



## General Assembly

Distr.: General  
8 June 2004

Original: English

---

United Nations Commission  
on International Trade Law

### UNCITRAL Digest of case law on the United Nations Convention on the International Sale of Goods\*

#### *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.

---

\* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.



## In general

1. Article 83 states that although a buyer may have lost the right to avoid the contract or to require the seller to deliver substitute goods under article 82 retains its other remedies, whether those remedies have their origin in provisions of the contract or in the CISG itself. Decisions have devoted very little attention to article 83. The provisions of Chapter V, Section V of the CISG (“Effects of avoidance”), which includes article 83,<sup>1</sup> have been cited in support of certain broad propositions concerning avoidance under the Convention. Thus, it has been asserted that “[t]he avoidance of the contract is thus a constitutive right of the buyer, which changes the contractual relationship into a restitutional relationship (arts. 81-84 CISG)”.<sup>2</sup> And in a decision finding that a buyer was not responsible for damage to goods that occurred while they were being transported by carrier back to the seller following the buyer’s avoidance of the contract, the court asserted that “Articles 81-84 CISG contain at their core a risk distribution mechanism, which within the framework of the reversal of the contract (restitution), overrides the general provisions on the bearing of risk contained in Art. 66 et. seq. CISG”.<sup>3</sup> In addition, an arbitral tribunal has asserted that where the contract is terminated, and damages for failure to perform are claimed under article 74 CISG et seq., one uniform right to damages comes into existence, which can be compared to the right to damages for non-performance under the applicable domestic law and prevails over the consequences of the termination of a contract provided for in articles 81-84 CISG.<sup>4</sup>

2. Furthermore, in one decision, a buyer was found to have lost the right to avoid the contract both because the buyer failed to set an additional period of time for performance under article 47, and because the buyer was unable to make restitution of the goods as required by article 82; the court noted that the buyer nevertheless retained a right to damages for breach of contract (although the buyer had not sought them), but the court did not cite article 83 in support of its assertion.<sup>5</sup>

---

<sup>1</sup> Chapter V, Section V comprises articles 81 through 84 of the CISG.

<sup>2</sup> Landgericht Düsseldorf, Germany, 11 October 1995, Unilex.

<sup>3</sup> Oberster Gerichtshof, Austria, 29 June 1999, Unilex.

<sup>4</sup> CLOUT case No. 166 [Arbitration-Schiedsgericht der Handelskammer Hamburg, Germany, 21 March, 21 June 1996] (see full text of the decision).

<sup>5</sup> CLOUT case No. 82 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994].