

5. With the exception of Burundi, Gabon, Sierra Leone and the Syrian Arab Republic, all members of the Commission were represented at the session.

6. The session was also attended by observers from the following States Members of the United Nations: Bhutan, Burma, Canada, Cuba, Iraq, Ireland, Netherlands, Niger, Peru, Poland, Romania, Senegal, Spain, Sweden, Trinidad and Tobago, Turkey, Uganda, Venezuela and Yugoslavia.

7. The following specialized agencies, intergovernmental and international non-governmental organizations were represented by observers:

- (a) *Specialized agencies*
International Monetary Fund (IMF).
- (b) *Intergovernmental organizations*
Commission of the European Communities; Council for Mutual Economic Assistance; Hague Conference on Private International Law; International Institute for the Unification of Private Law.
- (c) *International non-governmental organizations*
International Chamber of Commerce; International Union of Marine Insurance.

C. Election of officers

8. The Commission elected the following officers by acclamation:²

| | | |
|---------------|-------|-------------------------------|
| Chairman | | Mr. S. K. Date-Bah (Ghana) |
| Vice-Chairmen | | Mr. N. Gueiros (Brazil) |
| | | Mr. L. Kopač (Czechoslovakia) |
| | | Mr. L. Sevón (Finland) |
| Rapporteur | | Mr. R. K. Dixit (India) |

D. Agenda

9. The agenda of the session as adopted by the Commission at its 187th meeting, on 30 May 1978, was as follows:

1. Opening of the session
2. Election of officers
3. Adoption of the agenda; tentative schedule of meetings
4. International sale of goods
5. International payments

ingly, the General Assembly, at its twenty-fifth session, elected 14 members to serve for a full term of six years, ending on 31 December 1976, and, at its twenty-eighth session, elected 15 members to serve for a full term of six years, ending on 31 December 1979. The General Assembly, at its twenty-eighth session, also selected seven additional members. Of these additional members, the term of three members, selected by the President of the Assembly by drawing lots, would expire at the end of three years (31 December 1976) and the term of four members would expire at the end of six years (31 December 1979). To fill the vacancies on the Commission which would occur on 31 December 1976, the General Assembly, at its thirty-first session, on 15 December 1976, elected (or re-elected) 17 members to the Commission. Pursuant to resolution 31/99 of 15 December 1976, the new members took office on the first day of the regular annual session of the Commission immediately following their election (23 May 1977) and their term will expire on the last day prior to the opening of the seventh regular annual session of the Commission following their election (in 1983). In addition, the term of office of those members whose term would expire on 31 December 1979 was by the same resolution extended till the last day prior to the beginning of the regular annual session of the Commission in 1980.

² The election took place at the 187th and 188th meetings, on 30 May 1978, and at the 189th meeting, on 31 May 1978. In accordance with a decision taken by the Commission at its first session, the Commission has three Vice-Chairmen, so that, together with the Chairman and Rapporteur, each of the five groups of States listed in General Assembly resolution 2205 (XXI), sect. II, para. 1, will be represented on the bureau of the Commission (see *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*, para. 14 (Yearbook . . . 1968-1970, part two, I).

6. Programme of work of the Commission
7. Training and assistance in the field of international trade law
8. Future work
9. Other business
10. Date and place of the twelfth session
11. Adoption of the report of the Commission.

E. Decisions of the Commission

10. The decisions taken by the Commission in the course of its eleventh session were all reached by consensus, except for the decision referred to in paragraph 101, which was taken by a formal vote.

F. Adoption of the report

11. The Commission adopted the present report at its 209th meeting, on 16 June 1978.

CHAPTER II. INTERNATIONAL SALE OF GOODS

A. Formation and validity of contracts for the international sale of goods

12. The Commission, at its second session established a Working Group on the International Sale of Goods and requested it, *inter alia*, to ascertain which modifications of the Hague Convention of 1964 relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF) might render it capable of wider acceptance by countries of different legal, social and economic systems and to elaborate a new text reflecting such modifications.³

13. At its seventh session, the Commission considered the request of the International Institute for the Unification of Private Law (UNIDROIT) that it include in its programme of work the consideration of the "draft of a law for the unification of certain rules relating to the validity of contracts of international sale of goods" (the UNIDROIT draft).⁴ The Commission requested the Working Group "to consider the establishment of uniform rules governing the validity of contracts for the international sale of goods, on the basis of the above UNIDROIT draft, in connexion with its work on uniform rules governing the formation of contracts for the international sale of goods".⁵ At its ninth session, the Commission noted the views of the Working Group that it consider whether some or all of the rules on validity could appropriately be combined with rules on formation⁶ and gave the Working Group discretion as to whether to include some rules on validity among the provisions it was preparing on the formation of contracts for the international sale of goods.⁷ The Working Group completed its work on the preparation

³ *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 38, subpara. 3 (a) of the resolution contained therein (Yearbook . . . 1974, part one, II, A). The 1964 Hague Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods and the annexed Uniform Law (ULF) appears in the *Register of Texts of Conventions and Other Instruments Concerning International Trade Law*, vol. 1 (United Nations publication, Sales No. E.71.V.3), chap. I, sect. I.

⁴ *Ibid.*, *Twenty-ninth Session, Supplement No. 17 (A/9617)*, para. 89 (Yearbook . . . 1968-1970, part two, chap. III).

⁵ *Ibid.*, para. 93, para. 2 of the decision contained therein.

⁶ *Ibid.*, *Thirty-first Session, Supplement No. 17 (A/31/17)*, para. 24 (Yearbook . . . 1976, part one, II, A).

⁷ *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17)*, para. 27.

of such provisions at its ninth session, held at Geneva from 19 to 30 September 1977.⁸

14. At the present session the Commission had before it the following documents:

(a) A/CN.9/142 and Add. 1:* Report of the Working Group on the International Sale of Goods on the work of its ninth session. The addendum reproduced the text of a draft Convention on the Formation of Contracts for the International Sale of Goods as approved by the Working Group.

(b) A/CN.9/143:* Text of the draft of a uniform law for the unification of certain rules relating to validity of contracts for the international sale of goods, prepared by the International Institute for the Unification of Private Law (UNIDROIT). This document was circulated by the Secretary-General at the request of the Working Group on the International Sale of Goods made at its ninth session.

(c) A/CN.9/144:* Commentary on the draft Convention on the Formation of Contracts for the International Sale of Goods. This commentary was prepared and circulated by the Secretary-General in response to a request made by the Working Group on the International Sale of Goods at its ninth session.

(d) A/CN.9/145:* Incorporation of the provisions of the draft Convention on the Formation of Contracts for the International Sale of Goods into the draft Convention on the International Sale of Goods: analysis of drafting problems. This document was prepared by the Secretariat upon a request made by the Working Group on the International Sale of Goods at its ninth session.

(e) A/CN.9/146 and Add. 1 to 4:* Analytical compilation of comments by Governments and international organizations on the draft Convention on the Formation of Contracts for the International Sale of Goods and on the UNIDROIT draft of a uniform law for the unification of certain rules relating to validity of contracts for the international sale of goods.

1. *Relationship of the draft Convention on the Formation of Contracts for the International Sale of Goods to the draft Convention on the International Sale of Goods*⁹

15. The Commission considered the question, which it had deferred at its tenth session, whether the rules on formation of contracts for the international sale of goods should be the subject-matter of a convention separate from the Convention on the International Sale of Goods.

16. A single consolidated text dealing with formation of contracts and containing substantive rules governing the obligations of the buyer and seller was supported on the basis that an integrated text would be more appropriate than two conventions because of the close relationship between the subject-matters of each draft convention. Furthermore, the existence of two separate conventions would inevitably lead to dis-

crepancies between them as was illustrated by differences that already existed between the present draft texts and also by the differences that existed between the Convention on the Limitation Period in the International Sale of Goods and the present draft texts. A single text would also tend to encourage ratification of both the rules on formation and sales which would assist the harmonization and unification of international trade law.

17. Furthermore, although the existence of two separate conventions would enable States to ratify either the rules on formation or the rules on sale or both, the same result could be achieved by permitting separate ratification of those chapters in an integrated text which contains the rules on formation and sales. The benefits of a single text were generally considered to outweigh the problems that some States might encounter in implementing into their national law partial ratification of an entire text.

18. After discussion, the Commission decided to integrate the draft Convention on the Formation of Contracts with the draft Convention on the International Sale of Goods into a single text to be entitled "Draft Convention on Contracts for the International Sale of Goods".

2. *Duration of conference of plenipotentiaries to consider integrated text*¹⁰

19. The Commission was of the view that it would be difficult to finalize within four weeks an integrated Convention which contained approximately 80 substantive articles. There was a substantial body of opinion, based on experience in dealing with texts prepared by the Commission, that the adoption of a text of this length and complexity would require about six weeks. However, in deference to the view of several representatives that it would be difficult and costly for their countries to send delegations to a Conference of six weeks' duration, the Commission decided to recommend to the General Assembly that a conference of plenipotentiaries be convened for five weeks with the possibility of extending the Conference for a further week if such extension appeared necessary.

3. *Establishment of a Drafting Group*

20. The Commission, at its 201st meeting on 8 June 1978, established a Drafting Group composed of the representatives of Chile, Egypt, France, Hungary, India, Japan, Mexico, Nigeria, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland.

21. The Drafting Group was requested to integrate the draft Convention on Formation and the draft Convention on the International Sale of Goods into a single Convention. In doing so, the Drafting Group was requested to redraft the articles on sphere of application and general provisions as would be necessary for an integrated Convention. The Drafting Group was also requested to insert the rules on formation of contracts and the rules on sales in separate Parts of the Convention so that it would be possible to prepare a final clause which would permit a State to ratify or accept the

* Reproduced in this volume, part two, I.

⁸ Report of the Working Group on the International Sale of Goods on the work of its ninth session (Geneva, 19-30 September 1977), A/CN.9/142 and Add. 1.* The text of the provisions prepared by the Working Group is set out in the annex to the report (A/CN.9/142/Add.1).

⁹ The Commission considered this subject at its 197th meeting, on 6 June 1978; for the summary record of this meeting, see A/CN.9/SR.197.

¹⁰ The Commission considered this subject at its 197th meeting, on 6 June 1978; a summary record of this meeting is contained in A/CN.9/SR.197.

Convention either in respect of formation of contracts alone, in respect of sales alone or in respect of both.

22. In addition, the Drafting Group was requested to redraft articles of the draft Convention in accordance with the decisions taken by the Commission, to consider drafting suggestions made during the course of the Commission's discussions and, generally, to examine the text from the point of view of consistency of the terminology used and to ensure consistency between different language versions.

4. *Consideration of the report of the Drafting Group*¹¹

23. After considering the report of the Drafting Group, the Commission decided that article 7 of the draft Convention on Formation, which the Drafting Group had placed in the general provisions of the integrated draft Convention, should instead be included in part II of the draft Convention relating to the formation of the contract. The Commission also made a few drafting changes to various provisions. With these changes, the Commission adopted the text of the draft Convention on Contracts for the International Sale of Goods.

5. *Relationship of draft Convention with Prescription Convention*¹²

24. It was noted that the sphere of application provisions of the draft Convention differed in several respects from the equivalent provisions in the Convention on the Limitation Period in the International Sale of Goods. The Commission noted that, at the United Nations Conference on Prescription (Limitation) in the International Sale of Goods at which that Convention had been concluded, the possibility had been envisaged that, at such time as a revision of the Uniform Law on the International Sale of Goods was completed by the Commission, a protocol would be prepared to harmonize the sphere of application and general provisions of the two conventions.¹³

25. The Commission decided to recommend to the General Assembly that the conference of plenipotentiaries to be convened to conclude the Convention on Contracts for the International Sale of Goods be authorized to consider the desirability of adopting such a protocol. The Commission also requested the Secretary-General to prepare the draft of such a protocol for submission to the conference of plenipotentiaries.

6. *Summary of deliberations of the Commission on the draft Convention on the Formation of Contracts for the International Sale of Goods*

26. A summary of the Commission's deliberations is set forth in annex I below.

Decision of the Commission

27. At its 209th meeting on 16 June 1978, the Commission adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. *Approves* the text of the draft Convention on Contracts for the International Sale of Goods, as set forth below;

2. *Requests* the Secretary-General:

(a) To prepare, under his own authority, a commentary on the provisions of the draft Convention;

(b) To prepare draft provisions concerning implementation, reservations and other final clauses and, in particular, a provision which would allow a Contracting State to ratify or accept the Convention in respect of parts I and II or in respect of parts I and III or in respect of parts I, II and III;

(c) To circulate the draft Convention, together with the commentary and draft provisions concerning implementation, reservations and other final clauses, to Governments and interested international organizations for comments and proposals;

(d) To place before the conference of plenipotentiaries to be convened by the General Assembly the comments and proposals received from Governments and international organizations;

(e) To prepare an analytical compilation of such comments and proposals and to submit it to the conference of plenipotentiaries;

3. *Recommends* that the General Assembly should convene an international conference of plenipotentiaries, as early as practicable, to conclude, on the basis of the draft Convention approved by the Commission, a Convention on Contracts for the International Sale of Goods;

4. *Further recommends* that the General Assembly should authorize the conference of plenipotentiaries to consider the desirability of preparing a Protocol to the Convention on the Limitation Period in the International Sale of Goods, which would harmonize its provisions in respect of sphere of application with those in the Convention on Contracts for the International Sale of Goods as it may be adopted by the Conference.

B. *Text of the draft Convention on Contracts for the International Sale of Goods*

28. The draft Convention on Contracts for the International Sale of Goods reads as follows:

DRAFT CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

PART I. SPHERE OF APPLICATION AND GENERAL PROVISIONS

Chapter I. Sphere of application

Article 1

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

(a) When the States are Contracting States; or

(b) When the rules of private international law lead to the application of the law of a Contracting State.

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

¹¹ The Commission considered this subject at its 207th and 208th meetings on 14 June 1978; summary records of these meetings are contained in A/CN.9/SR.207 and 208.

¹² The Commission considered this subject at its 208th meeting, on 14 June 1978; a summary record of this meeting is contained in A/CN.9/SR.208.

¹³ See generally the note by the Secretariat on the relationship of the draft Convention on the International Sale of Goods and the draft Convention on the Formation of Contracts for the International Sale of Goods to the Convention on the Limitation Period in the International Sale of Goods (A/CN.9/XI/CRP.2).

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.

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.

Article 3

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

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

Article 4

This Convention 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.

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.

Chapter II. General provisions

Article 6

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

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.

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.

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.

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.

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.

PART II. FORMATION OF THE CONTRACT

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.

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.

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.

Article 15

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

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 which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed provided that the act is performed within the period of time laid down in paragraph (2) of this article.

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.

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.

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

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.

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.

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.

PART III. SALES OF GOODS

Chapter I. General provisions

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 a result.

Article 24

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

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.

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.

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.

Chapter II. Obligations of the seller

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.

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

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.

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.

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.

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.

Section II. Conformity of the goods and third party claims

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.

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.

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.

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.

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.

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.

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 of claim.

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.

Section III. Remedies for breach of contract by the seller

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.

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.

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.

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.

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 he 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.

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.

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.

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.

Chapter III: Obligations of the buyer

Article 49

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

Section I. Payment of the price

Article 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.

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.

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.

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.

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.

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.

Section II. *Taking delivery**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.

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

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.

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.

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.

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.

Chapter IV. *Provisions common to the obligations of the seller and of the buyer*Section I. *Anticipatory breach and instalment contracts.**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.

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.

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.

Section II. Exemptions

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.

Section III. Effects of avoidance

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.

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 of the buyer; or

(b) If the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 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.

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.

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 declared the contract avoided or required the seller to deliver substitute goods.

Section IV. Damages

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.

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.

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.

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.

Section V. Preservation of the goods

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.

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.

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.

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 articles 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.

Chapter V. Passing of risk

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.

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.

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.

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.

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.

Article (X)

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.

CHAPTER III. INTERNATIONAL PAYMENTS

Negotiable instruments

29. The Commission had before it two reports of the Working Group on International Negotiable Instruments: the report on the work of the Working Group's fifth session, held in New York from 18 to 29 July 1977 (A/CN.9/141),* and the report on the work of its sixth session (A/CN.9/147),* held at Geneva from 3 to 13 January 1978. These reports set forth the progress so far made by the Working Group in its work on the preparation of a draft convention on international bills of exchange and international promissory notes. The proposed convention would establish uniform rules applicable to an international negotiable instrument (bill of exchange or promissory note) for optional use in international payments.

Report of the Working Group (fifth session)

30. As indicated in its report, the Working Group at its fifth session began consideration of the revised text of the draft uniform law on international bills of exchange and international promissory notes, prepared by the Secretariat on the basis of the deliberations and decisions of the Working Group at its four previous sessions relative to the draft uniform law first prepared by the Secretary-General in response to a decision of the Commission¹⁴ and referred by the Commission to the Working Group.¹⁵ The report indicates that the Working Group at this session completed consideration of articles 1 to 23 and commenced consideration of article 24.

31. The report on the work of its fifth session sets forth the deliberations and conclusions of the Working Group with respect to the provision of the draft uniform law regarding sphere of application of the rules, formal requirements of an international negotiable instrument, completion of an incomplete instrument, interpretation, transfer of an instrument and the rights of a holder.

* Reproduced in this volume, part two, II.

¹⁴ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17 (A/8417)*, para. 35 (Yearbook . . . 1971, part one, II, A). The text of the draft uniform law, with commentary, appears in A/CN.9/WG.IV/WP.2.

¹⁵ *Ibid.*, *Twenty-seventh Session, Supplement No. 17 (A/8717)*, para. 61 (Yearbook . . . 1972, part one, II, A).