

### Article 61

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

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

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

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

#### REMEDIES AVAILABLE TO THE SELLER (ARTICLE 61 (1))

1. Article 61 (1) describes in general terms the various remedies available to the seller when the buyer does not perform one of its obligations. Where it states that the seller may “exercise the rights provided in articles 62 to 65,” article 61 (1) (a) merely refers to those provisions: each of the referenced provisions itself authorizes an aggrieved seller to exercise the rights described therein, so that those rights would be available to the seller even in the absence of the reference in article 61 (1) (a).<sup>1</sup> However, in stating that the seller may “claim damages as provided in articles 74 to 77,” article 61 (1) (b) serves as the legal basis for the seller’s right to claim compensation for the loss sustained; articles 74 to 77 merely specify the way in which damages, once they are found to be awardable, are to be measured. It is thus correct to cite article 61 (1) (b) as the source of a seller’s right to claim damages, as various court and arbitral decisions have done,<sup>2</sup> and not to refer merely to, for example, article 74.

2. Failure on the part of the buyer to perform any one of its obligations is the only prerequisite for recourse to the remedies referred to in article 61 (1). Thus, as one decision stated, an aggrieved seller’s recourse to such remedies is not subject to the requirement that the seller prove that the buyer was at fault.<sup>3</sup> It follows from this, *inter alia*, that payment of damages does not require the establishment of wrongful conduct on the buyer’s part. However, the buyer can, where applicable, avoid an award of damages if the requirements in article 79 or 80 are met.

3. Article 61 (1) mentions only the principal remedies available to an aggrieved seller. Other remedies in addition to those referred to in this provision may be available when a seller suffers a breach of contract by the buyer. These remedies are set out in articles 71, 72, 73, 78 and 88 of the Convention.<sup>4</sup> Unless otherwise agreed, furthermore, the seller additionally has the right, in principle, to retain the goods until the buyer has settled the price (article 58 (1) and (2)). Also, the question arises as to whether the Vienna Convention applies to setting-off against the sale price claims that a buyer may have against the seller, such as a damages claim

for non-performance by the seller of an obligation owed to the buyer. Since nothing in the Convention addresses this question expressly, most court decisions hold that set-off is subject to national laws.<sup>5</sup>

4. One particular implementation difficulty in regard to article 61 (1) arises in cases where the contract of sale imposes on the buyer obligations not provided for by the Convention. As is indicated in article 61 (1), failure by the buyer to perform “any of his obligations under the contract or this Convention” gives the seller recourse to the remedies provided in the Convention, even when the failure relates to a contractual obligation created by the exercise of party autonomy. Thus, in these cases, the national law governing the contract on matters not covered by the Convention does not have to be applied in order to determine the seller’s remedies, as the approach generally adopted by the courts confirms.<sup>6</sup>

#### CLAIMING DAMAGES IN COMBINATION WITH OTHER REMEDIES (ARTICLE 61 (2))

5. Article 61 (2) states that the seller is not deprived of the right to claim damages by choosing to exercise its right to other remedies.<sup>7</sup> This provision is particularly useful when the seller avoids the contract.<sup>8</sup> CISG articles 75 and 76 indicate how damages are to be calculated in the event of contract avoidance.<sup>9</sup>

#### REFUSAL OF A PERIOD OF GRACE (ARTICLE 61 (3))

6. Under article 61 (3), a judge or arbitrator is deprived of the power to grant the buyer a period of grace for performance of its obligations, including the obligation to pay the price. Periods of grace provided for by various national laws have been judged contrary to the needs of international trade.<sup>10</sup> Only the seller can grant the buyer additional periods of time for performance of contractual obligations.<sup>11</sup> However, it is generally accepted that domestic rules relating to insolvency proceedings remain applicable and thus supersede article 61 (3).<sup>12</sup>

## Notes

<sup>1</sup> Article 61 (1) (a) is, nevertheless, cited in many decisions: Okrésny súd Bratislava III, Slovakia, 22 May 2008, available in Slovak on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 15 November 2006, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 7 April 2006, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 2 June 2005, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 10 February 2005, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 28 June 2004, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 17 June 2004, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 19 March 2004, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 12 March 2004, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Tribunal fédéral, Switzerland, 19 February 2004, *Revue suisse de droit international et européen*, 2005, 121, available in French on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 3 February 2004, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 2 February 2004, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Landgericht Mönchengladbach, Germany, 15 July 2003, *Internationales Handelsrecht*, 2003, 229, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 496 [Hosjaistvennyi sud Gomel'skoi oblasti, Belarus, 6 March 2003]; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 17 February 2003, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 978 [China International Economic and Trade Arbitration Commission, People's Republic of China, 30 December 2002]; CLOUT case No. 629 [Kantonsgericht Zug, Switzerland, 12 December 2002], *Internationales Handelsrecht*, 2004, 65; CLOUT case No. 886 [Handelsgericht St. Gallen, Switzerland, 3 December 2002] (Sizing machine case), *Schweizerische Zeitschrift für internationales und europäisches Recht*, 2003, 104, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 636 [Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, Argentina, 21 July 2002] (*Cervecería y Maltería Paysandú S.A. v. Cervecería Argentina S.A.*); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 7 June 2002, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 539 [Oberlandesgericht Graz, Austria, 31 May 2002], available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 25 May 2001, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation [Russian Federation, 25 January 2001], available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 807 [China International Economic and Trade Arbitration Commission, People's Republic of China, 30 June 1999], *Zhōngguó guójì jīngjì mào yì zhōngcái cáijué shū xuānbǎn*, vol. 1999, 2004, 2133, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); China International Economic and Trade Arbitration Commission, People's Republic of China, 11 June 1999, *Zhōngguó guójì jīngjì mào yì zhōngcái cáijué shū xuānbǎn*, vol. 1999, 2004, 2064, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>2</sup> See Landgericht München, Germany, 18 May 2009, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org); Kantonsgericht Zug, Switzerland, 27 November 2008, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Kantonsgericht St. Gallen, Switzerland, 13 May 2008, *Internationales Handelsrecht*, 2009, 161, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 1234 [Bundesgerichtshof, Germany, 27 November 2007], *Internationales Handelsrecht*, 2008, 49], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Handelsgericht Aargau, Switzerland, 19 June 2007, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Zivilgericht Basel-Stadt, Switzerland, 8 November 2006, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 826 [Oberlandesgericht München, Germany, 19 October 2006], *Internationales Handelsrecht*, 2007, 30; CLOUT case No. 930 [Tribunal cantonal du Valais, Switzerland, 23 May 2006], *Revue suisse de droit international et européen*, 2008, 206; CLOUT case No. 721 [Oberlandesgericht Karlsruhe, Germany, 8 February 2006], *Internationales Handelsrecht*, 2006, 106; CLOUT case No. 746 [Oberlandesgericht Graz, Austria, 29 July 2004], available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Düsseldorf, Germany, 22 July 2004, *Internationales Handelsrecht*, 2005, 29, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 893 [Amtsgericht Willisau, Switzerland, 12 March 2004]; Landgericht Berlin, Germany, 21 March 2003, available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Landgericht Göttingen, Germany, 20 September 2002, *Internationales Handelsrecht*, 2005, 29, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Landgericht München, Germany, 30 August 2001, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Cour de Justice de Genève, Switzerland, 13 September 2002, available in French on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Cour d'appel de Colmar, France, 12 June 2001, available in French on the Internet at [www.cisg-france.org](http://www.cisg-france.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Amtsgericht Viechtach, Germany, 11 April 2002, *Das Juristische Büro*, 2002, 429, available in German and in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 986 [China International Economic and Trade Arbitration Commission, People's Republic of China, 4 February 2002]; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 22 January 2002, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 361 [Oberlandesgericht Braunschweig, 28 October 1999], *Transportrecht-Internationales Handelsrecht*, 2000, 4; CLOUT case No. 717 [China International Economic and Trade Arbitration Commission, People's Republic of China, 6 January 1999], *Zhōngguó guójì jīngjì mào yì zhōngcái cáijué shū xuānbǎn*, vol. 1999, 2004, 1417; CLOUT case No. 288 [Oberlandesgericht München, 28 January 1998], *Recht der Internationalen Wirtschaft*, 1998, 559; International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 29 September 1997, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 283 [Oberlandesgericht Köln, 9 July 1997], available in German on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); China International Economic and Trade Arbitration Commission, People's Republic of China, 6 August 1996,

*Zhōngguó guójì jīngjì mào yì zhòngcái cáijué shū xuǎnbiān*, vol. 1996, 2004, 1621, available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 376 [Landgericht Bielefeld, Germany, 2 August 1996]; CLOUT case No. 169 [Oberlandesgericht Düsseldorf, Germany, 11 July 1996], *Recht der Internationalen Wirtschaft*, 1996, 958; CLOUT case No. 166 [Schiedsgericht der Handelskammer Hamburg, Germany, 21 March 1996, 21 June 1996], *Neue Juristische Wochenschrift*, 1996, 3229; CLOUT case No. 133 [Oberlandesgericht München, Germany, 8 February 1995], available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Oberlandesgericht Hamburg, Germany, 14 December 1994, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org); CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993], *Recht der Internationalen Wirtschaft*, 1993, 934; CLOUT case No. 47 [Landgericht Aachen, Germany, 14 May 1993], *Recht der Internationalen Wirtschaft*, 1993, 760; CLOUT case No. 227 [Oberlandesgericht Hamm, Germany, 22 September 1992], *Transportrecht-Internationales Handelsrecht*, 1999, 24.

<sup>3</sup> CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993], *Recht der Internationalen Wirtschaft*, 1993, 934 (see full text of the decision).

<sup>4</sup> See Landgericht München, Germany, 18 May 2009, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org) (the decision cites article 61 (b) in conjunction with article 78); CLOUT case No. 296 [Amtsgericht Berlin-Tiergarten, Germany, 13 March 1997], *Praxis des Internationalen Privat- und Verfahrensrechts* (IPRax), 1999, 172 (the decision cites article 61 (b) in conjunction with article 78).

<sup>5</sup> See the Digest for article 4.

<sup>6</sup> See *Krajský súd v Nitre*, Slovakia, 12 November 2008, available in Slovak on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (obligation to return the packaging of the goods); *Kantonsgericht St. Gallen*, Switzerland, 13 May 2008, *Internationales Handelsrecht*, 2009, 161, available in German on the Internet at [www.globalsaleslaw.org](http://www.globalsaleslaw.org), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (breach of a re-export prohibition); CLOUT case No. 154 [Cour d'appel, Grenoble, France, 22 February 1995], *Journal du droit international*, 1995, 632 (breach of a re-export prohibition) (see full text of the decision); CLOUT case No. 217 [Handelsgericht des Kantons Aargau, Switzerland, 26 September 1997], *Schweizerische Zeitschrift für Internationales und Europäisches Recht*, 1998, 78 (violation of an exclusivity agreement); CLOUT case No. 311 [Oberlandesgericht Köln, Germany, 8 January 1997] (breach of an agreement to correct a lack of conformity within an agreed period of time); CLOUT case No. 104 [Arbitration Court of the International Chamber of Commerce, 1992 (Arbitral award No. 7197)], *Journal du droit international*, 1993, 1028 (failure to open a letter of credit); CLOUT case No. 261 [Bezirksgericht der Saane, Switzerland, 20 February 1997], *Schweizerische Zeitschrift für internationales und europäisches Recht*, 1999, 195; CLOUT case No. 631 [Supreme Court of Queensland, Australia, 17 November 2000] (*Downs Investments in liq. v. Perwaja Steel*), 2000 WL 33657824 (QSC), [2000] QSC 421, available in English on the Internet at [www.austlii.edu.au](http://www.austlii.edu.au).

<sup>7</sup> See, for a recital of this principle, *Polimeles Protodikio Athinon*, Greece, 2009, English abstract available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, Russian Federation, 30 May 2001, available on the Internet in English at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 261 [Bezirksgericht der Saane, Switzerland, 20 February 1997], *Schweizerische Zeitschrift für internationales und europäisches Recht*, 1999, 195.

<sup>8</sup> See, as examples, CLOUT case No. 986 [China International Economic and Trade Arbitration Commission, People's Republic of China, 4 February 2002]; *Cour de Justice de Genève*, Switzerland, 13 September 2002, available in French on the Internet at [www.cisg-online.ch](http://www.cisg-online.ch), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 261 [Bezirksgericht der Saane, Switzerland, 20 February 1997], *Schweizerische Zeitschrift für internationales und europäisches Recht*, 1999, 195.

<sup>9</sup> See the Digest for article 75 and article 76.

<sup>10</sup> United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, p. 48.

<sup>11</sup> *Rechtbank van Koophandel Hasselt*, Belgium, 25 February 2004, available in Dutch on the Internet at [www.law.kuleuven.be](http://www.law.kuleuven.be), available in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); *Rechtbank van Koophandel Hasselt*, Belgium, 2 June 1999, available in Dutch on the Internet at [www.law.kuleuven.be](http://www.law.kuleuven.be), English abstract available on the Internet at [www.unilex.info](http://www.unilex.info); *Rechtbank van Koophandel Hasselt*, Belgium, 5 May 1999, text of the decision in Dutch and an English abstract available on the Internet at [www.law.kuleuven.be](http://www.law.kuleuven.be).

<sup>12</sup> *Vysšij Choziajstviennyj Sud Rjespubliki Bielaru*, kassacionnoj kolliegii (Supreme Economic Court of the Republic of Belarus, Appeal Committee), Belarus, 31 July 2006, available in Russian and in English on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (application of national measures of financial support in the agricultural sector); CLOUT case No. 187 [U.S. District Court, Southern District of New York, United States, 21 July 1997], 1997 U.S. Dist. LEXIS 10630, available in English on the Internet at [www.unilex.info](http://www.unilex.info) (*obiter dictum* supporting the applicability of bankruptcy law to sales governed by the Vienna Convention; the case was concerned with a distribution agreement not governed by the Convention).