at its 28th meeting on 28 March 1980.

(ii) Consideration

4. At the 28th meeting, the UNCITRAL text was adopted.

ARTICLE 69

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 69

"(1) If the seller is bound to refund the price, he must also pay interest thereon 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 de-

clared the contract avoided or required the seller to deliver substitute goods."

2. In connection with article 69, the First Committee also considered some amendments submitted on the issue of interest on sums that were in arrears.

B. AMENDMENTS

3. Amendments were submitted to article 69, and on the issue of interest on sums that were in arrears, by Denmark, Finland, Greece, Sweden (A/CONF.97/C.1/L.216), Czechoslovakia (A/CONF.97/C.1/L.218), Japan (A/CONF.97/C.1/L.222), Pakistan (A/CONF.97/C.1/L.225) and United Kingdom (A/CONF.97/C.1/L.226/Rev.1).

4. These amendments were to the following effect:

- (i) *Denmark, Finland, Greece, Sweden* (A/CONF.97/C.1/L.216):

Add a new article 73 *bis* to read as follows:

"If a party fails to pay the price or any other sum as is in arrears, the other party is entitled to interest thereon at the customary rate for commercial credits at his place of business."

...

As a consequence the title "Section IV. *Damages*" should be amended to read "Section IV. *Damages and interest*".

[Withdrawn: see Consideration, 14, below.]

- (ii) *Czechoslovakia* (A/CONF.97/C.1/L.218):

Add a new article 60 *bis* to read as follows:

"(1) 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 prevailing in the country where the buyer has his place of business, at the time of delay increased by one per cent or, if there is no such a rate, at the rate applied to unsecured short-term international commercial credits increased by one per cent.

"(2) The seller may claim damages as provided in this Convention, if the loss is not covered by interests."

[Withdrawn: see Consideration, 14, below.]

- (iii) *Japan* (A/CONF.97/C.1/L.222):

Add a new article 73 *bis* to read as follows:

"If a party has failed to pay the price or any other sum that is in arrears, the other party is presumed to have suffered damages equivalent to the amount calculated at the interest rate for [unsecured short-term commercial credits prevailing] at his place of business."

[Withdrawn: see Consideration, 14, below.]

- (iv) *Pakistan* (A/CONF.97/C.1/L.225):

The following sentence may be added at the end of paragraph (1) of article 69:

"The rate of interest would be the one current at the seller's place of business."

[Withdrawn: see Consideration, 14, below.]

(v) *United Kingdom* (A/CONF.97/C.1/L.226/Rev.1):

The following proposal should replace that made in A/CONF.97/C.1/L.226:

Delete paragraph (1) of article 69.

New article in Part I.

Insert in Part I, chapter I (sphere of application), a new article to read as follows:

"This Convention does not affect any right of the seller or buyer to recover interest on money."

[Withdrawn: see Consideration, 14, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

5. The First Committee considered this article at its 28th, 29th and 34th meetings on 28 and 31 March and 3 April 1980 respectively.

(ii) *Consideration*

6. At the 29th meeting, an *ad hoc* working group composed of the representatives of Argentina, Czechoslovakia, Ghana, Greece, India, Italy, Pakistan and Sweden was established to consider the amendments relating to article 69 and the issue of interest on sums that are in arrears.

7. At the 34th meeting, the *ad hoc* working group submitted the following text:

Ad hoc Working Group on interest composed of Argentina, Czechoslovakia, Ghana, Greece, India, Italy, Pakistan and Sweden, assisted by Denmark, United States of America and Yugoslavia (A/CONF.97/C.1/L.247):

Matter of interest

(sums that are in arrears)

*Article 73 bis**Alternative I:*

"If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest thereon at the rate for a short-term commercial credit or at another similar appropriate rate prevailing in the main domestic financial centre of the party claiming payment."

Alternative II:

"If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest thereon at the rate for a short-term commercial credit or at another similar appropriate rate prevailing in the main domestic financial centre of the country of the party in default, or, in case the other party's actual credit costs are higher, at a rate corresponding thereto but not at a rate higher than the first said rate in his own country."

Alternative III:

"If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest thereon at the rate for a short-term commercial credit or at another similar appropriate rate

prevailing in the main domestic financial centre of the party in default. However, in case the party claiming interest is not fairly compensated by such rate, he may claim interest up to the first said rate in his own country."

*(Restitution of price)**Article 69**Paragraph (1).*

Add at the end of paragraph (1) of article 69 the following:

"at the rate as set out in article 73 bis in the country of the seller's place of business."

8. At the 34th meeting, a motion to close the debate on the proposals submitted by the *ad hoc* working group A/CONF.97/C.1/L.247 was adopted by 19 votes in favour and 16 against.

9. Alternative I of the proposals submitted by the *ad hoc* working group A/CONF.97/C.1/L.247 was rejected by 17 votes in favour and 22 against.

10. An oral amendment was submitted to delete from Alternative II of the proposals submitted by the *ad hoc* working group the words "or, in case of the other party's actual credit costs are higher, at a rate corresponding thereto but not at a rate higher than the first said rate in his own country". This oral amendment was rejected by 9 votes in favour and 16 against.

11. An oral amendment was submitted to delete from Alternative III of the proposals submitted by the *ad hoc* working group the words "However, in case the party claiming interest is not fairly compensated by such rate, he may claim interest up to the first said rate in his own country." This oral amendment was rejected by 8 votes in favour and 15 against.

12. Alternative II of the proposals submitted by the *ad hoc* working group as unamended was adopted by 20 votes in favour and 14 against, and referred to the Drafting Committee. An oral amendment to add the word "normal" before the word "rate" in the phrase "rate for a short-term commercial credit" was adopted by 9 votes in favour and 6 against.

13. The proposal of the *ad hoc* working group in regard to paragraph (1) of article 69 was adopted by 26 votes in favour and 8 against, and referred to the Drafting Committee. The UNCITRAL text of article 69 was adopted subject to this amendment.

14. The proposals of Denmark, Finland, Greece, Sweden (A/CONF.97/C.1/L.216), Czechoslovakia (A/CONF.97/C.1/L.218), Japan (A/CONF.97/C.1/L.222), Pakistan (A/CONF.97/C.1/L.225) and the United Kingdom (A/CONF.97/C.1/L.226/Rev.1) were withdrawn.

ARTICLE 74

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 74

"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."

B. AMENDMENTS

2. An amendment was submitted to article 74 by the Federal Republic of Germany (A/CONF.97/C.1/L.211).

3. This amendment was to the following effect:

Federal Republic of Germany (A/CONF.97/C.1/L.211):

Revise the first sentence of article 74 to read as follows:

"If the buyer is in delay in taking delivery of the goods *or, where payment of the price and delivery of the goods are concurrent conditions, if he is in delay in paying 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."

[Adopted: see Consideration, 5, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered article 74 at its 30th meeting on 31 March 1980.

(ii) *Consideration*

5. At the 30th meeting, the amendment by Federal Republic of Germany (A/CONF.97/C.1/L.211) was adopted by 19 votes in favour and 5 votes against, and the UNCITRAL text adopted, subject to the amendment.

ARTICLE 75

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 75

"(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 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 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."

B. AMENDMENTS

2. Amendments were submitted to article 75 by China (A/CONF.97/C.1/L.178) and Australia (A/CONF.97/C.1/L.227).

3. These amendments were to the following effect:

Paragraph (1).

(i) *China* (A/CONF.97/C.1/L.178):

Amend paragraph (1) of this article to read as follows:

"If the goods have been received by the buyer *but are found not to be in conformity with the contract* and he intends to reject them, he *must, apart from informing the seller without undue delay of his intention and providing him with the relevant documents including the inspection certificate issued by an inspection firm*, take such steps as are reasonable in the circumstances to preserve the goods . . ."

[Referred to Drafting Committee: see Consideration, 5, below.]

(ii) *Australia* (A/CONF.97/C.1/L.227):

Paragraph (1).

Insert after the words "reject them" in paragraph (1) the following words:

"*or if the goods have been taken into possession by the buyer on behalf of the seller under paragraph (2).*"

[Withdrawn in favour of oral amendment: see Consideration, 6, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered this article at its 30th and 31st meetings on 31 March 1980 and 1 April 1980 respectively.

(ii) *Consideration*

5. At the 30th meeting, the amendment by China (A/CONF.97/C.1/L.178) was referred to the Drafting Committee.

6. At the 31st meeting, the amendment by Australia (A/CONF.97/C.1/L.227) was withdrawn in favour of an oral amendment to insert at the end of the first sentence in paragraph (2) a sentence on the following lines:

"In this case his rights and duties as granted by paragraph (1) apply."

This oral amendment was adopted and referred to the Drafting Committee. The UNCITRAL text was adopted subject to this amendment.

ARTICLE 76

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 76

"The 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."

B. AMENDMENTS

2. No amendments were submitted to this article.

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

3. The First Committee considered article 76 at its 31st meeting on 1 April 1980.

(ii) *Consideration*

4. At the 31st meeting, the UNCITRAL text was adopted.

ARTICLE 77

A. UNCITRAL TEXT

1. The text of the United Nations Commission on International Trade Law provided as follows:

"Article 77

"(1) The party who is bound to preserve the goods in accordance with articles 74 or 75 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 cost of preservation, provided that notice of the intention to sell has been given to the other party.

"(2) If the goods are subject to loss or rapid deterioration or their preservation would involve unreasonable expense, the party who is bound to preserve the goods in accordance with article 74 or 75 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) The 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."

B. AMENDMENTS

2. An amendment was submitted to article 77 by Argentina, Spain, Portugal (A/CONF.97/C.1/L.188).
3. This amendment was to the following effect:

Paragraph (1).

Argentina, Spain, Portugal (A/CONF.97/C.1/L.188):

Amend the first paragraph of article 77 to read:

"(1) The party who is bound to preserve the goods in accordance with articles 74 or 75 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 cost

of preservation, provided that *he has given notice to the other party, requiring him to take possession of the goods within a reasonable time with a warning of his intention to proceed with the immediate sale of the goods.*"

[Withdrawn in favour of the amendment by the *ad hoc* working group: see Consideration, 7, below.]

C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

4. The First Committee considered this article at its 31st and 33rd meetings on 1 and 2 April 1980 respectively.

(ii) *Consideration**Paragraph (1).*

5. At the 31st meeting, the amendment by Argentina, Spain, Portugal (A/CONF.97/C.1/L.188) was referred for consideration to an *ad hoc* working group composed of the representatives of Argentina, Canada, Netherlands, Singapore and Spain.

6. At the 33rd meeting, the *ad hoc* working group submitted the following text.

Ad hoc working group composed of Argentina, Canada, Netherlands and Portugal (A/CONF.97/C.1/L.246), in which Singapore also participated:

Amend paragraph (1) as follows:

"(1) The party who is bound to preserve the goods in accordance with articles 74 or 75 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."

7. The amendment by the *ad hoc* working group relating to the addition of the words "*the price or*" was adopted to make paragraph (1) consistent with article 74 as amended by the First Committee at its 30th meeting on 31 March 1980. The amendment by the *ad hoc* working group to add the word "*reasonable*" was adopted by 23 votes in favour and 15 against, and referred to the Drafting Committee.

Paragraphs (2) and (3).

8. At the 33rd meeting, the UNCITRAL text was adopted.

III. Consideration of draft articles submitted by the Drafting Committee

1. At its 35th meeting on 4 April 1980, the First Committee considered draft articles 1 to 17 of the draft Convention on Contracts for the International Sale of Goods, as submitted to the First Committee by the Drafting Committee (A/CONF.97/C.1/L.248) and adopted the text of articles 1 to 17 as set forth in A/CONF.97/11/Add.1.

2. At its 36th meeting on 4 April 1980, the First Committee considered draft articles 18 to 31 of the draft Convention as submitted to the First Committee by the Drafting Committee (A/CONF.97/C.1/L.248 and Add.1) and adopted the text of articles 18 to 31 as set forth in A/CONF.97/11/Add.1.

3. At its 37th meeting on 7 April 1980, the First Committee considered draft articles 32 to 61 and 64 to 82 of the draft Convention as submitted to the First Committee by the Drafting Committee (A/CONF.97/C.1/

L.248/Add.2 and Add.3), and adopted the text of these articles as set forth in A/CONF.97/11/Add.2.

4. At its 38th meeting on 7 April 1980, the First Committee considered draft articles 62 and 63 of the draft Convention as submitted to the First Committee by the Drafting Committee (A/CONF.97/C.1/L.248/Add.2) together with the proposals of an *ad hoc* working group relating to these articles (A/CONF.97/C.1/L.252 and 253). At the 38th meeting, the First Committee adopted the text of these articles as set forth in A/CONF.97/11/Add.2.