



SINGAPORE ACADEMY OF LAW

**THE UNITED NATIONS CONVENTION ON CONTRACTS
FOR THE INTERNATIONAL SALE OF GOODS
(VIENNA, 1980)**

SHOULD SINGAPORE RATIFY?

**LAW REFORM COMMITTEE
SEPTEMBER 1994**

SINGAPORE ACADEMY OF LAW
LAW REFORM COMMITTEE

SUB-COMMITTEE ON COMMERCIAL LAW

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REPORT

12 Sep 1994

The Honourable Justice L P Thean
Chairman
Law Reform Committee
c/o Supreme Court
Singapore 0617

Dear judge,

**United Nations Convention on Contracts
for the International Sale of Goods**

This sub-committee was formed on 16 Feb 93 as a result of a resolution proposed by Attorney-General Chan Sek Keong then in his capacity as Chairman of the Law Reform Committee. Later on the sub-committee continued its work under your chairmanship. The sub-committee was appointed with the following terms of reference:

- (a) To consider, after consulting the business community, whether Singapore should ratify the United Nations Convention on Contracts for the International Sale of Goods; and
- (b) To examine and propose reform to the Carriage of Goods by Sea Act.

I am pleased to submit to you the attached report which addresses para (a) of the terms of reference. Para (b) will be addressed in a separate report.

The business organisations consulted are in favour of ratification of the Convention. The sub-committee supports ratification of the Convention and gives its reasons for this recommendation. It is also hoped that it will enhance the understanding of the business community and the legal profession. A comparison of the provisions of the Convention with our laws is set out in tabular form.

Yours sincerely,



CHARLES LIM AENG CHENG
Chairman
Sub-Committee on Commercial Law
Law Reform Committee
Encl.

10 August 1994

*Sub-Committee on Commercial Law
Law Reform Committee
Singapore Academy of Law*

REPORT

**United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)**

Should Singapore Ratify?

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I. EXECUTIVE SUMMARY

Terms of Reference

1. To consider, after consulting the business community, whether Singapore should ratify the United Nations Convention on Contracts for the International Sale of Goods.

Consultation Process

2. Invitations were sent to the following organisations to participate in the consultation process:

- (a) Chinese Chamber of Commerce and Industry
- (b) Indian Chamber of Commerce and Industry
- (c) International Chamber of Commerce
- (d) Malay Chamber of Commerce and Industry
- (e) Singapore Manufacturers Association
- (f) Association of Small and Medium Enterprises

3. Presentations and dialogue sessions were held with all the above organisations except for the Malay Chamber which did not respond to the invitation. The organisations consulted all responded in favour of ratification of the Convention.

Origins of and Background to the Convention

4. In 1964 UNIDROIT adopted two Uniform Sales Law Conventions which subsequently did not receive adequate adherence. The basic difficulty stemmed from inadequate participation by representatives of different legal backgrounds. By 1978 UNCITRAL had completed a draft Convention composed of parts on sales and on formation of sales contracts which were developed out of the two 1964 Conventions. The Convention was considered and adopted at a UN diplomatic conference in 1980. On **1st January 1988**, the Convention came into force, nearly 8 years after it was adopted. Singapore signed the Convention on 11 April 1980.

Who are Parties ?

5. There are now (as at 25 May 1994) a total of 38 parties to the Convention including many of the major economies in the world such as **USA, China, Russia, Canada, Australia and many EU countries**. Six out of the current 12 members of the EU are parties (**Denmark, Spain, Italy, France, Netherlands and Germany**). Next year, this will increase to 10 out of 16 as all 4 new members (**Austria, Norway, Sweden and Finland**) to be admitted in 1995 are parties to the Convention. Out of the 7 countries in the powerful **Group of 7 or G7 economic summit**, 5 countries are parties viz USA, Canada, France, Germany and Italy. The three members of **NAFTA** are also parties.

Who are Not ?

6. On the other hand, a few of our major trading partners such as the **UK, Japan and the ASEAN countries** have **not ratified** the Convention. However, **Japan** is also seriously considering ratification of the Convention. Chances are that if Singapore adopts the Convention, the other ASEAN countries may soon follow suit. The **UK Department of Trade and Industry** issued a consultation document in 1989 seeking views on UK's possible ratification. The responses to ratification were evenly balanced for and against and ratification has been stalled.

Legal Advantages in Ratification

7. The following are in short the legal advantages of ratification:
 - (1) Our current Sales Law (represented by the English Sale of Goods Act (SGA) 1979 which is in substance not very different from the SGA 1893) which is 100 years old is not better suited than the Convention for modern commercial contracts.
 - (2) The Convention serves a "gap-filling" function when a cross-border contract is made by phone or even by fax or telex but in only a few words:
 - (3) Having the Convention apply is better than having to choose an unknown foreign law eg Russian Law or German Law as the applicable law of the contract.
 - (4) It serves as a neutral law acceptable to both parties.
 - (5) The Convention recognises that the parties to international sales contracts may wish to exercise broad contractual freedom. Article 6 enables them to exclude the application of the Convention and to derogate from or vary the effect of any of its provisions.
 - (6) A prodigious amount of time and work and scholarship has gone into the making of the Convention.
 - (7) The Convention helps to avoid difficult conflict of laws issues.

Trade Advantages in Ratification

8. The following are in short the trade advantages of ratification:
 - (1) The Convention takes into account modern trade practices and realities. It contains provisions on the interpretation of contracts which are wider than the Common Law rules.
 - (2) The Convention is drafted in simple and plain language for businessmen to understand.
 - (3) The Convention contains useful provisions to practical problems such as requiring parties to preserve goods in their possession belonging to the other party.
 - (4) If Singapore does not ratify the Convention, we may be left behind from the rest of the major trading nations in the world.
 - (5) Convention countries account for 61% of the world's trade in 1992. States which participate in 34.66 % of Singapore's external trade for 1993 are parties to the Convention.
 - (6) The Convention will facilitate cross-border trade and save time, expense and avoid uncertainty.
 - (7) The Convention is available in all 6 official UN languages including Arabic, English, Chinese, French, Spanish and Russian. It would also have been translated into the languages of the other Convention countries such as German, Italian or Dutch.
 - (8) The economic powerhouse of China has its Foreign Economic Contracts Law of 1985 modeled after the Convention.

(9) The Convention offers a viable solution to the harmonisation of ASEAN international trade law.

(10) The Convention will provide the legal infrastructure to facilitate the Government's drive to promote economic expansion overseas by providing our businessmen and companies with a uniform sales law with the countries in which they are investing eg China.

(11) The Convention will facilitate any move for Singapore to link up with NAFTA as it is the uniform sales law of NAFTA.

Imperfections of Convention

9. One should not expect the Convention to:

(1) Be a complete and exhaustive code -

- the Convention does not cover passing of property, validity of contract, liability for death or personal injury and capacity to contract

- these issues are left to be decided by national laws so a choice of law clause is still required.

(2) Be free from interpretative difficulties as compromise between divergent legal systems may have made parts of the Convention uncertain.

(3) Provide a perfect solution to those issues it deals with.

(4) Take the place of contracts.

(5) Be more familiar to local courts and lawyers than the provisions of the current Sales Law.

Recommendations

10. It is recommended that:

(1) Singapore ratify the Convention with the reservation that Singapore will not be bound by Article 1(1)(b).

(2) this report of the sub-committee including the feedback from the business community, if adopted by the Law Reform Committee, be presented to the Ministry of Law and the Ministry of Trade and Industry.

(3) the Convention be given effect to by the enactment of a Sale of Goods (United Nations Convention) Act. A draft Bill is attached at **Appendix E**.

(4) a comprehensive publicity campaign be launched to raise the awareness of the business and legal community on the impending ratification as it will be implemented on an opt-out basis. The business organisations consulted, the Academy of Law and the Law Society can participate in this process by organising seminars and disseminating information on the Convention.

II. INTRODUCTION

Terms of Reference

1. This sub-committee was formed as a result of a resolution proposed by Attorney-General Chan Sek Keong then in his capacity as Chairman of the Law Reform Committee. The sub-committee was pursuant to the resolution appointed on 16 Feb 93 with the following terms of reference:

(a) To consider, after consulting the business community, whether Singapore should ratify the United Nations Convention on Contracts for the International Sale of Goods; and

(b) To examine and propose reform to the Carriage of Goods by Sea Act.

2. This report addresses para (a) of the terms of reference. Para (b) will be addressed in a separate report.

Background and reasons for consultation

3. There is a clear need for harmonisation of international trade law. Deputy Prime Minister (DPM) Lee Hsien Loong in his speech delivered at the International Business Law Conference on 9 Sep 92 said -

"Singapore can further improve the legal support for international business by promoting uniform laws among our trading partners. We can participate more energetically in the UN Commission on International Trade Law (UNCITRAL), which has an active programme for this purpose. Where possible, in areas of interest to us, we should take part in drawing up international conventions. For example, UNCITRAL has concluded a *UN Convention on Contracts for the International Sale of Goods (Vienna, 1980)*, which deals with the formation of contracts and the rights and obligations of sellers and buyers in international sales contracts. Such efforts are particularly significant in view of the uncertainties surrounding the outcome of the Uruguay Round."

4. The outcome of the Uruguay Round is no longer uncertain but the need for uniform laws remain. The DPM's remarks were followed by the following remarks made by the Attorney-General in his opening address at the Pacific Economic Cooperation Council (PECC) Meeting on 9 Sep 93:

" Given the complexity of the legal environment of the region, the way forward for these countries is not to start from scratch and to try to draw up harmonious trade laws which give effect to the interests and concerns of all participants. To the extent that we need secular laws to regulate trade and commerce, there are only two systems of law that are available for this purpose. In this regard, UNCITRAL has been doing sterling work since its formation. The way forward is to adopt or adapt the work of UNCITRAL. Singapore has been an active member of UNCITRAL since 1970 and has participated in the drafting of a number of UNCITRAL texts. Justice Warren Khoo, who is also with us today, chaired the drafting committee at the full diplomatic conference convened to adopt the UN Sales Convention 1980. He was twice chairman of UNCITRAL. Singapore will continue to support the work of UNCITRAL. In a speech made at the Singapore Conference on International Business

Law held in Singapore in September 1992, the Deputy Prime Minister said that Singapore could further improve the further support for international business by promoting uniform laws among our trading partners.

UNCITRAL is particularly well placed to achieve harmonisation of international trade law for the following reasons. Firstly, UNCITRAL is an UN organisation with proportionate representation of both developed and developing countries. Secondly, it also has proportionate representation of countries with Common Law and Civil Law systems. Thirdly, UNCITRAL has established a formidable reputation over the years for its objective and scholarly work. With such a wide forum, UNCITRAL is able to tap the resources of the very best legal minds in the world. But UNCITRAL is no ivory tower. It is in constant consultation with trade and professional bodies to keep up with current trade practices. The UNCITRAL texts are therefore well-balanced, sound, practical and up to date. Added to this is the advantage that they are available in all the official UN languages."

Economic trends that warrant a review

5. The global development that warrants a review of our position is the phenomenon of the collapse of communism and the opening of markets in former communist States such as Russia and the Eastern European States and our developing trade with China. Both Russia and China and several Eastern European States are parties to the Convention.

Changing Trends in Singapore's External Trade

6. Singapore's trade used to be largely dependant on the United States. But in recent years the focus of our trade has become more broad-based. The domestic development that warrants a review of our position is the move towards regionalisation and growing a second wing through overseas expansion and building an external economy. For example, ratification would immediately create a common contract and sales law between Singapore and China available in both English and Chinese versions. China is mentioned here rather than India or Malaysia because Singapore already shares the same English Sales Law with both India and Malaysia. Harmonisation of laws, at least in the area of international sales, would be less of a problem for trade with India and Malaysia.

Formation of sub-committee

7. In view of the above, Attorney-General Chan Sek Keong when he was Chairman of the Law Reform Committee had thought that it was an appropriate time to review the position by starting a consultative process within the business community. Consultation is needed because the Convention deals with the private law of contract between two or more parties. For this purpose, Mr Chan in his capacity as Chairman of the Law Reform Committee decided that a sub-committee of the Law Reform Committee of the Singapore Academy of Law be formed to consult the business community on whether Singapore should ratify the UN Sales Convention.

8. The sub-committee continued its work in the second half of 1993 and in 1994 under the chairmanship of Justice L P Thean, Justice of Appeal of the Supreme Court.

III. CONSULTATION

Consultation Process

9. Letters of invitation were sent on 23 Aug 93 by the Chairman to the following organisations to participate in the consultation process:

- (a) Chinese Chamber of Commerce and Industry
- (b) Indian Chamber of Commerce and Industry
- (c) International Chamber of Commerce
- (d) Malay Chamber of Commerce and Industry
- (e) Singapore Manufacturers Association
- (f) Association of Small and Medium Enterprises

10. The sub-committee thought that these organisations were widely representative of those in the business community that may be affected by ratification. All the organisations invited responded favourably except for the Malay Chamber which did not respond to the invitation.

11. The first presentation was made to the Chinese Chamber of Commerce and Industry on 23 Oct 93 at the Chinese Chamber. The second presentation was made to members of the International Chamber of Commerce and the Indian Chamber of Commerce and Industry on 24 Nov 93 at the SICC Boardroom. Subsequently a presentation was made to members of the Association of Small and Medium Enterprises on 22 Jan 94 and to the Singapore Manufacturers Association on 3 Feb 94 at their respective premises. The presentations and dialogue sessions were lively with the sub-committee members fielding a number of questions from the participants.

12. A **consultation paper** was prepared by the sub-committee and sent to the organisations which had expressed an interest in participating in the consultation process. A copy of the paper was sent to the Chairman of the Law Reform Committee on 28 October 1993 for his information. The purpose of the Consultative Paper was to explain the provisions and practical implications of the UN Sales Convention. The objective of the paper was to consult and gather feedback from the business community on whether Singapore should ratify the Convention. In addition, the text and summaries of the Convention were made available to the above organisations. The Chinese Chamber was also given the Chinese text of the Convention. A copy of the **Chinese text** is attached at **Appendix B**.

13. The organisations consulted all responded in favour of ratification of the Convention in the following letters (in chronological order):

- (a) International Chamber of Commerce (25 Nov 93)
- (b) Chinese Chamber of Commerce and Industry (3 Jan 94)
- (c) Association of Small and Medium Enterprises (4 May 94)
- (d) Indian Chamber of Commerce and Industry (5 May 94)
- (e) Singapore Manufacturers Association (6 May 94)

14. Copies of these letters are attached at **Appendices H1 to H5**.

Views of Business Community

15. The **International Chamber of Commerce** (25 Nov 93) said that they "see no reason why Singapore should not proceed to ratify the Convention as by and large it would appear to be in the interests of our business community particularly with regard to having a uniform contract system for ASEAN in due course."

16. The **Chinese Chamber of Commerce and Industry** (3 Jan 94) gave the following reasons for supporting ratification:

(a) the Convention introduces an element of certainty into contracts between Singapore and foreign businessmen which are currently governed by private international law. It is noted that parties have the option to opt out of the Convention.

(b) as indicated at the presentation held on 23 Oct 93, it would appear that ratification would bring about more advantages than disadvantages though the Convention is not a 'complete' one. Besides the Convention had already covered the essential issues like formation of contract, obligations of buyer and seller, remedies for breach of contract etc.

(c) some of Singapore's major trading partners have already ratified the Convention and that the value of the total trade of the 34 countries which have ratified the Convention accounted for 61.3 % of total global trade.

17. The **Indian Chamber of Commerce and Industry** (5 May 94) stated simply that they were in support of the proposal for Singapore to ratify the Convention.

18. The **Singapore Manufacturers Association** (6 May 94) stated that "Singapore companies would be able to benefit as a result of the harmonisation of trade laws". The SMA then expressed its support for the proposal for Singapore to ratify the Convention.

19. The **Association of Small and Medium Enterprises** (4 May 94) stated simply that they were in support of the proposal for Singapore to ratify the Convention.

IV. BACKGROUND TO THE CONVENTION

Origins of and Background to the Convention

20. The concern expressed over centuries on the barriers to international trade caused by national differences in the law of contract led in 1929 to the International Institute for the Unification of Private Law (UNIDROIT) sponsoring the drafting of a uniform law on the international sale of goods. This process was interrupted by the Second World War but resumed and led to the adoption in 1964 of two Conventions which set out a Uniform Law for the International Sale of Goods and a Uniform Law on the Formation of Contracts for the International Sale of Goods. Only 28 States attended the Conference and of them 19 were from Western Europe, three from Eastern Europe (but not the USSR), only Colombia from Latin America, only Japan from Asia, and only the United Arab Republic from Africa and the Middle-East. The Conventions came into force 8 years later, on their ratification by 5 States. The Conventions failed to achieve wide acceptance, with only 7 European and 2 other countries becoming party to them.

21. UNCITRAL faced a choice in its early sessions: should it promote acceptance of the 1964 Conventions (as it did with the 1958 Convention on Foreign Arbitral Awards) or should it prepare a new text dealing with this vital matter? It adopted the latter course, very much as a result of the comments which it sought and received from States. To quote the Secretary of UNCITRAL at the time:

"It became evident [from the comments] that the 1964 Conventions, despite the valuable work they reflected, would not receive adequate adherence. The basic difficulty stemmed from inadequate participation by representatives of different legal backgrounds in the preparation of the 1964 Conventions; despite efforts by UNIDROIT to encourage wider participation these Conventions were essentially the product of the legal scholarship of Western Europe."

22. By 1978 UNCITRAL had completed a draft Convention composed of parts on sales and on formation of sales contracts which were developed out of the two 1964 Conventions. The earlier drafts were prepared by a widely representative working group of States which was aided by the contribution, as observers, of a number of international organisations. The General Assembly of the United Nations convened a diplomatic conference to consider the draft Convention. Singapore has made significant contributions to the preparation of the Convention firstly through her participation as a member of UNCITRAL and secondly at the diplomatic conference held at Vienna¹.

23. On **1st January 1988**², the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) came into force as a consequence of the deposit of the 10th instrument of ratification, acceptance, approval or accession on 11 December 1986. This was nearly 8 years after it was adopted at Vienna in 1980.

24. Singapore signed the Convention on 11 April 1980. This signature is in itself not binding. Ratification is required to make Singapore a party to the Convention.

Who are and Who are Not Parties ?

Who are ?

25. The original 11 states for which the Convention came into force on 1st January 1988 were **Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, United States, Yugoslavia and Zambia**. Since that date, there are now (as at 25 May 1994) a total of 38

parties to the Convention including many of the major trading economies in the world such as **USA, China, Russia, Canada, Australia and many EU countries**. Six out of the current 12 members of the EU are parties (**Denmark, Spain, Italy, France, Netherlands and Germany**). Next year, this will increase to 10 out of 16 as all 4 new members (**Austria, Norway, Sweden and Finland**) to be admitted in 1995 are parties to the Convention. Out of the 7 countries in the powerful **Group of 7 or G7 economic summit**, 5 countries are parties viz USA, Canada, France, Germany and Italy. Of the other two remaining countries, Japan as discussed below at para 27 may eventually become a party and UK's position is ambivalent. All three members of **NAFTA** are also parties. The momentum at which the Convention is gathering widespread global acceptance can be seen by the fact that from June 1993 to May 1994, it gathered 4 more parties and the fact that there are 38 parties and 4 signatories within a relatively short (in the international time frame) span of 14 years. A list of the 38 parties to the Convention as at 25 May 1994 is attached at **Appendix D**.

26. The **New Zealand** Law Commission has recommended ratification of the Convention³. Sir KJ Keith the Chairman of the NZ Law Commission informed us on 21 Oct 93 that a Bill has been tabled in the NZ Parliament to implement the Convention. One noteworthy point is that after 1997, **Hong Kong** will be part of the territory of a Contracting State by virtue of China's earlier ratification. A list of the parties is at **Appendix D**.

Who are Not ?

27. On the other hand, a few of our major trading partners such as the **UK, Japan and the ASEAN countries** have **not ratified** the Convention. However, **Japan** is also seriously considering ratification of the Convention. Prof Iwahara of Tokyo University in his letter of 22 Feb 93 informed us that the Japanese Ministry of Justice has formed a Committee chaired by Prof K. Sono to consider ratification of the Convention. Prof Sono has informed us verbally that it is only a question of time before the Japanese Parliament ratifies the Convention.

28. It is generally true to say that other **ASEAN** countries may look to Singapore to take the lead in international trade law as Singapore has been active in UNCITRAL since 1970. Chances are that if Singapore adopts the Convention, the other ASEAN countries may soon follow suit resulting in a degree of harmonisation in ASEAN trade laws.

29. The **UK Department of Trade and Industry** issued a consultation document⁴ in 1989 seeking views on UK's possible ratification. The UK representative to UNCITRAL has explained that the responses to ratification were evenly balanced for and against. If we wait for the UK to ratify, it may be a long while before it does so. Robert G Lee in his 1993 article entitled "*the UN Convention on Contracts for the International Sale of Goods: OK for the UK ?*"⁵ states that the Secretary of Trade and Industry was due to make a statement on UK ratification of the Convention in mid May 1991. No such statement was made. It now seems that a ministerial statement will not be forthcoming as it is unlikely that any British Minister making such a statement (partly because of scarce Parliamentary time) would still be in office at the time of the introduction of any legislation. Indications are that the UK Parliamentary time-table is full for at least three years. UK's legal approach has been conservative and their reluctance is partly due to their perception of the superiority of English commercial law and their fear that English commercial law will lose out in international prominence. This can be perceived from the objection offered by the Law Society of England and Wales that "the Convention will result in a diminished role for English Law within the international trade arena"⁶.

V. OVERVIEW OF THE CONVENTION

Salient Features and Application of Convention

30. A summary of the provisions of the Convention prepared by the UNCITRAL Secretariat is attached at **Appendix C1**.

31. If Singapore ratifies the Convention, it will mean that contracts for the international sale of goods between Singapore and another Convention country will be governed by the law of the Convention unless the parties agree to opt out of the Convention.

32. The Convention states a uniform set of rules for the contracts which it governs. Those contracts are defined mainly by reference to two matters - the place of business of the parties and the subject matter of the contract.

33. The parties are to have their places of business in different States (and to know that fact in respect of the other party) and either

- those different States are Contracting States, or
- the rules of private international law must lead to the application of the law of a Contracting State (art 1 (1)(b)).

34. It follows that, in terms of art 1(1)(a), unless the parties otherwise agree, a sales contract between businesses in Toronto and New York is subject to the Convention since both Canada and the United States are Contracting States. By contrast, a contract between businesses in Sydney and Singapore is subject to the Convention (adopted without reservations) only if, as required by art 1(1)(b), the contract is subject to the law of New South Wales or some other jurisdiction which is itself a Contracting State. It follows from the second application provision that, as in the example, the Convention is already able to apply to Singapore international sales contracts. In general it applies if the contract expressly says that it is governed by the law of one of those countries or if one of those countries has the closest connection with the subject matter of the contract. However, we recommend below at para 58 that a reservation be made to exclude the application of art 1(1)(b) so that the Convention will not apply merely by virtue of the applicable or governing law of the contract.

An Overview of the Convention

35. An overview of the Convention adapted from a Report by the New Zealand Law Commission⁷ is set out at **Appendix C2**.

The Convention in Practice

36. An analysis of the Convention in practice adapted from the New Zealand Law Commission Report is set out at **Appendix C3**. The Convention has sufficient similarities with English Law to facilitate acceptance by our businessmen and lawyers. The following is a list of major differences which businessmen and lawyers should be aware of in practice:

- (1) An offer can be made irrevocable even if no consideration is given (art 16(2));
- (2) A counter-offer can amount to an acceptance even though there are alterations or additions to the offer if these do not materially alter the terms of the original offer unless the original offeror objects to it without undue delay (art 18(2));
- (3) The Convention emphasises saving the contract by eg -

- (a) narrowing the definition of "fundamental breach" which is the central element of the right to declare the whole contract as avoided (art 25 defines it as "a breach which 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");
 - (b) the aggrieved party can fix a final additional reasonable period for the party in default to perform (art 47) (Nachfrist in German Law);
 - (c) the party in possession of the goods must take reasonable steps in the specified circumstances to preserve them (sect VI).
- (4) Notice within a reasonable period after discovery or constructive discovery must be given before aggrieved party can rely on non-conformity or third party rights or claims to the goods or in respect of intellectual property (art 39 and 43).
- (5) If price or other sum of money is in arrears, the party to which it is owed is entitled to interest (art 78).
- (6) New remedies are provided such as -
- (a) delivery of substitute goods if lack of conformity constitutes a fundamental breach (art 46(2));
 - (b) remedy of the lack of conformity by repair(art 46(3));
 - (c) additional period of time fixed for performance (art 47);
 - (d) reduction of price for non-conformity (art 50);
 - (e) remedies may apply to part of goods (severance)(art 51);
 - (f) seller may make specifications himself on what is known if buyer fails to make specifications within agreed specified time(art 65).
- (7) The introduction of an "exemption" doctrine (art 79) which is akin to but significantly different from the common law doctrine of "frustration".

Opting Out

37. Article 6 provides that parties are free to vary or exclude the provisions of the Convention in whole or in part. This is the "opting out" provision which gives parties who are uncomfortable with the Convention, the freedom to opt out. This may be desirable for example where the parties are in Singapore and Australia which both have similar domestic Sales laws based on the English SGA.

Differences between Convention and Singapore Law

38 The law relating to the Sale of Goods in Singapore can of course be found in the UK Sale of Goods Act 1979 (SGA) which has been received into Singapore law by virtue of section 5 of the Civil Law Act⁸. As a result of the Application of English Law Act 1993, the SGA continues to apply and be part of our laws by virtue of that Act. It is now reprinted with modifications as Chapter 393 of the 1994 Revised Edition of Statutes. Invariably, in a Convention which attempts to unify the diversities of law in the world (particularly between the Civil Law and Common Law systems), the result can only be achieved through a fair

degree of compromise. One cannot therefore expect the Convention to be fully compatible with or similar to the SGA. Having said that, it should be noted that many of the provisions in the Convention are similar to the SGA and Common Law doctrines of contract law. Some of the provisions even represent innovations and improvements on the Common Law principles of contract law.

39. The main differences which lawyers and businessmen should be aware of are highlighted above. A detailed comparative table of the differences between the Convention and the Sale of Goods Act as well as English Contract Law prepared by Mr. Phua Wee Chuan is at **Appendix G**.

VI. SINGAPORE SHOULD RATIFY CONVENTION

Legal Advantages in Ratification

40. The following are in short the legal advantages of ratification:
- (1) Our current Sales Law (represented by the English Sale of Goods Act (SGA) 1979 which is in substance not very different from the SGA 1893) which is 100 years old is not better suited than the Convention for modern commercial contracts. This was suggested by a leading authority on commercial law, Prof Roy Goode⁹ in his article advocating ratification by the UK of the Sales Convention. A copy of Prof Goode's article in the Times of London, 22 May 1990 is attached at **Appendix F5**. The Convention offers rules that will be more responsive than the traditional national laws to the effective needs of international trade.
 - (2) The Convention serves a “gap-filling” function when a cross-border contract is made by phone or even by fax or telex but in only a few words. There is now a text delineating the rights and duties of buyer and seller and setting out, in broad terms and in 6 official languages, the essential legal provisions which can govern the international contract into which they intend to enter.
 - (3) Having the Convention apply is better than having to choose an unknown foreign law eg Russian Law or German Law as the applicable law of the contract. Singapore businessmen can avoid being forced to accept an unfamiliar foreign law. As demonstrated in the recent *Sumitomo Bank* case¹⁰, a foreign law issue can be decided in Singapore courts but additional expense and time will have to be spent in calling foreign experts to give evidence on an issue in the foreign law. This is in addition to the complex conflict of laws issues.
 - (4) It follows from the above that the Convention serves as a neutral law acceptable to both parties. If the other party's country is also a Convention State eg Russia, Germany or China, it can be said that both parties are adopting their own law and neither party loses out to the other party as far as choice of law is concerned.
 - (5) The Convention recognises that the parties to international sales contracts may wish to exercise broad contractual freedom. Article 6 enables them to exclude the application of the Convention and to derogate from or vary the effect of any of its provisions. This means that if a trader wishes to have its national law applied - and the other party can be persuaded -the new rules in the Convention do not apply to the extent of that agreement. The very significant role of trade usages and practices between the parties is also expressly recognised by the Convention. In the absence of such agreements between the parties, the uniform rules do apply.
 - (6) A prodigious amount of time and work and scholarship has gone into the making of the Convention. The earlier drafts were prepared by a widely representative working group of States which was aided by the contribution as observers of a number of international organisations. The delegates who participated in the drafting of the Convention include some of the most eminent jurists in both the Common Law and Civil Law countries.
 - (7) The Convention helps to avoid difficult conflict of laws issues. This is a complex area of law and much uncertainty can be generated over the basic question of what is the applicable law of the contract. The Convention also helps to avoid costly litigation which may arise from resolving these difficult issues that may otherwise arise.

41. A major element in the successful application of the rules to remove legal barriers to international trade is their uniform interpretation. The Convention takes a first step in the direction of avoiding divergent national interpretations by emphasising the international character of the rules, uniformity of application, the observance of good faith, and the application of the general principles underlying it (art 7). UNCITRAL has compiled what it calls CLOUT (Case Law on UNCITRAL Texts) which contains important court decisions from around the world, in an attempt to promote international uniformity in interpretation of the Convention.

Trade Advantages in Ratification

42. With the present emphasis on regionalisation, it is an appropriate time to consider ratification as it would provide a common sales law with countries as diverse as China, Russian Federation, Canada, US, several East European and EC countries and Australia.

(a) Summary of advantages

43. The following are in short the trade advantages of ratification:

(1) The Convention takes into account modern trade practices and realities. The Convention has a special advantage in that a number of provisions have been tailored according to the special needs of international trade. It contains provisions on the interpretation of contracts which are wider than the Common Law rules. It encourages parties to preserve the contract by offering them less drastic means than litigation to resolve disputes. This is a more Asian and consensual approach than the Western confrontational approach. As Justice Warren Khoo put it, the Convention promotes more "gentlemanly behaviour" and good faith which is the way business is done in this part of the world.

(2) The Convention is drafted in simple and plain language for businessmen to understand. It has a very limited use of technical legal terms and concepts. It is said to have the characteristics of simplicity, practicality and clarity. It is free of legal shorthand, free of complicated legal theory and easy for business people to understand. It is written in their language¹¹.

(3) The Convention contains useful provisions to practical problems such as requiring parties to preserve goods in their possession belonging to the other party. The Convention takes into account the special characteristics of international sale of goods contracts, especially the distances involved, the costs of transportation and the involvement of intermediaries. One consequence is an emphasis in the Convention on the preservation of the contract notwithstanding default or other non-compliance. This means that the remedies (especially those available to buyers) are extended beyond those normally available under Singapore Law. For example, the Seller has the right to cure defects in his or her performance not only up to the date of delivery but also thereafter if he can do so without causing the buyer unreasonable inconvenience.

(4) If Singapore does not ratify the Convention, we may be left behind from the rest of the major trading nations in the world. With the increasing number of Convention countries accounting for 61% of the world's trade in 1990, Singapore may find itself amongst the few major trading nations in the world which have yet to ratify the Convention. Our lawyers and courts will have insufficient time to learn and familiarise themselves with the Convention.

(5) **Appendix F1** prepared by Mr. Tay Thiam Peng of the Trade Development Board shows the statistics on the total trade of Convention countries amounting to

61% of the World's Trade in 1992¹². States which participate in 34.66% of Singapore's external trade for 1993 have already become parties to the Convention. See **Appendix F2** also prepared by Mr. Tay Thiam Peng for the statistics on the details of Singapore's external trade with Convention countries. More recent statistics are not readily available but are not expected to show any significant change. If at all, it would show an increase because of the increase in the number of parties and the phenomenal growth experienced by China in recent years.

(6) The Convention will facilitate cross-border trade and save time, expense and avoid uncertainty.

(7) The Convention is available in all 6 official UN languages including Arabic, English, Chinese, French, Spanish and Russian. It would also have been translated into the languages of the other Convention countries such as German, Italian or Dutch. This will save considerable costs and time in translation and help bridge language barriers.

(8) The economic powerhouse of China has its Foreign Economic Contracts Law of 1985 modeled after the Convention. It is likely that former communist countries such as Vietnam without any developed legal system, such as Vietnam, will find it attractive to adopt the Convention as their domestic sales law.

(9) As ASEAN is a microcosm of the world's different legal systems, any attempt to harmonise international trade law from scratch is a herculean task. The Convention offers a viable solution to the task of harmonisation of ASEAN international trade law if all ASEAN countries accept it. For example in the field of reciprocal enforcement of arbitral awards, a degree of harmonisation has been achieved as all ASEAN countries (except for Brunei) are parties to the 1958 New York Convention.

(10) The Convention will provide the legal infrastructure to facilitate the Government's drive to promote economic expansion overseas by providing our businessmen and companies with a uniform sales law with the countries in which they are investing eg China.

(11) The Convention will facilitate any move for Singapore to link up with NAFTA as it is the uniform sales law of NAFTA.

(b) Harmonisation of ASEAN Laws

44. Prof Dr Mochtar Kusuma-Atmadja, former Minister of Foreign Affairs and Justice in Indonesia, made the following frank and penetrating analysis of the state of efforts at harmonising ASEAN laws at the PECC Meeting on 9 Sep 93 and in the process offered us some good advice:

"In ASEAN where the level of integration is very low and attempts at integration in an institutional sense is meeting strong resistance, efforts at harmonisation have met with very little success if anything was achieved at all. The call made by the then Minister of Justice of Indonesia to harmonise the laws on contracts and the laws on corporations have to my knowledge not led to any results so far. Both examples show that efforts at harmonisation if done through the national legislative bodies is a long and arduous process at best. Such an approach meets resistance rooted in the notion of national sovereignty and is often political in nature even in matters which are recognised to be culturally neutral as is the case in law dealing with trade and industry Once a culturally neutral subject matter is identified such as trade or commerce ... harmonisation should become casier. An indirect approach should be used with one

agreed text as a model. One way to do it is through the dissemination and in-depth familiarisation process of a draft code, draft convention with related model contract(s), standard forms and procedures. An example of this approach using a draft code as a model was the harmonisation of the law on commerce and related matters in the more than fifty states of the USA using the UCC as a model

In my opinion this is the course to be followed with the draft conventions, draft codes, model laws and other drafts produced by UNCITRAL. The fact that international trade law is basically also politically neutral makes a familiarisation process through inclusion in law school curricula eminently reasonable.

....

In newly industrialising countries dependent on trade and export for their growth, however, governments increasingly recognise that improving their legal infrastructure is of equal importance to improvements in the country's physical or administrative infrastructure. They may become more supportive of efforts to harmonise international trade law if important segments of the legal community are actively engaged in it. In an international trade oriented city state like Singapore this should not be difficult to organise. It may already have been done."

(c) Going Regional

In January 1993, the Prime Minister appointed a Committee to Promote Enterprise Overseas to look into measures that will encourage Singapore business men and companies to venture overseas, and to promote entrepreneurship among Singaporeans. The emphasis is now to grow an external wing to our economy or an external economy. In the Law Ministry's addendum to the President's address issued on 11 January 1994, it was stated that a major review of laws will be conducted by the Ministry and the Attorney-General's Chambers to provide adequate infrastructure to support Singapore's drive to go regional. They will when appropriate adopt international conventions and model laws which harmonise and facilitate international trade and dispute settlements¹³.

(d) Building a world class external legal system

45. Complementary to building an external economy would be building a world class legal system for external and international trade. As the Business Times of 7 October 1993 (Law Page) put it:

"Singapore's legal scene is on the move. Only last month, it was reported that Singapore topped an international survey which measures the effectiveness of the legal systems of a number of countries.... A country's legal system is an important facilitator of its economy. Although a strong legal system does not guarantee a robust economy, it is difficult to find a robust economy without a strong legal system.

.....

The good news is that similar legal developments in Singapore are being considered for Singapore's external legal scene. By external I mean that part of Singapore's legal system which affects international transactions involving Singapore.

.....

Whether or not Singapore should accede to the Convention is an important issue which will affect the law of import and export sales. The obvious advantages are there."

(e) **Making Engine of Growth more efficient**

46. As Attorney-General Chan Sek Keong put it in his opening address at the PECC Meeting on 9 Sep 93:

"As a lawyer addressing an economic meeting, I am the first to acknowledge that the harmonisation of trade laws in itself can never be the engine of trade and economic development. However, without harmonisation the engine may not perform as efficiently as it should. It is therefore in the interest of trading nations with different legal systems to trade under a regime of uniform laws."

Practical Implications of Ratification

47. Aspects of the Convention have provoked negative comment. The Convention may introduce uncertainties (although the uncertainty of the present legal position should not be underestimated). **Appendixes C2 and C3** address some of those problems with two purposes: to provide information and opinion relevant to the evaluation of the Convention and acceptance of it; and to help enhance understanding of the Convention. It will be important for those affected by the Convention to be aware of those problems, especially since parties have an almost unlimited freedom to amend or even to completely replace the rules in the Convention. The parties' practices, usages, standard terms and specific agreements can overcome most if not all of the perceived problems, and those methods will often be better and more effective than will be diverse national laws.

Economic Impact of ratification with major and potential trading partners

48. Justice Warren Khoo, a Supreme Court Judge said at the Pacific Economic Cooperation Council (PECC) Meeting on 9 Sep 93:

"...Our businessmen and entrepreneurs have had to trade with, and invest in countries that were once quite remote from their consciousness. This means encounters with unfamiliar laws, unfamiliar ways of conducting trade and other economic relations. Neighbours who are very close to us are, in terms of their legal systems, very far indeed from us. They might as well be at the other end of the world. Indonesia is a case in point, so are countries of the former Indo-china. Further afield there is the economic colossus of Japan, and now there is the rising economic powerhouse of China. Singapore's trade laws are as different from those of any of these countries as any laws could possibly be.

In such a setting, that a convention like the Vienna Sales Convention should find a place, I suggest is self-evident. As barriers are lifted and economies opened up, and as trade relations are realigned, businessmen in Singapore have now to trade with those whose laws are quite unfamiliar. The chances of encountering legal problems and of having those problems resolved by an unfamiliar system of law are ever present. The Vienna Sales Convention represents an attempt to lessen such risks, at least in the area of sale of goods."

49. As mentioned above, States which participate in 34.66% of Singapore's external trade have already become parties to the Convention. Our major trading partners have adopted the

Convention. With 38 parties as at May 94 -including the US, most of the EU (France, Germany, Italy, Netherlands and Spain and Denmark and from 1995 Austria, Norway, Sweden and Finland) Australia, Canada, China and the Russian Federation, - it covers many countries which with we have substantial trading links. It also covers the countries to which we are seeking to forge trading links with such as Eastern Europe (Bulgaria, Hungary and Romania) and Latin America (Argentina, Chile, Mexico, Ecuador and Venezuela).

50. Dr. Gerold Herrmann, the Secretary of UNCITRAL has also informed us that since all three members of the North American Free Trade Agreement (NAFTA) viz. Canada, USA and Mexico are parties to the Convention, the Convention is by virtue of its article 1 the uniform sales law of intra-NAFTA trade, practically speaking. A copy of Dr. Herrmann's letter of 10 Feb 94 is attached at **Appendix J**. Singapore has raised the possibility of linking up with NAFTA on a bilateral basis¹⁴. Whether this is achieved through AFTA (ASEAN Free Trade Area) or the APEC forum (Asia-Pacific Economic Cooperation), ratification of the Convention would give Singapore the necessary legal infrastructure to share a uniform sales law with the NAFTA member countries.

Imperfections of Convention

51. As Justice Khoo said, one should not look at the Convention through rose-tinted glasses. One should not expect the Convention to:

- (1) Be a complete and exhaustive code –
 - the Convention does not cover passing of property, validity of contract, liability for death or personal injury and capacity to contract
 - these issues are left to be decided by national laws so a choice of law clause is still required.
- (2) Be free from interpretative difficulties as compromise between divergent legal systems may have made parts of the Convention uncertain.
- (3) Provide a perfect solution to those issues it deals with.
- (4) Take the place of contracts.
- (5) Be (at least in the initial period) more familiar to local courts and lawyers than the provisions of our current Sales Law. But the legal profession here has shown its ability in recent history to adapt to changes and new laws. It is arguably casier to master the Convention than the provisions of a foreign law such as Chinese or Russian law.

52. Some further criticisms are that because the parties are free to derogate or vary provisions of Convention, some like Derek Wheatley QC (see **Appendix F5**) say this leads to uncertainty. Another criticism made by the Law Society of England and Wales is that it will not produce uniformity because it will be subject to differing national interpretations. In this respect, UNCITRAL has endeavoured to promote uniformity of interpretation by publishing CLOUT. A copy of CLOUT is attached at **Appendix L1**. CLOUT (Case Law On UNCITRAL Texts) is a collection of digests of court decisions and arbitral awards relating to UNCITRAL texts including the Convention. It is available in English and the other UN languages. CLOUT should assist courts and arbitral tribunals in arriving at broadly uniform interpretations. This is aided by art 7(1) of the Convention which provides that in the interpretation of the Convention, regard is to be had to its international character and the need to promote uniformity in its application and the observance of good faith in international trade.

53. The Law Society of England and Wales also offered the objection that sophisticated traders will find it easy to avoid the provisions of the Convention. With respect, this argument seems more appropriate in the context of domestic consumer sales rather than international sales. This is especially when art 2(a) excludes consumer sales (goods bought for personal, family or household use) from the ambit of the Convention.

54. It is true that the wide acceptability of the Convention could be achieved only by numerous compromises. As is invariable in a Convention which attempts to unify the diversities of law in the world particularly between the Civil Law and Common Law systems, the result can only be achieved through a fair degree of compromise. For the Convention to be completely compatible or similar to the English Sale of Goods Act would have made it unacceptable to those countries with non-Common Law jurisdictions. It would have been perceived as the unwelcome imposition of English Law on their Civil Law systems. For example, it would make the Convention unacceptable to both Thailand and Indonesia which have Civil Law systems. These shortcomings have been compensated for by the advantage of replacing the multitude of foreign laws now applicable to the many foreign transactions of our traders.

55. As the UK Department of Trade and Industry (the equivalent of our MTI) stated in their consultation paper, to criticise certain detailed provisions of the Convention is not in itself a reason to reject it in its entirety, particularly where there is no evidence that the uncertain scope of the Convention will prejudice business. In other words we should not 'throw the baby out with the bath water'.

Reservations

56. The Convention permits a number of reservations as provided in Articles 92 to 96. Article 92 allows a State to exclude the application of Part II (formation of contract) or III (Sale of Goods) of the Convention. We advise against this reservation as it will dilute the utility and effectiveness of this Convention. As it is the Convention has already been criticised for not being a complete and exhaustive code. Article 93 which relates to countries with territorial units is not applicable to Singapore. Article 94 on two or more Contracting States having closely related laws is also not immediately applicable to us as Malaysia, Brunei and UK are not yet parties. If they do subsequently become parties, a joint reservation can still be made at any time. Such a reservation has been made by the Scandinavian countries who have traditionally a uniform system of laws. Article 96 on the requirement for contracts to be in writing is also not applicable to us as there is no such requirement in our laws. This reservation has been made by Russia and Eastern European countries.

57. The only reservation that we could possibly consider is that in Article 95. Article 95 allows the exclusion of Art 1(1)(b). Art 1(1)(b) provides that the Convention will apply where the parties' places of business are in different States and when the rules of private international law lead to the application of the law of a Convention State. China, US, Slovakia and British Columbia have made this reservation. Germany made a reservation that it will not apply art 1(1)(b) to a State that has made this reservation. Of the Commonwealth countries that have adhered to the Convention - Australia, Canada, Lesotho and Zambia - none (except Canada in respect of British Columbia) have made such a reservation. Article 95 will decrease in significance as more countries become parties to the Convention.

58. If no Article 95 reservation is made, it will mean that the Convention will apply even though one of the parties does not have his place of business in a Convention State. Let us illustrate with the following example on the assumption that Singapore ratifies the Convention. A Singapore trader enters into a contract with a Malaysian trader. If the contract provides that it be governed by Singapore law, then, the Convention will apply instead of the Singapore Sale of Goods Act. This may not be the result intended by traders. Hence, for a

start it is recommended that a reservation be entered as permitted by article 95. It can always be withdrawn later on if it is not found to be useful.

59. The reservation can be effected, as recommended by the Commonwealth Secretariat, by the following words:

" The Republic of Singapore in accordance with article 95 of the Convention, declares that it will not be bound by article 1 subparagraph (1)(b) of the Convention and will apply the Convention to Contracts of Sale of Goods only between those parties whose places of business are in different States when the States are Contracting States."

VII. RECOMMENDATIONS AND DRAFT BILL

Recommendations

60. It is recommended that:

- (1) Singapore ratify the Convention with the reservation under Article 95 that Singapore will not be bound by Article 1(1)(h)
- (2) this report of the sub-committee including the feedback from the business community, if adopted by the Law Reform Committee, be presented to the Ministry of Law and the Ministry of Trade and Industry.
- (3) the Convention be given effect to by the enactment of a Sale of Goods (United Nations Convention) Act attached at **Appendix E**.
- (4) a comprehensive publicity campaign be launched to raise the awareness of the business and legal community on the impending ratification as it will be implemented on an opt-out basis. The business organisations consulted, the Academy of Law and the Law Society can participate in this process by organising seminars and disseminating information on the Convention.

Draft Sale of Goods (United Nations Convention) Bill

61. A draft Sale of Goods (United Nations Convention) Bill prepared by the Sub-committee is attached at **Appendix E**. This Bill was modelled after the Model draft Bill contained in the Commonwealth Secretariat's Explanatory Documentation prepared for Commonwealth Jurisdictions issued in October 1991. The Commonwealth draft in turn drew its principal particulars from the Australian Sale of Goods (Vienna Convention) Act 1986 passed to give effect to the Convention in the State of Queensland. Other Australian State legislation are in pari materia with the Queensland Act. Unlike the Commonwealth Secretariat's and Australian legislation, our draft Bill makes provision for article 1(1)(b) not to apply. But this provision can be deleted by a Ministerial Order if the reservation is subsequently withdrawn.


62. It should be noted that there is no necessity to provide for specific provisions on interpretation of the Convention for the following reasons. Firstly, article 7(1) on interpretation will by virtue of clause 3 of the Bill have the force of law in Singapore. Secondly, apart from section 9A of the Interpretation Act, it is an established canon of statutory interpretation that the courts may refer to the *travaux preparatoires* (preparatory work) as an aid to the interpretation of a treaty or international convention¹⁵.

Dated this 31st day of August 1994.

Charles Lim Aeng Cheng, Chairman



Miss Toh Hwee Lian, Secretary



Lawrence Boo



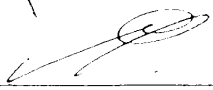
David Chong Gek Sian



Ms Pek Siok Lan



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
Sin Boon Ann



MS Tan Beng Tee



Tay Thiam Peng



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- 1 Singapore's representative to the diplomatic conference Justice Warren L.H. Khoo (then Senior State Counsel) was elected Chairman of the Drafting Committee. Mr. Khoo was also elected as Chairman of UNCITRAL twice in 1976 and 1981.
- 2 Art 99(1) of the Convention provides that it shall enter into force on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under art 92.
- 3 NZ Law Commission Report No 23, The United Nations Convention on Contracts for the International Sale of Goods: New Zealand's Proposed Acceptance, Jun 1992.
- 4 United Nations Convention on Contracts for the International Sale of Goods, A Consultative Document, UK DTI, June 1989.
- 5 JBL Mar 1993 p 131 at 145.
- 6 Law Reform Committee of the Council, Law Society of England and Wales (1981).
- 7 New Zealand Law Commission, Report No 23, 1992.
- 8 Cap. 43
- 9 Norton Rose Professor of English Law at St John's College, Oxford University.
- 10 *Sumitomo Bank Ltd v Kartika Ratna Thahil & Ors* [1993] 1 SLR 735.
- 11 Professor Sono, "The Vienna Sales Convention: History and Perspective" in the Dubrovnik Lectures 1, 7.
- 12 These figures are from the latest available IMF Direction of Trade Statistics Yearbook 1993 at the time of preparation of this report.
- 13 Straits Times, 12 January 1994, front page.
- 14 Business Times, 22 Jun 94 p 20.
- 15 Bennion on Statutory Interpretation at p 463.

APPENDICES

- A United Nations Convention on Contracts for the International Sale of Goods
- B Chinese Text of Convention
- C1 Summary of Convention prepared by UNCITRAL Secretariat
- C2 An Overview of the Convention
- C3 The Convention in Practice
- D Parties
- E Draft Sale of Goods (United Nations Convention) Bill
- F1 World External Trade Statistics
- F2 Singapore External Trade Statistics
- F3 Legally the Best and Still on the Move, Business Times 7 Oct 1993
- F4 Laws to be Reviewed to aid "Go Regional" Drive, ST 12 Jan 1994
- F5 Why Compromise Makes Sense, The Times (London) 22 May 1990
- F6 Why I Oppose the Wind of Change, The Times (London) 27 Mar 1990
- G Comparative Table of Convention Provisions with Singapore Law
- H Letters from Business Organisations Consulted
- H1 Chinese Chamber of Commerce and Industry
- H2 Indian Chamber of Commerce and Industry
- H3 International Chamber of Commerce
- H4 Singapore Manufacturers Association
- H5 Association of Small and Medium Enterprises
- I Letter from Prof Iwahara of Japan
- J Letter from Dr Gerold Herrmann, Secretary, UNCITRAL
- K Letter from Sir KJ Keith, Chairman, NZ Law Commission
- L1 CLOUT (Case Law On UNCITRAL Texts) cases on Convention
- L2 IBA List of Cases on Convention
- M Select Bibliography

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX A

United Nations Convention on Contracts
for the International Sale of Goods

B. CONTRACTS

United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)

The States Parties to this Convention.

Bearing in mind the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order.

Considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States.

Being of the opinion that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade.

Have agreed as follows:

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 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 in determining the application of this Convention.

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, hovercraft or aircraft;

(f) of electricity.

Article 3

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

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

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 in this Convention, it 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

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

Article 6

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

CHAPTER II. GENERAL PROVISIONS

Article 7

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

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 8

(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 of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, 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 9

(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 or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned

Article 10

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 11

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

Article 12

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement 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 96 of this Convention. The parties may not derogate from or vary the effect of this article.

Article 13

For the purposes of this Convention "writing" includes telegram and telex.

Part II. Formation of the contract

Article 14

(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 15

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

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

Article 16

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

Article 17

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

Article 18

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

(2) An 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 the preceding paragraph.

Article 19

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counteroffer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. 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, among other things, 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.

Article 20

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

(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

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

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

Article 22

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 23

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

Article 24

For the purposes of this Part of the 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 personally, to 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. Sale of goods

CHAPTER I. GENERAL PROVISIONS

Article 25

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Article 26

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

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part 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 28

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

Article 29

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

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. 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 30

The seller must deliver the goods, hand over any documents relating to them 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 31

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 32

(1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation 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, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

- (a) if a date is fixed by or determinable from the contract, on that date;
- (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 34

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. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Section II. *Conformity of the goods and third party claims*

Article 35

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, 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 or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of 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 lack of conformity

Article 36

(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 the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

Article 37

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. However, the buyer retains any right to claim damages as provided for in this Convention.

Article 38

(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 redirected in transit or 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 redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

Article 39

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

Article 40

The seller is not entitled to rely on the provisions of articles 38 and 39 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 41

The seller must deliver goods which are free from any right or claim of a third party unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

Article 42

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

Article 43

(1) The buyer loses the right to rely on the provisions of article 41 or article 42 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 has become aware or ought to have become aware of the right or claim.

(2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

Article 44

Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

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

Article 45

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

(a) exercise the rights provided in articles 46 to 52;

(b) claim damages as provided in articles 74 to 77.

(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 46

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this 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 of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

Article 47

(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 performance.

Article 48

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, 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 the preceding paragraph, that the buyer make known his decision.

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

Article 49

(1) The buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract: or

(b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed:

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so.

(a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;

(b) in respect of any breach other than late delivery, within a reasonable time:

(i) after he knew or ought to have known of the breach:

(ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performances.

Article 50

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

Article 51

(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, articles 46 to 50 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 52

(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 53

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 54

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 laws and regulations to enable payment to be made

Article 55

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Article 56

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 57

(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 his place of business subsequent to the conclusion of the contract.

Article 58

(1) If the buyer is not bound to pay the price at any other specific time he must pay it when the seller places either the goods or documents controlling their disposition at 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 59

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 compliance with any formality on the part of the seller.

Section II. *Taking delivery*

Article 60

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 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.

Article 62

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 this requirement.

Article 63

(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 performance.

Article 64

(1) The seller may declare the contract avoided:

(a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares 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 the right to declare the contract avoided unless he does 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 by the buyer, within a reasonable time:

(i) after the seller knew or ought to have known of the breach; or

(ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Article 65

(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 the requirements 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, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

CHAPTER IV PASSING OF RISK

Article 66

Loss of 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 67

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

Article 69

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods 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) However, if the buyer is bound to take over the goods at a place other than a 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 goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

Article 70

If the seller has committed a fundamental breach of contract, articles 67.68 and 69 do not impair the remedies available to the buyer on account of the breach.

CHAPTER V PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLET AND OF THE BUYER

Section I. *Anticipatory, breach and instalment contracts*

Article 71

(1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

- (a) a serious deficiency in his ability of perform or in his creditworthiness: or
- (b) his conduct in preparing to perform or in performing the contract.

(2) If the seller has already dispatched the goods before the grounds described to the preceding paragraph 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. The present paragraph relates only to the rights in the goods as between the buyer and the seller.

(3) A party suspending performance, whether before or after dispatch of the goods. must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Article 72

(1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided

(2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance

(3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

Article 73

(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 of contract 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 of contract 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 who declares the contract avoided in respect of any delivery may, at the same time, declare it 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. *Damages*

Article 74

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 of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 75

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 as well as any further damages recoverable under article 74.

Article 76

(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 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, 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 such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 77

A 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 by which the loss should have been mitigated.

Section III. *Interest*

Article 78

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

Section IV. Exemption

Article 79

(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:

(a) he is exempt under the preceding paragraph; and

(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect 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 by the other party 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.

Article 80

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

Section V. Effects of avoidance

Article 81

(1) Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

(2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

Article 82

(1) The buyer loses the 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) The preceding paragraph 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 the buyer received them is not due to his act or omission:

(b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; 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 or ought to have discovered the lack of conformity.

Article 83

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

Article 84

(1) If the seller is bound to refund the price, he must also pay interest on it, 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 VI *Preservation of the goods*

Article 85

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 86

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to 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 this can be done 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. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

A 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 88

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 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) A 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.

Part IV. Final provisions

Article 89

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention

Article 90

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

Article 91

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 92

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

Article 93

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or

accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 94

(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 95

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1) (b) of article 1 of this Convention.

Article 96

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement 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 that State.

Article 97

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

(5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

No reservations are permitted except those expressly authorized in this Convention.

Article 99

(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession this Convention, with the exception of the Part excluded enters into force in respect of that State, subject to the provisions of paragraph (6) of this article on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at the Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

(5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.

Article 100

(1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1) (b) of article 1.

(2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

Article 101

(1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX B

Chinese Text of Convention

اتفاقية الأمم المتحدة بشأن عقود البيع الدولي للبضائع

联合国国际货物销售合同公约

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE
INTERNATIONAL SALE OF GOODS

CONVENTION DES NATIONS UNIES SUR LES CONTRATS
DE VENTE INTERNATIONALE DE MARCHANDISES

КОНВЕНЦИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ
О ДОГОВОРАХ МЕЖДУНАРОДНОЙ КУПИЛЬ-ПРОДАЖИ ТОВАРОВ

CONVENCION DE LAS NACIONES UNIDAS SOBRE LOS CONTRATOS
DE COMPRAVENTA INTERNACIONAL DE MERCADERIAS

联合国国际货物销售合同公约

本公约各缔约国，

铭记联合国大会第六届特别会议通过的关于建立新的国际经济秩序的各项决议的广泛目标，

考虑到在平等互利基础上发展国际贸易是促进各国间友好关系的一个重要因素，

认为采用照顾到不同的社会、经济和法律制度的国际货物销售合同统一规则，将有助于减少国际贸易的法律障碍，促进国际贸易的发展，

兹协议如下：

第一部分

适用范围和总则

第一章

适用范围

第一条

- (1) 本公约适用于营业地在不同国家的当事人之间所订立的货物销售合同：
 - (a) 如果这些国家是缔约国；或
 - (b) 如果国际私法规则导致适用某一缔约国的法律。
- (2) 当事人营业地在不同国家的事实，如果从合同或从订立合同前任何时候或订立合同时，当事人之间的任何交易或当事人透露的情报均看不出，应不予考虑。
- (3) 在确定本公约的适用时，当事人的国籍和当事人或合同的民事或商业性质，应不予考虑。

第二条

本公约不适用于以下的销售：

- (a) 购供私人、家人或家庭使用的货物的销售，除非卖方在订立合同前任何时候或订立合同时不知道而且没有理由知道这些货物是购供任何这种使用；
- (b) 经由拍卖的销售；
- (c) 根据法律执行令状或其它令状的销售；
- (d) 公债、股票、投资证券、流通票据或货币的销售；
- (e) 船舶、船只、气垫船或飞机的销售；
- (f) 电力的销售。

第三条

(1) 供应尚待制造或生产的货物的合同应视为销售合同，除非订购货物的当事人保证供应这种制造或生产所需的大部分重要材料。

(2) 本公约不适用于供应货物一方的绝大部分义务在于供应劳力或其它服务的合同。

第四条

本公约只适用于销售合同的订立和卖方和买方因此种合同而产生的权利和义务。特别是，本公约除非另有明文规定，与以下事项无关：

- (a) 合同的效力，或其任何条款的效力，或任何惯例的效力；
- (b) 合同对所售货物所有权可能产生的影响。

第五条

本公约不适用于卖方对于货物对任何人所造成的死亡或伤害的责任。

第六条

双方当事人可以不适用本公约，或在第十二条的条件下，减损本公约的任何规定或改变其效力。

第二章

总 则

第七条

(1) 在解释本公约时，应考虑到本公约的国际性质和促进其适用的统一以及在国际贸易上遵守诚信的需要。

(2) 凡本公约未明确解决的属于本公约范围的问题，应按照本公约所依据的一般原则来解决，在没有一般原则的情况下，则应按照国际私法规定适用的法律来解决。

第八条

(1) 为本公约的目的，一方当事人所作的声明和其它行为，应依照他的意旨解释，如果另一方当事人已知道或者不可能不知道此一意旨。

(2) 如果上一款的规定不适用，当事人所作的声明和其它行为，应按照一个与另一方当事人同等资格、通情达理的人处于相同情况中，应有的理解来解释。

(3) 在确定一方当事人的意旨或一个通情达理的人应有的理解时，应适当地考虑到与事实有关的一切情况，包括谈判情形、当事人之间确立的任何习惯做法、惯例和当事人其后的任何行为。

第九条

(1) 双方当事人业已同意的任何惯例和他们之间确立的任何习惯做法，对双方当事人均有约束力。

(2) 除非另有协议，双方当事人应视为已默示地同意对他们的合同或合同的订立适用双方当事人已知道或理应知道的惯例，而这种惯例，在国际贸易上，已为有关特定贸易所涉同类合同的当事人所广泛知道并为他们所经常遵守。

第十条

为本公约的目的：

- (a) 如果当事人有一个以上的营业地，则以与合同及合同的履行关系最密切的营业地为其营业地，但要考虑到双方当事人在订立合同前任何時候或订立合同时所知道或所设想的情况；
- (b) 如果当事人没有营业地，则以其惯常居住地为准。

第十一条

销售合同无须以书面订立或书面证明，在形式方面也不受任何其它条件的限制。销售合同可以用包括人证在内的任何方法证明。

第十二条

本公约第十一条、第二十九条或第二部分准许销售合同或其更改或根据协议终止，或者任何发价、接受或其它意旨表示得以书面以外任何形式做出的任何规定不适用，如果任何一方当事人的营业地是在已按照本公约第九十六条做出了声明的一个缔约国内。各当事人不得减损本条或改变其效力。

第十三条

为本公约的目的，“书面”包括电报和电传。

第 二 部 分

合同的订立

第十四条

(1) 向一个或一个以上特定的人提出的订立合同的建议，如果十分确定并且表明发价人在得到接受时承受约束的意旨，即构成发价。一个建议如果写明货物并且明示或暗示地规定数量和价格或规定如何确定数量和价格，即为十分确定。

(2) 非向一个或一个以上特定的人提出的建议，仅应视为邀请做出发价，除非提出建议的人明确地表示相反的意向。

第十五条

- (1) 发价于送达被发价人时生效。
- (2) 一项发价，即使是不可撤销的，得予撤回，如果撤回通知于发价送达被发价人之前或同时，送达被发价人。

第十六条

- (1) 在未订立合同之前，发价得予撤销，如果撤销通知于被发价人发出接受通知之前送达被发价人。
- (2) 但在下列情况下，发价不得撤销：
 - (a) 发价写明接受发价的期限或以其它方式表示发价是不可撤销的；或
 - (b) 被发价人有理由信赖该项发价是不可撤销的，而且被发价人已本着对该项发价的信赖行事。

第十七条

一项发价，即使是不可撤销的，于拒绝通知送达发价人时终止。

第十八条

- (1) 被发价人声明或做出其它行为表示同意一项发价，即是接受。缄默或不行动本身不等于接受。
- (2) 接受发价于表示同意的通知送达发价人时生效。如果表示同意的通知在发价人所规定的时间内，如未规定时间，在一段合理的时间内，未曾送达发价人，接受就成为无效，但须适当地考虑到交易的情况，包括发价人所使用的通讯方法的迅速程度。对口头发价必须立即接受，但情况有别者不在此限。

(3) 但是，如果根据该项发价或依照当事人之间确立的习惯作法或惯例，被发价人可以做出某种行为，例如与发运货物或支付价款有关的行为，来表示同意，而无须向发价人发出通知，则接受于该项行为做出时生效，但该项行为必须在上一款所规定的期间内做出。

第十九条

(1) 对发价表示接受但载有添加、限制或其它更改的答复，即为拒绝该项发价，并构成还价。

(2) 但是，对发价表示接受但载有添加或不同条件的答复，如所载的添加或不同条件在实质上并不变更该项发价的条件，除发价人在不过分迟延的期间内以口头或书面通知反对其间的差异外，仍构成接受。如果发价人不做出这种反对，合同的条件就以该项发价的条件以及接受通知内所载的更改为准。

(3) 有关货物价格、付款、货物质量和数量、交货地点和时间、一方当事人对另一方当事人的赔偿责任范围或解决争端等等的添加或不同条件，均视为在实质上变更发价的条件。

第二十条

(1) 发价人在电报或信件内规定的接受期间，从电报交发时刻或信上载明的发信日期起算，如信上未载明发信日期，则从信封上所载日期起算。发价人以电话电传或其它快速通讯方法规定的接受期间，从发价送达被发价人时起算。

(2) 在计算接受期间时，接受期间内的正式假日或非营业日应计算在内。但是，如果接受通知在接受期间的最后一天未能送到发价人地址，因为那天在发价人营业地是正式假日或非营业日，则接受期间应顺延至下一个营业日。

第二十一条

(1) 逾期接受仍有接受的效力，如果发价人毫不迟延地用口头或书面将此种意见通知被发价人。

(2) 如果我有逾期接受的信件或其它书面文件表明，它是在传递正常、能及时送达发价人的情况下寄发的，则该项逾期接受具有接受的效力，除非发价人毫不迟延地用口头或书面通知被发价人：他认为他的发价已经失效。

第二十二條

接受得予撤回，如果撤回通知于接受原应生效之前或同时，送达发价人。

第二十三條

合同于按照本公约规定对发价的接受生效时订立。

第二十四條

为公约本部分的目的，发价、接受声明或任何其它意旨表示“送达”对方，系指用口头通知对方或通过任何其它方法送交对方本人，或其营业地或通讯地址，如无营业地或通讯地址，则送交对方惯常居住地。

第 三 部 分

货物销售

第一章

总则

第二十五條

一方当事人违反合同的结果，如使另一方当事人蒙受损害，以致于实际上剥夺了他根据合同规定有权期待得到的东西，即为根本违反合同，除非违反合同一方并不预知而且一个同等资格、通情达理的人处于相同情况中也没有理由预知会发生这种结果。

第二十六条

宣告合同无效的声明，必须向另一方当事人发出通知，方始有效。

第二十七条

除非公约本部分另有明文规定，当事人按照本部分的规定，以适合情况的方法发出任何通知、要求或其它通知后，这种通知如在传递上发生耽搁或错误，或者未能到达，并不使该当事人丧失依靠该项通知的权利。

第二十八条

如果按照本公约的规定，一方当事人有权要求另一方当事人履行某一义务，法院没有义务做出判决，要求具体履行此一义务，除非法院依照其本身的法律对不属于本公约范围的类似销售合同愿意这样做。

第二十九条

(1) 合同只需双方当事人协议，就可更改或终止。

(2) 规定任何更改或根据协议终止必须以书面做出的书面合同，不得以任何其它方式更改或根据协议终止。但是，一方当事人的行为，如经另一方当事人寄以信赖，就不得坚持此项规定。

第二章

卖方的义务

第三十条

卖方必须按照合同和本公约的规定，交付货物，移交一切与货物有关的单据并转移货物所有权。

第一节 交付货物和移交单据

第三十一条

如果卖方没有义务要在任何其它特定地点交付货物，他的交货义务如下：

- (a) 如果销售合同涉及到货物的运输，卖方应把货物移交给第一承运人，以运交给买方；
- (b) 在不属于上一款规定的情况下，如果合同指的是特定货物或从特定存货中提取的或尚待制造或生产的未经特定化的货物，而双方当事人在订立合同时已知道这些货物是在某一特定地点，或将在某一特定地点制造或生产，卖方应在该地点把货物交给买方处置；
- (c) 在其它情况下，卖方应在他于订立合同时的营业地把货物交给买方处置。

第三十二条

(1) 如果卖方按照合同或本公约的规定将货物交付给承运人，但货物没有以货物上加标记、或以装运单据或其它方式清楚地注明有关合同，卖方必须向买方发出列明货物的发货通知。

(2) 如果卖方有义务安排货物的运输，他必须订立必要的合同，以按照通常运输条件，用适合情况的运输工具，把货物运到指定地点。

(3) 如果卖方没有义务对货物的运输办理保险，他必须在买方提出要求时，向买方提供一切现有的必要资料，使他能够办理这种保险。

第三十三条

卖方必须按以下规定的日期交付货物：

- (a) 如果合同规定有日期，或从合同可以确定日期，应在该日期交货；
- (b) 如果合同规定有一段时间，或从合同可以确定一段时间，除非情况表明应由买方选定一个日期外，应在该段时间内任何时候交货；或者
- (c) 在其它情况下，应在订立合同后一段合理时间内交货。

第三十四条

如果卖方有义务移交与货物有关的单据，他必须按照合同所规定的时间、地点和方式移交这些单据。如果卖方在那个时间以前已移交这些单据，他可以在那个时间到达前纠正单据中任何不符合同规定的情形，但是，此一权利的行使不得使买方遭受不合理的不便或承担不合理的开支。但是，买方保留本公约所规定的要求损害赔偿的任何权利。

第二节 货物相符与第三方要求

第三十五条

(1) 卖方交付的货物必须与合同所规定的数量、质量和规格相符，并须按照合同所规定的方式装箱或包装。

(2) 除双方当事人业已另有协议外，货物除非符合以下规定，否则即为与合同不符：

- (a) 货物适用于同一规格货物通常使用的目的；
- (b) 货物适用于订合同时曾明示或默示地通知卖方的任何特定目的，除非情况表明买方并不依赖卖方的技能和判断力，或者这种依赖对他是不合理的；
- (c) 货物的质量与卖方向买方提供的货物样品或样式相同；
- (d) 货物按照同类货物通用的方式装箱或包装，如果没有此种通用方式，则按照足以保全和保护货物的方式装箱或包装。

(3) 如果买方在订立合同时知道或者不可能不知道货物不符合同，卖方就无须按上一款(a)项至(d)项负有此种不符合同的责任。

第三十六条

(1) 卖方应按照合同和本公约的规定，对风险转移到买方时所存在的任何不符合同情形，负有责任，即使这种不符合同情形在该时间后方始明显。

(2) 卖方对在上一款所述时间后发生的任何不符合同情形，也应负有责任，如果这种不符合同情形是由于卖方违反他的某项义务所致，包括违反关于在一段时间内货物将继续适用于其通常使用的目的或某种特定目的，或将保持某种特定质量或性质的任何保证。

第三十七条

如果卖方在交货日期前交付货物，他可以在那个日期到达前，交付任何缺漏部分或补足所交付货物的不足数量，或交付用以替换所交付不符合同规定的货物，或对所交付货物中任何不符合同规定的情形做出补救，但是，此一权利的行使不得使买方遭受不合理的不便或承担不合理的开支。但是，买方保留本公约所规定的要求损害赔偿的任何权利。

第三十八条

(1) 买方必须在按情况实际可行的最短时间内检验货物或由他人检验货物。

(2) 如果合同涉及到货物的运输，检验可推迟到货物到达目的地后进行。

(3) 如果货物在运输途中改运或买方须再发运货物，没有合理机会加以检验，而卖方在订立合同时已知道或理应知道这种改运或再发运的可能性，检验可推迟到货物到达新目的地后进行。

第三十九条

(1) 买方对货物不符合同，必须在发现或理应发现不符情形后一段合理时间内通知卖方，说明不符合同情形的性质，否则就丧失声称货物不符合同的权利。

(2) 无论如何，如果买方不在实际收到货物之日起两年内将货物不符合同情形通知卖方，他就丧失声称货物不符合同的权利，除非这一时限与合同规定的保证期限不符。

第四十条

如果货物不符合同规定指的是卖方已知道或不可能不知道而又没有告知买方的一些事实，则卖方无权援引第三十八条和第三十九条的规定。

第四十一条

卖方所交付的货物，必须是第三方不能提出任何权利或要求的货物，除非买方同意在这种权利或要求的条件下，收取货物。但是，如果这种权利或要求是以工业产权或其它知识产权为基础的，卖方的义务应依照第四十二条的规定。

第四十二条

(1) 卖方所交付的货物，必须是第三方不能根据工业产权或其它知识产权主张任何权利或要求的货物，但以卖方在订立合同时已知道或不可能不知道的权利或要求为限，而且这种权利或要求根据以下国家的法律规定是以工业产权或其它知识产权为基础的：

- (a) 如果双方当事人在订立合同时予期货物将在某一国境内转售或做其它使用，则根据货物将在其境内转售或做其它使用的国家的法律；或者
 - (b) 在任何其它情况下，根据买方营业地所在国家的法律。
- (2) 卖方在上一款中的义务不适用于以下情况：
- (a) 买方在订立合同时已知道或不可能不知道此项权利或要求；或者
 - (b) 此项权利或要求的发生，是由于卖方要遵照买方所提供的技术图样、图案、程式或其它规格。

第四十三条

(1) 买方如果不在已知道或理应知道第三方的权利或要求后一段合理时间内，将此一权利或要求的性质通知卖方，就丧失援引第四十一条或第四十二条规定的权利。

(2) 卖方如果知道第三方的权利或要求以及此一权利或要求的性质，就无权援引上一款的规定。

第四十四条

尽管有第三十九条第(1)款和第四十三条第(1)款的规定，买方如果对他未发出所需的通知具备合理的理由，仍可按照第五十条规定减低价格，或要求利润损失以外的损害赔偿。

第三节 卖方违反合同的补救办法

第四十五条

- (1) 如果卖方不履行他在合同和本公约中的任何义务，买方可以：
 - (a) 行使第四十六条至第五十二条所规定的权利；
 - (b) 按照第七十四条至第七十七条的规定，要求损害赔偿。
- (2) 买方可能享有的要求损害赔偿的任何权利，不因他行使采取其它补救办法的权利而丧失。
- (3) 如果买方对违反合同采取某种补救办法，法院或仲裁庭不得给予卖方宽限期。

第四十六条

- (1) 买方可以要求卖方履行义务，除非买方已采取与此一要求相抵触的某种补救办法。
- (2) 如果货物不符合同，买方只有在此种不符合同情形构成根本违反合同时，才可以要求交付替代货物，而且关于替代货物的要求，必须与依照第三十九条发出的通知同时提出，或者在该项通知发出后一段合理时间内提出。
- (3) 如果货物不符合同，买方可以要求卖方通过修理对不符合同之处做出补救，除非他考虑了所有情况之后，认为这样做是不合理的。修理的要求必须与依照第三十九条发出的通知同时提出，或者在该项通知发出后一段合理时间内提出。

第四十七条

- (1) 买方可以规定一段合理时限的额外时间，让卖方履行其义务。

(2) 除非买方收到卖方的通知，声称他将不在所规定的时间内履行义务，买方在这段时间内不得对违反合同采取任何补救办法。但是，买方并不因此丧失他对迟延履行义务可能享有的要求损害赔偿的任何权利。

第四十八条

(1) 在第四十九条的条件下，卖方即使在交货日期之后，仍可自付费用，对任何不履行义务做出补救，但这种补救不得造成不合理的迟延，也不得使买方遭受不合理的不便，或无法确定卖方是否将偿付买方预付的费用。但是，买方保留本公约所规定的要求损害赔偿的任何权利。

(2) 如果卖方要求买方表明他是否接受卖方履行义务，而买方不在一段合理时间内对此一要求做出答复，则卖方可以按其要求中所指明的时间履行义务。买方不得在该段时间内采取与卖方履行义务相抵触的任何补救办法。

(3) 卖方表明他将在某一特定时间内履行义务的通知，应视为包括根据上一款规定要买方表明决定的要求在内。

(4) 卖方按照本条第(2)和第(3)款做出的要求或通知，必须在买方收到后，始生效力。

第四十九条

(1) 买方在以下情况下可以宣告合同无效：

- (a) 卖方不履行其在合同或本公约中的任何义务，等于根本违反合同；或
- (b) 如果发生不交货的情况，卖方不在买方按照第四十七条第(1)款规定的额外时间内交付货物，或卖方声明他将不在所规定的时间内交付货物。

- (2) 但是，如果卖方已交付货物，买方就丧失宣告合同无效的权利，除非：
- (a) 对于迟延交货，他在知道交货后一段合理时间内这样做；
 - (b) 对于迟延交货以外的任何违反合同事情：
 - (一) 他在已知道或理应知道这种违反合同后一段合理时间内这样做；
 - 或
 - (二) 他在买方按照第四十七条第(1)款规定的任何额外时间满期后，或在卖方声明他将不在这一额外时间履行义务后一段合理时间内这样做；或
 - (三) 他在卖方按照第四十八条第(2)款指明的任何额外时间满期后，或在买方声明他将不接受卖方履行义务后一段合理时间内这样做。

第五十条

如果货物不符合同，不论价款是否已付，买方都可以减低价格，减价按实际交付的货物在交货时的价值与符合合同的货物在当时的价值两者之间的比例计算。但是，如果卖方按照第三十七条或第四十八条的规定对任何不履行义务做出补救，或者买方拒绝接受卖方按照该两条规定履行义务，则买方不得减低价格。

第五十一条

(1) 如果卖方只交付一部分货物，或者交付的货物中只有一部分符合合同规定，第四十六条至第五十条的规定适用于缺漏部分及不符合同规定部分的货物。

(2) 买方只有在完全不交付货物或不按照合同规定交付货物等于根本违反合同时，才可以宣告整个合同无效。

第五十二条

(1) 如果卖方在规定的日期前交付货物，买方可以收取货物，也可以拒绝收取货物。

(2) 如果卖方交付的货物数量大于合同规定的数量，买方可以收取也可以拒绝收取多交部分的货物。如果买方收取多交部分货物的全部或一部分，他必须按合同价格付款。

第三章

买方的义务

第五十三条

买方必须按照合同和本公约规定支付货物价款和收取货物。

第一节 支付价款

第五十四条

买方支付价款的义务包括根据合同或任何有关法律和规章规定的步骤和手续，以便支付价款。

第五十五条

如果合同已有效地订立，但没有明示或暗示地规定价格或规定如何确定价格，在没有任何相反表示的情况下，双方当事人应视为已默示地引用订立合同时此种货物在有关贸易的类似情况下销售的通常价格。

第五十六条

如果价格是按货物的重量规定的，如有疑问，应按净重确定。

第五十七条

(1) 如果买方没有义务在任何其它特定地点支付价款，他必须在以下地点向卖方支付价款：

(a) 卖方的营业地；或者

(b) 如凭移交货物或单据支付价款，则为移交货物或单据的地点。

(2) 卖方必须承担因其营业地在订立合同后发生变动而增加的支付方面的有关费用。

第五十八条

(1) 如果买方没有义务在任何其它特定时间内支付价款，他必须于卖方按照合同和本公约规定将货物或控制货物处置权的单据交给买方处置时支付价款。卖方可以支付价款作为移交货物或单据的条件。

(2) 如果合同涉及到货物的运输，卖方可以在支付价款后方可把货物或控制货物处置权的单据移交给买方作为发运货物的条件。

(3) 买方在未有机会检验货物前，无义务支付价款，除非这种机会与双方当事人议定的交货或支付程序相抵触。

第五十九条

买方必须按合同和本公约规定的日期或从合同和本公约可以确定的日期支付价款，而无需卖方提出任何要求或办理任何手续。

第二节 收取货物

第六十条

买方收取货物的义务如下：

- (a) 采取一切理应采取的行动，以期卖方能交付货物；和
- (b) 接收货物。

第三节 买方违反合同的补救办法

第六十一条

- (1) 如果买方不履行他在合同和本公约中的任何义务，卖方可以：
 - (a) 行使第六十二条至第六十五条所规定的权利；
 - (b) 按照第七十四条至第七十七条的规定，要求损害赔偿。
- (2) 卖方可能享有的要求损害赔偿的任何权利，不因他行使采取其它补救办法的权利而丧失。
- (3) 如果卖方对违反合同采取某种补救办法，法院或仲裁庭不得给予买方宽限期。

第六十二条

卖方可以要求买方支付价款、收取货物或履行他的其它义务，除非卖方已采取与此一要求相抵触的某种补救办法。

第六十三条

(1) 卖方可以规定一段合理时限的额外时间，让买方履行义务。

(2) 除非卖方收到买方的通知，声称他将不在所规定的时间内履行义务，卖方不得在这段时间内对违反合同采取任何补救办法。但是，卖方并不因此丧失他对迟延履行义务可能享有的要求损害赔偿的任何权利。

第六十四条

(1) 卖方在以下情况下可以宣告合同无效：

- (a) 买方不履行其在合同或本公约中的任何义务，等于根本违反合同；或
- (b) 买方不在卖方按照第六十三条第(1)款规定的额外时间内履行支付价款的义务或收取货物，或买方声明他将不在所规定的时间内这样做。

(2) 但是，如果买方已支付价款，卖方就丧失宣告合同无效的权利，除非：

- (a) 对于买方迟延履行义务，他在知道买方履行义务前这样做；或者
- (b) 对于买方迟延履行义务以外的任何违反合同事情：
 - (i) 他在已知道或理应知道这种违反合同后一段合理时间内这样做；或
 - (ii) 他在卖方按照第六十三条第(1)款规定的任何额外时间满期后或在买方声明他将不在这一额外时间内履行义务后一段合理时间内这样做。

第六十五条

(1) 如果买方应根据合同规定订明货物的形状、大小或其它特征，而他在议定的日期或在收到卖方的要求后一段合理时间内没有订明这些规格，则卖方在不损害其可能享有的任何其它权利的情况下，可以依照他所知的买方的要求，自己订明规格。

(2) 如果卖方自己订明规格，他必须把订明规格的细节通知买方，而且必须规定一段合理时间，让买方可以在该段时间内订出不同的规格。如果买方在收到这种通知后没有在该段时间内这样做，卖方所订的规格就具有约束力。

第四章

风险移转

第六十六条

货物在风险移转到买方承担后遗失或损坏，买方支付价款的义务并不因此解除，除非这种遗失或损坏是由于卖方的行为或不行为所造成。

第六十七条

(1) 如果销售合同涉及到货物的运输，但卖方没有义务在某一特定地点交付货物，自货物按照销售合同交付给第一承运人以转交给买方时起，风险就移转到买方承担。如果卖方有义务在某一特定地点把货物交付给承运人，在货物于该地点交付给承运人以前，风险不移转到买方承担。卖方有权保留控制货物处置权的单据，并不影响风险的移转。

(2) 但是，在货物以货物上加标记、或以装运单据、或向买方发出通知或其它方式清楚地注明有关合同以前，风险不移转到买方承担。

第六十八条

对于在运输途中销售的货物，从订立合同时起，风险就移转到买方承担。但是，如果情况表明有此需要，从货物交付给签发有运输合同单据的承运人时起，风险就由买方承担。尽管如此，如果卖方在订立合同时已知道或理应知道货物已经遗失或损坏，而他又不将这一事实告知买方，则这种遗失或损坏应由卖方负责。

第六十九条

(1) 在不属于第六十七条和第六十八条规定的情况下，从买方接收货物时起，或如果买方不在适当时间内这样做，则从货物交给他处置但他不收取货物从而违反合同时起，风险移转到买方承担。

(2) 但是，如果买方有义务在卖方营业地以外的某一地点接收货物，当交货时间已到而买方知道货物已在该地点交给他处置时，风险方始移转。

(3) 如果合同指的是当时未加识别的货物，则这些货物在未清楚注明有关合同以前，不得视为已交给买方处置。

第七十条

如果卖方已根本违反合同，第六十七条、第六十八条和第六十九条的规定，不损害买方因此种违反合同而可以采取的各种补救办法。

第五章

卖方和买方义务的一般规定

第一节 于期违反合同和分批交货合同

第七十一条

(1) 如果订立合同后，另一方当事人由于下列原因显然将不履行其大部分重要义务，一方当事人可以中止履行义务：

(a) 他履行义务的能力或他的信用有严重缺陷；或

(b) 他在准备履行合同或履行合同中的行为。

(2) 如果卖方在上一款所述的理由明显化以前已将货物发运，他可以阻止将货物交付给买方，即使买方持有其有权获得货物的单据。本款规定只与买方和卖方向对货物的权利有关。

(3) 中止履行义务的一方当事人不论是在货物发运前还是发运后，都必须立即通知另一方当事人，如经另一方当事人对履行义务提供充分保证，则他必须继续履行义务。

第七十二条

(1) 如果在履行合同日期之前，明显看出一方当事人将根本违反合同，另一方当事人可以宣告合同无效。

(2) 如果时间许可，打算宣告合同无效的一方当事人必须向另一方当事人发出合理的通知，使他可以对履行义务提供充分保证。

(3) 如果另一方当事人已声明他将不履行其义务，则上一款的规定不适用。

第七十三条

(1) 对于分批交付货物的合同，如果一方当事人不履行对任何一批货物的义务，便对该批货物构成根本违反合同，则另一方当事人可以宣告合同对该批货物无效。

(2) 如果一方当事人不履行对任何一批货物的义务，使另一方当事人有充分理由断定对今后各批货物将会发生根本违反合同，该另一方当事人可以在一段合理时间内宣告合同今后无效。

(3) 买方宣告合同对任何一批货物的交付为无效时，可以同时宣告合同对已交付的或今后交付的各批货物均为无效，如果各批货物是互相依存的，不能单独用于双方当事人在订立合同时所设想的目的。

第二节 损害赔偿

第七十四条

一方当事人违反合同应负的损害赔偿额，应与另一方当事人因他违反合同而遭受的包括利润在内的损失额相等。这种损害赔偿不得超过违反合同一方在订立合同时，依照他当时已知道或理应知道的事实和情况，对违反合同预料到或理应预料到的可能损失。

第七十五条

如果合同被宣告无效，而在宣告无效后一段合理时间内，买方已以合理方式购买替代货物，或者卖方已以合理方式把货物转卖，则要求损害赔偿的一方可以取得合同价格和替代货物交易价格之间的差额以及按照第七十四条规定可以取得的任何其它损害赔偿。

第七十六条

(1) 如果合同被宣告无效，而货物又有时价，要求损害赔偿的一方，如果没有根据第七十五条规定进行购买或转卖，则可以取得合同规定的价格和宣告合同无效时的时价之间的差额以及按照第七十四条规定可以取得的任何其它损害赔偿。但是，如果要求损害赔偿的一方在接收货物之后宣告合同无效，则应适用接收货物时的时价，而不适用宣告合同无效时的时价。

(2) 为上一款的目的，时价指原应交付货物地点的现行价格，如果该地点没有时价，则指另一合理替代地点的价格，但应适当地考虑货物运费的差额。

第七十七条

声称另一方违反合同的一方，必须按情况采取合理措施，减轻由于该另一方违反合同而引起的损失，包括利润方面的损失。如果他不采取这种措施，违反合同一方可以要求从损害赔偿中扣除原可以减轻的损失数额。

第三节 利息

第七十八条

如果一方当事人没有支付价款或任何其它拖欠金额，另一方当事人有权对这些款项收取利息，但不妨碍要求按照第七十四条规定可以取得的损害赔偿。

第四节 免责

第七十九条

(1) 当事人对不履行义务，不负责任，如果能证明此种不履行义务，是由于某种非他所能控制的障碍，而且对于这种障碍，没有理由预期他在订立合同时能考虑到或能避免或克服它或它的后果。

(2) 如果当事人不履行义务是由于他所雇用履行合同的全部或一部分规定的第三方不履行义务所致，该当事人只有在以下情况下才能免除责任：

(a) 他按照上一款的规定应免除责任，和

(b) 假如该款的规定也适用于他所雇用的人，这个人也同样会免除责任。

(3) 本条所规定的免责对障碍存在的期间有效。

(4) 不履行义务的一方必须将障碍及其对他履行义务能力的影响通知另一方。如果该项通知在不履行义务的一方已知道或理应知道此一障碍后一段合理时间内仍未为另一方收到，则他对由于另一方未收到通知而造成的损害应负赔偿责任。

(5) 本条规定不妨碍任何一方行使本公约规定的要求损害赔偿以外的任何权利。

第八十条

一方当事人因其行为或不行为而使得另一方当事人不履行义务时，不得声称该另一方当事人不履行义务。

第五节 宣告合同无效的效果

第八十一条

(1) 宣告合同无效解除了双方在合同中的义务，但应负责的任何损害赔偿仍应负责。宣告合同无效不影响合同中关于解决争议的任何规定，也不影响合同中关于双方在宣告合同无效后权利和义务的任何其它规定。

(2) 已全部或部分履行合同的一方，可以要求另一方归还他按照合同供应的货物或支付的价款。如果双方都须归还，他们必须同时这样做。

第八十二条

(1) 买方如果不可能按实际收到货物的原状归还货物，他就丧失宣告合同无效或要求卖方交付替代货物的权利。

(2) 上一款的规定不适用于以下情况：

- (a) 如果不可能归还货物或不可能按实际收到货物的原状归还货物，并非由于买方的行为或不行为所造成；或者
- (b) 如果货物或其中一部分的毁灭或变坏，是由于按照第三十八条规定进行检验所致；或者
- (c) 如果货物或其中一部分，在买方发现或理应发现与合同不符以前，已为买方在正常营业过程中售出，或在正常使用过程中消费或改变。

第八十三条

买方虽然依第八十二条规定丧失宣告合同无效或要求卖方交付替代货物的权利，但是根据合同和本公约规定，他仍保有采取一切其它补救办法的权利。

第八十四条

- (1) 如果卖方有义务归还价款，他必须同时从支付价款之日起支付价款利息。
- (2) 在以下情况下，买方必须向卖方说明他从货物或其中一部分得到的一切利益：
 - (a) 如果他必须归还货物或其中一部分；或者
 - (b) 如果他不可能归还全部或部分货物，或不可能按实际收到货物的原状归还全部或部分货物，但他已宣告合同无效或已要求卖方交付替代货物。

第六节 保全货物

第八十五条

如果买方推迟收取货物，或在支付价款和交付货物应同时履行时，买方没有支付价款，而卖方仍拥有这些货物或仍能控制这些货物的处置权，卖方必须按情况采取合理措施，以保全货物。他有权保有这些货物，直至买方把他所付的合理费用偿还给他为止。

第八十六条

(1) 如果买方已收到货物，但打算行使合同或本公约规定的任何权利，把货物退回，他必须按情况采取合理措施，以保全货物。他有权保有这些货物，直至卖方把他所付的合理费用偿还给他为止。

(2) 如果发运给买方的货物已到达目的地，并交给买方处置，而买方行使退货权利，则买方必须代表卖方收取货物，除非他这样做需要支付价款而且会使他遭受不合理的不便或需承担不合理的费用。如果卖方或受权代表他掌管货物的人也在目的地，则此一规定不适用。如果买方根据本款规定收取货物，他的权利和义务与上一款所规定的相同。

第八十七条

有义务采取措施以保全货物的一方当事人，可以把货物寄放在第三方的仓库，由另一方当事人担负费用，但该项费用必须合理。

第八十八条

(1) 如果另一方当事人在收取货物或收回货物或支付价款或保全货物费用方面有不合理的迟延，按照第八十五条或第八十六条规定有义务保全货物的一方当事人，可以采取任何适当办法，把货物出售，但必须事前向另一方当事人发出合理的意向通知。

(2) 如果货物易于迅速变坏，或者货物的保全牵涉到不合理的费用，则按照第八十五条或第八十六条规定有义务保全货物的一方当事人，必须采取合理措施，把货物出售。在可能的范围内，他必须把出售货物的打算通知另一方当事人。

(3) 出售货物的一方当事人，有权从销售所得收入中扣回为保全货物和销售货物而付的合理费用。他必须向另一方当事人说明所余款项。

第四部分

最后条款

第八十九条

兹指定联合国秘书长为本公约保管人。

第九十条

本公约不优于业已缔结或可能缔结并载有与属于本公约范围内事项有关的条款的任何国际协定，但以双方当事人的营业地均在这种协定的缔约国内为限。

第九十一条

(1) 本公约在联合国国际货物销售合同会议闭幕会议上开放签字，并在纽约联合国总部继续开放签字，直至一九八一年九月三十日为止。

(2) 本公约须经签字国批准、接受或核准。

(3) 本公约从开放签字之日起开放给所有非签字国加入。

(4) 批准书、接受书、核准书和加入书应送交联合国秘书长存放。

第九十二条

(1) 缔约国可在签字、批准、接受、核准或加入时声明它不受本公约第二部分的约束或不受本公约第三部分的约束。

(2) 按照上一款规定就本公约第二部分或第三部分做出声明的缔约国，在该声明适用的部分所规定事项上，不得视为本公约第一条第(1)款范围内的缔约国。

第九十三条

(1) 如果缔约国具有两个或两个以上的领土单位，而依照该国宪法规定、各领土单位对本公约所规定的事项适用不同的法律制度，则该国得在签字、批准、接受、核准或加入时声明本公约适用于该国全部领土单位或仅适用于其中的一个或数个领土单位，并且可以随时提出另一声明来修改其所做的声明。

(2) 此种声明应通知保管人，并且明确地说明适用本公约的领土单位。

(3) 如果根据按本条做出的声明，本公约适用于缔约国的一个或数个但不是全部领土单位，而且一方当事人的营业地位于该缔约国内，则为本公约的目的，该营业地除非位于本公约适用的领土单位内，否则视为不在缔约国内。

(4) 如果缔约国没有按照本条第(1)款做出声明，则本公约适用于该国所有领土单位。

第九十四条

(1) 对属于本公约范围的事项具有相同或非常近似的法律规则的两个或两个以上的缔约国，可随时声明本公约不适用于营业地在这些缔约国内的当事人之间的销售合同，也不适用于这些合同的订立。此种声明可联合做出，也可以相互单方面声明的方式做出。

(2) 对属于本公约范围的事项具有与一个或一个以上非缔约国相同或非常近似的法律规则的缔约国，可随时声明本公约不适用于营业地在这些非缔约国内的当事人之间的销售合同，也不适用于这些合同的订立。

(3) 作为根据上一款所做声明对象的国家如果后来成为缔约国，这项声明从本公约对该新缔约国生效之日起，具有根据第(1)款所做声明的效力，但以该新缔约国加入这项声明，或做出相互单方面声明为限。

第九十五条

任何国家在交存其批准书、接受书、核准书或加入书时，可声明它不受本公约第一条第(1)款(b)项的约束。

第九十六条

本国法律规定销售合同必须以书面订立或书面证明的缔约国，可以随时按照第十二条的规定，声明本公约第十一条、第二十九条或第二部分准许销售合同或其更改或根据协议终止，或者任何发价、接受或其它意旨表示得以书面以外任何形式做出的任何规定不适用，如果任何一方当事人的营业地是在该缔约国内。

第九十七条

- (1) 根据本公约规定在签字时做出的声明，须在批准、接受或核准时加以确认。
- (2) 声明和声明的确认，应以书面提出，并应正式通知保管人。
- (3) 声明在本公约对有关国家开始生效时同时生效。但是，保管人于此种生效后收到正式通知的声明，应于保管人收到声明之日起六个月后的第一个月第一天生效。根据第九十四条规定做出的相互单方面声明，应于保管人收到最后一份声明之日起六个月后的第一个月第一天生效。
- (4) 根据本公约规定做出声明的任何国家可以随时用书面正式通知保管人撤回该项声明。此种撤回于保管人收到通知之日起六个月后的第一个月第一天生效。
- (5) 撤回根据第九十四条做出的声明，自撤回生效之日起，就会使另一个国家根据该条所做的任何相互声明失效。

第九十八条

除本公约明文许可的保留外，不得作任何保留。

第九十九条

(1) 在本条第(6)款规定的条件下, 本公约在第十件批准书、接受书、核准书或加入书、包括载有根据第九十二条规定做出的声明的文书交存之日起十二月后的第一个月第一天生效。

(2) 在本条第(6)款规定的条件下, 对于在第十件批准书、接受书、核准书或加入书交存后才批准、接受、核准或加入本公约的国家, 本公约在该国交存其批准书、接受书、核准书或加入书之日起十二月后的第一个月第一天对该国生效, 但不适用的部分除外。

(3) 批准、接受、核准或加入本公约的国家, 如果是一九六四年七月一日在海牙签订的《关于国际货物销售合同的订立统一法公约》(《一九六四年海牙订立合同公约》)和一九六四年七月一日在海牙签订的《关于国际货物销售统一法的公约》(《一九六四年海牙货物销售公约》)中一项或两项公约的缔约国, 应按情况同时通知荷兰政府声明退出《一九六四年海牙货物销售公约》或《一九六四年海牙订立合同公约》或退出该两公约。

(4) 凡为《一九六四年海牙货物销售公约》缔约国并批准、接受、核准或加入本公约和根据第九十二条规定声明或业已声明不受本公约第二部分约束的国家, 应于批准、接受、核准或加入时通知荷兰政府声明退出《一九六四年海牙货物销售公约》。

(5) 凡为《一九六四年海牙订立合同公约》缔约国并批准、接受、核准或加入本公约和根据第九十二条规定声明或业已声明不受本公约第三部分约束的国家, 应于批准、接受、核准或加入时通知荷兰政府声明退出《一九六四年海牙订立合同公约》。

(6) 为本条的目的, 《一九六四年海牙订立合同公约》或《一九六四年海牙货物销售公约》的缔约国的批准、接受、核准或加入本公约, 应在这些国家按照规定退出该两公约生效后方始生效。 本公约保管人应与一九六四年两公约的保管人荷兰政府进行协商, 以确保在这方面进行必要的协调。

第一〇〇条

(1) 本公约适用于合同的订立，只要订立该合同的建议是在本公约对第一条第(1)款(a)项所指缔约国或第一条第(1)款(b)项所指缔约国生效之日或其后作出的。

(2) 本公约只适用于在它对第一条第(1)款(a)项所指缔约国或第一条第(1)款(b)项所指缔约国生效之日或其后订立的合同。

第一〇一条

(1) 缔约国可以用书面正式通知保管人声明退出本公约，或本公约第二部分或第三部分。

(2) 退出于保管人收到通知十二个月后的第一个月第一天起生效。凡通知内订明一段退出生效的更长时间，则退出于保管人收到通知后该段更长时间期满时起生效。

一千九百八十年四月十一日订于维也纳，正本一份，其阿拉伯文本、中文本、英文本、法文本、俄文本和西班牙文本都具有同等效力。

下列全权代表，经各自政府正式授权，在本公约上签字，以资证明。

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX C1

Summary of Convention
prepared by UNCITRAL Secretariat

UNITED NATIONS
GENERAL
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UNITED NATIONS CONVENTION ON CONTRACTS
FOR THE INTERNATIONAL SALE OF GOODS*

Note by the Secretariat

1. The United Nations Convention on Contracts for the International Sale of Goods provides a uniform text of law for international sales of goods. The Convention was prepared by the United Nations Commission on International Trade Law (UNCITRAL) and adopted by a diplomatic conference on 11 April 1980.
2. Preparation of a uniform law for the international sale of goods began in 1930 at the International Institute for the Unification of Private Law (UNIDROIT) in Rome. After a long interruption in the work as a result of the Second World War, the draft was submitted to a diplomatic conference in The Hague in 1964, which adopted two conventions, one on the international sale of goods and the other on the formation of contracts for the international sale of goods.
3. Almost immediately upon the adoption of the two conventions there was wide-spread criticism of their provisions as reflecting primarily the legal traditions and economic realities of continental Western Europe, which was the region that had most actively contributed to their preparation. As a result, one of the first tasks undertaken by UNCITRAL on its organization in 1968 was to enquire of States whether or not they intended to adhere to those conventions and the reasons for their positions. In the light of the responses received, UNCITRAL decided to study the two conventions to ascertain which modifications might render them capable of wider acceptance by countries of different legal, social and economic systems. The result of this study was the adoption by diplomatic conference on 11 April 1980 of the United Nations Convention on Contracts for the International Sale of Goods, which combines the subject matter of the two prior conventions.
4. UNCITRAL's success in preparing a Convention with wider acceptability is evidenced by the fact that the original eleven States for which the Convention came into force on 1 January 1988 included States from every geographical region, every stage of economic development and every major legal, social and economic system. The original eleven States were: Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, United States, Yugoslavia and Zambia.

5. As of 31 January 1988, an additional four States, Austria, Finland, Mexico and Sweden, had become a party to the Convention.

6. The Convention is divided into four parts. Part One deals with the scope of application of the Convention and the general provisions. Part Two contains the rules governing the formation of contracts for the international sale of goods. Part Three deals with the substantive rights and obligations of buyer and seller arising from the contract. Part Four contains the final clauses of the Convention concerning such matters as how and when it comes into force, the reservations and declarations that are permitted and the application of the Convention to international sales where both States concerned have the same or similar law on the subject.

Part One

SCOPE OF APPLICATION AND GENERAL PROVISIONS

A. Scope of application

7. The articles on scope of application state both what is included in the coverage of the Convention and what is excluded from it. The provisions on inclusion are the most important. The Convention applies to contracts of sale of goods between parties whose places of business are in different States and either both of those States are Contracting States or the rules of private international law lead to the law of a Contracting State. A few States have availed themselves of the authorization in article 95 to declare that they would apply the Convention only in the former and not in the latter of these two situations. As the Convention becomes more widely adopted, the practical significance of such a declaration will diminish.

8. The final clauses make two additional restrictions on the territorial scope of application that will be relevant to a few States. One applies only if a State is a party to another international agreement that contains provisions concerning matters governed by this Convention; the other permits States that have the same or similar domestic law of sales to declare that the Convention does not apply between them.

9. Contracts of sale are distinguished from contracts for services in two respects by article 3. A contract for the supply of goods to be manufactured or produced is considered to be a sale unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for their manufacture or production. When the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services, the Convention does not apply.

10. The Convention contains a list of types of sales that are excluded from the Convention, either because of the purpose of the sale (goods bought for personal, family or household use), the nature of the sale (sales by auction, on execution or otherwise by law) or the nature of the goods (stocks, shares, investment securities, negotiable instruments, money, ships, vessels, hovercraft, aircraft or electricity). In many States some or all of such sales are governed by special rules reflecting their special nature.

11. Several articles make clear that the subject matter of the Convention is restricted to the formation of the contract and the rights and duties of the buyer and seller arising from such a contract. In particular, the Convention is not concerned with the validity of the contract, the effect which the contract may have on the property in the goods sold or the liability of the seller for death or personal injury caused by the goods to any person.

B. Party autonomy

12. The basic principle of contractual freedom in the international sale of goods is recognized by the provision that permits the parties to exclude the application of this Convention or derogate from or vary the effect of any of its provisions. The exclusion of the Convention would most often result from the choice by the parties of the law of a non-contracting State or of the domestic law of a contracting State to be the law applicable to the

contract. Derogation from the Convention would occur whenever a provision in the contract provided a different rule from that found in the Convention.

C. Interpretation of the Convention

13. This Convention for the unification of the law governing the international sale of goods will better fulfill its purpose if it is interpreted in a consistent manner in all legal systems. Great care was taken in its preparation to make it as clear and easy to understand as possible. Nevertheless, disputes will arise as to its meaning and application. When this occurs, all parties, including domestic courts and arbitral tribunals, are admonished to observe its international character and to promote uniformity in its application and the observance of good faith in international trade. In particular, when a question concerning a matter governed by this Convention is not expressly settled in it, the question is to be settled in conformity with the general principles on which the Convention is based. Only in the absence of such principles should the matter be settled in conformity with the law applicable by virtue of the rules of private international law.

D. Interpretation of the contract; usages

14. The Convention contains provisions on the manner in which statements and conduct of a party are to be interpreted in the context of the formation of the contract or its implementation. Usages agreed to by the parties, practices they have established between themselves and usages of which the parties knew or ought to have known and which are widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned may all be binding on the parties to the contract of sale.

E. Form of the contract

15. The Convention does not subject the contract of sale to any requirement as to form. In particular, article 11 provides that no written agreement is necessary for the conclusion of the contract. However, if the contract is in writing and it contains a provision requiring any modification or termination by agreement to be in writing, article 29 provides that the contract may not be otherwise modified or terminated by agreement. The only exception is that a party may be precluded by his conduct from asserting such a provision to the extent that the other person has relied on that conduct.

16. In order to accommodate those States whose legislation requires contracts of sale to be concluded in or evidenced by writing, article 96 entitles those States to declare that neither article 11 nor the exception to article 29 applies where any party to the contract has his place of business in that State.

Part Two

FORMATION OF THE CONTRACT

17. Part Two of the Convention deals with a number of questions that arise in the formation of the contract by the exchange of an offer and an acceptance. When the formation of the contract takes place in this manner, the contract is concluded when the acceptance of the offer becomes effective.

18. In order for a proposal for concluding a contract to constitute an offer, it must be addressed to one or more specific persons and it must be sufficiently definite. For the proposal to be sufficiently definite, it must indicate the goods and expressly or implicitly fix or make provision for determining the quantity and the price.

19. The Convention takes a middle position between the doctrine of the revocability of the offer until acceptance and its general irrevocability for some period of time. The general rule is that an offer may be revoked. However, the revocation must reach the offeree before he has dispatched an acceptance. Moreover, an offer cannot be revoked if it indicates that it is irrevocable, which it may do by stating a fixed time for acceptance or otherwise.

Furthermore, an offer may not be revoked if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

20. Acceptance of an offer may be made by means of a statement or other conduct of the offeree indicating assent to the offer that is communicated to the offerer. However, in some cases the acceptance may consist of performing an act, such as dispatch of the goods or payment of the price. Such an act would normally be effective as an acceptance the moment the act was performed.

21. A frequent problem in contract formation, perhaps especially in regard to contracts of sale of goods, arises out of a reply to an offer that purports to be an acceptance but contains additional or different terms. Under the Convention, if the additional or different terms do not materially alter the terms of the offer, the reply constitutes an acceptance, unless the offeror without undue delay objects to those terms. If he does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

22. If the additional or different terms do materially alter the terms of the contract, the reply constitutes a counter-offer that must in turn be accepted for a contract to be concluded. Additional or different terms relating, among other things, 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 settlement of disputes are considered to alter the terms of the offer materially.

Part Three

SALE OF GOODS

A. Obligations of the seller

23. The general obligations of the seller are to deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to when, where and how the seller must perform these obligations.

24. The Convention provides a number of rules that implement the seller's obligations in respect of the quality of the goods. In general, the seller must deliver goods that are of the quantity, quality and description required by the contract and that are contained or packaged in the manner required by the contract. One set of rules of particular importance in international sales of goods involves the seller's obligation to deliver goods that are free from any right or claim of a third party, including rights based on industrial property or other intellectual property.

25. In connection with the seller's obligations in regard to the quality of the goods, the Convention contains provisions on the buyer's obligation to inspect the goods. He must give notice of any lack of their conformity with the contract within a reasonable time after he has discovered it or ought to have discovered it, and at the latest two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

B. Obligations of the buyer

26. Compared to the obligations of the seller, the general obligations of the buyer are less extensive and relatively simple; they are to pay the price for the goods and take delivery of them as required by the contract and the Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to how the price is to be determined and where and when the buyer should perform his obligation to pay the price.

C. Remedies for breach of contract

27. The remedies of the buyer for breach of contract by the seller are set forth in connection with the obligations of the seller and the remedies of the seller are set forth in

connection with the obligations of the buyer. This makes it easier to use and understand the Convention.

28. The general pattern of remedies is the same in both cases. If all the required conditions are fulfilled, the aggrieved party may require performance of the other party's obligations, claim damages or avoid the contract. The buyer also has the right to reduce the price where the goods delivered do not conform with the contract.

29. Among the more important limitations on the right of an aggrieved party to claim a remedy is the concept of fundamental breach. For a breach of contract to be fundamental, it must result in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the result was neither foreseen by the party in breach nor foreseeable by a reasonable person of the same kind in the same circumstances. A buyer can require the delivery of substitute goods only if the goods delivered were not in conformity with the contract and the lack of conformity constituted a fundamental breach of contract. The existence of a fundamental breach is one of the two circumstances that justifies a declaration of avoidance of a contract by the aggrieved party; the other circumstance being that, in the case of non-delivery of the goods by the seller or non-payment of the price or failure to take delivery by the buyer, the party in breach fails to perform within a reasonable period of time fixed by the aggrieved party.

30. Other remedies may be restricted by special circumstances. For example, if the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A party cannot recover damages that he could have mitigated by taking the proper measures. A party may be exempted from paying damages by virtue of an impediment beyond his control.

D. Passing of risk

31. Determining the exact moment when the risk of loss or damage to the goods passes from the seller to the buyer is of great importance in contracts for the international sale of goods. Parties may regulate that issue in their contract either by an express provision or by the use of a trade term. However, for the frequent case where the contract does not contain such a provision, the Convention sets forth a complete set of rules.

32. The two special situations contemplated by the Convention are when the contract of sale involves carriage of the goods and when the goods are sold while in transit. In all other cases the risk passes to the buyer when he takes over the goods or from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery, whichever comes first. In the frequent case when the contract relates to goods that are not then identified, they must be identified to the contract before they can be considered to be placed at the disposal of the buyer and the risk of their loss can be considered to have passed to him.

E. Suspension of performance and anticipatory breach

33. The Convention contains special rules for the situation in which, prior to the date on which performance is due, it becomes apparent that one of the parties will not perform a substantial part of his obligations or will commit a fundamental breach of contract. A distinction is drawn between those cases in which the other party may suspend his own performance of the contract but the contract remains in existence awaiting future events and those cases in which he may declare the contract avoided.

F. Exemption from liability to pay damages

34. When a party fails to perform any of his obligations due to an impediment beyond his control that he could not reasonably have been expected to take into account at the time of the conclusion of the contract and that he could not have avoided or overcome, he is exempted from paying damages. This exemption may also apply if the failure is due to the failure of a third person whom he has engaged to perform the whole or a part of the contract. However,

he is subject to any other remedy, including reduction of the price, if the goods were defective in some way.

G. Preservation of the goods

35. The Convention imposes on both parties the duty to preserve any goods in their possession belonging to the other party. Such a duty is of even greater importance in an international sale of goods where the other party is from a foreign country and may not have agents in the country where the goods are located. Under certain circumstances the party in possession of the goods may sell them, or may even be required to sell them. A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expense of preserving the goods and of selling them and must account to the *other* party for the balance.

Part Four

FINAL CLAUSES

36. The final clauses contain the usual provisions relating to the Secretary General as depositary and providing that the Convention is subject to ratification, acceptance or approval by those States that signed it by 30 September 1981, that it is open to accession by all States that are not signatory States and that the text is equally authentic in Arabic, Chinese, English, French, Russian and Spanish.

37. The Convention permits a certain number of declarations. Those relative to scope of application and the requirement as to a written contract have been mentioned above. There is a special declaration for States that have different systems of law governing contracts of sale in different parts of their territory. Finally, a State may declare that it will not be bound by Part II on formation of contracts or Part III on the rights and obligations of the buyer and seller. This latter declaration was included as part of the decision to combine into one convention the subject matter of the two 1964 Hague Conventions.

Further information can be obtained from

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The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX C2

An Overview of the Convention

AN OVERVIEW OF THE CONVENTION

1. This Annex explains briefly the main provisions of the Convention. It also notes major differences from Singapore law. It considers in turn

- varying acceptance of the Convention
- the application and scope of the Convention
- interpretation the formation of contracts
- the obligations of the parties and their remedies.

VARYING ACCEPTANCE OF THE CONVENTION BY CONTRACTING STATES

2. The Convention facilitates flexibility in the acceptance of the rules it sets out in two important ways. As already mentioned, the parties to the sales contract can themselves by agreement vary or displace the uniform rules if they are otherwise applicable (art 6). Annex V considers that important power of the parties. Here we note the prior power of States to become bound by less than the whole Convention. The basic rule is that States cannot make any reservations except those expressly authorised (art 98). The Convention authorises 5 different reservations (or declarations). Some are mentioned in the following paragraphs.

Territorial application

3. A State consisting of territorial units in which different systems of law apply may confine the territorial extent of its acceptance (art 93). So the Canadian accession does not extend to Quebec and the Yukon.

Only contracts between parties in Contracting States

4. A State may limit the scope of application of the Convention to contracts between businesses in separate Contracting States, excluding the additional category of contracts which are subject to the law of a Contracting State, it being irrelevant in which two or more States the parties carry on their businesses (art 95; see art 1(1)(b), discussed in paras 11 - 12.) China, Czechoslovakia, the United States and Canada (in respect of British Columbia) have made that reservation. A Bill introduced into the British Columbia legislature in April 1992 will allow the withdrawal of its reservation, (Bill for Attorney General Statutes Amendment Act 1992 cl 13).

Exclusion of rules either about formation or about obligations

5. A State can declare that it will not be bound either by Part II (about the formation of the contracts) or by Part III (about the obligations of the parties under the contracts). This power effectively means that the Convention (like the 1964 texts) can be divided into two, with States deciding to accept either the rules about the formation of international sales contracts or those about the operation of the contracts. The limited acceptance has a corresponding limiting effect for the operation of the Convention in relation to other Contracting States. So far, such declarations have been made only by Denmark, Finland, Norway and Sweden in respect of Part II concerning the formation of contracts. (There is a Nordic Convention on the formation of contracts.) Those States have also made the reciprocal declarations referred to in paras 7-8.

6. The above 3 reservations may be made only at the stage of the final acceptance of the Convention. They cannot be made later. They can however be withdrawn - and thereby the full scope of application of the Convention can be achieved. By contrast, the following 2

reservations may be made at any time. It will be noted that the first is made by agreement with another State and operates only in relation to businesses in the two States in question. Accordingly the interests of other Contracting States are protected (or largely so) from the effect of the new reservation.

Reciprocal variations

7. Two or more Contracting States with the same or closely related legal rules may at any time declare that the Convention is not to apply to contracts of sale or to their formation if the parties have their places of business in those States. Similar provisions can be made in relation to non-Contracting States (art 94) As noted (para 5), only 5 Scandinavian States have taken advantage of this facility. Around the time of its accession Australia considered but rejected - the possibility of making such a declaration in relation to New Zealand.

8. The Convention in a more general way recognises the power of the Contracting States in their relations with one another to depart from the terms of the Convention. Article 90 provides that the Convention does not prevail over any international agreements governing the same matters provided that the parties to the sales agreement have their places of business in the Contracting States to that international agreement.

Contracts to be in writing

9. The Convention does not require the contract to be in any particular form. However to gain the support of some planned economy countries, the Convention allows States, whose legislation requires sales contracts to be in writing, to declare that provisions of the Convention allowing the contract or steps relating to it to be other than in writing do not apply when a party has its place of business in that State (art 96). China, two South American and four Eastern European States have made this declaration.

APPLICATION AND SCOPE OF THE CONVENTION

10. The Convention states a uniform set of rules for the contracts which it governs. Those contracts are defined mainly by reference to two matters - the place of business of the parties and the subject matter of the contract.

11. The parties are to have their places of business in different States (and to know that fact in respect of the other party) and either

- those different States are Contracting States, or
- the rules of private international law must lead to the application of the law of a Contracting State (art 1 (1)).

It follows that, in terms of art 1(1)(a), unless the parties otherwise agree, a sales contract between businesses in Toronto and New York is subject to the Convention since both Canada and the United States are Contracting States. By contrast, a contract between businesses in Sydney and Singapore is presently subject to the Convention only if, as required by art 1(1)(b), the contract is subject to the law of New South Wales or some other jurisdiction which is itself a Contracting State (or a territory within such a State).

12. It follows from the second application provision that, as in the example, the Convention is already able to apply to Singapore international sales contracts - particularly those involving Australia and major European countries. In general it applies if the contract expressly says that it is governed by the law of one of those countries or if one of those countries has the closest connection with the subject matter of the contract. This is subject to the reservation, made by only a handful of States, against this means of application.

13. So far as the subject matter of the contract is concerned, the Convention does not attempt to provide a comprehensive definition of a contract for the sale of goods. Contracts for the supply of goods to be manufactured or produced are generally included while contracts preponderantly about the supply of labour or other services are not (art 3). The Convention expressly does not apply to consumer sales, sales by auction, sales on execution or otherwise by authority of law, and in three areas where there is likely to be a particular regime - shares and negotiable instruments; ships and aircraft; and electricity (art 2).

14. As indicated, the substantive parts of the Convention govern only the formation of the sale contract and the buyer's and seller's rights and obligations arising from the contract. The Convention expressly states that it is not concerned with the validity of the contract or the effect which the contract may have on the property in the goods sold (art 4). The Convention also does not apply to the seller's liability for death or personal injury caused by the goods to any person (art 5). All those matters remain governed by the relevant system of law. The parties may be well advised to try to deal with them in the contract - to the extent they can.

INTERPRETATION

15. The Convention prescribes rules for the interpretation both of the Convention and of the statements and actions of parties to sales contracts.

16. One threat to uniform law stated in a Convention such as this is to be found in differing approaches to the interpretation of the law in the courts of different jurisdictions. The Convention itself attempts to meet that threat by providing special rules of interpretation. Article 7(1) provides that

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

Courts in a number of jurisdictions have emphasised such matters when interpreting similar conventions. So Lord Wilberforce (quoting Lord Macmillan) called for an approach, appropriate for the interpretation of an international convention, unconstrained by technical rules of English law, or English legal precedent, and on broad principles of general acceptance, *James Buchanan and Co v Babco Forwarding and Shipping (UK) Ltd [1978] AC 141,152*. To that extent the first part of the direction in art 7(1) is not new. It repeats established practice. But it is well worth emphasising nonetheless, as appears from its inclusion in other uniform law conventions. It makes the practice binding on all courts resolving disputes about the meaning of the Convention. And it strengthens the tendency seen in the cases. An important practical consideration is promoting knowledge of national court judgments on the law stated in the Convention. UNCITRAL is addressing that matter. That promotion of knowledge should help achieve consistent interpretation and remove or reduce uncertainties in the operation of the uniform rules. The major commentaries are also an important help in that direction. We consider the third element of the paragraph - the observance of good faith in international trade - in Annex V.

17. Article 7(2) goes on to deal with the problems of gaps in the text:

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

The first part of this paragraph continues the emphasis on uniform, international rules. The answers to interpretation questions are to be found if possible within the Convention and its

underlying principles. There is not to be too precipitate a reference to a national system of law. It is a last resort. Such an emphasis on principle is seen by some as being a civil law emphasis. On this analysis, the common lawyer by contrast would look for a precedent. Such a view appears to us to be a misleading caricature. As the statement by Lord Wilberforce indicates and much recent judicial practice relating to statutory interpretation confirms, courts in common law jurisdictions very often search for the principles underlying the legislation they are interpreting. That emphasis is to be found in particular in cases involving the interpretation of treaties where, as well, there is the widely accepted approach to the interpretation of treaties found in the provisions of the Vienna Convention on the Law of Treaties.

18. One of those provisions relates to the interpretation of multilingual treaties—a matter which is relevant here since, as the final paragraphs of the Convention indicate, it was signed in the six official United Nations languages and all are equally authentic. In accordance with the Vienna Convention art 33, multilingual texts are presumed to have the same meaning in each authentic text, and if there is a difference of meaning which cannot be otherwise resolved the meaning which best reconciles the texts having regard to the object and purpose of the treaty is to be adopted.

19. One example shows how that approach can be used to elaborate the meaning of the text. The Convention often uses the phrase "place of business". In other contexts such as company law, this and similar terms present difficulties. For instance can an hotel room be a place of business when used by a company representative who sets up briefly to transact business? Generally, common law courts have required a degree of permanency. The existence of this requirement in the Convention is reinforced by the French and Spanish versions which use the term "etablissement" and "establecimiento".

20. Another example arises from the exclusion, by art 2, of ships and vessels from the application of the Convention. Is a rowing boat a "ship" or "vessel" and therefore not covered? Perhaps it is not (although where is the line to be drawn) but some would say it falls within "bateau" in the French text, and, to anticipate the next point, the drafting history supports that wider reading.

21. The Vienna Convention on the Law of Treaties deals as well with the use of the drafting history of a treaty in interpreting it. That Convention recognises the use of that preparatory work and the circumstances of the conclusion of the treaty (a) to confirm the meaning of the text determined in other ways or (b) to determine the meaning if the basic approach to interpretation leaves the text ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable. That drafting history might also facilitate the search for the "international character" and the "need to promote uniformity" as called for in art 7(1).

22. Such practices have also been adopted by courts in Singapore and elsewhere. Professor John Honnold has now facilitated the process of using that material by publishing the documentary history in very convenient form. The commentaries make extensive use of the records. That material may in addition help a court determine the principles underlying the Convention for the purpose of art 7.

23. The Convention also gives directions on the interpretation of the statements and the conduct of the parties to the contract in issue. Its emphasis on fairness between the parties is evident in its provisions which are designed to ensure that effect is given to the intentions of the parties so far as they can be determined (arts 8 and 9). If actual intent cannot be determined then a "reasonable person" test is applied with reference to all the circumstances of the case. The provisions would permit access to virtually any type of evidence (eg negotiations and subsequent conduct) as long as it were relevant. The parties are also bound by any usage or practice to which they have agreed or which they have established

themselves. As well they are subject to widely known and regularly observed relevant usages in international trade - unless of course otherwise agreed. Those usages are of enormous practical significance in many areas of international trade. Many have their origins in practices which began long before the preparation of uniform law conventions and indeed before the establishment of the modern State with its distinct legal system and separate commercial laws enacted as an expression of sovereignty, eg *Berman "The Law of International Commercial Transactions (Lex Mercatoria)" (1988) 2 Journal of Int Dispute Resolution 235*

FORMATION OF CONTRACT

24. The rules in Part II of the Convention concerning the formation of a contract are in essence those of offer and acceptance. They do however differ in some respects from the law of Singapore. For instance

- (a) an offer can be made expressly irrevocable.
- (b) an offer is also irrevocable if it was reasonable for the offeree to rely on the offer as irrevocable and the offeree has acted in reliance on it,
- (c) an acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror; to that extent the postal acceptance rule would be abolished, and
- (d) a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer can constitute an acceptance rather than a counter offer.

25. Those changes appear to promote greater certainty and efficiency in international trade. (They might indeed be seen as attractive for local trade as well.) Thus (a) and (b) facilitate serious dealing; (c) removes the differences arising from different forms of communication and takes account of new technology; (d) avoids unnecessary steps where the original offeror acquiesces in the nonmaterial variations and avoids the "battle of the forms". But, while none of the changes should present any difficulty or danger to those familiar with the new rules, care should be taken in respect of non revocable offers; that change may be a trap for the unwary.

26. The Convention addresses the definiteness of the offer and contract, a matter of some controversy in the preparation of the text. Article 14 (1) requires the offer to be "sufficiently definite". It has that quality if "it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and price". If that is a statement of the necessary (and not simply of sufficient) conditions then it appears to prevent open price contracts and related quantum meruit argument. In support of that, one eminent commentator has called attention to the insistence of some legal systems (including those of France and Russia) that the price be either determined or objectively determinable at the time of the formation of the contract. That insistence might also be seen as going to the validity of the contract, a matter not covered by the Convention. But art 55 may provide the answer. That provision reads:

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price ordinarily charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

That suggests that art 14(1) states only some of the conditions of definiteness. Furthermore, any relevant practice on usage applicable between the parties might fill any gap about price (art 9).

OBLIGATIONS AND REMEDIES GENERALLY

27. Part II of the Convention, just considered, should answer the question: Is there a contract? If there is, Part III, now to be considered, deals with the parties' rights, obligations and remedies. Its five chapters set out in a systematic way

- general provisions applicable throughout the part (including provisions about remedies),
- the obligation of the seller and remedies for breach of those obligations,
- the obligations of the buyer and remedies for breach,
- the rules for the passing of risk,
- provisions common to the obligations of the buyer and seller.

The Convention sets out a unified set of rules to deal with the operation of the contract and achieving of the sale. Once again it emphasises the contract made by the parties. Thus the second and third chapters on the obligations of the parties each begin with parallel provisions; the parties must take the actions "required by the contract". As Professor Honnold says, it is not significant that the Convention mentions the contract. What is significant is the fact that the expectations of the parties (as shown by the language of the contract, the practices of the parties and applicable usages) are so consistently the theme of the Convention.

28. The provisions on remedies give special weight to the characteristics of international sales, including the costs of transport, the complications of distance, and the problems of handling rejected goods in a foreign country. The rules emphasise saving the contract, for instance by narrowly defining fundamental breach, and by enabling the seller to cure the breach. An aggrieved party facing nonperformance can also fix a final, additional reasonable period of time for the party at fault to perform, a borrowing of *Nachfrist* from German law. Default beyond that period is a ground for avoidance.

29. The emphasis on saving the contract is also to be seen in the relatively narrow definition of fundamental breach; only such a breach or failure to comply in the extended time just mentioned can justify avoidance of the contract. A breach is fundamental, according to art 25,

if it results in such detriment to the other party as substantially to deprive him of what he is entitled to under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

"Fundamental breach" under the Convention is quite distinct from the concept with the same name under English law: that concept was developed to enable an aggrieved buyer to escape contractual provisions denying the buyer's rights. By contrast the Convention uses the phrase primarily as the central element of the right to declare the whole contract avoided (arts 49(1)(a) and 64(1)(a); see also arts 46(2), 51(2), 70, 72 and 73).

30. Part III also of course reflects broader characteristics of the Convention as a whole; it is a document which is intended to be durable, it is the product of very extensive international collaboration, and accordingly it is flexible, capable of development (through the application

and interpretation of courts around the world; and business practice which is free to exclude or vary it), and free of "the awesome relies from the dead past that populate in amazing multitude the older codifications of sales law, an unromantic place" (Rabel, "The Hague Conference on the Unification of Sales Law" (1952) *1 Am Jl Comp L* 58, 61).

OBLIGATIONS OF THE SELLER AND RELATED REMEDIES

31. The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods as required by the contract and Convention. That basic set of obligations and the related remedies are spelled out in the three sections of chapter II.

32. Section I (arts 31-34) regulates the delivery of the goods and the handling over of documents. According to a leading English commentator, these relatively detailed articles do not seem likely to cause difficulty for English lawyers. As noted, the transfer of property in the goods in accordance with the sales contract is not regulated by the Convention, art 4.

33. The basic obligation in section II (arts 35-40) on conformity of the goods is that

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. (art 35(1))

Conformity is spelled out in terms of fitness for ordinary purpose and for any particular purpose known to the seller, unless the buyer did not reasonably rely on the seller's skill and judgment. The wording of the obligations differs from the Sale of Goods Act 1979 there is no talk of conditions and warranties for instance - but the substance appears not to differ in any significant way.

34. The rules relating to the consequence of non conformity are however new. They are the result of major contention at Vienna in the preparation of the text, contention resulting from differences in national law and national interests. The buyer loses the right to rely on a lack of conformity of the goods unless notice is given

- (a) within two years of the actual handover of the goods (unless there is a contractual guarantee fixing a different time which might be longer or shorter),
or
- (b) within a reasonable time after the discovery of the lack of conformity

whichever is the earlier (art 39; see also arts 40 and 44).

35. The seller is also under a general obligation to deliver goods free of any right or claim of a third party including intellectual property rights (arts 41 and 42). Again the buyer loses the right to rely on those obligations of the seller by failing to give notice within a reasonable time of knowledge of the defect. In this area there is no outer time limit (art 43). If the buyer has a reasonable excuse for not giving the notice required by the provisions in respect of conformity and third party rights, the buyer may reduce the price in accordance with the remedy provisions (considered next) or claim damages (except for loss of profit) (art 44)

36. The buyer's remedies include and extend beyond those available under the present law. The Convention first sets out rights to compel performance and later deals with damages (paras 74-76):

- (a) The buyer can require the seller to perform the contractual obligations (art 46(1)). That right, like others relating to required performance, is subject to the qualification that a court is not bound to enter a judgment for specific

performance unless it would do so under its own law in respect of similar contracts of sale not governed by the Convention (art 28).

- (b) The buyer can require the delivery of substitute goods in a case of non-conformity involving a fundamental breach and if timely notice is given (art 46(2)).
- (c) The buyer can require repair in the case of nonconformity unless this is unreasonable, again if timely notice is given (art 46(1)).
- (d) As noted, the buyer (and the seller too) may fix an additional, reasonable time for the other party to complete the contract (arts 47 and 63).
- (e) The buyer may declare the contract avoided if the seller's failure is a fundamental breach, or in a case of non-delivery the seller does not deliver the goods within the period fixed in terms of (d) or declares that it will not do that (art 49. see also art 51). Again the seller has parallel rights in the event of fundamental breach or failure to comply with the notice by the buyer (art 64).
- (f) The buyer may reduce the price in the case of non conformity (art 50).

37. The seller has, in parallel to (b) and (c), a right to cure any deficiency in performance, before or after the time fixed for performance (arts 37, 48). The latter right is subject to reasonableness limits - of time, convenience and certainty - and to the right to damages.

38. The Convention also regulates partial and excessive performance (arts 51-52). Those provisions differ in detail from existing law (which in its English manifestation has been widely criticised). They are part of a broader set of provisions designed, as indicated, to remove impediments to trade and to help preserve the contracts covered by the Convention. For instance a shortfall in quantity can justify a declaration of avoidance by the buyer only if the failure is a fundamental breach of the contract and in the case of excess performance only the excess can be rejected. By contrast, the Sale of Goods Act s 32 allows the buyer to reject the whole delivery in either case.

OBLIGATIONS OF THE BUYER AND THE RELATED REMEDIES

39. The basic obligation of the buyer is of course to pay the price for the goods and take delivery of them as required by the contract and the Convention (art 53). The Convention provides for the determination of the price when it has not been fixed or according to weight (arts 55-56 and para 53) and for the place and time of the payment (arts 57 59).

40. The seller's remedies again are divided into specified rights and damages (considered later). The specified rights are

- (a) to require the buyer to pay the price, take delivery and perform its other obligations (art 62),
- (b) to fix an additional period for performance (art 63, para 63(d)),
- (c) to declare the contract avoided for fundamental breach or non-compliance with the requirement under (b) (art 64, para 63(e)).

41. The Convention gives a further remedy to the seller if the buyer fails, in breach of the relevant contract, and following reasonable notice, to specify the form, measurement or other features of the goods. The seller can make a specification which becomes binding if the buyer does not make a different specification within a reasonable time (art 65). This provision has

to be related to the obligation of the party to mitigate the loss resulting from the breach the party is relying on (art 77).

THE PASSING OF RISK

42. The risk in general passes from the seller to the buyer at the time of the handing over of the goods to the first carrier (art 67). The risk in respect of goods sold in transit passes at the time of the conclusion of the contract (art 68). And in other cases the risk passes when the buyer takes over the goods or the goods are placed at the buyer's disposal (art 69). (But of course parties in Singapore often separate these elements.) The Convention departs from the general rule in the Sale of Goods Act that risk passes with title. The Convention does not regulate transfer of title but clearly identifies the decisive facts which enable the parties to determine the appropriate arrangements including insurance. The parties can of course agree to a different arrangement and the relevant trade usage may also lead to a different result (arts 6 and 9).

PROVISIONS COMMON TO THE OBLIGATIONS OF SELLER AND BUYER

Exemption Impossibility

43. While chapter V deals mainly with remedies, arts 79 and 80 deal with exemptions arising from impossibility and breach by the other party. Article 79 deals with the very difficult issue of the excusing of a non-performing party because of impossibility or some such cause. Paragraph (1) of that provision states the basic rule:

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.

The article operates however only to prevent an action in damages (see art 79(5)). It does not bring the contract to an end. However, if a failure to perform is a fundamental breach, the other party may declare the contract avoided.

44. The article was difficult to prepare and has since given rise to criticism. For instance the wording is vague and imprecise. One commentator has called on national courts to see the provision in the context of both the Convention as a whole and the practices of international trade. The more sophisticated and widespread international commerce becomes, the more difficult it is to say that a party could not reasonably have been expected to take the particular impediment into account (B Nicholas in Galston 5-14).

45. Article 80 states the basic proposition that

A party may not rely on failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

It can be seen as a particular manifestation of good faith. Its relationship to other provisions in the Convention including art 79 and those concerning remedies is also the subject of some controversy, eg Uniform Law 553-556, Bianca 596 600.

Anticipatory breach

46. A party faced with the prospect of failure to perform by the other party may be able to suspend the performance of its obligations or declare the contract void. The suspension right arises if "it becomes apparent" that the other party will not perform "a substantial part" of its obligations as a result of (a) a serious decline in its ability to perform or creditworthiness or

(b) its conduct under the contract (art 71). The right to avoid for anticipatory breach arises if "it is clear that one of the parties will commit a fundamental breach" (art 72).

Damages

47. The basic right to damages is stated in terms of foreseeability:

Damages for breach of contract by one party consist of a sum equal to the loss, including the 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 (art 74).

That appears to conform with the basic rule of damages in *Hadley v Baxendale* (1854) 9 Exch 341, 156 ER 45. We have already noted the obligation of a party relying on breach to mitigate the loss (art 77).

48. The Convention also states two special rules for damages after avoidance of the contract - where the buyer has bought goods in replacement or the seller has resold; and where there has been no such purchase or resale (arts 75-76).

49. A party is entitled to interest from the party who has failed to pay the price or any other sum that is in arrears (art 78). The Convention provides no basis for the calculation of interest.

Effect of avoidance

50. When a contract is avoided

- the parties are relieved of their contractual obligations subject to payment of damages,
- the contract remains binding to the extent of its provisions for dispute resolution or matters consequent upon avoidance,
- restitution of goods delivered or money paid may be claimed,
- the buyer must account to the seller for all benefits received from the contract goods,
- the seller must pay interest on any price refund. (arts 81, 84)

51. A buyer may not avoid a contract unless restitution of the goods delivered can be made, but other remedies remain available (arts 82-83).

52. The party in possession or control of the goods must take reasonable steps to preserve them. Limited rights of sale apply where there is unreasonable delay in remedying the breach or where the goods are perishable or too costly to preserve (arts 85-88).

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX C3

The Convention in Practice

THE CONVENTION IN PRACTICE

INTRODUCTION

53. This Annex discusses some of the principal legal issues arising in practice from the preparation and application of a contract for the international sale of goods. While the Annex emphasises the Convention, the main points considered arise even in the absence of the Convention.

54. That fact is to be balanced against the fact that some provisions of the Convention would introduce new law or appear to be complex. As well, the Convention provides a single body of widely accepted law which should be uniformly developed and interpreted and which would supersede in practice the sales law of many of the countries with which Singapore trades. To the extent that the new law presents problems, they would relate just to that single conventional regime. That specific focus should reduce significantly the transaction costs arising from the present involvement with many other separate systems of law.

55. This Annex considers in turn some of the practical issues relating to.

- the application of the Convention
- the validity of the sales contract
- the use of legal concepts
- formation of contracts
- third party rights
- remedies
- force majeure
- exclusion and variation of the sales of the Convention.

APPLICATION

56. Whether the Convention applies to a particular contract turns first on the provisions of the Convention, briefly discussed in Annex IV and second on the attitude of the parties for they can exclude or vary its application. Here we consider three matters:

- the closest relationship test for the place of business, a central element in the first ground for application, under article 1(1)(a).
- the determination of the governing law of the contract the second means of application of the Convention, under article 1(1)(b),
- the possibility of the implied exclusion by the parties of the rules of the Convention, if they are otherwise applicable.

Whether the parties should exclude or vary the application of the Convention is considered at the end of this Annex.

Closest relationship test

57. The "closest relationship" test of art 10 may be decisive for the application of the Convention where one or more of the parties have more than one place of business and especially where one of these is in the same State as that of the other party. The basic test in that case is the place of business which has the closest relationship to the contract and its performance having regard to the circumstances known or contemplated by the parties. Parties in this position should address the problem before contracting if the test appears difficult to apply in the circumstances. They might consider using the additional means of application provided by article 1(1)(b).

58. In cases of doubt the interpretation provisions may assist. We have seen that they favour recognition of the international nature of the contracts and the correct approach to interpretation may be expected to favour rejection of a precipitate reference to domestic law.

Governing law

59. If the parties have their places of business in different States which are not Contracting States, the Convention applies only if the rules of private international law lead to the application of the law of a Contracting State (article 1(1)(b)). That is to say, although the Convention is designed to minimise the relevance of different national legal regimes, it does not (and cannot) entirely remove their relevance. The proper law of the contract will always be relevant to matters such as the validity of the contract which are not dealt with by the Convention. It is also determinative where article 1(1)(b) is the only basis on which the Convention could apply. There is risk in entering into international transactions without identifying the proper law. The Convention removes some of those risks, especially when the businesses are in two different Contracting States. But if that is not so there may be risk and uncertainty. That can however be removed if the parties address the choice of law issue and expressly and clearly set out their agreement in the contract by way of a choice of law clause.

60. The rules of private international law of most jurisdictions will normally give effect to such a choice of law clause provided there is no breach of the public policy of any relevant jurisdiction. If a choice of law clause is used to attempt to circumvent non-derogable aspects of the State law (eg export bans), public policy will often require that the clause be avoided. Clauses which apply different law to different aspects of the contract and those which choose a law having no connection with either party may also fall under suspicion. But in general, the parties have considerable autonomy.

61. Subject to public policy considerations, a choice of law clause may also be used to exclude operation of the Convention (art 6). It may (again subject to matters of public policy) apply the law of any State in substitution.

62. Care should be taken with the drafting of the choice of law clause (or a clause taking advantage of art 6) if the intention is to exclude the Convention. So a simple reference to the law of New South Wales might properly be read as including the law stated in the Convention; it is after all expressly made part of the law of New South Wales. The provision might instead refer specifically to the local, domestic (or the internal, substantive) law of the jurisdiction in question and might as well expressly exclude the Convention.

Exclusion of Convention by implication

63. Article 6 of course stresses the broad freedom of the parties. It was possible for the Convention to accord that freedom in part because of its limited scope; it does not regulate the validity of the contract, prejudice the rights of third parties, extend to consumer contracts or deal with product liability. It does nevertheless cover critical aspects of international commerce. Does art 6 mean that the rules on those aspects may be set aside merely by implication? Or is something more called for? The commentaries on the provision (which

draw on its history) confirm the plain meaning that art 6 does not require an express provision. But there is obviously considerable advantage in making the exclusion or modification express; in that event, the matter is clear, the particular governing law is likely to be identified by such a provision (with the consequent advantages of that course) and the history of the provision discourages too easy an inference of implied exclusion. The intention to exclude would be found by application of the interpretation provisions of the Convention, eg Bianca 51-52, 55-58. And some provisions of the Convention, such as those directions on interpretation, would be very difficult to exclude.

THE VALIDITY OF THE SALES CONTRACT

64. The Convention is not concerned with the validity of the contract. That proposition does not stand alone. Rather it appears as an explanation of the positive statement in art 4 that the Convention applies (only) to the formation of the contract and the rights and obligations of the buyer and seller under it. That statement of the positive scope of the Convention gives some indication of what might be left to fall within the excluded range of "validity" issues.

65. Those possible issues are many: contractual capacity, mistake, export and import regulation, illegal and unconscionable contracts for instance. It will not always be clear whether a particular challenge relates to validity or to matters covered by the Convention. Open price contracts present an example. We have already noted that the definiteness requirement of art 14(1) might be softened somewhat by art 55 (para 53). But might there not be a prior argument that the contract is void and that accordingly those provisions do not begin to operate?

66. Professor Tallon refers to the French courts holding to be void, contracts providing for payment of the price usually charged for similar goods at the same place or providing for a tentative price, the actual price being that of the list price in effect at the time of delivery. The decisions, he says, might be justified by reference not only to the Civil Code but also to broader public policy considerations of the protection of a weaker party, Galston 7-11 to 12. The view might be taken that under French Law this matter concerns the validity of the contract and not its formation and accordingly falls outside the scope of the Convention and any curative effect of art 55. The view in Singapore might be the opposite. The determination of the law governing that issue may accordingly be decisive.

67. Parties contemplating a continuing arrangement for the supply of goods need to have regard to both the validity and definiteness issues if they are not intending to determine the price from the outset. They might have to give greater specificity to the means of and criteria for price determination. The international approach to interpretation demanded by art 7 may also help resolve the issue.

THE USE OF LEGAL CONCEPTS

68. This paper mentions the direct, practical and simple character of the Convention. That was a major consequence of the international collaborative process that was followed in preparing the text. Some familiar concepts and related legal expressions have disappeared as a consequence; risk passes (it is not transferred) on the handing over or taking of the goods (not on their deliverance as under the 1964 Convention and not on property passing). Warranties and conditions make no appearance. And consideration too appears to be absent in some contexts when the common law might require it.

69. The Convention depends in important ways on standards such as reasonableness and good faith. They are of course familiar ideas and concepts. They can however suggest a lack of certainty and precision. They might be seen as undermining the terms of the contract as agreed between the parties and as threatening the security of international commerce. Those

concerns cannot be answered in a completely comprehensive way. But two broad answers can be given, one relating to the powers of the parties, the other to the characteristics of law in this area.

70. The first is found in the parties' freedom, stressed in art 6 and emphasised elsewhere in the Convention, to write the contract in their own terms. They can displace any uncertainty with their own special law. The course of relations between the parties and relevant trade usages may also help achieve that greater certainty (arts 8 and 9).

71. The second set of answers to the concern recalls the parallel role of such standards in related areas of our law. Standards of reasonableness are of course common. They lie at the heart of obligations of due care. Similarly the Sale of Goods Act 1979 requires the payment of "a reasonable price" if none is fixed and no procedure for determining it exists (s 10(2)); see also ss 16 (reasonably fit for purpose), 36 (reasonable opportunity of examining), and 20, 31(3), 31(5), 37, 39 and 57 (all about "reasonable time" - a common feature of the Convention). Consider as well the broad standards and powers included in the contract statutes.

72. Statutory references to good faith are probably less frequent. It does of course have a prominent role, at least potentially, in the Convention (see art 7). But, again to take just the one example, the Sale of Goods Act uses it, as a synonym for honesty, in respect of the rights of third parties; ss 25, 48 and 2(2). Again we have to keep in mind that the rules are international. They are not to be seen purely in a national context.

73. The requirement in art 7(1) that the Convention be interpreted to promote not only uniformity but also the observance of good faith in international trade represents a compromise. In Honnold's words:

- (a) Some delegates supported a general rule that, at least in the formation of the contract, the parties must observe principles of "fair dealing" and must act in "good faith";
- (b) Others resisted this step on the ground that "fair dealing" and "good faith" had no fixed meaning and would lead to uncertainty.

The text does not of course impose good faith as a distinct obligation of the parties. Rather it is solely to be used in interpreting the Convention. What does that add to the uniformity and principle directions in art 7? Professor Honnold has suggested possible uses, for instance in respect of the performance demanded within the additional reasonable period. Professor Schlechtriem links good faith to the frequent references to reasonableness.

101 The broad standards in the Convention relate as well to two of its basic characteristics: it is intended to be durable, a base for vast international commercial activity; but a base which the parties are free to put to one side or to modify if they so desire (to return to the first point about the extensive freedom of the contracting parties) (Kritzer 108-114).

FORMATION OF CONTRACTS

74. Some of the issues arising from open priced contracts have already been considered. Here we mention aspects of the Convention provisions relating to irrevocable offers and counter offers which are novel, novel that is to Singapore lawyers.

75. Under Singapore law an offer can be irrevocable only if the offeree has given consideration. If no consideration has been given, an offer which is expressed to be irrevocable can be revoked. As noted, art 16(2) qualifies the general rule stated in art 16(1) that an offer may be revoked at any time up to the dispatch of the 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 on the offer as being irrevocable and the offeree has acted in reliance on the offer.

76. It follows that an offer which is simply intended to lapse after a fixed time is likely to be interpreted under art 16(2)(a) as irrevocable because it states a fixed time. If that possibility is not intended, care should be taken in the drafting of the offer. The potential effect of art 16(2)(b) in respect of implied irrevocability could also be met by explicit drafting of the offer. But, depending on the circumstances, the commercial interests of the offeror might of course be enhanced by the greater certainty of dealing that arises from irrevocability. It is significant that the law of major trading countries including the United States and much of Europe is consistent in this respect with the Convention.

77. Under Singapore law an acceptance which varies the terms offered is a counter offer, not an acceptance. Article 19 begins with that principle.

- (1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter offer.

But it then goes on to qualify the principle.

- (2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. 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, among other things, 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.

78. These two paragraphs recognise the fact that in many transactions the standard form used by the seller will differ from that used by the buyer. The law has to attempt to deal with "the battle of the forms". The above provisions are designed to maintain the contract - in the absence of timely objection by the offeror - if the differences between the offer and "acceptance" are immaterial. As Honnold points out, although legal doctrine in many countries conforms with the principle stated in para (1) of art 19, there is evidence of courts upholding contracts by finding that the alleged deviation in the "acceptance" was not really inconsistent with the offer in the light of commercial practice or good faith, or was a request for a modification of an agreement, or had been waived by the proposer or accepted in silence by the other party, Uniform Law 230.

79. The new provisions in arts 19(2) and 19(3) do highlight the need for care in contract management - a need which is present now of course - and they help facilitate the formation and performance of contracts when the arguments against that course do not have real commercial merit.

THIRD PARTY RIGHTS

80. The Convention, to repeal, regulates the rights and obligations of the buyer and seller. "In particular" it is not concerned with the effect which the contract may have on the property in the goods sold (art 4(b)). That matter, including the rights of third parties, is essentially left to national legal systems.

81. The parties should give attention to the time of the passing of property in terms of the relevant domestic law or the provisions in the contract. Relevant trade terms will often continue to govern the matter. That position is not directly affected by the Convention, although the significance of the passing of property is reduced by the Convention rules relating to the passing of risk - reduced, that is, for those legal systems which link the passing of risk to the passing of property. As already noted, under the Convention risk in general passes on the handing over of the goods to the first carrier or to the buyer if it is taking direct delivery. That set of rules provides a clear basis on which relevant arrangements, including insurance, can be made, para 69.

82. Article 30 states the basic obligation that the seller "transfer the property in the goods ... as required by the contract and this Convention". Articles 41 and 42 spell that out. Under the former:

The seller must deliver goods which are free from any rights or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim

Article 42 makes more detailed provision concerning a third party right or claim based on industrial property or other intellectual property. Article 41 corresponds with the seller's obligation under s 14 of the Sale of Goods Act, and appears to extend beyond it to "claims". Any departure from the obligation must be based on agreement and not merely on the knowledge of the buyer (which is sufficient in respect of industrial and intellectual property). The agreement, it is accepted, can be implied. There may nevertheless be obvious advantages in dealing with this matter expressly in the contract. Consider for instance the position of the buyer who must pay before goods are released from a warehouse or carrier.

83. The obligations of the parties to one another under art 42 depend on whether they knew or could not have been unaware of the right or claim of the third party based on their intellectual or industrial property. "Could not have been unaware" appears to be close to actual knowledge. It can be contrasted with "ought to have known" or "discovered" which is used in several other provisions of the Convention (such as art 39(1) on non-conformity). While the latter formula appears to impose a duty to investigate the former may not. Prudence might nevertheless dictate inquiry in some circumstances, and either party might be well advised to deal expressly with the issue where such rights or claims are likely.

REMEDIES

84. Remedies are critical in the effective operation of law in an area such as this. It is not surprising that the Convention gives them a great deal of emphasis, introducing a range of remedies not to be found in Singapore law. There is already an extensive amount of relevant commentary, valuable to those who must work with the rules in the Convention.

85. The Convention provides a unitary set of remedies designed to take account of the special characteristics of international commerce and directed at preserving the contract if that is practicable.

86. The parties are free to adapt or even to supplant the Convention's remedies. One exercise of their contractual freedom might be to provide for methods of dispute settlement other than through the courts, for instance by conciliation, mediation or arbitration (on the

last of which the Law Reform Committee has recently considered the UNCITRAL Arbitration Model Law.

87. One major area of commentary and potential difficulty is "fundamental breach". The definition would constrain the relative freedom of the buyer under Singapore law to reject the goods. Again the parties may want to negotiate a more specific avoidance regime, but the Convention rules do have the advantage of preserving contracts where only minor irregularities in performance occur - subject still of course to a right to damages and to the giving of relevant notices.

88. Uncertainty about the application of the fundamental breach definition in a particular case also can be avoided by making use of the reasonable notice (Nachfrist) provision. The relevant constraint there on the aggrieved person's power of avoidance of the contract is that the extra time allowed must be reasonable. Calculating that period is probably easier than assessing the fundamental character of the breach.

89. Remedies may also be lost if timely notice is not given - for instance of non conformity, avoidance, defect in documents, and third party claims. These requirements are to be explained by the need for greater certainty in the international context. Singapore businesses will need to ensure that their contract management procedures are such that rights are not lost through a failure to give that notice.

FORCE MAJEURE

90. The earlier comment on art 79 about impossibility of performance calls attention to the problems in the preparation and in the likely interpretation of this provision and also its limited effect (it prevents only an action in damages and does not affect other remedies (paras 70.71)). It will also be recalled that the law regularly applied in granting specific performance by the court in question is to be applied in respect of international sales as well (art 28). Accordingly the not uncommon reluctance of courts in the common law tradition to grant that remedy may give greater scope in practice to art 79.

91. Some comfort may also be drawn from the comment by Professor Nicholas that similar problems of the verbal statement of the rule and its actual application are present in most major legal systems. The formulations found in these systems are no more helpful than those in art 79. He puts the view of another expert in these words: "there are always some who hope that by multiplying words they may succeed in defining the undefinable and others, like himself, who know that this is futile." (Galston 5-10) Once again if the parties to a particular arrangement can be sufficiently far sighted and can agree, they might be able to avoid some of the difficulties arising from art 79 (as from similar national doctrines) by specific terms in their contract.

EXCLUSION AND VARIATION OF THE RULES OF THE CONVENTION

92. Professor Honnold was quoted earlier as emphasising the significance of the fact that the expectations of the parties are constantly the theme of the Convention. They have very broad powers to vary or even displace the rules in the Convention. They might do that through their own contract or because of the particular or general usages relating to their trade (arts 6, 8, 9).

93. Standard terms have been developed for use with particular goods (especially for commodities such as wool, grain or sugar). For more general use, terms such as FOB (free on board) and CIF (cost, insurance, freight) have evolved. Used alone, the latter terms rely largely on the common law for definition. The International Chamber of Commerce has taken these terms, revised them and published a set of standard definitions known as INCOTERMS

(last revised 1990). The ICC definitions specify, for each term, the respective obligations of buyer and seller in matters such as export licences, type of insurance, cost of insurance and port of shipment. Thus, the term “FOB (Incoterms, 1990)” would import the relevant standard obligations into the contract rather than the common law understanding. This could be subject to any usage that has developed in the particular trade or region or between the parties.

94. Standard terms such as INCOTERMS do not however generally define the whole contract. For instance remedies are not normally covered. A contract could therefore be constructed by employing a trade term to define transactional arrangements with the Convention providing the supporting law (including remedies). To the extent that the trade term displaces the default rules of the Convention (such as the definition of the place at which delivery is to occur) the incorporation will modify the Convention. Since the remedial provisions have been, in part at least, tailored to those default rules there is a possibility that the modification will upset the fit between obligation and remedy for its breach.

95. Under art 49, avoidance is immediately available for fundamental breach. If a breach of a particular element of the transaction would not amount to fundamental breach under the default rules of the Convention, but can be seen as fundamental under the trade terms used, then the effect of incorporation of the trade term may have unexpected results. It is not suggested that the use of trade terms should be discouraged - they obviously have great value in facilitating trade – but rather that the parties’ contract be adjusted if necessary to take account, say, of the remedies in the Convention. No doubt those preparing and revising standard terms will also have regard to the relevant provisions of the Convention.

96. Parties considering departure from the terms of the Convention have to consider competing considerations. On the one side they have the great advantage of the widely accepted and increasingly understood text. Using that text can avoid major difficulties which would otherwise arise during negotiation. (For example, which law should apply? What specific obligations and remedies should be created?) It gives the parties immediate access to the developing interpretation of the standard text, familiar to commerce around the world. They have the advantage of that unified law. But for very understandable reasons they may wish to write their own law, to supplement where there are gaps or obscurities and to displace where the law is not satisfactory for their purpose. They should assess the advantages which they foresee in their special arrangement against the values (including the growing certainties) of the uniform rules in the Convention.

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The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX D

Parties

(Status Updated to 22nd February 1995)

United Nations Convention on Contracts for the International Sale of Goods
(Vienna, 1980)

<u>State</u>	<u>Signature</u>	<u>Ratification</u> <u>Accession</u> <u>Approval</u> <u>Acceptance</u> <u>Succession</u> (*)	<u>Entry into force</u>
Argentina <u>1/</u>		19 July 1983	1 January 1988
Australia		17 March 1988	1 April 1989
Austria	11 April 1980	29 December 1987	1 January 1989
Belarus <u>1/</u>		9 October 1989	1 November 1990
Bosnia and Herzegovina		12 January 1994	6 March 1992
Bulgaria		9 July 1990	1 August 1991
Canada <u>2/</u>		23 April 1991	1 May 1992
Chile <u>1/</u>	11 April 1980	7 February 1990	1 March 1991
China <u>3/</u>	30 September 1981	11 December 1986	1 January 1988
Cuba		2 November 1994	1 December 1995
Czech Republic <u>a/</u>		30 September 1993	1 January 1993
Denmark <u>4/</u>	26 May 1981	14 February 1989	1 March 1990
Ecuador		27 January 1992	1 February 1993
Estonia <u>1/</u>		20 September 1993	1 October 1994
Egypt		6 December 1982	1 January 1988
Finland <u>4/</u>	26 May 1981	15 December 1987	1 January 1989
France	27 August 1981	6 August 1982	1 January 1988
Georgia		16 August 1994	1 September 1995
Germany <u>b/ 5/</u>	26 May 1981	21 December 1989	1 January 1991
Ghana	11 April 1980		
Guinea		23 January 1991	1 February 1992
Hungary <u>1/ 6/</u>	11 April 1980	16 June 1983	1 January 1988
Iraq		5 March 1990	1 April 1991
Italy	30 September 1981	11 December 1986	1 January 1988
Lesotho	18 June 1981	18 June 1981	1 January 1988
Lithuania <u>1/</u>		18 January 1995	1 February 1996
Moldova		13 October 1994	1 November 1995
Mexico		29 December 1987	1 January 1989
Netherlands	29 May 1981	13 December 1990	1 January 1992
New Zealand <u>8/</u>		22 September 1994	1 October 1995
Norway <u>4/</u>	26 May 1981	20 July 1988	1 August 1989
Poland	28 September 1981		
Romania		22 May 1991	1 June 1992
Russian Rederation <u>c/ 1/</u>		16 August 1990	1 September 1991
Singapore <u>7/</u>	11 April 1980	16 February 1995	1 March 1996
Slovak Republic <u>o/</u>		28 May 1993 *	1 January 1993
Slovenia		7 January 1994 *	25 June 1991
Spain		24 July 1990	1 August 1991
Sweden <u>4/</u>	26 May 1981	15 December 1987	1 January 1989
Switzerland		21 February 1990	1 March 1991
Syrian Arab Republic		19 October 1982	1 January 1988
Uganda		12 February 1992	1 March 1993
Ukraine <u>1/</u>		3 January 1990	1 February 1991
United States of America <u>7/</u>	31 August 1981	11 December 1986	1 January 1988
Venezuela	26 September 1981		
Yugoslavia	11 April 1988	27 March 1985	1 January 1988
Zambia		6 June 1986	1 January 1988

Signatures only: 3; ratifications, accessions, approval, acceptance and successions: 44

a/ The Convention was signed by the former Czechoslovakia on 1 September 1981 and an instrument of ratification was deposited on 5 March 1990, with the Convention

entering into force for the former Czechoslovakia on 1 April 1991. 7/ On 28 May 1993 the Slovak Republic, and on 30 September 1993 the Czech Republic, deposited instruments of succession, with effect from 1 January 1993, the date of succession of States

b/ The Convention was signed by the former German Democratic Republic on 13 August 1981, ratified on 23 February 1989 and entered into force on 1 March 1990.

c/ The Russian Federation continues, as from 24 December 1991, the membership of the former Union of Soviet Socialist Republics (USSR) in the United Nations and maintains, as from that date, full responsibility for all the rights and obligations of the USSR under the Charter of the United Nations and multilateral treaties deposited with the Secretary-General.

Declarations and reservations

1/ Upon adherence to the Convention the Governments of Argentina, Belarus, Chile, Estonia, Hungary, Lithuania, Ukraine and USSR, in accordance with articles 12 and 96 of the Convention, that any provision of article 11, article 29 or Part II of the Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing, would not apply where any party had his place of business in their respective States.

2/ Upon accession the Government of Canada declared that, in accordance with article 93 of the Convention, the Convention will extend to Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and the Northwest Territories. Upon accession the Government of Canada declared that, in accordance with article 95 of the Convention, with respect to British Columbia, it will not be bound by article 1 (1) (b) of the Convention. In a notification received on 31 July, 1992, the Government of Canada withdrew that declaration. In a declaration received on 9 April 1992 the Government of Canada extended the application of the Convention to Quebec and Saskatchewan. In a notification received on 29 June 1992, Canada extended the application of the Convention to Yukon.

3/ Upon approving the Convention the Government of China declared that it did not consider itself bound by sub-paragraph (b) of Paragraph 1 of Article 1 and Article 11 as well as the provisions in the Convention relating to the content of Article 11.

4/ Upon ratifying the Convention the Governments of Denmark, Finland, Norway and Sweden declared in accordance with article 92 (1) that they would not be bound by Part II of the Convention (Formation of the Contract). Upon ratifying the Convention the Governments of Denmark, Finland, Norway and Sweden declared, pursuant to article 94 (1) and 94 (2), that the Convention would not apply to contracts of sale where the parties have their places of business in Denmark, Finland, Sweden, Iceland or Norway.

5/ Upon ratifying the Convention the Government of Germany declared that it would not apply article 1 (1) (b) in respect of any state that had made a declaration that that state would not apply article 1 (1) (b).

6/ Upon ratifying the Convention the Government of Hungary declared that it considered the General Conditions of Delivery of Goods between Organizations of the Member Countries of the Council for Mutual Economic Assistance to be subject to the provisions of article 90 of the Convention.

7/ Upon ratifying the Convention the Governments of Czechoslovakia, Singapore and of the United States of America declared that they would not be bound by sub paragraph (1) (b) of Article 1

8/ Upon accession to the Convention the Government of New Zealand declared that this accession shall not extend to the Cook Islands, Niue or Tokelau.

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify?

APPENDIX E

Draft Sale of Goods (United Nations Convention) Bill

**THE SALE OF GOODS (UNITED NATIONS
SALES CONVENTION) ACT 199____.
(ACT OF 199____)**

ARRANGEMENT OF SECTIONS.

Section.

1. Short title and commencement.
2. Interpretation.
3. Convention to have force of law.
4. Convention to prevail in event of inconsistency.
5. Convention countries.

The Schedule.

A BILL

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An Act to give effect to the United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna on 11th April 1980.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

- Short title and commencement. 1.- (1) This Act may be cited as the Sale of Goods (United Nations Sales Convention) Act 199_.
- (2) This Act shall come into operation on such date as the Minister may by notification in the Gazette appoint*.
- Interpretation. 2. In this Act, “Convention” means the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria, on 10th April 1980, and opened for signature and accession on 11th April 1980, the English text of which is set out in the Schedule.
- Convention to have force of law. 3.- (1) Subject to subsection (2), the provisions of the convention shall have the force of law in Singapore.
- (2) Sub-paragraph (1) (b) of Article 1 of the Convention shall not have the force of law in Singapore and accordingly the Convention will apply to contracts of sale of goods only between those parties whose places of business are in different states when the States are Contracting States.
- (3) The Minister may by order delete subsection (2) if the reservation made pursuant to Article 95 of the convention is withdrawn.
- Convention to prevail in event of inconsistency. 4. The provision of the Convention shall prevail over any other law in force in Singapore to the extent of any inconsistency.
- Convention countries. 5. A notification made by the Minister and published in the Gazette –
- (a) declaring that the Convention has entered or will enter into force, with effect from a specified date, in respect of a specified country;
- (b) declaring that a specified country has made a declaration under Part IV of the Convention and specifying the details of that declaration, including the date the declaration took or will take effect; or
- (c) declaring that a specified country has denounced the Convention or Part II or III of the Convention and specifying the date the denunciation took or will take effect,
- shall be evidence of the fact contained in the notification.

(2) For the purposes of this Act, a certificate signed by the Minister stating any of the facts referred to in subsection (1) in relation to a State specified in the certificate shall, upon mere production, be prima facie evidence of that fact.

THE SCHEDULE

Section 2.

[TEXT OF UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS].

EXPLANATORY STATEMENT

This Bill seeks to give effect in Singapore to the United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna on 11th April 1980 (referred to as the "Convention").

Clause 1 relates to the short title and commencement.

Clause 2 defines the term "Convention".

Clause 3(1) provides that the Convention, except for Article 1(1)(b), shall have the force of law in Singapore and is therefore part of the laws of Singapore. If the reservation made under Article 95 of the Convention which excludes the application of Article 1(1) (b) is subsequently withdrawn, clause 3(3) provides that the Minister may by order delete clause 3(2) so that Article 1(1) (b) will apply.

Clause 4 provides that the Convention shall prevail over any other law in Singapore to the extent of any inconsistency.

Clause 5 allows the Minister by Gazette notification to declare the countries which are bound by the Convention and the reservations and declarations, if any, made by such countries. The Minister may also declare any denunciation made by a specified country. The Minister may in relation to a specified country issue a certificate in relation to the above matters which will be prima facie evidence of the facts contained in the certificate.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

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* The Act should come into force on the date when Singapore becomes bound by the Convention.

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX F1

World External Trade Statistics

WORLD EXTERNAL TRADE STATISTICS
(For The Year 1992)

CONTRACTING STATE	TOTAL (US\$ M)	TOTAL (AS % OF WORLD TRADE)
ARGENTINA	27,922	0.37
AUSTRALIA	86,270	1.15
AUSTRIA	98,583	1.31
BULGARIA	5,565	0.07
BELARUS	NA	NA
CANADA	261,398	3.47
CHILE	21,647	0.29
CHINA	167,959	2.23
DENMARK	73,179	0.97
ECUADOR	6,062	0.00
EGYPT	18,544	0.25
FINLAND	45,197	0.60
FRANCE	477,177	6.33
GERMANY	837,242	11.11
GHANA	2,764	0.04
GUINEA	1,365	0.02
HUNGARY	21,771	0.29
IRAQ	1,204	0.02
ITALY	370,696	4.92
LESOTHO	NA	NA
MEXICO	103,997	1.38
NETHERLANDS	269,298	3.57
NORWAY	61,034	0.81
POLAND	35,595	0.47
ROMANIA	10,497	0.14
RUSSIAN FEDERATION	NA	NA
SINGAPORE	125,733	1.67
SLOVAKIA	NA	NA
SPAIN	163,112	2.17
SWEDEN	105,760	1.40
SWITZERLAND	131,295	1.74
SYRIAN ARAB REP	6,624	0.09
UGANDA	588	0.01
UKRAINE	NA	NA
US	1,000,016	13.27
VENEZUELA	29,320	0.39
YUGOSLOVIA	30,051	0.40
ZAMBIA	2,360	0.03
TOTAL	4,599,825	61.06

OVERALL WORLD TRADE TOTAL = US\$ 7,533,100

SOURCE: IMF DIRECTION OF TRADE STATISTICS YEARBOOK 1993

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The United Nations Convention On Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX F2

Singapore External Trade Statistics

SINGAPORE EXTERNAL TRADE STATISTICS
(FOR THE YEAR 1993)

TRADE WITH	OUT (S\$M)	OUT (%)	IN (S\$M)	IN (%)	IN & OUT (S\$M)	IN & OUT (%)
ARGENTINA	246	0.21	55	0.04	301	0.12
AUSTRALIA	2,702	2.26	2,384	1.73	5,086	1.98
AUSTRIA	292	0.24	196	0.14	488	0.19
BULGARIA	24	0.02	7	0.01	31	0.01
BELARUS	NA	NA	NA	NA	NA	NA
CANADA	775	0.65	544	0.40	1,319	0.51
CHILE	103	0.09	143	0.10	246	0.10
CHINA	3,068	2.57	3,877	2.82	6,945	2.70
DENMARK	198	0.17	213	0.15	411	0.16
ECUADOR	7	0.01		0.00	7	0.00
EGYPT	154	0.13	159	0.12	313	0.12
FINLAND	155	0.13	483	0.35	638	0.25
FRANCE	1,759	1.47	3,131	2.28	4,890	1.90
GERMANY	4,747	3.97	4,203	3.05	8,950	3.48
GHANA	32	0.03	11	0.01	43	0.02
GUINEA	NA	NA	NA	NA	NA	NA
HUNGARY	63	0.05	19	0.01	82	0.03
IRAQ	NA	NA	NA	NA	NA	NA
ITALY	1,053	0.88	1,832	1.33	2,885	1.12
LESOTHO	NA	NA	NA	NA	NA	NA
MEXICO	211	0.18	64	0.05	275	0.11
NETHERLANDS	3,100	2.59	1,275	0.93	4,375	1.70
NORWAY	413	0.35	224	0.16	637	0.25
POLAND	98	0.08	85	0.06	183	0.07
ROMANIA	26	0.02	74	0.05	100	0.04
RUSSIAN FEDERATION	NA	NA	NA	NA	NA	NA
SLOVAKIA	..	0.00	2	0.00	2	0.00
SPAIN	481	0.40	419	0.30	894	0.35
SWEDEN	224	0.19	670	0.49	894	0.35
SWITZERLAND	705	0.59	1,488	1.08	2,193	0.85
SYRIAN ARAB REP	43	0.04	4	0.00	47	0.02
UGANDA	17	0.01	..	0.00	17	0.01
UKRAINE	NA	NA	NA	NA	NA	NA
US	24,292	20.33	22,360	16.25	46,652	18.15
VENEZUELA	79	0.07	23	0.02	102	0.04
YUGOSLOVIA	NA	NA	NA	NA	NA	NA
ZAMBIA	2	0.00	97	0.07	99	0.04
TOTAL	45,069	37.72	44,042	32.01	89,111	34.66
WORLD	119,473		137,603		257,076	

SOURCE: SINGAPORE TRADE DEVELOPMENT BOARD

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The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX F3

Legally the Best and Still on the Move
Business Times 7 Oct 1993

THE LAW PAGE

APPENDIX F3

Legally the best and still on the move

After winning kudos for its legal system, Singapore now aims for a better external legal scene, writes Benny Tabalujan

Singapore's legal scene is on the move. Only last month, it was reported that Singapore topped an international survey which measures the effectiveness of the legal systems of a number of countries. This is good news. A country's legal system is an important facilitator of its economy. Although a strong legal system does not guarantee a robust economy, it is difficult to find a robust economy without a strong legal system.

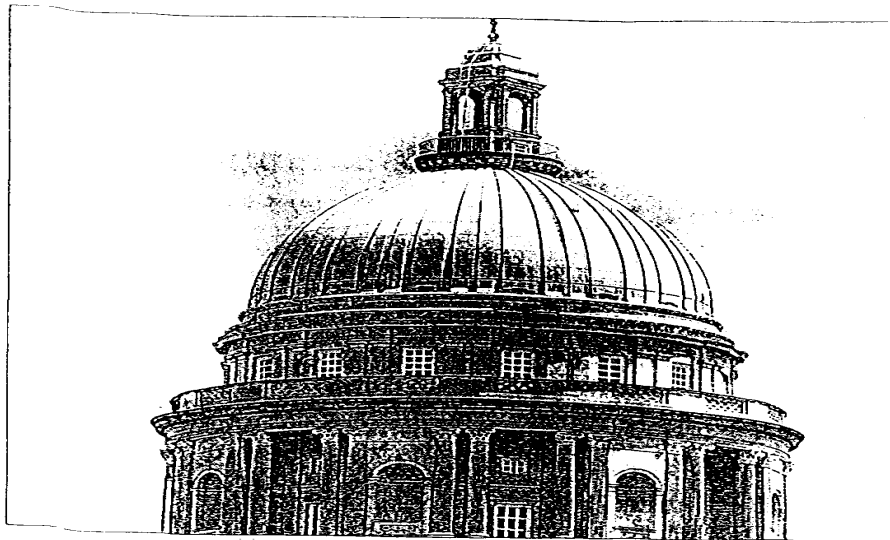
Of course, any ranking of legal systems has subjective elements. After all, few legal systems in the world are identical. This lack of homogeneity raises difficulties when making comparisons. Nevertheless, the ranking was done independently by a foreign institution. That alone ought to count for something.

Singapore's success in the ranking exercise no doubt is partly attributable to the recent changes in the domestic legal system. These changes have reduced the backlog of court Second to none and justice for all: The Supreme Court symbolises the fact that a robust cases and the waiting time for new hearings. Chief Justice Yong Pung How and his team deserve congratulations.

The good news is that similar legal developments in Singapore are being considered for Singapore's external legal scene. By external I mean that part of Singapore's legal system which affects international transactions involving Singapore.

Some of these developments were discussed last month at an international conference on the harmonisation of international trade law in the Asia Pacific region. The conference was organised by the Pacific Economic Cooperation Council (PECC) — the lesser known but nevertheless important precursor to the Asia Pacific Economic Cooperation (Apec) forum.

Two legal developments relating to Singapore bear special notice:



Second to none and justice for all: The Supreme Court symbolises the fact that a robust economy cannot prevail without a sound legal system

•Singapore is currently considering the adoption of the Uncitral (United Nations Commission on International Trade Law) model law on international commercial arbitration.

The current Arbitration Act — modelled after its English counterpart — applies to domestic as well as international arbitrations held in Singapore. Commentators have pointed out that it is outdated in certain respects. For example, it

arguably gives the local courts too much discretion to intervene in international commercial arbitrations. This is contrary to overseas trends. The question now is whether to have the Arbitration Model Law replace the existing Arbitration Act, at least where international arbitrations are concerned.

The Arbitration Model Law is just that — a model law. It was completed by Uncitral in 1985 to serve as a benchmark for countries wishing to enact

an up-to-date arbitration law with internationally accepted standards. Although it is not without criticism, it has generally been well received in the international community. To date, more than 20 countries or jurisdictions have adopted it with or without modification. They include several key states in the US including California, Connecticut and Texas, as well as Australia, Canada and Hongkong.

In his opening address at the PECC Conference, Singa-

pore's Attorney General Chan Sek Keong mentioned that a draft bill which recommends the adoption of the Uncitral model law for international commercial arbitrations in Singapore is currently under consideration. This bill is the work of the Sub-Committee on the Revision of Arbitration Laws It meets under the auspices of the Law Reform Committee of the Singapore Academy of Law.

If the Uncitral model law is adopted, it will be another sign that the authorities are keen to ensure that Singapore keeps abreast with legal developments overseas. Singapore should become a more attractive place for international commercial arbitrations. In turn, this ought to give a boost to the activities of the Singapore International Arbitration Centre set up in 1991.

•Singapore is also considering acceding to the UN Convention on Contracts for the International Sale of Goods, commonly known as the Vienna Convention. The Convention has already been acceded to by more than 30 countries, including some large trading countries like the US, Australia, China, as well as a host of eastern and western European countries.

The Vienna Convention, was finalised in 1980 to provide uniform rules for international sales contracts International sales contracts are contracts for the sale of goods where there is more than one legal jurisdiction involved. The Convention came into operation in 1988 when the minimum number of 10 countries ratified or acceded to it.

Whether or not Singapore should accede to the Convention is an important issue which will affect the law of import and export sales. The obvious advantages are there. The Convention details the obligations of buyers and sellers, what amounts to a breach of contract and other critical is-

sues. By creating its own rules, the Convention overcomes the problem of determining which domestic law applies to an international sales contract.

For example, take a German manufacturer who agrees to sell precision tools to a Singaporean buyer. Due to some unforeseen events, delivery is delayed.

Who bears the loss arising from the delay? Which law — German or Singaporean — applies to the contract? Does this amount to a force majeure? The Convention's rules will help resolve these and other similarly complex legal issues.

The Convention's rules reflect legal principles from both the common law (English law) as well as civil law (European law) systems. Given that most countries today have legal systems which are rooted in one of these two systems, the Convention should be acceptable to most countries.

Of course, the Convention has also received criticism. But these are relatively few. Ultimately, the task faced by the authorities is to weigh the potential benefits against the potential disadvantages flowing to Singapore if the country accedes to the Convention. This is being examined by another sub-committee of the Law Reform Committee of the Singapore Academy of Law.

It is understood that the sub-committee will be issuing a consultative document and holding dialogue sessions with the business community before making its recommendations.

Meanwhile, it is good to know that although Singapore's legal system has been given a gold star recently, no one is resting on these laurels. The task of improving a country's legal system — both domestic and external — never stops.

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Law Review*

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX F4

Laws to be Reviewed to aid "Go Regional" Drive
The Straits Times 12 January 1994

The Straits Times

Estd. 1845

WEDNESDAY, JANUARY 12, 1994

50 CENTS MITA(P) 045/12/93

Laws to be reviewed to aid 'go regional' drive

A MAJOR review of laws will be conducted by the Law Ministry and the Attorney-General's Chambers to provide adequate legal infrastructure to support Singapore's drive to go regional.

They will, when appropriate, adopt international conventions and model laws which harmonise and facilitate international trade and dispute settlements

In his addendum to the President's Address released yesterday, Law Minister S. Jayakumar said commercial

laws will be reviewed and modified where necessary to create a "more predictable legal environment" for businesses to operate.

He also cited two priorities in law reform: patents and bankruptcy.

New laws will be introduced to upgrade the current patent system and make it more convenient for Singaporeans to obtain patent protection for their inventions.

The ministry plans to change the current requirement that Singaporeans must

first have patent protection in the United Kingdom before their inventions can be protected here. Singaporeans will instead be allowed to file applications for patents locally.

On bankruptcy, laws will be introduced to improve the administration of the affairs of bankrupts, and to protect creditors' interests without stifling entrepreneurship.

"We will strike a fair balance between the interests of the debtor, the creditor and society," he said.

There will be greater ac-

countability of bankrupts in the administration of their estates on the one hand, and speedier discharges of bankrupts on the other.

He said the ministry will review other Acts of Parliament which rely on English law. This follows the enactment of the Application of English Law Act 1993, which makes Singapore's commercial law independent of future legislative changes in the UK.

Legislation will also be introduced to abolish all appeals to the Privy Council, a move

announced by Chief Justice Yong Pung How on Saturday.

The Registry of Land Titles will convert all lands from the common law to the land titles registration system. It will also computerise the Land Titles Register to handle more land transactions and public searches.

Finally, the A-G's Chambers will provide better legal advice to ministries and government departments by centralising services in its civil division

■ See Pages 21, 22

The United Nations Convention on Contracts for the
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Should Singapore Ratify ?

APPENDIX F5

Why Compromise Makes Sense
The Times (London) 22 March 1990

THE TIMES TUESDAY MAY 22 1990

THE LAW

Why compromise makes sense

Professor Roy Goode urges full support for a convention on the international sale of goods

IN HIS article (*The Law*, March 27), Derek Wheatley QC, opposed the adoption of the Vienna Convention on Contracts for the International Sale of Goods on the ground that it was incomplete, and would lead to uncertainty, and that English sales law was superior.

His views must, of course, command respect. But there is another side to the coin. Not everyone would agree that our sales law, based as it is on legislation almost 100 years old and tying risk to property, is better suited to modern sales contracts than the convention rules. But even if it were, there are compelling reasons for ratification.

The convention has already been ratified by 19 states, which include major jurisdictions from the common law family. With support accelerating, it is clear Britain is in danger of being left behind.

Many contracts are concluded informally, such as by telephone, and only the basic terms are agreed. The convention thus fulfils an important gap-filling function. Without the convention rules, it would be necessary to ascertain which law governed the contract, applying the conflict of laws rules of

the forum. This would involve time and expense, as well as encouraging forum shopping.

Then there is the much-vaunted superiority of English law, the belief that contracts count for nothing except where governed by English law. But for every such contract entered into by an English exporter or importer, there is another contract governed by foreign law which may well be less favourable to him than the convention.

An importer confronted with a contract governed by Rumanian law, with which he may be unfamiliar, that is in a foreign language and which reflects a non-common law tradition, may prefer to have his rights governed by a set of uniform rules which reflect common law as well as civil law influences, that feature in an authentic English text

and which regular usage will make familiar to him.

At present, international traders may have to familiarize themselves with the laws of a large number of foreign countries. Is it not sensible to provide them with the opportunity of subscribing to a single uniform law, adapted as they see fit?

In addition, where an English case involves a sales contract governed by foreign law, the parties may have to go to great expense and call in expert evidence. But where the convention rules apply, the court takes judicial notice of them and this expense is avoided.

Often when one party to a contract is reluctant to have the other party's law imposed on him, they compromise and use a neutral law. The convention provides a neutral law which, as its universal-



ity increases, will become ever more convenient.

The convention in no way impairs the freedom of contract enjoyed by businessmen. Parties may exclude the convention almost in its entirety or vary its effects as they please. Thus ratification of the convention does not interfere with

the ability of the parties to select English law minus the convention if they prefer.

It would be better for the UK to ratify sooner rather than later so that English courts can give rulings that might influence the courts of other countries.

The convention is proving attractive to other members of the European Community. The UK would be both unpopular and disadvantaged if it adopted an isolationist attitude.

Where harmonization can be achieved, it helps to eliminate the impact of differences in national laws, thus facilitating cross-border trade and saving time, expense and uncertainty. The conclusion of a sales convention of more than 100 articles has involved a prodigious amount of work and international collaboration spread over years.

The convention is far from perfect, but reflects a sensible compromise of widely contrasting viewpoints. If similar ventures are not to be discouraged, it is important that it receive support.

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The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX F6

Why I Oppose the Wind of Change
The Times (London) 27 Mar 1990

THE TIMES TUESDAY MARCH 27 1990

THE LAW

Why I oppose the wind of change

Should we meddle with a highly respected contracts procedures?

An important international change is pending which has received little attention. The UK Convention on Contracts for the International Sale of Goods is the subject of a consultation document from the Department of Trade and Industry, dated June this year.

The convention, already ratified by 19 countries, including the United States, proposes a new law for "cross-border" sale of goods. Its provisions are complex but not comprehensive. National law of the contracting parties will still be relevant, even when the countries of both have ratified.

This is because some important elements of contract law, such as when property passes, the validity of the contract, the effect of usage, liability for death or personal injury and the essential requirement of capacity to contract, are all left to be decided by national law. National laws, of course, differ widely on the subject.

The stated object of adopting "uniform rules which govern contracts for the International Sale of

Goods" so as to " ... contribute to the removal of legal barriers in international trade" is obviously desirable - but not so easy to achieve. It is not, regrettably, likely to be realized by ratification of the convention because so much of national law remains.

International accord on vexed questions such as the need to establish commercial benefit in relation to reliance on guarantees by a parent of a subsidiary company's liability, contracts outside the scope of a company's memorandum of association, and the like are not mentioned in the convention.

Worse, the existing certainty of our own law of contract would be undermined by provisions in Article 8 of the convention, which provides that the written terms as agreed between the parties could be displaced if one party were to rely on preceding negotiations or subsequent conduct as proof of the

intent of either party at the time of contracting. This might displace the intention set out in the written contract itself.

Certainty as to the terms and effects of the contract is of paramount importance and would be imperilled by the provision of "convention law", should it apply.

Two earlier conventions with the same basic theme are already part of our law by reason of the Uniform Laws on International Sales Act 1967. There is no single case recorded of any contract subject to the provisions of this Act coming before the courts for interpretation or enforcement. The vital difference is that the earlier conventions do not apply unless the contracting parties say they shall. Presumably, few have done so. This contrasts with the provisions of the present convention in that a contract as defined would be subject to the "convention law", unless the

contracting parties expressly excluded it.

The trouble is that people tend to forget. "Convention law", if not excluded, will apply and our own business community may find itself, to its own surprise, faced with a defence, perhaps, that the other party to the contract had no capacity to contract under his/her own national law or bound by terms which our UK businessmen have never heard of, and which even then may be varied because of the intentions of the opposing party at the time or even because of subsequent events.

A further cogent point is that if the UK ratifies it, "convention law" will become part of English law. At present, English law, and the judges who administer it, are so highly regarded that of cases heard in the Commercial Court in the last year the parties were split roughly 50-50 between English and foreign liti-

gants and, almost more surprising, nearly 30 per cent of all the cases had no English litigant at all.

This tremendous accolade for English law and for English justice must be imperilled by the UK adopting a common denominator, a "convention law" thrashed out around a negotiating table, to which nobody had seriously objected but in which there is clearly no discernible advantage, either.

Convention law is to be interpreted by the courts of all the countries concerned. This raises a somewhat daunting prospect and the unanswered question of "what happens when interpretations differ?"

We must not be deceived by the glib lure of a uniformity that will not be achieved. We must not imperil the excellent status English law and its administrators undoubtedly have in the eyes of the world.

Derek Wheatley QC

The author formerly chief legal adviser at Lloyds Bank is now in private practice at the Bar.

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX G

Comparative Table of Convention Provisions
with Singapore Law

UN SALES CONVENTION & SINGAPORE LAW

Introductory Note

Singapore law governing the sale of goods in Singapore can be found in the English *Sale of Goods Act 1979* ("SGA") (received in to Singapore law by virtue of the *Application of English Law Act 1993*) and contract law (with a combination of Singapore and English sources). A comparison of the UN Sales Convention ("Convention") and Singapore law will reveal that there are many similarities and some minor differences in legal principles. Set out below is a table summarising the similarities and differences between the Convention and Singapore law.

UN SALES CONVENTION	SINGAPORE LAW
<p><i>Scope of Application</i></p> <p>1 Article 4 provides that the Convention is not concerned with (a) the validity of the contract or any of its provisions or of any usage; (b) the effect which the contract may have on the property in the goods sold. Domestic law will therefore regulate these excluded matters.</p>	<p>The transfer of property between buyer and seller is governed by sections 16 to 20 of the SGA. Questions relating to the validity of the contract such as capacity, illegality, mistake, fraud etc. are dealt with under the general Contract law which is mainly Common law. Article 4 of the Convention has little effect on Singapore law.</p>
<p><i>Product Liability</i></p> <p>2 Article 5 states that the Convention "does not apply to the liability of the seller for death or personal injury caused by the goods to any person".</p>	<p>Under Contract Law, it is possible to maintain a claim for personal injury or death. Article 5 of the Convention has little effect on Singapore law.</p>
<p><i>Variation & Exclusion of Convention provisions</i></p> <p>3 Article 6 provides that parties are free to vary or exclude the provisions of the Convention in whole or in part.</p> <p>4 No comment.</p>	<p>No comment.</p>
<p><i>Interpretation</i></p> <p>4 Article 7 provides for interpretation of the Convention</p>	<p>Good faith is not an element in the interpretation.</p>
<p>5 Article 8 provides for the interpretation of statements and conduct of the parties.</p>	<p>The parol evidence rule in Contract Law states that generally parol evidence is inadmissible in court in the interpretation of a contractual provision.</p>
<p><i>Customary Usage</i></p>	

<p>6 Article 9 provides that the parties are bound by "any usage to which they have agreed and by any practices which they have established among themselves". However it goes on to provide for a presumption that the parties are bound by the usages of which they did not know only if it is widely known and regularly observed in the particular branch of international trade revolved and he ought to have known about it. A usage confined to domestic trade is not applicable even if the parties were familiar with it.</p>	<p>Under Contract Law, customs and usages of particular trade have often been admitted to aid the interpretation of documents.</p>
<p><i>Form of Contract</i></p> <p>7 Article 11 maintains freedom from form ie a contract need not be made in writing but as a compromise articles 12 and 96 allows a Contracting State to make a reservation that the provisions of the Convention which allow for freedom of form will not apply to contracts not made or evidenced in writing where any party has his place of business in that state.</p>	<p>Under Contract law, there is no requirement for contracts to be made or evidenced in writing except for certain contracts under the statute of frauds and other legislation eg sale of land and deeds. Singapore businessmen should therefore be on guard when dealing with parties in a country which has made this declaration.</p>
<p>FORMATION OF THE CONTRACT</p> <p>8 The Convention adopts the English law analysis in terms of offer and acceptance in the formation of the contract.</p>	<p>The Singapore law of contract is that of English Law.</p>
<p><i>Offer</i></p> <p>9 Article 14 makes a distinction between an offer and an invitation to treat.</p> <p>10 Article 14(1) provides that an offer must be sufficiently "definite" and indicates the intention of the offeror to be bound in the case of acceptance. An offer is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price. Article 14 should be read together with article 55.</p>	<p>Similar distinction in Singapore law.</p> <p>Offer is also defined in terms of an expression of willingness to contract made with the intention that it shall become binding upon acceptance¹. However, there is no requirement of an offer being definite. The end result though is the same as there is an analogous requirement that an agreement must be complete and certain².</p>
<p><i>When does an Offer take effect?</i></p> <p>11 Article 15(1) states that an offer becomes effective when it "reaches the offeree. For definition of "reaches", see article 24.</p>	<p>No comment.</p>

<p>12 Article 15(2) provides that an offer may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.</p>	<p>Similar³.</p>
<p><i>Revocation of Offer</i></p> <p>13 Article 16(1) states an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.</p> <p>14 Article 16(2) provides that an offer cannot be revoked if it indicates, by stating a fixed time for acceptance or otherwise, that it is irrevocable or it was reasonable for the offeree to rely on its being irrevocable and he has acted in reliance on it</p>	<p>Similar⁴.</p> <p>Under Singapore law, an offer may be revoked even though the offeror has promised to keep the offer open for a certain time, for such a promise is unsupported by consideration and is therefore not binding.⁵</p>
<p><i>Rejection of Offer</i></p> <p>15 Article 17 states that an offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.</p>	<p>Similar⁶.</p>
<p><i>Acceptance</i></p> <p>16 Article 18(1) provides that a statement made by or other conduct of the offeree indicating assent to an offer is an acceptance.</p> <p>17 Silence or inactivity does not in itself amount to acceptance.</p> <p>18 Article 18(2) provides that an acceptance of an offer becomes effective at the moment the indication of assent "reaches" the offeror. For a definition of "reaches", see article 24.</p>	<p>Similar.</p> <p>Similar⁷.</p> <p>The general rule is that an acceptance has no effect until it is "communicated" to the offeror⁸. An acceptance is communicated when it is actually brought to the notice of the offeror⁹. An exception to this rule is postal acceptance¹⁰. The Convention's concept of "reaches" appears to exclude the application of the postal acceptance rule.</p>
<p><i>Acceptance must be Unqualified</i></p> <p>19 Article 19(1) states that an offeree must accept an offer as it stands; if he attempts to add or subtract anything from it, he is not accepting it but making a counter offer.</p>	<p>Similar¹¹.</p>

<p>20 Article 19(2) provides that a reply which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance unless the offeror, without undue delay, objects to the discrepancy.</p> <p>21 Article 19(3) gives examples of some of the types of changes that would amount to materially altering the terms of an offer.</p>	<p>Similar concept¹². One view is that the likely effect of Article 19(2) on Contract Law would be in the area of the "battle of the forms", by placing on the offeror the burden of objecting "without undue delay" to merely verbal differences between offer and reply¹³.</p>
<p><i>Period for Acceptance</i></p> <p>22 Article 20(1) provides that the period during which the offeree can accept runs, in the absence of an indication to the contrary, from the day the offeror's letter was dated. The date of the letter is the date shown on it; if no date is shown it is the date on the envelope.</p> <p>23 In the case of an offer made by instantaneous means of communications (e.g. telephone or telex), the time period for acceptance runs from the moment the offer reaches the offeree. It is further provided in article 20(2) that if notice of acceptance cannot be delivered to the offeror because the last day of the time period is an official holiday or non-business day, the period is extended to the first business day following.</p>	<p>No comment</p> <p>For instantaneous communication, Contract law has unlike the Convention, focused more on the time of acceptance¹⁴ rather than the time period for acceptance¹⁵.</p>
<p><i>Late Acceptance</i></p> <p>24 Article 21(1) has the effect that a late acceptance is nevertheless effective if, without delay, the offeror so informs the offeree.</p> <p>25 Article 21(2) deals with an acceptance which, though sent in an appropriate time, is received late because of a delay in transmission. In this case, the acceptance, even though it is late, is considered to be effective unless the offeror otherwise informs the offeree without delay. The burden is on the offeror to inform the offeree without delay that he considers his offer to have lapsed prior to the receipt of the acceptance. To this extent, the risk is shifted to the offeror.</p>	<p>The problem of acceptance which, though sent in an appropriate time, is received late because of a delay in transmission does not arise under Contract Law if acceptance was sent through the post - under the postal acceptance rule, acceptance will be effective from date of postage¹⁶.</p>

<p><i>Withdrawal of Acceptance</i></p> <p>26 Article 22 states that an acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.</p>	<p>In the case of postal acceptance, there is no authority whether a postal acceptance can be revoked by a later communication which reaches the offeror before, or at the same time as, the acceptance¹⁷.</p>
<p><i>Conclusion of Contract</i></p> <p>27 Article 23 states that a contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of the Convention.</p>	<p>No comment.</p>
<p><i>Definitions of "reaches"</i></p> <p>28 Article 24 generally provides that an offer or an acceptance "reaches" the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.</p>	<p>Contract Law has not focused on the issue of communication of offer. Instead, the attention has been on communication of acceptance. The general rule is that an acceptance is "communicated" when it is brought to the notice of the offeror¹⁸. The requirement of "communication" may, however, in some circumstances be satisfied even though the acceptance has not actually come to the notice of the offeror - acceptance through the post.</p>
<p>SALE OF GOODS</p> <p><i>Fundamental Breach</i></p> <p>29 Article 25 provides that a breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result¹⁹.</p>	<p>Arguable that the first part of article 25 is similar to the test propounded by Diplock L.J. found in <i>Hong Kong Fir Shipping Co. Ltd v Kawasaki Kisen Kaisha Ltd</i>²³, viz., whether the breach deprives the injured party of "substantially the whole benefit which it was the intention of the parties as expressed in the contract that he should obtain....."</p>

<p>30 The concept of "fundamental breach" is a central concept in the Convention's system of remedies. It is a pre-requisite of avoidance of the contract by either party²⁰ and also of the buyer's right to require delivery of substitute goods in case of non-conformity²¹. And it is also important to the rules governing risk²².</p>	
<p><i>Avoidance of Contract</i></p> <p>31 Article 26 provides that a declaration of avoidance of the contract is effective only if made by notice to the other party.</p>	<p>No comment.</p>
<p><i>Rick of Delay or Error on Communication</i></p> <p>32 Article 27 applies to "any notice, request or other communication". It places the risk of delay or error in transmission on the person to whom the communication is addressed.</p>	<p>Unlike the Convention which distinguish between transmitter and receiver, Contract Law focuses on the offeror and the offeree. Where the offer is made by post, Contract law places the risks of delay on the offeror on the grounds, <i>inter alia</i>, that it is the offeror who trust the post²⁴.</p>
<p><i>Specific Performance</i></p> <p>33 Article 28 states that if a party is entitled to require specific performance of any obligation by the other party, a court is not bound to enter a judgment for specific performance unless the court would do so under its own law an respect of similar contracts of sale not governed by the Convention</p>	<p>No impact on Singapore law as rules of domestic law on specific performance can prevail over the rules of the Convention.</p>
<p><i>Variation or Termination of Contract</i></p> <p>34 Article 29 provides that a contract may be modified or terminated by the mere agreement of the parties.</p>	<p>Similar.</p>
<p>OBLIGATIONS OF THE SELLER</p> <p><i>Delivery of Goods, Documents and Transfer of Property</i></p> <p>35 Article 30-34 deals with the seller's obligation to deliver the goods, hand over any documents relating to them and transfer the property in the goods²⁵, as required by the</p>	<p>Generally similar²⁶.</p>

contract and the Convention.	
<p><i>Conformity of the Goods</i></p> <p>36 Article 35(1) states that 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.</p> <p>37 Article 35(2) generally provides that goods do not conform with the contract unless they, <i>inter alia</i>²⁷;</p> <ul style="list-style-type: none"> - "are fit for the purposes for which goods of the same description would ordinarily be used". - "are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment" <p>"possess the qualities of goods which the seller has held out to the buyer as a sample or model"</p>	<p>Similar concept found in Sales of Goods Act.</p> <p>Close to the definition of merchantable quality in section 14(6), Sales of Goods Act.</p> <p>"Close to section 14(3), Sales of Goods Act (fitness for purpose made known to the seller).</p> <p>Equivalent to section 15(2)(a) of the Sales of Goods Act (sale by sample).</p>
<p><i>Conformity – Time for compliance</i></p> <p>38 Article 36(1) states that the requirement of conformity must be satisfied at the moment that the risk passes, through the lack of conformity may become apparent only later.</p>	<p>In principle, the goods must be merchantable and fit for their purpose at the time of sale, though in c.i.f. and f.o.b. contracts the duty normally relates to the time when risk passes, <i>viz.</i> the time of shipment²⁸.</p>
<p>Article 36(2) provides that after the passing of risk, the seller is still liable for lack of conformity if this is due to a breach of any of the seller's obligations, including a breach of any guarantee that for a period of time the goods will remain fit²⁹.</p>	<p>Similar concept of a warranty limited in time³⁰.</p>
<p><i>Early Delivery</i></p> <p>39 Article 37 provides that if the seller has delivered goods before the date for delivery, he may, up to that date, remedy any deficiency in quantity or lack of conformity in the goods delivered. However, the buyer retains any right to claim damages as provided for in the Convention.</p>	<p>No equivalent concept.</p>

<p><i>Buyer's duty to examine goods</i></p> <p>40 Article 38 States that the buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances. This rule is modified if the contract involves carriage of goods or the goods will be in transit.</p>	<p>Under the SGA, section 34, the buyer has a right to examine the goods. He is not under a duty to examine the goods.</p>
<p><i>Loss of buyer's right to rely on lack of conformity</i></p> <p>41 Article 39 provides that the buyer loses his right³¹ to rely on the lack of conformity if he does not give notice of it to the seller, (a) within a reasonable time after he has discovered it or ought to have done so, (b) in any case within two years of the actual handing over of the goods.</p> <p>42 This rule on loss of buyer's right will not apply if the lack of conformity relates to facts of which the seller knew or could not have been unaware and which he did not disclose to the buyer (article 40).</p>	<p>Buyer not under any duty to examine goods. In the case of a sale where the supplier gives certain warranties, the limitation period of six years runs from the time of delivery, and not the time of breach of warranty³².</p>
<p><i>Goods must be free from 3rd party claim</i></p> <p>43 Articles 41-42 generally states that the seller must deliver goods which are "free from any right or claims of a third party", including rights or claims based on industrial property or intellectual property.</p>	<p>Similar to SGA, section 12³³.</p>
<p><i>Notice Obligation of Buyer</i></p> <p>44 Articles 43 provides that the buyer must provide notice to the seller of any breach of articles 41 or 42 within a reasonable time.</p> <p>If buyer has a reasonable explanation for his failure to give the required notice, he may reduce the price in accordance with article 50 or claim damages, except for loss of profit (article 44).</p>	<p>Though there is no equivalent notice provision in the SGA, any failure or delay in giving notice of breach may lead to the defence of acquiescence being available to the seller.</p>
<p>Remedies for breach of contract</p>	

<p><i>Damages</i></p> <p>45 Articles 45 (for seller's breach) and 61 (for buyer's breach) introduce, <i>inter alia</i>, the important remedy of damages. A claim for damages lies whenever a party fails to perform any one of his obligations (no matter whether they be of major or minor importance) under the contract or the Convention (articles 45(1)(b) and 61(1)(b)).</p>	<p>In line with common law approach whereby an objective failure on the part of a party to fulfil any of his obligations provide the other party with a claim for damages³⁴.</p>
<p><i>Damages - non exclusive remedy</i></p> <p>46 It is further provided that by resorting to any other remedy the aggrieved party is not precluded from claiming damages. Consequently, the aggrieved party who avoids the contract may both recover the purchase price and claim any additional damages. Damages are independent of any fault. Damages are further defined in article 74. See below.</p>	
<p><i>Damages – Computation of</i></p> <p>47 Article 74 states that 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 of which he then knew or ought have known, as a possible consequence of the breach.</p>	<p>This embraces both the rules in <i>Hadley v Baxendale</i>³⁵ (save that "a possible consequence" without qualification may be said to be a weaker requirement than that which results from recent English decisions)³⁶.</p>
<p>48 Where the contract has been avoided and the aggrieved party has made a substitute transaction, the aggrieved party can recover the difference between the contract price and the price in the substitute transaction as any further damages recoverable under article 74, provided that the transaction was made "in a reasonable manner and within a reasonable time after avoidance" (article 75).</p> <p>49 Where the contract has been avoided, but there has been no substitute transaction, the aggrieved party can recover the difference between the price fixed by the contract and the current price <i>at the time of avoidance</i> as well as</p>	<p>In contrast to the Convention which refers to the actual price secured, Contract Law uses the more abstract method of market price.</p> <p>Under SGA, sections 50(3), 51(3)³⁷ market price is calculated at the time at which performance is due</p>

<p>any further damages recoverable under article 74 (article 76).</p> <p>50 To the general rule that the relevant moment is the time of avoidance there is an exception for the case in which the aggrieved party has avoided the contract after taking over the goods. In this case, the market price is to be calculated at the time of that taking over (article 96, last sentence).</p>	
<p><i>Interest</i></p> <p>51 Where the breach consists in a failure to pay the price or any sum that is in arrears, the other party is entitled to interest without prejudice to any claim for damages (article 78).</p>	<p>Under Contract Law, interest is not payable on debts in the absence of an express agreement or established customary usage³⁸</p>
<p><i>Mitigation</i></p> <p>52 Article 77 provides for the aggrieved party's duty to mitigate his loss.</p>	<p>Equivalent concept.</p>
<p><i>Specific Performance</i></p> <p>53 The aggrieved party may require performance by the other party of his obligations unless the aggrieved party has resorted to a remedy which is inconsistent with this requirement.</p> <p>This remedy should be examined together with article 28. The latter provides that a court is not bound to enter a judgment for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by the Convention.</p> <p>(See article 46 for buyer's remedy; see article 62 for seller's remedy)</p>	<p>The remedy of specific performance can similarly be found in SGA, section 52 as well as Contract Law. Under the SGA and Contract Law, the right to require performance is considered to be a discretionary remedy to be requested from the courts³⁹. In view of article 28, the discretionary nature of the remedy would not be affected.</p>
<p><i>Substitute Goods</i></p> <p>54 Article 46(2) provides that, if the goods do not conform with the contract, the buyer may require delivery of substitute goods if the lack of conformity constitute a fundamental breach and a request for substitute goods is made either in conjunction with notice of non-conformity under article 39 or within a reasonable time thereafter.</p>	<p>There is no equivalent concept of remedy of repair or delivery of substitute under common law. However, in practice, it is common to provide and to find such remedies expressed as provisions in contracts.</p>

<p><i>Repair of Defects</i></p> <p>55 Under article 46(3), the buyer may also require the seller's remedy the lack of conformity by repair, unless this is unreasonable having regard to the circumstances, but a request for repair must be made either in conjunction with notice of non-conformity of the goods given under article 39(1) or within a reasonable time thereafter.</p>	
<p><i>Extension of Time</i></p> <p>56 Under articles 47 (for seller's breach) and 63 (for buyer's breach), the aggrieved party may fix an additional period of time of reasonable length for performance by the other party of his obligations. During the period named the aggrieved party cannot resort to any remedy for breach of contract. However, he is not deprived thereby of any right he may have to claim damages for delay in performance.</p>	<p>No similar concept.</p>
<p><i>Seller's Right to Cure</i></p> <p>57 The seller has a right to cure "any failure to perform his obligations not only before the time fixed for performance but also after (article 48).</p> <p>The exercise of this right is subject to its not causing the buyer unreasonable inconvenience or unreasonable expense and to the buyer's right to damages⁴⁰</p> <p>The seller can ask the buyer to make known whether he will accept late performance within a period specified by the seller (articles 48(2), (3), (4)). If the buyer does not respond within a reasonable time, the seller is entitled to go ahead and perform. In the meantime the buyer may not resort to any remedy inconsistent with the seller's performance.</p>	<p>Under Contract Law, the seller does not have a right to cure his breach.</p>
<p><i>Avoidance</i></p> <p>58 The buyer may under article 49(1) declare the contract avoided⁴¹ only</p>	

- if the seller's failure to perform any of his obligations under the contract or the Convention amounts to a fundamental breach of contract, or

- in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with article 47(1) or declares that he will not deliver within the period so fixed⁴².

59 An equivalent remedy of avoidance of contract also exist for the seller if it is the buyer who breaches the contract (article 64)⁴³.

60 When the grounds of avoidance in article 49 exist and the buyer wishes the contract avoided, he must notify the seller, of the avoidance (article 26).

61 Generally, the buyer loses his right to avoid the contract unless he makes his declaration within a reasonable time after he has become aware of the seller's breach (article 49(2)(a)-(b)).

62 By avoiding the contract, the buyer is not precluded from claiming damages (article 45(2)).

Similar to common law distinction between fundamental and non-fundamental breach.

Time of delivery is prima facie of the essence and any failure to deliver on time will be treated as a breach of a condition, justifying the buyer to avoid the contract⁴⁴.

Under SGA, section 11(4), where a contract of sale is not severable, and the buyer has accepted the goods, or part of them, the breach of a condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is an express or implied term of the

Reduction of Price

63 Where the goods do not conform with the contract, Article 50 gives the buyer the right to reduce the price.

64 However, if the seller remedies any failure to perform his obligations in accordance with article 37 or 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

Buyer has to initiate legal proceeding to sue for damages for the diminution in value of goods. Buyer does not have the right to reduce the price.

Partial or Excessive Performance

65 Articles 51 and 52 deal with remedies in cases of partial performance or excessive performance.

<p>The cases dealt with here are those in which the seller</p> <ul style="list-style-type: none"> (a) delivers only part of the goods, (b) delivers all the goods but some are non-conforming, (c) delivers before the date fixed, or (d) delivers more than was contracted for. <p>As far as (a) and (b) above are concerned, article 51 provides that the remedies discussed in articles 46 to 50 (substitute goods, extension of time, seller's right to cure, avoidance, price reduction) apply in respect of the undelivered or non-conforming part.</p> <p>In the case of (c) the buyer may refuse to take delivery of the goods (article 52(1), but, if he does so, he may be obliged to take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense (article 86(2)). If he takes possession, he must take such steps to preserve them as are reasonable in the circumstances (article 86(1)).</p>	<p>SGA, section 30(2) provides that where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate. In the case of goods of non-conforming quality, then depending on whether the delivery is by way of instalment⁴⁵, the buyer can treat the non-conforming goods as a breach of condition, entitling him to avoid the contract and claim damages.</p>
<p>In case (d), where delivery of more than the contract occurs, the buyer may take delivery of the whole or may reject the excess. If he takes delivery of any part of the excess he must pay for it at the contract rate (article 52),,?? impracticable to take physical possession only of the contract quantity. However, it would be possible for the buyer to take possession of the excess amount in the name of the seller (article 86(1)). If the burden that would be thrown on the buyer if he were to take the entire delivery was substantial, the excess delivery may constitute a fundamental breach.</p>	<p>SGA, sections 30(2)-(3) states that where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or the may reject the whole. If the buyer accepts all the goods delivered, he must pay for them at the contract rate.</p>
<p><i>Seller's Right to Make Specification</i></p> <p>66 If under the contract the buyer is to</p>	<p>Presumably, if the buyer fails to make the</p>

<p>specify the detailed specifications of the goods and he fails to do so, the seller may make the specifications himself in accordance with the requirements of the buyer that may be known to him. If the seller does so, he must inform the buyer of the details of the specification and allow him a reasonable time within which to make a different specification. If the buyer fails to respond, he is bound by the seller's specification (article 65).</p>	<p>detailed specification it would be because the goods are no longer needed by buyer. Under common law, it is unclear whether this right of the seller to make specifications under the Convention conflict with the seller's right to mitigate damages⁴⁶.</p>
<p>Obligations of the Buyer</p> <p>67 The buyer must pay the price for the goods and take delivery of them as required by the contract and the Convention (article 53).</p>	<p>SGA, section 27 states, <i>inter alia</i>, that it is the duty of the buyer to accept and to pay for goods delivered in accordance with the terms of the contract.</p>
<p><i>Payment of the price</i></p> <p>68 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 laws and regulations to enable payment to be made (article 54).</p>	
<p><i>Price Determination</i></p> <p>69 Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged <i>at the time of the conclusion of the contract</i> for such goods sold under comparable circumstances for the trade concerned (article 55).</p>	<p>SGA, section 8 provides that where the price in a contract of sale is not fixed by contract, the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. The reasonable price of goods is usually ascertained by reference to the current market price at the time and place of delivery, even though some other figure may also be reasonable⁴⁷.</p>
<p><i>Price Depending on Weight of Goods</i></p> <p>70 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 56).</p>	
<p><i>Place of Payment</i></p>	

<p>71 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 (article 57).</p> <p>72 The seller must bear any increase in the expense incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.</p>	<p>There is no clear rule in the SGA. However, section 28 states that unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions. Further, section 29(1) provides that apart from any such contract, express or implied, the place of delivery is the seller's place of business if he has one, and if not, his residence; except that, if the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.</p>
<p><i>Time of Payment</i></p> <p>73 The buyer must pay the price on the date fixed by or determinable from the contract and the Convention without the need for any request or compliance with any formality on the part of the seller (article 59).</p> <p>74 If the buyer is not bound to pay the price at any other specific time he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and the Convention. The seller may make such payment a condition for handing over the goods or document (article 58).</p> <p>75 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 (article 58).</p>	<p>SGA, section 28 states that unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions.</p>
<p><i>Opportunity to Examine Goods</i></p> <p>76 The buyer is not bound to pay the price until he 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.</p>	<p>SGA, section 34(2) states that unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.</p>

<p><i>Taking Delivery</i></p> <p>77 The buyer's obligation to take delivery consists of (a) doing all the acts which could reasonably be expected of him in the contract or which are necessary in order to enable the seller to make delivery, and (b) taking over the goods (article 60).</p>	<p>The SGA does not focus on the buyer taking over the goods. Rather it focus on whether the buyer has accepted the goods (section 35).</p>
<p>Passing Of Risk</p> <p>78 Article 67 provides that for contracts involving <i>carriage of goods</i>,</p> <ul style="list-style-type: none"> - and where the seller is not bound to hand the goods over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sales. - and the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. <p>79 Article 68 provides generally with certain exceptions that for <i>goods sold in transit</i>, the risk passes to the buyer from the time of the conclusion of the contract.</p> <p>80 In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods (article 69). The passing of property is irrelevant to the passing of risk under the Convention.</p>	<p>Under Contract Law, risk generally passes with the property in the goods⁴⁸.</p>
<p>Provisions Common To Both Buyer & Seller</p> <p><i>Suspension of Obligation</i></p> <p>81 Article 71 provides that a party may suspend the performance of his obligations if after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of either (a) a serious deficiency in his ability to perform or his credit worthiness, or (b) his conduct is preparing to perform or in performing the contract. A party suspending performance must give notice of the</p>	<p>No equivalent rule in Contract Law.</p>

suspension to the other party.	
<p><i>Anticipatory Breach</i></p> <p>82 If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided (article 72).</p>	Similar to Contract Law
<p><i>Exemptions</i></p> <p>83 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 (article 79).</p> <p>84 If the failure to perform is due to the failure of a third person whom he engages to perform the whole or a part of the contract, the defaulting party is exempt from liability only if (a) he himself is exempt under article 79 and (b) the third person would be so exempt if the article 79 were applied to him (article 79(2)).</p> <p>85 Article 79(3) provides that the exemption applies for the period during which the impediment exists.</p>	Article 79 appears to be similar to the Contract Law concept of frustration and impossibility. However, unlike article 79, the effect of frustration and impossibility, is to provide the non- performing party with the right to terminate the contract ⁴⁹ .
<p><i>Preservation of the goods</i></p> <p>86 If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. The seller is entitled to be reimbursed for the actions he has taken to preserve the goods (article 85)</p> <p>87 Similar provisions apply under article 86(1) where the goods have been received by the buyer, but he intends to reject them.</p>	No equivalent concept.

1 CHITTY ON CONTRACTS ("CHITTY"), 26th Ed, para 42.

2 CHITTY, paragraph 41.

3 *Byrne & co v Leon van Tienhoven* (1880) 5 CPD 344.

4 *Routledge v Grant* (1828) 4 Bing 653.

5 *Routledge v Grum* (1828) 4 Bing 653

6 *Tinn v Hoffmann & Co* (1873) 29 LT 271

7 CHITTY, paragraph 81.

8 *Holwell Securities Ltd v Hughes* [1974] 1 WLR 155.

9 *Entores Ltd v Miles Far East Corp* [1955] 2 QB 327.

10 *Adams v Lindsell* (1818) 1 B & Ald 681.

11 *Hyde v Wrench* (1840) 3 Beav 334.

12 LAW OF CONTRACT by Treitel, 7th Ed. page 16.

13 INTERNATIONAL SALES, page 217.

14 *Entores Ltd v Miles Far East Corp* [1955] 2 QB 327.

15 CHITTY, paragraph 67.

16 *Adams v Lindsell* (1818), 1 B & Ald.

17 CHITTY, paragraph 75.

18 *Entores Ltd v Miles Far East Corp* [1955] 2 QB 327

19 Article 25 does not specify the time at which the party in breach had to foresee or
should have foreseen the result

20 Arts. 49(1)(a), 51(2), 64(1)(c), 72(1), 73(1), (2)

21 Art 46(2)

22 Art 70.

23 [1962] 2 QB 26 at 66.

24 CHITTY, paragraph 71

25 What the seller must do to discharge his obligation to transfer the property in the
goods is a matter for the applicable domestic law.

²⁶ Sale of Goods Act 1979, s 27

²⁷ The Convention is silent as to whether Article 35(2) can be excluded by disclaimer provisions in the sales contract. Since the Convention is silent on this point, it may be a question of what national law may permit or restrict in relation to such disclaimer.

²⁸ CHITTY ON CONTRACTS Specific Contracts, 26th Ed, para 4754, 4761.

²⁹ It is unclear whether the "guarantee" can be implied or whether the "period of time" has to be fixed by the guarantee.

³⁰ *Chapman v Gwyther* (1866) LR 1 QB 463.

³¹ Nevertheless, the buyer may still reduce the price in accordance with Article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice (Article 44).

³² *Walker v Milner* (1806) 4 F&F 745.

³³ See *Niblell Ltd v Confectioners Materials Co Ltd* [1921] All ER 459 for a section 12 action based on trade mark infringement.

³⁴ *Hadley v Bavendale* (1854) 9 Exch. 341, *Bavs v Chaplin* [1968] 1 QB 1, *Chaplin v Hick* [1911] 2 KB 788.

³⁵ (1854) 9 Exch 341

³⁶ *The Heron II* [1969] 1 AC 350

³⁷ of section 53(3).

³⁸ *London, Chatham & Dover Rly Co v South Eastern Rly Co* [1892] 1 Ch 120 at 140.

³⁹ *Paget v Marshall* (1884) 28 Ch D 225, *Powell v Smith* (1872) LR 14/E/Q 85.

⁴⁰ The relation between buyer's right to avoid if the breach is fundamental and the seller's right to cure the breach is unclear.

⁴¹ Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due (Article 81(1)).

⁴² For definition of fundamental breach, see Article 25: "a breach which 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."

⁴³ However note that Article 64 has no equivalent provision to Article 49(2)(b)(iii).

⁴⁴ Sale of Goods Act. section 10 provides that whether time is of the essence depends on the terms of the contract. But see *Hartley v Hartley* [1920] 3 KB 475 at 484 where McCardie J said "In ordinary commercial contracts for the sales of goods, the rule clearly is that time is prima facie of the essence with respect to delivery."

- ⁴⁵ Sale of Goods Act 1979, section 30(2); *Maple Flock Co Ltd v Universal Furniture Products (Wembley) Ltd* (1934) 1 KB 148; *R A Munro & Co Ltd v Meyer* [1930] 2 KB 312.
- ⁴⁶ See *Benjamin's Sale of Goods* (3rd Ed). paragraph 1286. In *White & Carter (Councils) Ltd v McGregor* [1962] AD 413 at 431 where Lord Reid (one of the majority) suggested that the courts may not allow a contractor to complete his performance (despite a repudiation by the other party) if the contractor had no legitimate interest, financial or otherwise, in performing his side of the contract.
- ⁴⁷ *Benjamin's Sale of Goods* (3rd Ed), paragraph 179.
- ⁴⁸ See *Sales of Goods Act 1979*, section 20
- ⁴⁹ See *Sale of Goods Act 1979* section 7, *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 3?; *Frustrated Contracts Act* (Cap 115), section 2.

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX H

Letters from Business Organisations Consulted

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX H1

Chinese Chamber of Commerce and Industry



SINGAPORE CHINESE CHAMBER OF COMMERCE & INDUSTRY

47 Hill Street Singapore 0617 Tel 3378381 (8 Lines) Cable "SIANGHWE" Telex SCCCI RS 33714 Fax (65) 3390605

Your Ref AG/769/74 Pt 1 Vol 1 Our Ref CC/GSB/93 Date 3 Jan 94

Mr Charles Lim Aeng Cheng
Chairman
Sub-Committee on Commercial Law
Law Reform Committee

Dear Mr Lim

**UN CONVENTION ON CONTRACTS FOR THE
INTERNATIONAL SALE OF GOODS ACT (VIENNA, 1980)**

The Chamber generally feels that ratification of the above Convention will benefit the business community for the following reasons:

- ≈ the Convention introduces an element of certainty into contracts between Singapore and foreign businessmen which are currently governed by private international law. It is noted that parties have the option to opt out of the Convention;
- ≈ as indicated during the presentation held on 23 Oct 93, it would appear that the ratification would bring about more advantages than disadvantages though the Convention is not a 'complete' one. Besides, the Convention has already covered the essential issues like formation of contract, obligations of buyer and seller, remedies for breach of contract etc; &
- ≈ we note that some of Singapore's major trading partners have already ratified the Convention and that the value of total trade of the 34 countries which have ratified the Convention accounted for 61.3% of total global trade.

The above represents the general view of the Chamber but not necessarily that of every member.

Meanwhile, we would appreciate it if you could keep us posted when your office has made a recommendation to the government. Thank you.

With Best Regards

Yours sincerely

SINGAPORE CHINESE CHAMBER OF COMMERCE & INDUSTRY

A handwritten signature in black ink, appearing to read 'Fiona Hu', written in a cursive style.

Miss Fiona Hu

Director (Research & Publications)

RL/WPWIN/REGINA/REPLY.UN

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX H2

Indian Chamber of Commerce and Industry



SINGAPORE INDIAN CHAMBER OF COMMERCE & INDUSTRY

5 May 1994

Mr Charles Lim Aeng Cheng
Chairman
Sub-Committee on Commercial Law
Law Reform Committee
Singapore Academy of Law

Fax: 332 5965

Dear Mr Lim

**U N CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF
GOODS VIENNA 1980**

Thank you for the opportunity to participate in the consultative process where our Chambers two Director's participated.

We wish to confirm that our Chamber is in support of the proposal for Singapore to ratify the above Convention.

Yours sincerely

GEORGE ABRAHAM
EXECUTIVE DIRECTOR

- c.c. 1. Mr M Rajaram
2. Mr S Gopalakrishnan

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX H3

International Chamber of Commerce



SINGAPORE INTERNATIONAL CHAMBER OF COMMERCE

FOUNDED 1837

TELEPHONE 2241255
CABLE INTCHAMBER
TELEX RS 25235 INTCHAM
TELEFAX 2242785

6 RAFFLES QUAY #10 01
JOHN HANCOCK TOWER
SINGAPORE 0104

25 November 1993

Mr Charles Lim Aeng Cheng
Deputy Senior State Counsel
Attorney-General's Chambers
1 Coleman Street #10-00
SINGAPORE 0617

Dear Mr Lim

**UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF
GOODS, VIENNA, 1980**

I would like to thank you and your colleagues for taking the trouble to visit our Chamber yesterday to make a presentation to us.

I regret that the audience was not as large as we had originally anticipated, but, at least, we had representatives from three of the five members of SFCCI, who will be reporting back to their respective Chambers.

As I mentioned to you, I see no reason why Singapore should not proceed to ratify the above Convention as, by and large, it would appear to be in the interests of our business community, particularly with regard to having a uniform contract system for ASEAN in due course.

No doubt, you will continue to liaise with us on this important issue.

Best regards

Yours sincerely

A handwritten signature in black ink, appearing to read 'G G Hayward', with a horizontal line underneath.

G G Hayward
Executive Director

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX H4

Singapore Manufacturers Association

SMA

06/05/94 11:37 ☎65 3365385
新嘉坡廠商公會

APPENDIX H4

Singapore Manufacturers Association
SMA House, 20 Orchard Road, Singapore 0923
Tel. 3388787, Telex: SMA RS 24992, Fax: 3383358, 3365385
(Opposite Dhoby Ghaut MRT Station)



6 May 1994

Mr Charles Lim Aeng Cheng
Chairman
Sub-Committee on Commercial Law
Law Reform Committee
Singapore Academia of Law

Fax: 3325965

Dear Mr Lim

**Re: Rectification of the UN Conventions on Contracts for the International Sale of Goods
(Vienna, 1980)**

The Singapore Manufacturers Association would like to take this opportunity to thank you and your colleges in briefing our members on the above UN Convention on 3 February 1994.

As discussed, Singapore companies would be able to benefit as a result of harmonisation of trade laws. The SMA would like to express our support for the Law Reform Committee on the propose rectification of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)

Yours faithfully

A handwritten signature in black ink, appearing to read "Lee Ting Jian", with a horizontal line drawn through it.

Lee Ting Jian
Manager
Business Development Centre
(Research and Business Information)

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX H5

Association of Small and Medium Enterprises



THE ASSOCIATION OF SMALL AND MEDIUM ENTERPRISES

中小型企业公会

≡Adapt & ¾ Innovate

“灵活适应，力求创新”

4 May 1994

Mr Charles Lam
Chairman
Sub Committee on Commercial Law
Law Reform Committee
Attorney General's Chambers

Via Fax: 332-5965

**UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF
GOODS, VIENNA, 1980**

The Association is in favour of the proposed ratification of the UN Convention on Contracts for the International Sale of Goods (Vienna, 1980)

Regards

Yours Sincerely
The Association of
Small & Medium Enterprises

Augustine Charles
Executive Director

This is a [?]

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX I

Letter from Prof Iwahara of Japan

APPENDIX I

THE UNIVERSITY OF TOKYO
FACULTY OF LAW

Hongo. Bunkyo-ku. Tokyo, 113 Japan

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Telex: UNITOKYO J25510

February 22, 1993

Mr. Charles Lim Aeng Cheng
Attorney - General's Chambers
1 Coleman Street, #10-00
SINGAPORE 0617

Dear Mr. Cheng:

It is my great pleasure to hear from you. The conversation with you and your contributions to the conference were those of the most thrilling memories of the 24th and 25th Sessions of UNCITRAL at Vienna and New York.

The reason that Japan has not yet acceded the UN Sales Convention is as follows. The Ministry of Justice is considering to ratify the Convention and has organized a study group on ratification of the Convention. Professor Sono is one of the most influential members of the group. After the group considers problems that might be derived if Japan ratifies the Convention, the Ministry of Justice will propose to ratify the Convention to the Diet. However, it will probably take about two or three years before the Diet ratifies the Convention, because the number of legislation staffs of the Ministry is very limited.

It is true that the business community in Japan has not taken up a positive attitude to the ratification. Many Japanese international trading companies have a vague concern that their freedom of contract could be restricted if the Convention is ratified even though they can choose not to use the Convention. But they do not strongly oppose the ratification, and some big international trading companies, including Mitsubishi Trading Company, support the ratification. Thus I believe that if the Ministry of Justice decides to propose to ratify the Convention to the Diet, it will be ratified.

I hope this letter can be of any help to your ratification process. With my warmest regards,

Sincerely yours,



Shinsaku Iwahara
Professor of Law

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX J

Letter from Dr Gerold Herrmann, Secretary, UNCITRAL

UNITED NATIONS



NATIONS UNIES



United Nations Commission on International Trade Law

Vienna International Centre
P.O. Box 500, A-1400 Vienna, Austria
Telephone: (43-1) 211-31/4060 or 4061

Telegram: UNATIONS VIENNA TeleFAX: (43-1) 23-74-85 Telex: 135612 uno a

TELEFAX – TELEFAX – TELEFAX – TELEFAX – TELEFAX – TELEFAX – TELEFAX

To: Mr. Charles Lim Aeng Cheng
Chairman, Sub-Committee on
Commercial Law
Law Reform Committee
Attorney-General's Chambers
1 Coleman Street, # 10-00
Singapore 0617

Our Ref.: LA/TL 133(2-8)
GH/vpe

Your Ref.: AG/769/74 Pt 1 Vol 2

From: Gerold Herrmann, Secretary
United Nations Commission on
International Trade Law, Vienna

Date: 10 February 1994

Fax No.: 0065/3362496

This page No. 1 of

Dear Charles,

Upon my return from Asia and Moscow, and before hopping over to New York, I hasten to answer - belatedly - your letter of 25 January.

Unfortunately, I cannot confirm the two points that you recall as having been made by me at some time in the past, at least not the way that you have cast them. While being unable to recall which of my many unqualified utterings you might refer to, let me simply tell you what I know relating to the two aspects referred to.

1. I do not know whether the UN Sales Convention is mentioned in the NAFTA Agreement (I would suspect that it is not); however, since all three members of NAFTA are CISG-States, the Convention is by virtue of its article 1 the uniform sales law of intra-NAFTA trade, practically speaking.

2. While I have no idea about China's law for domestic sales and its similarity (or not) with CISG, I know that the Convention has been used as a model or guideline for China's Foreign Economic Contracts Law of 1985 (which I understand is currently under revision).

Good luck in your worthwhile promotion efforts and kind regards,

Yours sincerely,

Gerold Herrmann
Secretary
United Nations Commission on
International Trade Law

The United Nations Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX K

Letter from Sir KJ Keith, Chairman, NZ Law Commission



LAW COMMISSION
LIBRARY

L 50

REPORT OF THE FOREIGN AFFAIRS AND
DEFENCE COMMITTEE

INQUIRY INTO NEW ZEALAND'S PARTICIPATION
IN ECONOMIC AND TRADE LINKAGES
IN THE ASIA-PACIFIC REGION

NEW ZEALAND

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[?]

Sale of Goods (United Nations Convention)

230. Commencement This section and the next 5 succeeding sections shall come into force on a date to be appointed by the Governor General by Order in Council 30

231. Interpretation in sections 230 to 235 of this Act,
“Convention” means the United Nations Convention on Contracts for the International Sale of Goods done at Vienna on the 11th day of April 1980, a copy of the English text of which is set out in the Schedule to this Act. 35

232. Sections to bind the Crown - Sections 230 to 235 of the Act shall bind the Crown

233. Convention to have force of law The provisions of the Convention shall have the force of law in New Zealand 49

234. Convention to be a code – The provisions of the Convention shall in relation to contracts to which it applies (?) place of any other law of New Zealand relating to contract of sales of goods to the extent-

- [?] (a) That the law is concerned with any matter that is governed by the Convention; and
(b) That the application of the law is not expressly permitted by the Convention

235. Certificates about Contracting States A certificate signed by the Secretary of Foreign Affairs and Trade or by a Deputy Secretary of Foreign Affairs and Trade, stating whether or not in respect of any specified day or period, 10

- (a) A State is a Contracting State:
(b) A declaration made under the Convention is effective in respect of a State and, if so, the contents of any such declaration, - 15
shall be conclusive evidence for ad purposes of the matters stated in the certificate.

The United Nation Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX L1

CLOUT (Case Law On UNCITRAL Texts)
Cases on Convention

CASE LAW ON UNCITRAL TEXTS
(CLOUT)

CASES RELATING TO THE UNITED NATIONS SALES CONVENTION (CISG)

Case 21: CISG 1(1)(a); 7(2); 9 (2)

Argentina: Juzgado Nacional de Primera Instancia en lo Commercial No. 7. Secretaria No. 44 20 May 1991, judgement not final
“Elastar Sacifia S/ Concurso preventivo S/ Incidente de Impugnación por Bettcher Industries Inc
Original in Spanish
Unpublished

A contract for the international sale of goods between a seller of the state of the Ohio, United States of America, and an Argentine buyer was considered to be governed by CISG because but States had acceded to CISG, the sale contract had been concluded after CISG had entered into force (article 1(1)(a) CISG) and, according to the commercial invoice, the seller had its place in business in the state of Ohio. Questions not settled in the Convention are subject to the laws of the seller, since in principle the sale is governed by the law of the domicile of the seller who is responsible for the performance characteristic of the contract, in accordance with the rules of international private law (article 7(2) CISG).

The seller has a right to interest on the price because this was expressly agreed and notwithstanding the fact that CISG contains no express provision recognizing payment of interest It was considered that payment of interest was a widely known usage in international trade (article 9(2) CISG).

Case 22: CISG 100

Argentina: Camara Nacional de Apelaciones en lo Comercial. Sala. C (From the advice of the State Attorney assigned to the Court).
15 March 1991, judgement not final
“Quilmes Combustibles S.A.v. Vigan S.A. S/ Ordinario”
Original in Spanish
Unpublished

In an action for late performance of a sales contract, which contained a jurisdiction clause it was considered that CISG was not applicable. The contract had been concluded on a date preceding the entry into force of CISG (article 100 CISG).

Case 23: CISG 8(3); 18(1); 19(1) (3)

United States U.S. District Court for the Southern District of New York, 91 Civ. 3253 (CLB) 14 April 1992; appeal dismissed 19 January 1993
Filanto, S.p.A v. Chilewich International Corp.
Published in English: 789 Federal Supplement 1229 (1992); 984 Federal Report, 2d 58 (1993)
Commented on by Brand & Flechtner, 12. The Journal of Law & Commerce, 239 (1993)

A New York enterprise agreed to sell shoes to a Russian enterprise pursuant to a master agreement that required disputes to be arbitrated in Moscow. To fulfill the agreement, the New

York enterprise entered into multiple contracts with an Italian manufacturer. Pursuant to one purported contract the Italian manufacturer supplied shoes but the New York buyer made only partial payment. The Italian manufacturer sued in a New York court to recover the price. Alleging that the contract incorporated the Russian master agreement by reference, the New York buyer sought a stay of proceedings to permit arbitration.

The court construes article II(1) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards to determine whether the parties had agreed in writing to arbitrate. Concluding this is a federal law question, the court refers to contract principles embodied in CISG. It holds that the New York buyer's offer, which incorporated the Russian master agreement by reference, had been accepted by the Italian manufacturer's failure to respond promptly. Although under article 18(1) CISG silence is not usually acceptance, the court finds that under article 8(3) CISG the course of dealing between the parties created a duty on the part of the manufacturer to object promptly and that its delay in objecting constituted acceptance of the New York enterprise's offer.

Case 24 CISG 8(3)

United States: U.S. Court of Appeals for the Fifth Circuit

15 June 1993

Beijing Metals & Minerals Import/Export Corporation v. American Business Center, Inc., *et. al.*

Published in English: 993 Federal Reports 2d 1178 (1993); reproduced in 1993 U.S. App. Lexis 14211

A Chinese manufacturer and a U.S. importer agreed to develop the North American market for the manufacturer's weight lifting equipment. Following a dispute, the parties concluded a modified payment agreement in writing. When the Chinese manufacturer sought to enforce the payment agreement, the U.S. importer raised defences under alleged contemporaneous oral agreements with respect to the manufacturer's supply obligations. The lower court excluded the testimony about oral agreements under the state's "parol evidence" rule.

The appellate court declines to resolve the dispute about whether CISG or state law applies to the parties' contract because it concludes that to do so would be unnecessary to its decision. Nevertheless, the court states expressly that the parol evidence rule "applies regardless" of whether CISG applies or not.

Case 25: CISG 1(b), 57(a)

France: Cour d' Appel de Grenoble, Chambre des Urgences

16 June 1993

Original in French

Unpublished

In the context of commercial relations providing for phased delivery of goods, a Spanish businessman bought construction materials from a French company. He thus received delivery, from January to June 1991, of certain materials at the principal place of business of the French company. Alleging that the materials were defective the buyer refused to pay their price and was sued before the French interim relief court, which found that it did not have substantive and territorial jurisdiction.

Based on the provisions of article 5/1 of the EC Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters of 27 September 1968, the appellate court found in favour of the competence of the French court, since it was the court of the place of Performance of the obligation of the buyer to pay.

The appellate court held that the contractual relationship of the parties constituted an international sale of goods and applied CISG as the relevant French law, in accordance with the French private international law. Applying article 57(1)(a) CISG the court determined that the price of the goods should have been paid at the place of business of the seller

Case 26: CISG 1(1)(a); 53; 57(1); 78

International Chamber of Commerce International Court of Arbitration

Arbitral award issued in 1992 in case no. 7158

Excerpts published in French Journal de Droit International, 4, 1992, 1006

Commented on by Hascher in Journal de Droit International, 4, 1992, 1007

(Abstract prepared by Picard S. of the ICC International Court of Arbitration)

In the absence of an agreement of the parties on the law applicable, the arbitral tribunal found that CISG is applicable to the contract for the provision and installation of materials destined for the construction of a hotel.

CISG entered into force in Yugoslavia and Austria, the countries of the buyer and the seller respectively before the conclusion of the contract. In addition, the contract falls within the scope of application of CISG, since it is clear from the text of the contract that the provision of services is secondary to the sale.

Consequently, if CISG applies, the buyer in default is obliged to pay the price and the interest for delay in payment. As CISG does not indicate the applicable interest rate, the arbitral tribunal applied the national law applicable in accordance with the rules of private international law, that is the law of the place of payment. Since the contract does not specify the place of payment, the tribunal applied article 57(1) CISG and designated the place of delivery of the goods as the place of payment.

CASE LAW ON UNCITRAL TEXTS
(CLOUT)

CASES RELATING TO THE UNITED NATIONS SALES CONVENTION (CISG)

Case 45: CISG 38(1); 39(1); 40

International Chamber of Commerce, International Court of Arbitration

Arbitral award issued in 1989 in case no 5713

Excerpts published in Yearbook Commercial Arbitration, Vol. XV - 1990, 70

Summary published in Italian: Diritto del commercio internazionale July-September 1993, 651

(Abstract prepared by Picard of the ICC International Court of Arbitration)

In a series of contracts for the sale of goods on f.o.b. terms, the buyer disputed, both prior to shipment and upon arrival, the conformity of goods covered under one of the contracts with certain contract specifications. The buyer treated the goods in order to make them more saleable and sold them at a loss. The seller demanded full payment and the buyer filed a counterclaim demanding compensation for direct losses, financing costs, lost profits and interest

The arbitral tribunal held, pursuant to article 13 (3) of the 1975 ICC arbitration rules, which allows the tribunal in the absence of a choice of law by the parties to determine the applicable law by applying the private international law rule that it deems appropriate, that the contract was governed by the law of the country where the seller had his place of business. In addition, pursuant to article 13(5) of the ICC arbitration rules, the tribunal decided to take into account CISG as a source of prevailing trade usages. As the applicable provisions of the law of the country where the seller had his place of business appeared to deviate from the generally accepted trade usages reflected in CISG in that it imposed extremely short and specific time requirements in respect of the buyer giving notice to the seller in case of defects, the tribunal applied CISG

The tribunal found that the buyer had complied with the requirements of CISG to examine the goods properly (art. 38(1) CISG) and to notify the seller accordingly (art. 39(1) CISG). It was held that, according to article 40 CISG, at any rate the seller would not be entitled to rely on non-compliance by the buyer with articles 38 and 39 of CISG for the reason that the seller knew or could not have been unaware of the non-conformity of the goods with contract specifications. The tribunal awarded the seller the full amount of its claim and set it off against part of the buyer's counterclaim

Case 46: CISG 1(1); 50; 53; 59

Germany: Landgericht Aachen; 41 0 198/89

3 April 1989

Excerpts published in German: Recht der Internationalen Wirtschaft (RIW) 1990, 491 Referred to by Piltz in Neue Juristische Wochenschrift (NIW) 1994, 1101

The seller, an Italian shoe manufacturer, claimed the balance of amounts due from a contract concluded in 1989. The German buyer counterclaimed a price reduction for non-conformity of the goods with contract specifications.

The court found that the law of Italy was applicable under German private international law as the law of the country where the seller had its place of business, and applied CISG as part of Italian law in force at the time of the conclusion of the contract. It was held that the buyer could reduce the price of the goods in the same proportion as the value that the goods actually delivered had at the time of delivery bore to the value that conforming goods would have had at that time (*art. 50 CISG*).

Case 47: CISG 31 (b); 61 (1)(b), 63; 74.77

Germany: Landgericht Aachen; 43 O 136/92

14 May 1993

Excerpts published in German: Recht der Internationalen Wirtschaft (RIW) 1993, 760

Summary published in Italian: Diritto del commercio internazionale July-September 1993, 651

Referred to by Piltz in Neue Juristische Wochenschrift (NJW) 1994, 1101

The German seller of ten electronic ear devices demanded damages for breach of contract by the Italian buyer, who had failed to take delivery despite the additional period of time set by seller for the buyer to take delivery.

The court held that it had jurisdiction under article 5(1) of the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters, which provides that a party who is domiciled in a Contracting State can be sued before the courts of the place where the obligation giving rise to the dispute had to be performed. The court applied article 31 (b) CISG which was applicable under German private international law as part of German law, and determined that Aachen, where the goods had been manufactured, was the place where the seller was obliged to deliver (*art. 31(b) CISG*).

The court applied articles 61 (1)(b), 63 and 74 77 CISG and found that the buyer had to pay damages to the seller for failing to take delivery of the goods, even after the additional period of time set by the seller had expired.

Case 48: CISG 1(1)(b); 5(1) and (2); 38(1); 39; 45; 50; 51

Germany: Oberlandesgericht Dusseldorf; 17 U 82/93

8 January 1993

Excerpts published in German: Praxis des Internationalen Privat und Verfahrensrechts (IPRax) 1993, 412

Summary published in Italian: Diritto del commercio internazionale July-September 1993, 651

Commented on by Magnus in Praxis des Internationalen Privat-und Verfahrensrechts (IPRax) 1993, 390 and in Zeitschrift für Europäisches Privatrecht (ZEuP) 1993, 79

The German buyer of fresh cucumbers appealed against the decision of the court of first instance, which ordered the German buyer to pay to the Turkish seller the balance of the price under the contract. The court of first instance had dismissed the application of the buyer for a reduction of the price of the goods for non-conformity with contract specifications on the ground that the buyer had inspected the goods at the place of delivery in Turkey and had found them to be in good order.

The appellate court found that the parties, during the oral hearings before the court of first instance, had agreed to submit their dispute to German law and held that CISG was applicable as part of German law. The judgement of the court of first instance was upheld on the ground that the buyer lost the right to rely on non conformity of goods and to reduce the price proportionally, since it gave notice of the non-conformity only when the goods arrived in Germany, i.e. seven

days after the buyer had the opportunity to examine them at the place of delivery in Turkey (art. 38, 39(1) and 50 CISG).

Case 49: CISG 7(2); 45; 57(1)(a); 74

Germany: Oberlandesgericht Düsseldorf; 17 U 73/93

2 July 1993

Excerpts published in German: Recht der Internationalen Wirtschaft (RIW) 1993, 845

The plaintiff, a German buyer of a knifecutting machine, demanded damages for personal injury caused by, and repair costs of, the machine, which the plaintiff had bought from the defendant, a manufacturer situated in Indiana, U.S.A., and installed in a Russian furniture factory. The court of first instance found in an interim judgement that it had jurisdiction. The defendant appealed.

The appellate court dismissed the appeal and found that the court of first instance had jurisdiction under the provisions of the German code of civil procedure granting, jurisdiction to the court of the place where the disputed obligation, in the present case the obligation to payment of damages, was to be performed. In order to determine the place where damages were payable, the appellate court applied CISG as part of the law of Indiana, which was applicable under German private international law. The appellate court held that article 57(1)(a) CISG, providing that the purchase price is payable at the place of business of the seller, indicated a general principle that claims for payment of money, including damages for breach of contract arising under articles 45 and 74 CISG, were payable at the place of business of the claimant, who in the present case was the German buyer.

Case 50: CISG 35(2)(a); 45; 49(1); 51(1); 74

Germany: Landgericht Baden-Baden; 4 O 113/90

14 August 1991

Excerpts published in German: Recht der Internationalen Wirtschaft (RIW) 1992, 62

Summary published in Italian: Diritto del commercio internazionale July September 1993, 651

The plaintiff, an Italian tile manufacturer, demanded payment of the balance due under a Contract with the defendant, a German company. The defendant counterclaimed damages on the ground that the goods initially ordered, as well as the replacement sent, were non conforming with contract specifications. Under the contract, objections concerning non conformity could not be submitted later than thirty days after delivery.

The court, applying CISG as part of Italian law applicable under German private international law, found that the plaintiff failed to deliver goods fit for the purpose for which goods of the same description would ordinarily be used and, as a result, the defendant was entitled to declare the contract partially avoided and to reduce the price (art. 35(2), 45, 49(1) and 51(1) CISG). While such a partial avoidance did not affect the defendant's right to claim damages (art. 45(1)(b) CISG), it was held that the defendant had lost the right to claim damages since it failed to notify the plaintiff about the non conformity of goods within the thirty-day period after delivery set in the contract.

Case 51: CISG 45(1)(b); 73(1); 74

Germany: Amtsgericht Frankfurt 32 C 1074/90-41

31 January 1991

Excerpts published in German with comments by Jayme: Praxis des Internationalen Privat und Verfahrensrechts (IPRax) 1991, 345

The plaintiff, an Italian manufacturer of shoes, demanded payment of the balance due under the contract with defendant, a German company. The contract provided for payment of 40% of the purchase price upon delivery and the balance within sixty days after delivery. The seller sent an invoice in September 1989 and shipped the goods in January 1989 but suspended delivery without notifying the buyer, who was forced to pay more than 40% of the purchase price upon delivery in order to obtain the goods.

The court held that the seller committed a breach of contract by suspending delivery without giving notice of the suspension to the buyer and set off the claim of the seller for the balance of the purchase price against the claim of the buyer for damages (art. 45(1)(b), 73(1) and 74 CISG).

Case 52: CISG 9(1); 53

Hungary: Municipal Court Budapest AZ 12.G.41.471/1991/21

24 March 1992

Adamfi Video Production GmbH v. Alkotók Stúdiója Kiszövetkezet

Original in Hungarian

Unpublished

Summary published in Italian: Diritto del commercio internazionale July-September 1993, 651

Commented on by Vida in Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 1993, 263

The plaintiff, a German company, demanded payment of the price and interest for goods sold and delivered to the defendant, a Hungarian company. At first, the defendant disputed the existence of a contract and the delivery of goods. However, the court found that delivery had taken place on the basis of documents obtained from the Hungarian Customs Authority and the forwarding agent had delivered the goods upon receipt signed by an employee of the defendant.

The court relied upon a sales contract that had previously been concluded between the parties, in order to determine the price of the goods and the other elements of the contract and ordered the defendant to pay (art. 9(1) and 53 CISG).

As to the obligation for payment of interest, which is not regulated by CISG, the court, on the basis of the Hungarian Act on Private International Law (paragraph 25 of Legal Decree No. 1 of 1973), applied German law as the law of the seat of the seller. In this context, on the basis of article 352 paragraph (1) of the German Code of Commerce (HGB), the Court awarded to the plaintiff interest at the rate of 5% on the amount due as of the day the obligation to pay the purchase price (determined in German currency) became due.

The United Nation Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX L2

IBA List of Cases on Convention

INTERNATIONAL BAR ASSOCIATION

Committee M7: International Sales New Orleans October 13, 1993

Hans van Houtte, Chairman
Stibbe Simont Monahan Duhot, Brussels

I. Court decisions on CISG

CISG as Lex Mercatoria:

ICC award no. 5713 (1989), XV YB. C.A. (1990), 70.

Article 1: notion of "sale"

ICC-award No 7153 (1993), Journal Droit International 1992, 1005

Article 1,1,b: CISG applicable because of conflict of laws

LG München July 3, 1989, IPrax 1990, 316
LG Stuttgart; September 6, 1989, IPrax 1990, 317
Rb. Alkmaar November 30, 1989, NIPR 1990, 283
LG Aachen April 30, 1990, RIW 1990, 491
AG Oldenburg April 24, 1990, IPrax 1991, 336
LG Hamburg September 26, 1990 IPrax 1991, 400
Rb Dordrecht November 21, 1990, NIPR 1991, 159
LG Frankfurt June 13, 1991, RIW 1991, 591
LG Frankfurt September 16, 1991, RIW 1991, 952
OLG Frankfurt September 17, 1991, RIW 1991, 950
Rb Roermond December 19, 1991, NIPR 1992, 394
Hof s'Hertogenbosch February 26, 1992, NIPR 1992, 374

Article 3: Goods to be manufactured

OLG Frankfurt September 17, 1991, RIW 1991, 950

Art. 7.2: Filling the gaps

AG Oldenburg April 24, 1990, IPrax 1991, 336

Article 8,3: Interpretation on the basis of established practices

IG Hamburg September 26,1990 EuZW 1991, 188

Article 9: Usages

Court Budapest March 24, 1992, IPrax 1993, 263

Article 11 and 96: Contract in writing

Court Budapest March 24, 1992, IPrax 1993, 263

Article 18: Acceptance of offer

LG Aachen May 14, 1993, RIW 1993, 760

Article 19: Acceptance with altered conditions

Filanto v. Chilewich, 789 F. Supp. 1229 (S.D.N.Y. 1992)

Article 23: Moment of conclusion of contract

LG Hamburg September 26, 1990, EuZW 1991, 188

Article 29: Modification of contract by agreement

Court Budapest March 24, 1992, IPrax 1993, 263

LG Hamburg September 26, 1990, EuZw 1991, 188

Article 33: Delivery of Goods

AG Oldenburg April 24, 1990, IPrax 1991, 336

Article 38: Examination of goods delivered

ICC award no 5713 (1989), XV Yb C.A. (1990), 70

LG Aachen April 3, 1990, RIW 1990, 491

Article 39: Notice of lack of conformity within reasonable time

ICC award no 5713 (1989), XV Yb. C.A. (1990), 70

LG München July 3, 1989, IPrax 1990, 316

LG Stuttgart September 6, 1989, IPrax 1990, 317

LG Aachen April 3, 1990, RIW 1990, 491

Rb. Dordrecht November 21, 1990, NIPR 1991, 159

Article 47: Additional period for performance

AG Oldenburg, April 24, 1990, Prax 1991, 336

Article 49: Declaration of the contract avoided

AG Oldenburg, April 24, 1990, IPrax 1991, 336
LG Frankfurt September 16, 1991, RIW 1991, 952
OLG Frankfurt September 17, 1991, EuZW 1992, 352

Article 50: Reduction of price

LG Aachen April 3, 1990, RIW 1990, 491

Article 57: Place of payment

ICC award no 7153 (1992), Journal Droit International 1992, 1005

Article 58,1: Moment of payment

LG Hamburg September 26, 1990, EuZW 1991, 188

Article 59: No request for payment

LG Aachen April 3, 1990, RIW 1990, 491

Article 60: Obligations to take delivery

LG Aachen May 14, 1993, RIW 1993, 760

Article 61,1,b: Damages for a non-performance

LG Aachen April 3, 1990, RIW 1990, 491
LG Aachen May 14, 1993, RIW 1993, 760

Article 71: Anticipatory breach

AG Frankfurt January 1, 1991, IPrax 1991, 345

Article 74 and 75: Damages

LG Aachen April 3, 1990, RIW 1990, 491
ICC award no 6281 (1989), Journal Droit International 1989, 1114

Article 78: Interest

Law of place of payment:

ICC award no 7153 (1992), Journal Droit International 1992, 1005

Law of creditor:

LG Stuttgart September 6, 1989, IPrax 1990, 317
LG Frankfurt September 16, 1991, RIW 1991, 952

Actual loss:

LG Aachen April 3, 1990, RIW 1990, 491

AG Oldenburg April 24, 1990, IPrax 1991, 336

Proper law of contract:

AG Oldenburg April 24, 1990, IPrax 1991, 336

LG Hamburg September 26, 1990, EuZw 1991, 188

Law of debtor or creditor:

OLG Frankfurt June 13, 1991, RIW, 1991, 591

Article 79:

ICC award no 6281 (1989), Journal Droit International 1989, 1114

Article 100: CISG not applicable to contracts concluded before entry into force

Cass. It. March 3, 1988, RDIPP 1990, 155

ICC award 6281 (1989), XV Yb. Comm. Arb. (1990), 96

Hot's Hertogenbosch November 27, 1991, NIPR 1992, nr 228

Rb Roermond December 19, 1991, NIPR 1992, nr 394

Rb Arnhem May 7, 1992, NIPR 1992, nr 390

Rb Arnhem September 3, 1992, NIPR 1993, nr 127

Rb Arnhem October 22, 1992, NIPR 1993, nr 130.

II. Status of CISG as of July 1993

<u>State</u>	<u>Signature</u>	<u>Ratification</u> <u>Accession</u> <u>Approval</u> <u>Acceptance</u>	<u>Entry into force</u>
Argentina ^{2/}		19 July 1983	1 January 1988
Australia		17 March 1988	1 April 1989
Austria	11 April 1980	29 December 1987	1 January 1989
Bulgaria		9 July 1990	1 August 1991
Belarus ^{2/}		9 October 1989	1 November 1990
Canada ^{2/}		23 April 1991	1 May 1992
Chile ^{1/}	11 April 1980	7 February 1990	1 March 1991
China ^{3/}	30 September 1981	11 December 1986	1 January 1988
Denmark ^{4/}	26 May 1981	14 February 1989	1 March 1990

The United Nation Convention on Contracts for the
International Sale of Goods (Vienna, 1980)
Should Singapore Ratify ?

APPENDIX M

Select Bibliography

Select Bibliography

Abbreviations used in the commentary appear in bold in this appendix.

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