I. INTERNATIONAL SALE OF GOODS

A. Uniform rules on substantive law

1. *Analysis of comments and proposals relating to articles 1-17 of the Uniform Law on International Sale of Goods (ULIS) 1964: note by the Secretary-General (A/CN.9/WG.2/WP.6)* *

CONTENTS

	Paragraphs
I. Introduction	1–4
II. Analysis of the comments and proposals	5–88
A. Articles 1 and 2: problems of scope of application of the law	5–38
1. The definition of international sale (article 1 of ULIS)	6–7
(*a*) Proposed basic changes	8–17
(i) Elimination of tests other than international character of offer and acceptance	8–10
(ii) Deletion of tests related to offer and acceptance (paras. 1 (*b*) and 1 (*c*))	11–12
(iii) Under international shipment test, extension to include international shipment prior to the contract and shipment of goods taken or purchased on high seas	13–15
(iv) Exclusion of contracts for the construction and installation of a complete works (industrial plant and machinery)	16–17
(*b*) Proposed drafting changes	18–25
(i) More than one place of business	19–20
(ii) Appropriateness of the use of the word "involves" in article 1, para. 1 (*a*)	21–24
(iii) Appropriateness of the use of the word *transport* in the French version of article 1, para. 1 (*a*)	25
2. Problems concerned with the applicability of the Law with special reference to the contact between a Contracting State and the parties to a transaction	26–34
(*a*) Proposed changes in the text of articles 1 and 2 of ULIS with respect to the applicability of the Law	26–30
(*b*) Proposals relating to provisions for reservations and declarations	31–34
3. Changes in arrangement	35–38
B. Article 3: exclusion of the application of the Law by the parties	39–44
C. Article 4: application of the Law by choice of the parties	45–46
D. Article 5: applicability of mandatory rules of national laws; consumer protection	47–55
E. Article 7: commercial and civil character of the transaction	56–59
F. Article 9: usages	60–63
G. Article 10: definition of fundamental breach	64–70
H. Article 11: definition of the expressions "promptly" and "within a reasonable time"	71–73
I. Article 12: definition of the expression "current price"	74–77
J. Article 13: meaning of the expression "a party knew or ought to have known"	78–80
K. Article 15: form of the contract; requirement of writing	81–84
L. Article 17: questions not governed by the Law	85–88

* 19 November 1970.

I. INTRODUCTION

1. The United Nations Commission on International Trade Law at its third session determined the working methods which it decided to apply with respect to uniform rules of the international sale of goods. The decision of the Commission[1] provides, *inter alia,* as follows:

"72. The Commission *decided,* on the recommendation of the Working Group, to adopt the following working methods with respect to uniform rules of the international sale of goods:

"(*a*) The Working Group on the International Sale of Goods, established at the second session of the Commission, should continue its work under the terms of reference set forth in paragraph 3 (*a*) of the draft resolution adopted by the Commission at its second session;

"(*b*) Instead of considering selected items, the Working Group should consider ULIS systematically, chapter by chapter, giving priority to articles 1-17;

"(*c*) Members of the Working Group are requested to submit their proposals in writing and in time to allow the Secretary-General to circulate such proposals prior to the meeting;

"(*d*) Representatives of members of the Working Group, alone or in co-operation with representatives of other members, should be entrusted, if so willing, with the examination and redrafting of the articles referred to in paragraph (*b*) above, and any other provisions of ULIS related to those articles. Such representatives should take into consideration the relevant suggestions of Governments, the documents mentioned in the report of the Commission on the work of its third session, and the decisions taken at that session as well as the practices of international trade;

"(*e*) The representatives entrusted with the tasks referred to in paragraph (*d*) above shall submit the result of their work, including explanatory comments on each article, to the Secretary-General not later than 30 June 1970. The Secretary-General is requested to transmit these reports to other members of the Working Group on Sales for comments. The comments which reach the Secretary-General before 31 August 1970 shall be transmitted to the forthcoming session of the Working Group. The Secretary-General is also requested to submit his observations to the Working Group, whose report should contain explanatory comments on each issue or article of ULIS recommended for approval."

2. Pursuant to the above decision, the Working Group on the International Sale of Goods met during the third session of the Commission and entrusted representatives of its members with the examination and redrafting of the first 17 articles of the Uniform Law on the International Sale of Goods (ULIS). Representatives of other members of the Working Group were requested to act as consultants with respect to this examination of specified articles. All the representatives who were entrusted with the examination of an article of ULIS have submitted reports giving the results of their examination; some of these reports also set forth the opinions of the consultants. In accordance with subparagraph (*c*) of the Commission's decision, quoted in paragraph 1 above, the Secretary-General has circulated the reports and observations received from members of the Working Group to the other members of the Working Group for comments. Several such comments were submitted.

3. The following reports, observations, proposals and comment relating to articles 1 to 17 of ULIS have been submitted to the Secretary-General and are annexed to this analysis:[2]

On article 1

1. Report by the representative of the United States of America. This report also deals with the observations made by the representative of the USSR, separately listed under 2 below (annex I).
2. Observations and proposal by the representative of the USSR (annex II).
3. Revision of article 1 by the representative of the United Kingdom (annex III).

On article 2

4. Report by the representative of Japan. This report also deals with the observations made by the representative of Mexico and, in addition to article 2, it affects article 1 and the question of reservations and declarations relating to the field of application of the law (annex IV).

On article 3

5. Report by the representative of the United Kingdom. The report also includes comments by the representatives of Tunisia and Kenya (annex V).

On article 5

6. Report by the representative of Norway (annex VI).
7. Comment by the representative of France (annex VII).

On article 9

8. Draft revision of the article and explanatory comments by the representative of Hungary (annex VIII).

On articles 10 to 13 and 15

9. Draft revision of the articles and explanatory coments by the representative of the USSR (annex IX).

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[1] Report of the United Nations Commission on International Trade Law on the work of its third session, *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17* (A/8017) (hereinafter referred to as UNCITRAL report on third session (1970). *Yearbook of the United Nations Commission on International Trade Law* (hereinafter referred to as UNCITRAL Yearbook), *vol. I: 1968-1970,* part two, III, A, para. 72.

[2] For the annexes (original language version only), see A/CN.9/WG.2/WP.6/Add.1; not reproduced in this volume.

10. Comments on articles 10-13 and 15 by the representative of France (Comments on the proposal of the USSR listed under item 9 above) (annex X).

11. Note on the proposal of the USSR for the amendment of article 15 (item 9 above) by the representative of the United Kingdom (annex XI).

12. Comment on articles 10-13 by the representative of the United Kingdom (annex XII).

13. Draft revision of articles 10 and 15 and comments on articles 11-13 by the delegation of Ghana (annex XIII).

On article 17

14. Report by the representative of France (annex XIV).

4. Several of the reports discuss a number of distinct issues that are also the subject of comments and proposals in other reports. This report brings together and analyses the proposals and comment on specific issues to facilitate their consideration by the Working Group.

II. Analysis of the comments and proposals

A. Articles 1 and 2: problems of scope of application of the Law

5. The subjects of article 1 and article 2 are related and some representatives have suggested the consolidation of these two articles. In approaching these problems, it may be helpful to follow the following order: (1) problems concerned primarily with the definition of international sale (article 1 of ULIS); (2) problems concerned with the applicability of the Law with special reference to the contact between a contracting State and the parties to a transaction (article I-1 (introduction) and article 2 of ULIS); (3) problems of arrangement, including possible consolidation of the solutions reached under (1) and (2) above.

1. *The definition of international sale (article 1 of ULIS)*

6. Article 1 of ULIS reads as follows:

"1. The present Law shall apply to contracts of sale of goods entered into by parties whose places of business are in the territories of different States, in each of the following cases:

"(*a*) where the contract involves the sale of goods which are at the time of the conclusion of the contract in the course of carriage or will be carried from the territory of one State to the territory of another:

"(*b*) where the acts constituting the offer and the acceptance have been effected in the territories of different States;

"(*c*) where delivery of the goods is to be made in the territory of a State other than that within whose territory the acts constituting the offer and the acceptance have been effected.

"2. Where a party to the contract does not have a place of business, reference shall be made to his habitual residence.

"3. The application of the present Law shall not depend on the nationality of the parties.

"4. In the case of contracts by correspondence. offer and acceptance shall be considered to have been effected in the territory of the same State only if the letters, telegrams or other documentary communications which contain them have been sent and received in the territory of that State.

"5. For the purpose of determining whether the parties have their places of business or habitual residences in "different States", if a valid declaration to that effect made under Article II of the Convention dated the first day of July 1964 relating to a Uniform Law on the International Sale of Goods is in force in respect of them.

7. The Commission at its third session approved [3] the conclusion of the Working Group that, "in general, the definition set forth in article 1 of ULIS was satisfactory". [4] However, several comments were made suggesting improvements in the definition. Some of the proposals are of a basic character, suggesting the elimination of parts of article 1, extensions of the coverage, and other changes in substance. Other proposals involve drafting refinements directed to the present language of article 1. Adoption of the basic proposals directed to the substance of the article would make many of the drafting refinements irrelevant; the Group may therefore wish to start with the proposals for basic changes.

(a) *Proposed basic changes*

(i) *Elimination of tests other than international character of offer and acceptance*

8. The study submitted by the representative of the United Kingdom [5] suggested that difficulties of interpretation are presented by the following tests now contained in article 1: (i) the international character of the parties (paras. 1 and 5); (ii) international shipment (para. 1(*a*)); and (iii) offer and acceptance in one State and delivery in another (para. 1(*c*)).

9. Consequently, this study suggested that the one test for applicability (apart from agreement of the parties should be the international character of the offer and acceptance. This proposal which also implements another United Kingdom proposal referred to in paragraph 46 below, was embodied in the following draft:

"1. This law shall apply

'(i) to the extent that it is appropriate to any contract if the parties thereto have chosen it as the law of the contract; *and*

'(ii) to any contract for the sale of goods (irrespective of the nationality or places of business of the parties) if the acts constituting the offer and acceptance have been effected in the territories of different Contracting States neither of which had adhered to the Convention

[3] UNCITRAL Report on third session (1970, para. 51; UNCITRAL Yearbook, vol. I: 1968-1970, part two, III.

[4] A/CN.9/35. Report of the Working Group on the International Sale of Goods on its first session, paras. 41 and 43; UNCITRAL Yearbook, vol. I: 1968-1970, part three, I, A, 2.

[5] Annex III.

governing this Law subject to a reservation under Article V.'

"2. Same as paragraph 4 of the present text of article 1.

"3. Same as paragraph 5 of the present text of article 1."

The study noted that paragraph (i) is designed to incorporate the first part of article 4 of ULIS. It was suggested further that account should be taken of the last three lines of article 4 ("it does not affect the application of any mandatory provision of law which would have been applicable if the parties had not chosen the Uniform Law") in relation to an article in the above suggested form. [6]

10. The study by the representative of the United Kingdom expressed the view that it would be difficult to produce any clear formulation extending the law beyond that proposed in paragraph 9 above. However, it was noted that consideration might be given to the concept of extending the law's ambit to cases "where the parties who effected their contract within the territory of a single Contracting State each did so in the clear knowledge that their contract was of an international character in that it was a contract between business concerns in different Contracting States". [7]

(ii) *Deletion of tests related to offer and acceptance (paras. 1* (b) *and 1* (c)*)*

11. In connexion with the above proposal it would be appropriate to consider the contrasting proposal set forth in the study by the USSR. This study stressed the fortuitous nature of the place of offer and acceptance, and therefore proposed that the tests relating to offer and acceptance in paras. 1 (*b*) and 1 (*c*) of ULIS be deleted. [8] Accordingly, only the tests relating to (*a*) the international character of the parties and (*b*) the international shipment of the goods would be maintained. It was proposed that article 1, para. 1 of ULIS read as follows:

"*Alternative I.* 'The present Law shall apply to contracts of sale of goods entered into by the parties whose places of business are in the territories of different States, where the contract contemplates that the goods are at the time of the conclusion of the contract or will be subject to transport to the territory of a given State from abroad or that the goods have been subject to such transport, but remained unsold prior to the conclusion of the contract'.

"*Alternative II.* 'The present Law shall, apply to contracts of sale of goods entered into by the parties, whose places of business are in the territories of different States, where the parties at the time of the conclusion of the contract knew or ought to have known that the goods are at this time or will be subject to transport to the territory of a given State from abroad or that the goods have been subject to such transport but remained unsold prior to the conclusion of the contract'." [9]

[6] *Ibid.*, paras. 13 and 14.

[7] *Ibid.*, para. 19.

[8] Annex II, paras. II.1 (*a*) and (*d*).

[9] *Ibid.*, article IV.

This language also implements certain other proposals that are considered in paragraphs 13 and 15 below.

12. The text proposed by the USSR is similar to that proposed by the Norwegian representative at the first session of the Working Group. [10] The Norwegian draft text reads as follows:

"The present law shall apply to contracts of sale of goods entered into by parties whose places of business are in the territories of different States, where the contract contemplates transport of the goods from the territory of one State to the territory of another."

(iii) *Under the international shipment test, extension to include international shipment prior to the contract and shipment of goods taken or purchased on high seas*

13. In connexion with the last suggestion, it is appropriate to consider the further proposal in the USSR study that international shipment by the seller to the buyer's country prior to the contract should be given effect. The study discusses two types of situations: (*a*) goods brought by the seller to the buyer's country and thereafter sold to the buyer from demonstration halls or seller's warehouses; (*b*) the transactions in which contract gives the seller the choice to deliver from stocks in buyer's country or to deliver by international shipment. [11] These two situations may be distinguishable: under (*a*) the contract may require delivery of goods then in the buyer's country, while under (*b*) the international shipment may be consistent with, but perhaps not required (or "contemplated") by the contract. Language proposed by the representative of the USSR is set forth under para. 11, *supra.*

14. The study submitted by the representative of the United States [12] noted a problem of duration of transport that had been mentioned at the first session of this Working Group. [13] It was noted that when a seller has brought goods into a buyer's country, and held them in a bonded warehouse or similar place prior to sale, the further transportation of the goods to the buyer might be part of the international shipment, and thus bring the transaction within ULIS. It was noted that this question was related to the USSR proposal with respect to sale of goods after their arrival in buyer's country, and that the two issues could conveniently be considered together.

15. At the first session of this Working Group it was noted that the phrase "carried from the territory of one State to the territory of another" might exclude commodities (such as fish) taken on the high seas and carried into a State. [14] The representative of the USSR in his study proposed language (quoted in para. 11 *supra*) referring to transport of goods "to the territory of a given State from abroad". The study notes that

[10] Working Group report, annex V, annex B; op. cit, *supra,* foot-note 4.

[11] Annex II, para. II.1. See also Working Group report, annex V, paras. 5-7.

[12] Annex I, para. (I)(2).

[13] Working Group report, annex V, para. 8; op. cit, *supra,* foot-note 4.

[14] *Ibid.*, para. 44.

this language would meet the problem presented by contracts of sale of commodities which originate outside the territory of any State. [15]

(iv) *Exclusion of contracts for the construction and installation of a complete works (industrial plant and machinery)*

16. The USSR study suggested that contracts for the erection and installation of industrial plants presented problems that called for rules different from the usual sales contract. It was therefore proposed that the following exception be added to ULIS:

" The present Law shall not apply to contracts of supply of complete works and installations, unless agreed upon by the parties to a contract." [16]

17. The representative of the United States, commenting on the above proposal, expressed the view that since most sales of plant and machinery were the subject of detailed contracts, the impact of the uniform law, even if it should apply, would probably be slight in such a transaction. He thought therefore that no such provision was needed; it could be left for the courts to decide borderline cases where the contract had not included an express choice of the governing law. [17]

(b) *Proposed drafting changes*

18. As referred to in para. 8 above, the Working Group on Sales, at its first session, concluded that "in general, the definition set forth in article 1 of ULIS was satisfactory". However, certain problems of drafting were considered but not resolved at that session. The Commission, at its third session, approved the report of the Working Group "in so far as the Group approved the structure of article 1 of ULIS". The Commission further decided to refer recommendations for improvements in drafting to this Working Group. Further changes in drafting were suggested in the studies and comments relating to article 1 of ULIS. The principal problems of drafting are briefly noted below.

(i) *More than one place of business*

19. The problem related to the identification of the "place of business" of a party (art. 1-1) when business is conducted in two or more States. The problem was considered at the second session of the Commission, [18] and at the first session of this Working Group. [19] The problem has been further considered in the studies submitted to this session by the representatives of the United States [20] and of the United Kingdom. [21] As has been noted, the latter study suggests that difficulties of interpretation call for the selection of this test.

20. The study submitted by the representative of the United States suggested that article 1 of ULIS should point to that place of business that is relevant to the transaction in question, and that this would not necessarily be the principal place of business. It was consequently proposed that the word "relevant" be inserted in the introductory part of paragraph 1 before the words "place of business" and that a new sub-paragraph be added to paragraph 1, explaining the word "relevant". This new sub-paragraph would read:

"Where a party has places of business in the territory of more than one State, the relevant place of business shall be that place of business that has the closest relationship to that aspect of the transaction that is relied upon under (*a*), (*b*) or (*c*) of the preceding sub-paragraph to make the present Law applicable." [22]

(ii) *Appropriateness of the use of the word "involves" in article 1, para. 1* (a)

21. The Working Group at its first session noted that the English text of paragraph 1 (*a*) did not correspond with the French text, and suggested the following wording as a more accurate translation of the original French text:

"(*a*) Where the contract contemplates that the goods are, at the time of the conclusion of the contract, or will be the subject of transport from the territory of one State to the territory of another;" [23]

22. At the third session of the Commission, Japan suggested the elimination of the word "contemplates" from the above text. It based its proposal on the view of the proper meaning of the French word "*implique*" in para. 1 (*a*) stated in the report of the Working Group on its first session [24] and suggested the substitution of the following equivalent for the French word "*implique*":

"... It may be objectively believed that the parties expect that... and this expectation need not be expressed in the contract, ...". [25]

23. The study submitted by the representative of the USSR also suggested the elimination of the word "contemplates" from the text quoted in sub-paragraph (*a*) above and the use of the following expression:

"... where the parties at the time of the conclusion of the contract knew or ought to have known...". [26]

24. The representative of the United States in his report on article 1 of ULIS, noted that the word "contemplates" may not be an accurate translation of the French "*implique*"; he suggested, however, that the word "contemplates" be retained in the English text, with an appropriate note in the legislative history that the term was used in an objective sense. It was further suggested that in the French version, instead of "*implique*", the word "*envisage*" be used to conform to article 74 (2) of ULIS. [27]

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[15] Annex II, para. III.

[16] *Ibid.*, para. V.

[17] Annex I, para. (I)(3).

[18] UNCITRAL report on second session (1969); UNCITRAL Yearbook, vol. I: 1968-1970, part two, II, A, annex I, para. 31 (Japan).

[19] Working Group report, annex I, para. (I)(1); op. cit, *supra*, foot note 4.

[20] Annex I, para. (I)(1).

[21] Annex III, paras. 4(i) and 8-12.

[22] Annex I, para. I.1.

[23] Working Group report, para. 32, op. cit, *supra*, footnote 4.

[24] *Ibid.*, para. 33.

[25] UNCITRAL/III/CRP/5.

[26] Annex II, para. IV.

[27] Annex I, para. III.3.

(iii) *Appropriateness of the use of the word* transport *in the French version of article 1, para. 1* (a)

25. The representative of the United States noted [28] that there was a problem of translation, if not of language itself, with respect to the word *transport* as used in the French text of sub-paragraph 1 (*a*). In the opinion of this representative, sub-paragraph 1 (*a*) "is intended to apply where the movement of the goods is to be accomplished not by an independent carrier but by the seller himself... or in appropriate circumstances by the buyer himself...". It was suggested that in the English version the word "transport" be used to cover this meaning as distinct from "carriage" used in other articles of ULIS while in the French text the word *transport* be replaced by a more appropriate word since in other articles of ULIS (19(2), 23(1), 38(2), 54(1)(2), 82(1)) the same word used as having the meaning of "carriage by an independent carrier".

2. *Problems concerned with the applicability of the Law with special reference to the contact between a Contracting State and the parties to a transaction*

(a) *Proposed changes in the text of articles 1 and 2 of ULIS with respect to the applicability of the Law*

26. The present text of article 2 of ULIS reads as follows:

"Rules of private international law shall be excluded for the purposes of the application of the present Law, subject to any provision to the contrary in the said Law."

27. At the third session of UNCITRAL a revision of article 2 was proposed by Working Party I. The Commission decided that the substance of this revision should be the basis for future work by the Working Groups on Sales. [29] The proposed text reads as follows:

"The present Law is applicable (*a*) irrespective of any rules of private international law when the place of business of each of the contracting parties is in the territory of a Contracting State which has adopted the present Law without any reservation which would preclude its application to the contract; (*b*) when the rules of private international law indicate that the applicable law is the law of a Contracting State which has adopted the present Law without any reservation which would preclude its application to the contract."

28. It will be noted that paragraph (*a*) of the above provision deals with the issue covered in the opening sentence of article 1, paragraph 1 of ULIS. Under the present text of ULIS (art. 1, para. 1), the Law is applicable without reference to rules of private international law, when the places of business of the parties to an international sale (paras. 1 (*a*) (*b*) and (*c*)) are in the territories of "different States"; neither of the States need be a "Contracting" State. In contrast, sub-paragraph (*a*) of the above text restricts such application of the Law to contracts where each of the parties has his place of business "in the territory of a *Contracting* State". The proposals of Mexico and Japan set forth in the next succeeding paragraph also support of this restriction.

29. The representatives of Mexico and Japan suggested a redrafting of articles 1 and 2. Both proposals are based on the above-quoted proposal of Working Party I that was approved in substance by the Commission at the third session. Certain differences in wording and arrangement are, however, proposed. Thus, both propose the use of the phrase "different contracting States". The proposal by the representative of Mexico reads as follows:

"Article 1. The present Law shall apply to the contracts of sale of goods entered into by parties whose place of business are located in a territory of different Contracting States, which have accepted the law without submitting a reserve which excludes its application to the contract, in any one of the following cases:"

"... [para. 1, sub-paras. (*a*), (*b*) and (*c*)—unchanged paras. 2-5—unchanged.]

"Article 2. In the absence of the requisite set forth under paragraph first of the foregoing article, the present Law shall also apply when the provisions of private international law indicate that the applicable legislation is the one of a Contracting State which has adopted this Law without submitting a reserve which excludes its application to the contract." [30]

30. The proposal of the representative of Japan, *inter alia,* implements a suggestion made at the third session of the Commission, that the provisions on applicability commence with a reference to "contracts of international sale of goods", followed by a definition of this term. [31]

The proposal is as follows:

"Article 1

"(1) The present Law shall apply to contracts of international sale of goods entered into by parties whose places of business are in the territories of different Contracting States which have adopted the present Law without any reservation which would preclude its application to the contract, in each of the international sales defined in Article 2.

"(2) When the place of business of any of the parties to a contract of international sale of goods is not in the territory of any Contracting State, the rules of private international law shall apply in determination of the applicable law. When the rules of private international law indicate that the law applicable to the contract is the law of a Contracting State which has adopted the present Law without any reservation which would preclude its application to the contract, or when the law of such a Contracting State or the national legislation enacting the present Law, is chosen by the parties as the law applicable to the contract, the present Law shall apply to the contract."

"... [(3) Same as art. 1, para. 2 of the present text.

"(4) Same as art. 1, para. 3 of the present text.]

[28] Annex I, para. 1.2.

[29] UNCITRAL report on third session (1970), para. 30; UNCITRAL Yearbook, vol. I: 1968-1970, part two, III, A.

[30] Annex IV, para. 5.

[31] UNCITRAL report on third session (1970), para. 31; UNCITRAL Yearbook, vol. I: 1968-1970, part two, III.

"(5) For the purpose of determining whether the parties have their places of business or habitual residence in 'different Contracting States' any two or more States shall not be considered to be 'different Contracting States' if a valid declaration to that effect made under article II of the Convention dated ... is in force in respect of them." [32]

The representative of Japan proposed further that a new article 2 should provide for the definition of "international sale" as distinguished from domestic sale of goods, based on article 1, paras. 1 (*a*), (*b*), (*c*) and 4 of ULIS. [33]

(b) *Proposals relating to provisions for reservations and declarations*

31. The sessional Working Party appointed by the Commission at its third session reported that the Convention providing for a uniform law should include the following:

"Any State may, at the time of the deposit of its instrument of ratification of, or accession to, the present Convention or, having become a party to the Convention, at any time after the Convention has entered into force, declare, by a notification addressed to the Government of... that, notwithstanding the provisions contained in article 2 of the Uniform Law, it will apply the Uniform Law to all contracts of sale of goods covered by the Uniform Law.

"If the declaration has been made at the time of the deposit of its instrument of ratification of or accession to the present Convention, it shall be effective from the date on which the Convention enters into force for that State.

"If the declaration has been made at any time after the Convention has entered into force, it shall be effective six months after the date of notification of such declaration." [34]

32. With respect to the provisions for reservations set forth in articles II through IV of the Hague Conventions of 1964 the Working Party recommended that: (1) article II should be retained; (2) article III should be deleted if the recommendations set forth in paragraphs 27 (revision of article 2 of ULIS) and 31 (provisions for declaration) above should be adopted; (3) action on article IV should be postponed until it was seen whether and to what extent the uniform law would conflict with the 1955 Hague Convention. The Working Party noted further that it had reached no conclusion as to the retention of article V of the Convention. [35]

33. The Commission, as a whole, took no position as to the proposals contained in paras. 31 and 32 above.

34. The representative of Tunisia, who acted as consultant in the preparation of the study on article 2 by the representative of Japan, came to the conclusion that the provision permitting declaration by States, proposed by the Working Party, quoted in para. 31 above, might become an obstacle to a wide adoption of the uniform law and it would be better therefore not to include the declaration into the Convention. [36] The representative of Japan supported that view and pointed out that States were free to change their rules of private international law in order to make the uniform law applicable by their courts to all contracts of sale covered by that Law, without having recourse to the Convention. [37]

3. *Changes in arrangement*

35. The text of article 2 quoted in paragraph 27 above embodies the opening part of article 1, paragraph 1 of ULIS.

36. The proposals of the representatives of Mexico and Japan quoted in paragraphs 29 and 30, respectively, above suggest the rearrangement of articles 1 and 2 in the quoted form.

37. The proposal of the representative of the United Kingdom, quoted in paragraph 9 above embodies the suggestion that the power of the parties to choose the uniform law, now covered in article 4, be included in article 1. [38]

38. The USSR study proposed amalgamation of the provisions on sphere of application in article 1, article 5 and article 6. [39]

B. ARTICLE 3: EXCLUSION OF THE APPLICATION OF THE LAW BY THE PARTIES

39. Article 3 of ULIS provides as follows:

"The parties to a contract of sale shall be free to exclude the application thereto of the present Law either entirely or partially. Such exclusion may be express or implied."

40. The study prepared by the representative of the United Kingdom [40] on this article also includes comments by the representatives of Tunisia and Kenya who acted as consultants in the preparation of the study. The representative of Norway, in the study on articles 5 and 7 of ULIS, also touched upon article 3 and suggested the adoption of a revised text.

41. The representative of Tunisia, in the comments noted above, expressed the view that it would be preferable to delete article 3, or to modify it in such a manner that the parties would not have the right to modify essential elements of the contract which should be set out explicitly in the Uniform Law. [41] He based his opinion on the understanding that in recent years the principle of the autonomy of the parties had noticeably lost much of its value since in all economic systems the State had been intervening more or less directly in the relations of the individuals who were only free to

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32 *Ibid.*, para. 6.

33 *Ibid.*, para. 6, sub-para. 4.

34 UNCITRAL report on third session (1970), para. 27; UNCITRAL Yearbook, vol. I: 1968-1970, part two, III, A.

35 *Ibid.*, para. 28.

36 Annex IV, para. 8.

37 *Ibid.*, para. 9.

38 Annex III, para. 5.

39 Annex II, para. 1.

40 Annex V.

41 *Ibid.*, para. 9.

conclude contracts which took account of the imperative economic and financial rules of their States. In the opinion of the representative of Tunisia the maintenance of article 3 would also make it possible for the stronger party to impose its will on the weaker one and finally it would involve the risk that the aim of the uniform Law to apply in all countries uniform rules to the international sale of goods would not be achieved. [42]

42. The representative of the United Kingdom suggested in his study to retain article 3 in its present form. [43] The representative of Kenya came to the same conclusion. [44]

43. The study prepared by the representative of the United Kingdom distinguished between express exclusion and implied exclusion, and also between exclusion of all of the Law and exclusion of only part of the Law. As to express exclusion, the study, in response to the arguments advanced by the representative of Tunisia, expressed the view that this article would not absolve the parties to the contract from complying with the mandatory or imperative rules of public policy and that the substitution of the law of the stronger party would not necessarily lead to unjust result since every national law attempted to strike an equitable balance between the rights of the buyer and those of the seller. It was emphasized that free negotiations were still the basis upon which international trade was conducted, and that abolition of freedom of contract would frustrate the natural evolution of commercial practice to meet changing situations and new demands, and thereby impede the development of international trade. [45] As to exclusion of the Law by implication it was mentioned that partial exclusion was more likely to occur by implication as in cases where the parties made reference to well-recognized terms of sale (such as c.i.f., f.o.b., etc.) which express understandings and practice that often differ from rules stated in the Law. The rules applied generally in respect of sales by documents, and payment by means of bills of exchange or bankers' commercial credits were also not consistent with some of the provisions of the Law. [46]

44. The representative of Norway, in his study on articles 5 and 7 dealing primarily with the sale of consumer goods, [47] suggested that provisions of national law providing for the protection of consumer buyers should not be subject to exclusion by the parties. To conform with proposal amendments to this effect, he suggested that article 3 should open as follows: "Except when otherwise expressly provided in the present Law, . . .". [48]

C. ARTICLE 4: APPLICATION OF THE LAW BY CHOICE OF THE PARTIES

45. Article 4 of ULIS provides as follows:

"The present Law shall also apply where it has been chosen as the law of the contract by the parties, whether or not their places of business or their habitual residences are in different States and whether or not such States are Parties to the Convention dated the 1st day of July 1964 relating to a Uniform Law on the International Sale of Goods, to the extent that it does not affect the application of any mandatory provisions of law which would have been applicable if the parties had not chosen the Uniform Law."

46. The representative of the United Kingdom expressed the view that under article 4 the circumstances in which the parties could choose the Law were unclear. Was this choice limited to circumstances where the Law was otherwise inapplicable for the sole reason that the parties did not have places of business in different States or different Contracting States? Or could the parties choose to apply the Law where the sales transaction had no international element (article 1-1), or where the Law was inapplicable for some other reason not mentioned in article 4. [49] It was therefore suggested that article 4 should be incorporated in the revised text of article 1. [50] The suggested text is reproduced in paragraph 9 above.

D. ARTICLE 5: APPLICABILITY OF MANDATORY RULES OF NATIONAL LAWS; CONSUMER PROTECTION

47. Article 5 of ULIS provides as follows:

"1. The present Law shall not apply to sales:

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

"(*b*) Of any ship, vessel or aircraft, which is or will be subject to registration;

"(*c*) Of electricity;

"(*d*) By authority of law or on execution or distress.

"2. The present Law shall not affect the application of any mandatory provision of national law for the protection of a party to a contract which contemplates the purchase of goods by that party by payment of the price by instalments."

48. No comment was made with respect to paragraph 1 of this article. The representative of Norway submitted a study that discusses paragraph 2 of article 5 and also article 7. [51] Comments on the study by Norway were submitted by the representative of France. [52]

49. The study of the representative of Norway is primarily concerned with consumer sales which under this study was defined as sales which contemplate "the purchase of goods (primarily) for personal, family or household purposes". The study notes that consumers are usually in a weak negotiating position in relation to the professional seller; for this reason many States have enacted rules of law and other measures for their protection. The rules providing for such protection

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[42] *Ibid.*, para. 3.

[43] *Ibid.*, para. 8.

[44] *Ibid.*, para. 7.

[45] *Ibid.*, para. 4.

[46] *Ibid.*, para. 6.

[47] Annex VI. See also chapter D, below.

[48] *Ibid.*, annex II.

[49] Annex III, para. 4 (v).

[50] *Ibid.*, para. 5.

[51] Annex VI.

[52] Annex VII.

implement public policy and have a mandatory character similar to those mentioned in article 5, paragraph 2, relating to sale by instalments, but are not protected by article 5. Underlying this discussion is an issue of general significance, not confined to sales to consumers. Thus, attention was drawn to the provision of article 8 that the Law shall not "be concerned with... the validity of the contract or of any of its provisions...". It was suggested that the scope of this provision was subject to various questions. Although national rules on validity would apparently control contract provisions where the Uniform Law had no rules supporting the contract provision, it was questionable whether national rules would override contract provisions supported by the Law; a similar question might arise with respect to rules applied by the Law in the absence of a contractual provision (e.g. article 34, cf. article 33-3). There was also a question as to whether national mandatory rules would be preserved as rules concerning "the *validity*" of the contract or its provisions, where the national rule afforded a party (such as a consumer) rights or privileges supplementing (rather than invalidating) the contract. The study notes that the Report of the Special Commission states that "the Uniform Law does not in any way affect the imperative rules of municipal law", [53] but concludes that a prevalent view inclines towards the opinion that mandatory provisions of national laws which are not expressly upheld by special provisions in ULIS [54] will be overriden by the provisions of ULIS. The study suggests that article 5, paragraph 2 and paragraph 8 are not sufficient to protect the buyer in a consumer sale. It therefore suggests to insert a new provision in ULIS which can unambiguously give consumer buyers sufficient protection. [55]

50. The study sets out three principal alternatives for amending ULIS to assure consumer protection: (1) to broaden the exception in article 5, paragraph 2, concerning sales by instalments, to cover all applicable mandatory rules of national law for the protection of a consumer buyer; (2) to make certain provisions of ULIS themselves mandatory; and (3) completely to exclude consumer sales or all civil non-commercial sales from ULIS. [56]

51. As the first alternatives which would secure consumer protection, the representative of Norway suggested the following text to replace the present text of article 5, paragraph 2:

"The present Law shall not affect the application of any mandatory provision of national law for the protection of a party to a contract which contemplates the purchase of [consumer] goods by that party [primarily] for personal, family or household purposes." [57]

52. The representative of France supported the above language, subject to deletion of the words in brackets. [58]

53. The study submitted by the representative of Norway noted the comment, made at the third session of the Commission, that a general reference to mandatory rules of domestic legislation would be difficult to apply, since different legal systems follow widely varying approaches in deciding what rules are mandatory. [59] The study noted, however, that this objection was not serious in connexion with consumer sales, since the volume of such sales governed by ULIS would not be great, and uniformity would not be important in this field.

54. As another alternative, the representative of Norway suggested the insertion of a new paragraph 2 defining the expression "consumer sale" (for the text, see para. 59 below) in article 7, and of mandatory provisions for the protection of consumers in articles 26, 27, 39, 41, 43 and 44. [60]

55. The study by the representative of Norway indicated that the amendment to article 5, paragraph 2, quoted in paragraph 51 above, provided the first preference in dealing with the problem of consumer purchases. However, as has been noted, a third alternative would be the complete exclusion of consumer sales from the Law. This alternative will be considered further in relation to specific proposals addressed to article 7. (The Working Group may wish to consider whether it would be efficient to consider whether consumer sales should be totally excluded before considering possible revision of article 5, para. 2.)

E. ARTICLE 7: COMMERCIAL AND CIVIL CHARACTER OF THE TRANSACTION

56. Article 7 of ULIS reads as follows:

"The present Law shall apply to sales regardless of the commercial or civil character of the parties or of the contracts."

57. The representative of the United Kingdom, in his study on article 1 of ULIS, expressed the view that while purchases of tourists travelling abroad were governed by the local domestic law such purchases would fall under ULIS if the purchased goods were requested to be sent directly to the buyer's home abroad. Accordingly, it was suggested by the United Kingdom representative that "any additional case to be covered by any new draft should be limited to transactions between persons who are contracting commercially" [61] If accepted by the Working Group the suggestion would call for appropriate modification of article 7.

58. The question of limitation of the sphere of application of the Uniform Law to commercial transactions was also touched upon by the representative of

[53] Diplomatic Conference on the Unification of Law governing the International Sale of Goods, The Hague, 1964. Records and Documents of the Conference. Ministry of Justice of the Netherlands, 1966. Vol. II, p. 30.

[54] There are only two such provisions in ULIS: article 4 and article 5, paragraph 2.

[55] Annex VI, paras. 3-10.

[56] *Ibid.*, para. 11.

[57] *Ibid.*, at annex II, alternative A.

[58] Annex VII.

[59] UNCITRAL report on third session (1970), para. 63; UNCITRAL Yearbook, vol. I: 1968-1970, part two, III, A.

[60] Annex VI, at annex II, alternative 3.

[61] Annex III, para. 18.

France. He stated that although in the practice the Uniform Law would mainly apply to transactions between parties of commercial character, nevertheless, in his opinion, the determination of the character of the merchant might raise some difficulties in several countries, e.g. in France. He therefore would prefer the present text to stand as it is. [62]

59. The representative of Norway suggested that in case the Commission would adopt his suggestion relating to consumer protection quoted in paragraph 51 above, the following text be added to article 7 as new paragraph 2:

"For the purpose of the present Law, the expression 'consumer sale' means a sales contract which contemplates the purchase of [consumer] goods by the contracting buyer [primarily] for personal, family or household use." [63]

F. ARTICLE 9: USAGES

60. Article 9 of ULIS reads as follows:

"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. They shall also be bound by usages which reasonable persons in the same situation as the parties usually consider to be applicable to their contract. In the event of conflict with the present Law, the usages shall prevail unless otherwise agreed by the parties.

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

61. The Commission, at its third session, decided to refer the proposals made in respect of article 9 to the Working Group. [64] During the session the following proposals were made:

(*a*) The sessional Working Group established by the Commission for the revision of article 9 recommended that paragraphs 2 and 3 of the article be replaced by the following text:

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

"3. Where terms, clauses or standard forms of contracts commonly used in commercial practice are employed, they shall be interpreted according to the meaning intended to be given to them by the parties. In the absence of any such intention, they shall be interpreted according to usage as provided in the preceding paragraph." [65]

(*b*) According to another proposal, paragraph 2 of article 9 should be revised to read as follows:

"The usages which the parties shall be considered to have impliedly made applicable to their contract shall include any usage which is widely known in international trade and regularly [and generally] observed by parties to contracts of the type involved and of which the parties to the contract either are aware or should, because it is so widely known and regularly [generally] observed, be [have been] aware." [66]

(*c*) One representative proposed the following wording of paragraph 2:

"It is considered that the parties are impliedly bound by any usage which is widely known in international trade and which is regularly observed by parties to contracts of the type involved." [67]

62. Pursuant to the decision of the Commission at its third session to entrust representatives of members of the Working Group with the examination and redrafting of articles of ULIS, the representative of Hungary was requested to examine article 9. As a result of the examination he submitted the following revised text of 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 [and generally] 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 the 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 usually given to them in the trade concerned." [68]

63. As to the question whether in paragraph 2 of the above text the expression "regularly" or "generally" should be used, the Hungarian representative noted that in his opinion the proof of regular use, i.e. permanent repetition of application of a certain usage would be easier than the proof of "general" use which involved

[62] Annex X.

[63] Annex VI, at annex II.

[64] UNCITRAL report on third session (1970), para. 42; UNCITRAL Yearbook, vol. I: 1968-1970, part two, III, A.

[65] *Ibid.*, para. 38.

[66] *Ibid.*, para. 40.

[67] *Ibid.*, para. 41.

[68] Annex VIII. It will be noted that paras. 1, 3 and 4 are the same as provisions in ULIS.

not only regular but also broad geographical application of the usage. [69]

G. ARTICLE 10: DEFINITION OF FUNDAMENTAL BREACH

64. Article 10 of ULIS reads as follows:

"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."

65. The representative of the USSR submitted comments addressed jointly to proposed revisions of articles 10, 11 and 13 of ULIS. This study expressed the view that the expression "a reasonable person in same situation" used in articles 9 and 10 might, to a certain extent, cause fundamental differences in the interpretation of several articles and definitions contained in ULIS. He therefore suggested that in articles 10, 11 and 13 it should specify "the extent of awareness and prevision which a merchant engaged in international commerce should possess in the same situation". In the opinion of the USSR representative this would promote uniform interpretation of definitions contained in ULIS relating to such concepts as "fundamental breach", "a party know or ought to have known", "promptly", "within a reasonable time". [70]

"For the purposes of the present Law, a breach of contract shall be regarded as fundamental in all cases when it has been provided so, as well as in those cases when the party in breach knew, or ought to have known at the time of the conclusion of the contract that a merchant engaged in international commerce, being in the same situation as the other party, and in the same circumstances would not have entered into the contract if he had forseen the breach and its effects. [71]

67. The representative of the United Kingdom in his comments on article 10, noted that the USSR text would require the court or arbitrator to consider what "a merchant engaged in international commerce" would have done irrespective of the fact that "the other party" might not have contracted in a commercial capacity. [72]

68. The representative of France noted that, according to article 7, the Uniform Law did not apply only to merchants. He further expressed the opinion that the changes in the text as suggested by the USSR representative were not necessary since the words "in the same situation" could only relate to a person engaged in international trade while the expression "engaged in international commerce", as suggested by the USSR representative, would exclude the more general idea of "a reasonable person in the same situation". [73]

69. The representative of the United Kingdom noted in his comments that, from the point of view of English law there was no difficulty whatsoever about the interpretation or application of article 10. In his opinion, therefore, article 10 is satisfactory as it stands. Should, however, the wording of the article be changed because of the difficulty it might cause in non-common-law systems, the actual ideas contained in the article would have to be maintained. Such ideas are the concept of "fundamental breach", the necessity of an objective test to determine whether or not the breach was fundamental and the freedom of the parties to stipulate that certain breaches should be treated as fundamental or as non-fundamental. [74]

70. The delegation of Ghana suggested that the concept of fundamental breach as used in certain common law countries was different from the defined in article 10. He therefore suggested to replace the word "fundamental" by the word "major". He further suggested the elimination of the speculative and uncertain test of foreseeability used in the present definition of fundamental breach. The text proposed by the Ghanaian delegation reads as follows:

"For the purposes of the present law, a breach of contract shall be regarded as a major one when such breach substantially derogates from the attainment or the main purpose of the contract, as objectively determined by the Court." [75]

H. ARTICLE 11: DEFINITION OF THE EXPRESSIONS "PROMPTLY" AND "WITHIN A REASONABLE TIME"

71. Article 11 reads as follows:

"Where under the present Law an act is required to be performed 'promptly', it shall be performed within as short a period as possible, in the circumstances, from the moment when the act could reasonably be performed."

72. The representative of the USSR suggested changes in the text of this article in accordance with his general considerations referred to in paragraph 65 above. He also suggested the addition to the present text of a new paragraph 2 defining the expression "within a reasonable time". The proposed text is as follows:

"1. Where under the present Law an act is required to be performed 'promptly', it shall be performed within as short a period as possible, in the circumstances, from the point of view of a merchant engaged in international commerce, starting from the moment when the act could reasonable be performed.

"2. Where under the present Law an act is required to be performed within a reasonable time or any similar expression is used, it shall be regarded as one to be performed within a period normally

[69] *Ibid.*, explanatory comment.

[70] Annex IX, commentaries to articles 10, 11 and 13: general considerations.

[71] *Ibid.*

[72] Annex XII, para. A.9.

[73] Annex X.

[74] Annex XII, paras. A.8 and 9.

[75] Annex XIII, para. A.

required in the circumstances from the point of view of a merchant engaged in international commerce." [76]

73. From the point of view of English law the representative of the United Kingdom did not find it necessary to effect any change in article 11 or to add to the present text a definition of the expression "within a reasonable time". In his opinion, however, if such definition would be required by other legal systems, the USSR proposal would merit careful consideration. [77]

I. ARTICLE 12: DEFINITION OF THE EXPRESSION "CURRENT PRICE"

74. Article 12 reads as follows:

"For the purposes of the present Law, the expression 'current price' means a price based upon an official market quotation, or, in the absence of such a quotation, upon those factors which, according to the usage of the market, serve to determine the price."

75. The representative of the USSR commenting on the article suggested that the expression "current price" be determined rather as "the price prevailing in the market concerned" than as "a price *based* upon an official market quotation" as determined by the present text. The reason for this change is that the "prevailing price" is always determined in accordance with the established practices and usages while the "price based upon the quotation" means that the interested party in proving the current price would have, in each case, to take into account not only the official quotation but also usages and methods of price calculation established in the given market. It is not clear, therefore, why official quotation should be given priority before the usual methods of price calculation. [78]

76. On the basis of the above considerations and taking also into account the provisions of article 84, para. 2 of ULIS, the USSR representative suggested that article 12 should read as follows:

"For the purposes of the present Law, the expression 'current price' means a price prevailing in a given market and calculated in accordance with the methods of calculation established in that market." [79]

77. The representative of the United Kingdom suggested that article 84, para. 2, was really a gloss on the definition in article 12, and further that the expression "current market price" would be more informative and less confusing than "current price". It was therefore suggested that:

"(i) Article 12 be omitted and such definition of current price as may be tought necessary be included in article 84; and

"(ii) Consideration be given to the question whether article 84.2 does not require amendment to ensure that the comparison to be made is effectively a comparison between the contract price and the price which the buyer would have to pay or the seller receive if, on the date on which the contract was avoided, he bought or sold like quantities of like goods for delivery on the same date on identical terms and conditions, being a price based wherever possible upon a market quotation." [80]

J. ARTICLE 13: MEANING OF THE EXPRESSION "A PARTY KNEW OR OUGHT TO HAVE KNOWN"

78. Article 13 reads as follows:

"For the purposes of the present Law, the expression 'a party knew or ought to have known', or any similar expression, refers to what should have been known to a reasonable person in the same situation."

79. In accordance with the considerations referred to in para. 65 above the representative of the USSR suggested the following revised text:

"For the purposes of the present Law, the expression 'a party knew or ought to have known', or any similar expression, refers to what should have been known in the same circumstances to a merchant engaged in international commerce." [81]

80. The comments on article 11 made by the representative of the United Kingdom, referred to in paragraph 73 above, also apply to this article. [82]

K. ARTICLE 15: FORM OF THE CONTRACT; REQUIREMENT OF WRITING

81. Article 15 reads as follows:

"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."

82. To satisfy requirements of legislation of a number of countries in which a written form of foreign trade contracts was obligatory, the representative of the USSR suggested that article 15 should be revised as follows:

"No requirements are made with regard to form of a contract of sale. In particular, it may be proved by means of witnesses. The contract, however, shall be in writing, if so required by laws of at least one of the countries, in the territories whereof the parties to the contract have their places of business." [83]

83. The delegation of Ghana suggested that the present text of article 15 be retained but the following text be added to it to accommodate the demands of the countries which require their foreign trade contracts to be in writing:

[76] Annex IX.

[77] Annex XII, para. B.

[78] Annex IX, commentaries to article 12.

[79] *Ibid.*

[80] Annex XII, para. C.

[81] Annex IX.

[82] Annex XII, para. D.

[83] Annex IX.

"However, where the municipal law of a contracting State requires that an international contract of sale shall be in writing and such contracting State, at the time of the ratification of the present Law, lodges a declaration with the Government of ... to this effect, contracts with traders in such contracting State shall comply with the writing requirement." [84]

84. The representative of the United Kingdom submitted comments on the proposal of the USSR representative, quoted in paragraph 82 above. (The comments also seem relevant to the text proposed by the delegation of Ghana, set out in paragraph 83 above.) According to these comments, the character of "writing" may vary from country to country; in addition, when legal proceedings in connexion with contracts of an international character are brought in a court of a third country, the observance of the provisions of a foreign law requesting the contract to be in writing would greatly depend on the conflict of law rules of the forum. If, *e.g.*, these rules characterize the above-mentioned provisions of foreign law as being of an evidentiary character, the court presumably would ignore those provisions. The same could happen in countries the law of which considers a contract valid if it fulfils the requirements as to form either of the law of the place of contracting or of the proper law. For this reason the study expresses the opinion that the inclusion in the Uniform Law of the text proposed by the USSR representative would not make the relevant provisions of the national law automatically applicable. Consequently, the USSR proposal is opposed. At the same time, the study expresses the view that if any amendment to article 15 is made, it would be necessary to introduce further provisions which would (*a*) define the meaning of the concept "in writing" ; (*b*) draw a distinction between evidentiary and substantive requirements of form and (*c*) specify the consequences of a non-compliance with the requirement of written form. [85]

L. ARTICLE 17: QUESTIONS NOT GOVERNED BY THE LAW

85. Article 17 reads as follows:

"Questions concerning matters governed by the present Law which are not expressly settled therein shall be settled in conformity with the general principles on which the present Law is based."

86. At the third session of the Commission no agreement was reached on the article. The Commission decided to refer the question to the Working Group for further consideration in the light of the views and proposals expressed at the session. [86] The report of the Commission on its third session notes that several representatives supported the retention of article 17 in its present form or with minor clarifying amendments. Others supported the proposal in para. 66 of the report of the Working Group on its first session to supplant article 17 with the following: "Private international law shall apply to questions not settled by ULIS". It was also suggested that the general principles be rendered explicitly in the preamble of a future convention on the Uniform Law. Others suggested that reference to private international law should be added, at the end of a general rule of interpretation, to deal with the problem of gaps in the law. Finally one representative proposed the deletion of the article. [87]

87. A detailed study on article 17 was submitted by the representative of France. The study deals with most of the criticisms of the article made by representatives at meetings of the Commission and the Working Group, respectively, and comes to the conclusion that the principle established by article 17 may be considered indispensable in some form or another. In the view of the author of the study the application of domestic law or of the law indicated by the conflict rules of the *lex fori* would amount to precluding the application of the Uniform Law in many cases which the legislator and the parties themselves had wanted the law to cover. The application of the national law of the court hearing the case, as suggested at the previous session of the Working Group would also render unachievable the desire that the rights and obligations of the parties be defined without recourse to a court, even a court of arbitration. Recourse to the law designated by the rules of private international law would have the same effect and would introduce an additional element of uncertainty. [88]

88. As a solution, the representative of France suggested in his study the addition to article 17 of the idea that the interpretation of the Uniform Law must be as harmonious as possible at the international level or, more specifically, that in interpreting the Uniform Law one should consider the interpretations placed on it in other countries. He accordingly supported the adoption of the text proposed at the first session of the Working Group, that reads:

"The present law shall be interpreted and applied so as to further its underlying principles and purposes, including the promotion of uniformity in the law of international sales." [89]

[84] Annex XIII, para. B.

[85] Annex XI.

[86] UNCITRAL report on the third session (1970), para. 55; UNCITRAL Yearbook, vol. I: 1968-1970, part two, III, A.

[87] *Ibid.*, para. 54.

[88] Annex XIV.

[89] Working Group report, para. 63; op. cit, *supra*, footnote 4.