

2. Revised text of the Uniform Law on the International Sale of Goods as approved or deferred for further consideration by the Working Group, on the International Sale of Goods at its first five sessions (A/CN.9/87, Annex I)

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UNIFORM LAW ON THE INTERNATIONAL SALE OF GOODS*

CHAPTER I

SPHERE OF APPLICATION OF THE LAW

Article 1

1. The present Law shall apply to contracts of sale of goods entered into by parties whose places of business are in different States:

* Square brackets in the text of the law indicate that no final decision was taken by the Working Group on the provisions enclosed. The headings in ULIS have been retained, where appropriate; for ease in reference, some new headings, not contained in ULIS, have been inserted by the Secretariat; all such new headings are enclosed in square brackets.

(a) When the States are both 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 shall 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. The present Law shall also apply where it has been chosen as the law of the contract by the parties.

Article 2

The present Law shall not apply to sales:

1. (a) Of goods of a kind and in a quantity ordinarily bought by an individual for personal, family or household use, unless it appears 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] that they are bought for a different use;

(b) By auction;

(c) On execution or otherwise by authority of law.

2. Neither shall the present Law apply to sales:

(a) Of stocks, shares, investment securities, negotiable instruments or money;

(b) Of any ship, vessel or aircraft [which is registered or is required to be registered];

(c) Of electricity.

Article 3

1. [The present Law shall not apply to contracts where the obligations of the parties are substantially other than the delivery of and payment for goods.]

2. Contracts for the supply of goods to be manufactured or produced shall be considered to be sales within the meaning of the present Law, unless the party who orders the goods undertakes to supply an essential and substantial part of the materials necessary for such manufacture or production.

Article 4

For the purpose of the present Law:

(a) [Where a party has places of business in more than one State, his place of business shall be his principal place of business, unless another place of business has a closer relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at the time of the conclusion of the contract;]

(b) Where a party does not have a place of business, reference shall be made to his habitual residence;

(c) Neither the nationality of the parties nor the civil or commercial character of the parties or the contract shall be taken into consideration;

(d) A "Contracting State" means a State which is Party to the Convention dated . . . relating to . . . and has adopted the present Law without any reservation [declaration] that would preclude its application to the contract;

(e) Any two or more States shall not be considered to be different States if a declaration to that effect made under article [II] of the Convention dated . . . relating to . . . is in force in respect of them.

Article 5

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

Article 6

(Transferred to article 3, paragraph 2)

Article 7

(Transferred to article 4 (c))

Article 8

The present Law shall govern only the obligations of the seller and the buyer arising from a contract of sale. In particular, the present Law shall not, except as otherwise expressly provided therein, be concerned with the formation of the contract, nor with the effect which the contract may have on the property in the goods sold, nor with the validity of the contract or of any of its provisions or of any usage.

CHAPTER II

GENERAL PROVISIONS

Article 9

1. [The parties shall be bound by any usage which they have expressly or impliedly made applicable to their contract and by any practices which they have established between themselves.]

2. [The usages which the parties shall be considered as having impliedly made applicable to their contract shall include any usage of which the parties are aware and which in international trade is widely known to, and regularly observed by parties to contracts of the type involved, or any usage of which the parties should be aware because it is widely known in international trade and which is regularly observed by parties to contracts of the type involved.]

3. [In the event of conflict with the present Law, such usages shall prevail unless otherwise agreed by the parties.]

4. [Where expressions, provisions or forms of contract commonly used in commercial practice are employed, they shall be interpreted according to the meaning widely accepted and regularly given to them in the trade concerned unless otherwise agreed by the parties.]

Article 10

[For the purposes of the present Law, a breach of contract shall be regarded as fundamental wherever the party in breach knew, or ought to have known, at the time of the conclusion of the contract, that a reasonable person in the same situation as the other party would not have entered into the contract if he had foreseen the breach and its effects.]

Article 11

Where under the present Law an act is required to be performed "promptly", it shall be performed within as short a period as is practicable in the circumstances.

Article 12

(Deleted)

Article 13

(Deleted)

Article 14

Communications provided for by the present Law shall be made by the means usual in the circumstances.

Article 15

[A contract of sale need not be evidenced by writing and shall not be subject to any other requirements as to form. In particular, it may be proved by means of witnesses.]

Article 16

Where under the provisions of the present Law one party to a contract of sale is entitled to require performance of any obligation by the other party, a court shall not be bound to enter or enforce a judgement providing for specific performance except in accordance with the provisions of article VII of the Convention dated the 1st day of July 1964 relating to a Uniform Law on the International Sale of Goods.

Article 17

[In interpreting and applying the provisions of this Law, regard shall be had to its international character and to the need to promote uniformity [in its interpretation and application].]

CHAPTER III

OBLIGATIONS OF THE SELLER

Article 18

The seller shall deliver the goods, hand over any documents relating thereto and transfer the property in the goods, as required by the contract and the present Law.

SECTION I. DELIVERY OF THE GOODS
[AND DOCUMENTS]*Article 19*

(Deleted)

SUBSECTION 1. OBLIGATIONS OF THE SELLER AS
REGARDS THE DATE AND PLACE OF DELIVERY*Article 20*

Delivery shall be effected:

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

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

(c) In all other cases by placing the goods at the buyer's disposal at the place where the seller carried on business at the time of the conclusion of the contract or, in the absence of a place of business, at his habitual residence.

Article 21

1. If the seller is bound to deliver the goods to a carrier, he shall make, in the usual way and on the usual terms, such contracts as are necessary for the carriage of the goods to the place fixed. Where the

goods are not clearly marked with an address or otherwise appropriated to the contract, the seller shall send the buyer notice of the consignment and, if necessary, some document specifying the goods.

2. If the seller is not bound by the contract to effect insurance in respect of the carriage of the goods, he shall provide the buyer, at his request, with all information necessary to enable him to effect such insurance.

Article 22

The seller shall deliver the goods:

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

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

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

Article 23

Where the contract or usage requires the seller to deliver documents relating to the goods, he shall tender such documents at the time and place required by the contract or by usage.

Articles 24-32

(Incorporated into articles 41-47)

SUBSECTION 2. OBLIGATIONS OF THE SELLER AS
REGARDS THE CONFORMITY OF THE GOODS*Article 33*

1. The seller shall deliver goods which are of the quantity and quality and description required by the contract and contained or packaged in the manner required by the contract and which, where not inconsistent with the contract,

(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 contracting, 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 shall not be liable under subparagraphs (a) to (d) of the preceding paragraph for any defect if at the time of contracting the buyer knew, or could not have been unaware of, such defect.

Article 34

(Deleted)

Article 35

1. The seller shall be liable in accordance with the contract and the present Law for any lack of conformity which exists at the time when the risk passes, even

though such lack of conformity becomes apparent only after that time. [However, if risk does not pass because of a declaration of avoidance of the contract or of a demand for other goods in replacement, the conformity of the goods with the contract shall be determined by their condition at the time when risk would have passed had they been in conformity with the contract.]

2. The seller shall also be liable for any lack of conformity which occurs after the time indicated in paragraph 1 of this article and is due to a breach of any of the obligations of the seller, including a breach of an 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 specified period.

Article 36

(Incorporated into article 33)

Article 37

If the seller has delivered goods before the date for delivery he may, up to that date, deliver any missing part or quantity of the goods or deliver other goods which are in conformity with the contract or remedy any defects in the goods delivered, provided that the exercise of this right does not cause the buyer either unreasonable inconvenience or unreasonable expense. The buyer shall, however, retain the right to claim damages as provided in article 82.

Article 38

1. The buyer shall examine the goods, or cause them to be examined, promptly.

2. In the case of carriage of the goods, examination may be deferred until the goods arrive at the place of destination.

3. If the goods are redispached by the buyer without a reasonable opportunity for examination by him and the seller knew or ought to have known at the time, when the contract was concluded, of the possibility of such redispach, examination of the goods may be deferred until they arrive at the new destination.

Article 39

1. The buyer shall lose the right to rely on a lack of conformity of the goods if he has not given the seller notice thereof within a reasonable time after he has discovered the lack of conformity or ought to have discovered it. If a defect which could not have been revealed by the examination of the goods provided for in article 38 is found later, the buyer may none the less rely on that defect, provided that he gives the seller notice thereof within a reasonable time after its discovery. [In any event, the buyer shall lose the right to rely on a lack of conformity of the goods if he has not given notice thereof to the seller within a period of two years from the date on which the goods were handed over, unless the lack of conformity constituted a breach of a guarantee covering a [longer] [different] period.]

2. In giving notice to the seller of any lack of conformity the buyer shall specify its nature.

3. Where any notice referred to in paragraph 1 of this article has been sent by letter, telegram or other

appropriate means, the fact that such notice is delayed or fails to arrive at its destination shall not deprive the buyer of the right to rely thereon.

Article 40

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

SECTION II. [REMEDIES FOR BREACH OF CONTRACT BY THE SELLER]

Article 41

1. Where the seller fails to perform any of his obligations under the contract of sale and the present Law, the buyer may:

(a) Exercise the rights provided in articles 42 to 46;

(b) Claim damages as provided in article 82 or articles 84 to 87.

2. In no case shall the seller be entitled to apply to a court or arbitral tribunal to grant him a period of grace.

Article 42

1. The buyer has the right to require the seller to perform the contract to the extent that specific performance could be required by the court under its own law in respect of similar contracts of sale not governed by the Uniform Law, unless the buyer has acted inconsistently with that right by avoiding the contract under article 44 or, by reducing the price under article 45 [or by notifying the seller that he will himself cure the lack of conformity].

2. However, where the goods do not conform with the contract, the buyer may require the seller to deliver substitute goods only when the lack of conformity constitutes a fundamental breach and after prompt notice.

Article 43

Where the buyer requests the seller to perform, the buyer may fix an additional period of time of reasonable length for delivery or for curing of the defect or other breach. If the seller does not comply with the request within the additional period, or where the buyer has not fixed such a period, within a period of reasonable time, or if the seller already before the expiration of the relevant period of time declares that he will not comply with the request, the buyer may resort to any remedy available to him under the present law.

Article [43 bis]

1. The seller may, even after the date for delivery, cure any failure to perform his obligations, if he can do so without such delay as will amount to a fundamental breach of contract and without causing the buyer unreasonable inconvenience or unreasonable expense, unless the buyer has declared the contract avoided in accordance with article 44 or the price reduced in accordance with article 45 [or has notified the seller that he will himself cure the lack of conformity].

2. If the seller requests the buyer to make known his decision under the preceding paragraph, and the

buyer does not comply within a reasonable time, the seller may perform provided that he does so before the expiration of any time indicated in the request, or if no time is indicated, within a reasonable time. Notice by the seller that he will perform within a specified period of time shall be presumed to include a request under the present paragraph that the buyer make known his decision.

Article 44

1. The buyer may by notice to the seller declare the contract avoided:

(a) Where the failure by the seller to perform any of his obligations under the contract of sale and the present law amounts to a fundamental breach of contract, or

(b) Where the seller has not delivered the goods within an additional period of time fixed by the buyer in accordance with article 43.

2. The buyer shall lose his right to declare the contract avoided if he does not give notice thereof to the seller within a reasonable time:

(a) Where the seller has not delivered the goods [or documents] on time, after the buyer has been informed that the goods [or documents] have been delivered late or has been requested by the seller to make his decision under article [43 *bis*, paragraph 2];

(b) In all other cases, after the buyer has discovered the failure by the seller to perform or ought to have discovered it, or, where the buyer has requested the seller to perform, after the expiration of the period of time referred to in article 43.

Article 45

Where the goods do not conform with the contract, the buyer may declare the price to be reduced in the same proportion as the value of the goods at the time of contracting has been diminished because of such non-conformity.

Article 46

1. Where the seller has handed over part only of the goods or an insufficient quantity or where part only of the goods handed over is in conformity with the contract, the provisions of articles [43, 43 *bis*, and 44] shall apply in respect of the part or quantity which is missing or which does not conform with the contract.

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

Article 47

1. Where the seller tenders delivery of the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

2. Where the seller has proffered to the buyer a quantity of goods greater than that provided for in the contract, the buyer may reject or accept the excess quantity. If the buyer rejects the excess quantity, the seller shall be liable only for damages in accordance with article 82. If the buyer accepts the whole or part of the excess quantity, he shall pay for it at the contract rate.

Article 48

(Deleted)

Article 49

(Deleted)

Article 50

(Transferred to article 23)

Article 51

(Deleted)

SECTION III. TRANSFER OF PROPERTY

Article 52

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

2. Unless the seller already knows of the right or claim of the third person, the buyer may notify the seller of such right or claim and request that within a reasonable time the goods shall be freed therefrom or other goods free from all rights or claims of third persons shall be delivered to him by the seller. Failure by the seller within such period to take appropriate action in response to the request shall amount to a fundamental breach of contract.

Article 53

(Deleted)

Article 54

(Transferred to article 21)

Article 55

(Incorporated into articles 41 to 47)

CHAPTER IV

OBLIGATIONS OF THE BUYER

Article 56

The buyer shall pay the price for the goods and take delivery of them as required by the contract and the present law.

SECTION I. PAYMENT OF THE PRICE

Article 56 bis

The buyer shall take steps which are necessary in accordance with the contract, with the laws and regulations in force or with usage, to enable the price to be paid or to procure the issuance of documents assuring payment, such as a letter of credit or a banker's guarantee.

A. FIXING THE PRICE

Article 57

Where a contract has been concluded but does not state a price or expressly or impliedly make provision for the determination of the price of the goods, the buyer shall be bound to pay the price generally charged

by the seller at the time of contracting; if no such price is ascertainable, the buyer shall be bound to pay the price generally prevailing for such goods sold under comparable circumstances at that time.

Article 58

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

B. PLACE AND DATE OF PAYMENT

Article 59

1. The buyer shall pay the price to the seller at the seller's place of business or, if he does not have a place of business, at his habitual residence, or, where the payment is to be made against the handing over of the goods or of documents, at the place where such handing over takes place.

2. Where, in consequence of a change in the place of business or habitual residence of the seller subsequent to the conclusion of the contract, the expenses incidental to payment are increased, such increase shall be borne by the seller.

Article 59 bis

1. The buyer shall pay the price when the seller, in accordance with the contract and the present Law, places at the buyer's disposal either the goods or a document controlling their disposition. The seller may make such payment a condition for handing over the goods or the document.

2. Where the contract involves the carriage of goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will be handed over to the buyer at the place of destination against payment of the price.

3. The buyer shall not be bound to pay the price until he has had an opportunity to inspect the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with such opportunity.

Article 60

Where the parties have agreed upon a date for the payment of the price or where such date is fixed by usage, the buyer shall, without the need for any other formality, pay the price at that date.

Articles 61-64

(Incorporated into articles 70 to 72 bis)

SECTION II. TAKING DELIVERY

Article 65

The buyer's obligation to take delivery consists in doing all such acts which could reasonably be expected of him in order to enable the seller to effect delivery, and also taking over the goods.

Article 66

(Incorporated into articles 70 to 72 bis)

[SECTION III. REMEDIES FOR BREACH OF CONTRACT BY THE BUYER]

Article 67

[1. If the contract reserves to the buyer the right subsequently to determine the form, measurement or other features of the goods (sale by specification) and he fails to make such specification either on the date expressly or impliedly agreed upon or within a reasonable time after receipt of a request from the seller, the seller [may have recourse to the remedies specified in articles 70 to 72 bis], or make the specification himself in accordance with the requirements of the buyer in so far as these are known to him.

2. If the seller makes the specification himself, he shall inform the buyer of the details thereof and shall fix a reasonable period of time within which the buyer may submit a different specification. If the buyer fails to do so the specification made by the seller shall be binding.]

Article 68

(Incorporated into articles 70 to 72 bis)

Article 69

(Deleted)

Article 70

1. Where the buyer fails to perform any of his obligations under the contract of sale and the present Law, the seller may:

(a) Exercise the rights provided in articles 71 to 72 bis; and

(b) Claim damages as provided in articles 82 and 83 or articles 84 to 87.

2. In no case shall the buyer be entitled to apply to a court or arbitral tribunal to grant him a period of grace.

Article 71

1. If the buyer fails to pay the price, the seller may require the buyer to perform his obligation.

2. If the buyer fails to take delivery or to perform any other obligation in accordance with the contract and the present law, the seller may require the buyer to perform to the extent that specific performance could be required by the court under its own law in respect of similar contracts of sale not governed by the present law.

3. The seller cannot require performance of the buyer's obligations where he has acted inconsistently with such right by avoiding the contract under article 72 bis.

Article 72

Where the seller requests the buyer to perform, the seller may fix an additional period of time of reasonable length for such performance. If the buyer does not comply with the request within the additional period, or where the seller has not fixed such a period, within a period of reasonable time, or if the buyer already before the expiration of the relevant period of time declares that he will not comply with the request, the seller may resort to any remedy available to him under the present law.

Article 72 bis

Alternative A (text suggested in document A/CN.9/WG.2/WP.19):¹

[1. The seller may by notice to the buyer declare the contract avoided:

(a) Where the failure by the buyer to perform any of his obligations under the contract of sale and the present law amounts to a fundamental breach of contract, or

(b) Where the buyer has not performed the contract within an additional period of time fixed by the seller in accordance with article 72.

2. The seller shall lose his right to declare the contract avoided if he does not give notice thereof to the buyer within a reasonable time after the seller has discovered the failure by the buyer to perform or ought to have discovered it, or, where the seller has requested the buyer to perform, after the expiration of the period of time referred to in article 72.]

Alternative B (text of proposal A in paragraph 59 of the report of the Working Group on its fifth session):²

[1. The seller may by notice to the buyer declare the contract avoided:

(a) Where the buyer has not paid the price or otherwise has not performed the contract within an additional period of time fixed by the seller in accordance with article 72; or

(b) Where the goods have not yet been handed over, the failure by the buyer to pay the price or to perform any other of his obligations under the contract of sale and the present law amounts to a fundamental breach.

2. If the buyer requests the seller to make known his decision under paragraph 1 of this article and the seller does not comply promptly the seller shall where the goods have not yet been handed over, be deemed to have avoided the contract.

3. The seller shall lose his right to declare the contract avoided if he does not give notice to the buyer before the price was paid or, where the goods have been handed over, promptly after the expiration of the period of time fixed by the seller in accordance with article 72.]

Alternative C (text of proposal B in paragraph 59 of the Working Group on its fifth session):³

[2. The seller shall lose his right to declare the contract avoided if he does not give notice thereof to the buyer within a reasonable time:

(a) Where the buyer has not performed his obligations on time, after the seller has been informed that the price has been paid late or has been requested by the buyer to make his decision as regards performance or avoidance of the contract;

(b) Where the seller has requested the buyer to perform, after the expiration of the period of time referred to in article 72;

(c) In all other cases, after the seller has discovered the failure by the buyer to perform or ought to have discovered it. In any event, the seller shall lose his right to claim the return of delivered goods if he has not given notice thereof to the buyer within a period of 6 months [1 year] from the date on which the goods were handed over, unless the contract reserves the seller the property or a security right in the goods.]

CHAPTER V

PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

SECTION I. ANTICIPATORY BREACH

*Article 73*⁴

1. A party may suspend the performance of his obligation when, after the conclusion of the contract, a serious deterioration in the economic situation of the other party or his conduct in preparing to perform or in actually performing the contract, gives reasonable 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 become evident, he may prevent the handing over of the goods to the buyer even if the latter holds a document which entitles him to obtain them. The provision of the present paragraph relates only to the rights in the goods as between the buyer and the seller.

3. A party suspending performance, whether before or after dispatch of the goods, shall promptly notify the other party thereof, and shall continue with performance if the other party provides adequate assurance of his performance. On the failure by the other party, within a reasonable time after notice, to provide such assurance, the party who suspended performance may avoid the contract.

Article [74] (previously article 75)

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

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

Article [75] (previously article 76)

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

¹ See in this volume, section 5 below.

² See in this volume, section 1 above.

³ *Ibid.*

⁴ Four member States reserved the right to suggest modification of the text at a later session (report of fifth session, paragraph 104; see in this volume section 1 above).

SECTION II. EXEMPTIONS

*Article [76] (previously article 74)**Alternative A* (text provisionally adopted by Drafting Party V):

[1. Where a party has not performed one of his obligations in accordance with the contract and the present law, he shall not be liable in damages for such non-performance if he proves that, owing to circumstances which have occurred without fault on his part, performance of that obligation has become impossible or has so radically changed as to amount to performance of an obligation quite different from that contemplated by the contract. For this purpose there shall be deemed to be fault unless the non-performing party proves that he could not reasonably have been expected to take into account, or to avoid or to overcome the circumstances.

2. Where the non-performance of the seller is due to non-performance by a subcontractor, the seller shall be exempt from liability only if he is exempt under the provisions of the preceding paragraph and if the subcontractor would also be exempt if the provisions of that paragraph were applied to him.

3. Where the impossibility of performance within the provisions of paragraph 1 of this article is only temporary, the exemption provided by this article shall cease to be available to the non-performing party when the impossibility is removed, unless the performance required has then so radically changed as to amount to performance of an obligation quite different from that contemplated by the contract.

4. The non-performing party shall notify the other party of the existence of the circumstances which affect his performance within the provisions of the preceding paragraphs and the extent to which they affect it. If he fails to do so within a reasonable time after he knows or ought to have known of the existence of the circumstances, he shall be liable for the damage resulting from such failure.]

Alternative B (text of alternative proposal in paragraph 114 of the report of the Working Group on its fifth session):⁵

[1. Where a party has not performed one of his obligations [in accordance with the contract and the present Law], he shall not be liable [in damages] for such non-performance if he proves that it was due to an impediment [which has occurred without any fault on his side and being] of a kind which could not reasonably be expected to be taken into account at the time of the conclusion of the contract or to be avoided or overcome thereafter.

2. Where the circumstances which gave rise to the non-performance constitute only a temporary impediment, the exemption shall apply only to the necessary delay in performance. Nevertheless, the party concerned shall be permanently relieved of his obligation if, when the impediment is removed, performance would, by reason of the delay, be so radically changed as to amount to the performance of an obligation quite different from that contemplated by the contract.

⁵ See in this volume section 1 above.

3. The non-performing party shall notify the other party of the existence of the impediment and its effect on his ability to perform. If he fails to do so within a reasonable time after he knows or ought to have known of the existence of the impediment, he shall be liable for the damage resulting from this failure.

4. The exemption provided by this article for one of the parties shall not deprive the other party of any right which he has under the present Law to declare the contract avoided or to reduce the price, unless the impediment which gave rise to the exemption of the first party was caused by the act of the other party [or of some person for whose conduct he was responsible].]

Article 77

(Deleted)

SECTION III. EFFECTS OF AVOIDANCE

Article 78

[1. Avoidance of the contract releases both parties from their obligations thereunder, subject to any damages which may be due.

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

Article 79⁶

1. The buyer shall lose his right to declare the contract avoided or to require the seller to deliver substitute goods where it is impossible for him to return the goods in the condition in which he received them.

2. Nevertheless the preceding paragraph shall not apply:

(a) If the goods or part of the goods have perished or deteriorated as a result of the defect which justifies the avoidance;

(b) If the goods or part of the goods have perished or deteriorated as a result of the examination prescribed in article 38;

(c) If part of the goods have been sold in the normal course of business or have been consumed or transferred by the buyer in the course of normal use before the lack of conformity with the contract was discovered or ought to have been discovered;

(d) If the impossibility of returning the goods or of returning them in the condition in which they were received is not due to the act of the buyer or of some other person for whose conduct he is responsible;

(e) If the deterioration or transformation of the goods is unimportant.

⁶ One member State has reserved its position in respect of paragraph 2 (d) of this article until final acceptance of the provisions on transfer of risk. (Report on fifth session, paragraph 148; see in this volume section 1 above.) Another representative suggested that at the second reading of the text, the Working Group should transfer this article into chapter III and revise its language in accordance with the proposal contained in paragraph 151 of the report.

Article 80

The buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods by virtue of article 79 shall retain all the other rights conferred on him by the present law.

Article 81

1. Where the seller is under an obligation to refund the price, he shall also be liable for the interest thereon at the rate fixed by article 83, as from the date of payment.

2. The buyer shall be liable to account to the seller for all benefits which he has derived from the goods or part of them, as the case may be:

(a) Where he is under an obligation to return the goods or part of them, or

(b) Where it is impossible for him to return the goods or part of them, but he has nevertheless exercised his right to declare the contract avoided or to require the seller to deliver substitute goods.

SECTION IV. SUPPLEMENTARY RULES CONCERNING DAMAGES

Article 82⁷

Damages for breach of contract by one party shall 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 shall not exceed the loss which the conclusion of the contract, in the light of the facts and matters which then were known or ought to have been known to him, as a possible consequence of the breach of contract.

Article 83

Where the breach of contract consists of delay in the payment of the price, the seller shall in any event be entitled to interest on such sum as in arrear at a rate equal to the official discount rate in the country where he has his place of business or, if he has no place of business, his habitual residence, plus 1 per cent.

Article 84

1. In case of avoidance of the contract, the party claiming damages may rely upon the provision of article 82 or, where there is a current price for the goods, recover the difference between the price fixed by the contract and the current price on which the contract is avoided.

2. In calculating the amount of damages under paragraph 1 of this article, the current price to be taken into account shall be that prevailing at the place where delivery of the goods is to be effected or, if there is no such current price, the price at another place which serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

⁷ Two members of the Working Group reserved the right to return to this article at a later stage (report on fifth session, paragraph 164; see in this volume section 1 above).

Article 85

If the contract is avoided and, 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, he may, instead of claiming damages under articles 82 or 84, recover the difference between the contract price and the price paid for the goods bought in replacement or that obtained by the resale.

Article 86

(Deleted)

Article 87

(Deleted)

Article 88

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

Article 89

In case of fraud, damages shall be determined by the rules applicable in respect of contracts of sale not governed by the present law.

Article 90

(Deleted)

SECTION V. PRESERVATION OF THE GOODS

Article 91

Where the buyer is in delay in taking delivery of the goods or in paying the price, the seller shall take reasonable steps to preserve the goods; he shall have the right to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 92

1. Where the goods have been received by the buyer, he shall take reasonable steps to preserve them if he intends to reject them; he shall have the right to retain them until he has been reimbursed his reasonable expenses by the seller.

2. Where goods dispatched to the buyer have been put at his disposal at their place of destination and he exercises the right to reject them, he shall be bound to take possession of them on behalf of the seller, provided that this may be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision shall not apply where the seller or a person authorized to take charge of the goods on his behalf is present at such destination.

Article 93

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

Article 94

1. The party who, in the cases to which article 91 and 92 apply, is under an obligation to take steps to preserve the goods may sell them by any appropriate means, provided that there has been unreasonable delay by the other party in accepting them or taking them back or in paying the cost of preservation and provided that due notice has been given to the other party of the intention to sell.

2. The party selling the goods shall have the right to retain out of the proceeds of sale an amount equal to the reasonable costs of preserving the goods and of selling them and shall transmit the balance to the other party.

Article 95

Where, in the cases to which articles 91 and 92 apply, the goods are subject to loss or rapid deterioration or their preservation would involve unreasonable expense, the party under the duty to preserve them is bound to sell them in accordance with article 94.

CHAPTER VI

PASSING OF THE RISK

Article 96

Where the risk has passed to the buyer, he shall pay the price notwithstanding the loss or deterioration of the goods, unless this is due to the act of the seller [or of some other person for whose conduct the seller is responsible].

Article 97

1. Where the contract of sale involves carriage of the goods, the risk shall pass to the buyer when the goods are handed over to the carrier for transmission to the buyer.

2. The first paragraph shall also apply if at the time of the conclusion of the contract the goods are already in transit. However, if the seller at that time knew or ought to have known that the goods had

been lost or had deteriorated, the risk of this loss or deterioration shall remain with him, unless he discloses such fact to the buyer.

Article 98

1. In cases not covered by article 97 the risk shall pass to the buyer as from the time when the goods were placed at his disposal and taken over by him.

2. When the goods have been placed at the disposal of the buyer but have not been taken over or have been taken over belatedly by him and this fact constitutes a breach of the contract, the risk shall pass to the buyer as from the last moment when he could have taken the goods over without committing a breach of the contract. [However, where the contract relates to the sale of goods not then identified, the goods shall not be deemed to be placed at the disposal of the buyer until they have been clearly identified to the contract and the buyer has been informed of such identification.]

[Article 98 bis

1. Where the goods do not conform to the contract and such non-conformity constitutes a fundamental breach, the risk does not pass to the buyer so long as he has the right to avoid the contract.

2. In the case of a fundamental breach of contract other than for non-conformity of the goods, the risk does not pass to the buyer with respect to loss or deterioration resulting from such breach.]

Article 99

(Deleted)

Article 100

(Deleted)

Article 101

(Deleted)

**3. Texts of comments and proposals by representatives on articles 56 to 70
(A/CN.9/87, Annex II) ***

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* Previously issued as document A/CN.9/WG.2/WP.15/Add.1 of 16 November 1972.

I

COMMENTS AND PROPOSALS OF THE REPRESENTATIVE OF THE USSR

*Articles 56-60 of ULIS**Article 56*

This article does not give rise to any objection.

Article 57

It seems appropriate to exclude this article from the Uniform Law. In our view, the Law should not provide, even indirectly and restrictedly, for a possibility of concluding sale contracts without stating a price or making provision for the determination of the price.

According to the legislation and practice of many countries, the price is an indispensable or essential element of such contracts, failing which there shall be no contract made at all. It should be mentioned that under article 8 the Uniform Law shall not be concerned with the formation and validity of the contract.

Apart from the inappropriateness of the provision itself, i.e. imposing the obligation on the buyer to pay the price "generally charged" by the seller ("habitulement pratiqué par le vendeur") where no price or a manner of determining thereof has been agreed by the parties, such a provision seems also unacceptable for obvious practical considerations, namely: how may one definitely decide which price is being "charged" by the seller, what kind of evidence might be sufficient or conclusive. Other contracts may well contain a good deal of conditions different from those of the contract made with the buyer concerned and affecting the matter of price at varying degrees. Evidently it is not always possible to find completely identical contracts, particularly for the supply of machines and equipment. In trade practice, prices often depend upon a variety of factors including the volume of other transactions, the business relations and settlements between the parties with regard to other transactions, covering long periods of their commercial dealings. Not infrequently sellers provide various allowances and rebates to buyers either at the time of concluding a contract or thereafter, which fact may not be reflected in any way in the contract itself.

It should be noted also that the provision in question is generally concerned not with the obligations of the buyer but, rather, with the matter of determining the price.

Article 58

It would be recommendable to replace the words "in case of doubt" with the words "unless otherwise agreed by the parties".

Article 59

This article does not give rise to any objection.

Article 60

Generally it would seem advisable to discuss at the next meeting of the Working Group a possibility of formulating provisions on the date of payment along the lines recommended with regard to the date

of delivery at the third session of the Working Group, Geneva, 17-28 January 1972 (A/CN.9/62, para. 22).¹

In any case it would seem useful, for the purpose of simplifying the present text of article 60 of ULIS, to omit the words "without the need for any other formality" (as has been done by the Working Group at its last session in reconsidering article 20 of ULIS—paragraph 22 of the above-mentioned document A/CN.9/62). The above words, as they stand at present, are not sufficiently clear; a question may first be raised as to what kind of "formalities" are meant: do they refer to a demand of payment or the effecting of payment, do they mean formalities to be complied with by the seller or buyer, etc.

II

COMMENTS AND PROPOSALS OF THE REPRESENTATIVE OF GHANA

*Articles 56-60 of ULIS**Article 56*

This article does not seem to need any comment.

Article 57

The text of this article, in its first part, seems by implication to make provision for cases in which the price is not expressly stated; the contract may make provision for its ascertainment.

The second part of the text does address itself to the question: "What if the contract does not provide a mode for ascertaining the price?" (A subsidiary question, which the text does not pause to answer in its first part, is whether the provision for determination of the price may be deduced by way of implication, where no such provision is expressly made. This will be considered later.)

The delegation of Ghana has been very impressed by the very closely reasoned argument of the representative of the USSR against leaving the price to be fixed in the uncertain manner at present made possible by this article. In municipal law, the concept of the "market price" or the "reasonable price"—not always regarded as the same—may render the uncertainty inherent here manageable; in the field of international sale such a concept is likely to be impracticable except in the comparatively few cases of particular commodities whose prices are fixed by the operations of recognized commodity exchanges.

The delegation of Ghana believes that "the price generally charged by the seller at the time of the conclusion of the contract" is not certain enough, as a test, to be an adequate substitute for the "market price"/"reasonable price" concept in municipal sale law. The reasons stated by the representative of the USSR in the third paragraph of his comment are sufficient to show the unsatisfactory nature of this criterion.

On purely theoretical grounds, also, the text may well create difficulties among jurists and legal advisers

¹ UNCITRAL Yearbook, Vol. III: 1972, part two, I, A, 5.

who, on doctrinal grounds, cannot regard a sale contract as "concluded" when no price is fixed or fixable by reference to some part of the contract.

For these reasons, the delegation of Ghana finds the present text of article 57 unsatisfactory. That raises a further question. Must it be deleted altogether, or must ULIS make specific provision for this case?

The delegation of Ghana believes that deletion would create an unsatisfactory situation; businessmen will be left in doubt as to the status of a sale contract that was concluded in all important respects except for the fixing of the price. As this situation may be expected not to occur only during negotiations, when nothing is regarded by either party as binding, it seems necessary to legislate specifically for it. For this reason, the delegation of Ghana does not share the view that article 57 should be excluded altogether. It should be modified to meet the difficulty outlined by the representative of the USSR.

The delegation of Ghana believes that one way of doing this would be to retain the first part of article 57 (subject to a small modification to be discussed shortly) and to insist that the agreement shall not generate any obligations for either party until a price agreeable to both has been settled.

If such a rule has the appearance of unnecessary finality, it at least has the merit of certainty in an area where certainty is of paramount importance. It seems that its apparent harshness can be reduced by making it possible to ascertain the price by reasonable implication from other terms of the contract where these bear on the question. To leave no room for doubt, the possibility of drawing such an implication from other terms of the contract ought, it is thought, to be expressly provided for. A possible amendment to article 57, giving effect to these observations, would read as follows:

No contract shall be enforceable by either party under the present Law unless it states a price or makes express or implied provision for the determination of the price; unless the parties thereto expressly or by implication otherwise agree.

The concluding clause in this proposed amendment leaves the door open in the cases where the parties deal with each other in circumstances where it is reasonable to assume that, either because they contracted with reference to a recognized commodity market, or because they have agreed to suspend negotiations on the single issue of price, it is in their mutual interest for the other agreed provisions of the contract to be enforceable.

Article 58

The delegation of Ghana prefers the clause "unless otherwise agreed" to the phrase "in case of doubt" in this article. It seems better to create a definite *prima facie* link between the price and the actual commodity sold (as distinguished from the commodity and its packaging, etc.), and to leave the parties free to modify this if they wish, than to leave this role to cases of "doubt" whose nature is not specified in the law and which, in any case, could be difficult to identify.

Article 59

Paragraph 1. For economic reasons, Ghana and, it is believed, many other developing nations, will find it difficult to commit themselves unreservedly to the rule set out in this paragraph.

The impact of unavoidable exchange control legislation in several of these countries will normally make it difficult, if not altogether impossible, for a buyer in these countries to give such an unreserved undertaking as is entailed in a promise to pay at the seller's place of business, as literally understood. Conversely, where municipal exchange control legislation allows this, a seller in a country with inconvertible currency may well prefer to be paid by a buyer in a country with convertible currency in the latter's country or usual place of business, and wish to stipulate for this in his contract. It would not be satisfactory for such a stipulation to oblige the seller by implication to hand over the goods in the country of the buyer.

For these reasons the delegation of Ghana would prefer this rule to be made facultative by prefacing it with the words: "unless otherwise agreed".

Paragraph 2. This paragraph does not create any problems for the delegation of Ghana.

Article 60

The delegation of Ghana shares the view of the representative of the USSR on the desirability of deleting the words "without any other formality" from the text of this article.

It seems desirable, as noted by the representative of the USSR, also to try to approximate as far as possible the rules relating to date of payment to the principles underlying the newly recommended rules relating to the time of delivery.

III

COMMENTS AND PROPOSALS OF THE REPRESENTATIVE OF MEXICO

Articles 56-60 of ULIS

CHAPTER IV

OBLIGATIONS OF THE BUYER

Article 56

(No change)

SECTION I. PAYMENT OF THE PRICE

A. Fixing the price

Article 57

1. Payment of the price consists in the delivery to the seller or to another person indicated by the seller of the monies or documents provided for in the contract.

2. Where a contract has been concluded but does not state a price or make provision for the determination of the price, the buyer shall be bound to pay the price generally charged by the seller at the time of the conclusion of the contract or, in the

absence of such a price, the one prevailing in the market at the time of the conclusion of the contract.

3. Except as otherwise provided in the contract or established by usages, the price shall be paid in the currency of the country of the seller.

Article 58

1. When the currency indicated in the contract for the payment of the price gives rise to doubts, the currency of the country of seller shall be deemed as applicable.

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

Article 59

...

Addition of the following new paragraph (3):

3. The buyer shall comply with all the requirements of his national laws in order to permit the seller to receive the price as provided in the contract.

Comments

1. The obligations of the buyer are established in those articles, specifically the price and the place and the date at which the same should be paid.

2. With respect to the first of these articles, namely, article 56, we do not propose any change, since it limits itself to establish the two basic obligations of the buyer; and corresponds to article 18 in the structure of ULIS, which establishes the respective obligations of the seller.

3. In so far as concerns article 57, that is the one which establishes the rules for the fixing of the price, it is our opinion that it should cover an additional situation, namely in what does the payment of the price consist as well as the rules which are applied when no price is fixed in the contract.

4. As to the payment of the price, we believe it should be indicated that the same consists in the delivery of the monies or documents provided for in the contract. We consider that these principles be fixed in order to expressly regulate both the cases of direct payment to the seller—exceptional in international sale transactions—as well as payment through a bank and/or through documents.

5. In connexion with the rules which should be applied when a fixed price is not stated in the contract, they should provide not only the price generally charged by the seller at the time of the conclusion of the contract, but also the case in which said reference is not possible, or when the seller does not normally state the price, in which hypothesis we believe that the price prevailing in the market should be applied also at the time of the conclusion of the contract.

6. With reference to article 58, it is our opinion that two hypotheses be foreseen. The first hypothesis concerns the currency in which payment should be made, when the one indicated in the contract might refer indistinctly to the countries involved in the contract; that is, when the name of the money is the

same in various countries (dollars, francs, pesos, etc.). In such event, we believe that the money of the country of the seller should govern. The second hypothesis is the one currently provided for in ULIS, namely the one relative to the fixing of the price in accordance with the weight of the goods.

7. In connexion with the problems of the place and date of payment, it is our belief that a provision should be added to article 59 to resolve the problems arising when exchange controls exist in the country of the buyer. In such a case, we believe it advisable that ULIS establish a simple rule, namely that the fulfilment of all the requisites fixed by the internal legislation of the buyer shall be his obligation in order that the seller receive the price agreed upon in the terms of the contract.

This rule is important, since if the exit of money from the country of the buyer were to be prevented, it would grant rights to the seller, either to consider the contract *ipso jure* avoided; to detain or vary the shipment of the goods or even to claim damages.

8. Finally, as to article 60, we do not propose any amendment, but we would like to note that this provision could be actually omitted, inasmuch as it does not establish any special rule which was not provided in other articles of ULIS. The contractual agreement, or the usages in the absence of the agreement to which this article 60 refers, are provided for in article 1 and 9 of ULIS.

Furthermore, the special references to the application of the usages in this article and others of ULIS, notwithstanding the general regulation of article 9, are not convenient, since they can be interpreted as limitations to the scope of said article 9, or because in other situations, in which ULIS does not contain express reference to usages, it might be considered that the same would not be applicable.

IV

COMMENTS AND PROPOSALS OF THE REPRESENTATIVE OF THE UNITED KINGDOM

Articles 56-60 of ULIS

1. Articles 56-60 deal with certain obligations of the buyer, in particular the payment of the price.

2. *Article 56*: no comment.

3. *Article 57*: this provides for the fixing of the price if it has not been stated. It has been objected that a contract would not exist if the price were not fixed. But the article is expressly confined to cases where a contract has been concluded. The chances of an international sales contract being concluded without the price being fixed are very small indeed, but it could happen in exceptional cases, and the article should stay. (The example has been given of publishers who distribute catalogues and whose order forms do not repeat the prices.)

4. The "price generally charged by the seller at the time of the conclusion of the contract" would presumably (as a result of article 9) be established first of all by the course of dealing between the parties, and if that did not show a price, the price generally charged by the seller to third parties would be appli-

cable. Whilst there might be a conflict between the two prices—i.e. the previous price paid by the buyer and the price charged by the seller to third parties at the time of the contract—in my view the previous price between the parties would be the valid price. It does not seem to be worth complicating the article by mentioning this expressly.

5. *Article 58*: no comment.

6. *Article 59*: this article adopts the rule that the debtor shall seek out the creditor. This is in accordance with English Law and is supported by the United Kingdom.

7. *Article 60*: it might be argued that this article is unnecessary since there is an obligation to pay the price. However, some legal systems require notice to establish delay in payment except where the parties have agreed on a date for a payment. This article places a date fixed by usage on the same level as a date determined by agreement. The words "without the need for any other formality" could be omitted.

V

COMMENTS AND PROPOSALS OF THE REPRESENTATIVES OF AUSTRIA AND THE UNITED KINGDOM

Articles 61 to 64 of ULIS

GENERAL OBSERVATIONS

1. Both representatives consider that this group of articles does not give rise to any fundamental objections. Articles 61 to 64 ought, however, to be harmonized with articles 24 *et seq.*, which have not yet been finalized by the Working Group.

Article 61

2. The two representatives have no comments on paragraph 1 of this article.

3. Mr. Loewe (Austria) points out that this process of harmonization might require the deletion of paragraph 2 of article 61 and the replacement of *ipso facto* avoidance ("résolution de plein droit") in paragraph 1 of article 62 by another system. Personally, he regrets the disappearance of the system of *ipso facto* avoidance and finds the text for replacement proposed by the Drafting Group at the session held in Geneva in January 1972 to be extremely unattractive and complicated.

4. Mr. Guest (United Kingdom) points out that it may be very doubtful in practice whether or not "it is in conformity with usage and reasonably possible for the seller to sell the goods", so that it will be difficult to decide whether the seller is entitled to sue for the price or only to claim damages. As a general rule, under the Sale of Goods Act, 1893 (United Kingdom), the seller may only maintain an action for the price (i) when the property (ownership) in the goods has passed to the buyer, or (ii) when the price is payable on a day certain irrespective of delivery. The relevant provisions of the 1893 Act are attached as appendix A to this report. It may also be helpful for the Working Group to consider article 2, section 2-709, of the Uniform Commercial Code (United States of America), which is attached as appendix B.

Article 62

5. The observations of Mr. Loewe on article 62, paragraph 1, are contained in paragraph 3 above. Mr. Guest agrees that it will be necessary to replace *ipso facto* avoidance with different provisions.

6. Neither representative has any comments on paragraph 2 of this article.

Article 63

7. Both representatives consider that this article is probably useful.

Article 64

8. Both representatives consider that article 64 should be retained—it corresponds with paragraph 3 of article 24 of the Working Group's draft.

Appendix A

SALE OF GOODS ACT, 1893

s.27 It is the duty ... of the buyer to accept and pay for [the goods] in accordance with the terms of the contract of sale.

s.49 (1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. . . .

Note

In English Law, the seller may also claim payment of the price if the goods perish after the risk of their loss has passed to the buyer.

If the contract merely provides for payment against shipping documents, and the buyer refuses to accept the tender of the documents, the seller cannot claim the price, for the property in the goods will not pass until the documents are transferred and the price is not payable on a day certain irrespective of delivery (*Stein, Forbes and Co., v. County Tailoring Co.* (1917) 86 L.J.Q.B.448 (c.i.f.); see also *Colley v. Overseas Exporters* [1921] 3 K.B.302 (f.o.b.—buyer fails to nominate effective ship—no action for price).

Where the seller cannot maintain an action for the price, he may still claim damages for non-acceptance under section 50 of the 1893 Act.

Appendix B

UNIFORM COMMERCIAL CODE, ART. 2

Section 2-709. Action for the price

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) Of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) Of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes impossible he may resell them at any time prior to the collection of the judgement. The net proceeds of any such resale must be credited to the buyer and payment of the judgement entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (section 2-610), a seller who is not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

VI

PROPOSAL OF THE REPRESENTATIVE OF JAPAN ON ARTICLE 68 OF ULIS

In the process of examination of articles 65-68 of ULIS, although we are still to continue our examination, our experts and I would like to make the suggestions intermediately that the word "accept" in paragraph 1 of article 68 should be replaced by "take".

VII

COMMENTS BY THE REPRESENTATIVE OF HUNGARY OF OF THE PROPOSAL OF THE REPRESENTATIVE OF JAPAN ON ARTICLE 68 OF ULIS

We appreciate highly your proposal and agree with your suggestion that the word "accept" in paragraph 1 of article 68 should be replaced by "take".

VIII

COMMENTS AND PROPOSALS OF THE REPRESENTATIVE OF FRANCE

Articles 69 and 70 of ULIS

Articles 69 and 70, which constitute chapter IV, section III, of ULIS, entitled "Other obligations of the buyer", have given rise to only very few comments (see

primarily documents A/CN.9/31, paragraphs 130 and 131).²

Article 69

1. Japan submitted that the provisions of this article made no provision for the many disputes that could arise between buyers and sellers regarding documentary credits, e.g. disputes over contracts providing for a letter of credit without specifying its precise contents, the time of opening the credit or the amount involved.

This point is well taken, but it might be asked whether such provisions, which are more than implicit in the existing text, would not overburden the text, without any great advantage, in comparison with the other ways of making provision for or guaranteeing payment of the price, namely, the acceptance of a bill of exchange and the giving of a banker's guarantee.

Article 70

2. Austria expressed the view that it was difficult to understand why the seller could only declare the contract avoided if he did so promptly, and that an additional period of time for the buyer to perform would be in the latter's interest.

It appears that the structure of this article is exactly the same as that of article 55, which contains identical provisions concerning other obligations of the seller. Logically, therefore, article 70 should be given the same wording as article 55. However, the Working Group was unable to consider any revision of the latter article at its last session (see document A/CN.9/62,³ para. 15, and annex I, para. 36), and it requested the representative of Japan to submit, together with the representatives of other countries including Austria, a study on that article in combination with the study on articles 50 and 51.

² UNCITRAL Yearbook, Vol. I: 1968-1970, part three, I, A, 1.

³ UNCITRAL Yearbook, Vol. III: 1972, part two, I, A, 5.