これからの国際商取引法
―UNCITRAL作成文書の条文対訳―


UNCITRALアジア太平洋地域センター（UNCITRAL-RCAP）
グローバル私法フォーラム（GPLF）

2016年12月

UNCITRAL アジア太平洋地域センター（UNCITRAL-RCAP）
グローバル私法フォーラム（GPLF）
Foreword

The United Nations Commission on International Trade Law (UNCITRAL) is the core legal body of the United Nations system in the field of international trade law. Since its establishment in 1966 by Resolution 2205 (XXI) of the General Assembly of the United Nations, UNCITRAL has been playing an important role in furthering the progressive harmonization and modernization of the law of international trade in pursuance of the mandate by producing and promoting the use and adoption of legislative and non-legislative instruments in various key areas of commercial law, encompassing dispute settlement including arbitration and conciliation, international contract practices, transport, insolvency, electronic commerce, international payments, secured transactions, public procurement and sale of goods.

In order to support UNCITRAL with its technical assistance activities, in January 2012, the UNCITRAL Regional Centre for Asia and the Pacific (RCAP) was established as the first and so far the only field office of UNCITRAL, located in Incheon, Republic of Korea. In addition to disseminating international trade norms and standards, particularly those elaborated by UNCITRAL, the Regional Centre engages actively in the provision of bilateral and multilateral technical assistance to States in the region with respect to the adoption and uniform interpretation of UNCITRAL texts, through workshops and seminars, in coordination with various international and regional organizations active in trade law reform projects. The Regional Centre also engages in strengthening information, knowledge and statistics through briefings, workshops, seminars, publications, social media, and information and communication technologies, including in regional languages. Furthermore, the Regional Centre also functions as a channel of communication between States in the region and UNCITRAL.

UNCITRAL is most grateful for the support of the Republic of Korea in hosting the Regional Centre and providing manpower and financial support, as well as for the support of China which has also agreed to the loan of legal experts from the Government of the Hong Kong Special Administrative Region to the Regional Centre to engage in its work of providing technical assistance and capacity building activities.
In the past five years since the establishment of the Regional Centre, many States in Asia and the Pacific have demonstrated significant interest and support for UNCITRAL texts. As the third largest economy of the world, Japan has been not only an active participant in UNCITRAL’s work, but also an important partner of UNCITRAL in trade law reforms. Indeed, Japan has been a Member State of the Commission since its establishment, and has adopted key UNCITRAL texts, namely the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG), the UNCITRAL Model Law on International Commercial Arbitration, which forms the basis of the Japanese Arbitration Act, and the UNCITRAL Model Law on Cross-Border Insolvency, which forms the basis of Japan's Act on Recognition of and Assistance for Foreign Insolvency Proceedings. Moreover, Japan is a Contracting State to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (New York Convention), one of the most successful international conventions whose universal adoption and uniform interpretation UNCITRAL remains in active pursuit. In addition, UNCITRAL has had the honour of seeing Professor Emeritus Kazuaki Sono, serving as the fourth Secretary of UNCITRAL from 1980 to 1985 and as Chairperson of the twenty-fourth session of UNCITRAL in 1991, making significant contributions in furthering UNCITRAL’s cause in the progressive harmonization and unification of international trade law.

Japan has been actively engaged in the provision of technical assistance and capacity building to other States in the area of international commercial law. The activities of the Japan International Co-operation Agency (JICA) on commercial law in South East Asia and elsewhere have brought significant benefits to developing countries, complementing the efforts of UNCITRAL in the facilitation of international trade and investment by both devising and implementing uniform legal frameworks. In encouraging private sector development in developing countries, Japan provides a variety of assistance schemes, not only to support investment in infrastructure projects, such as the construction, operation and maintenance of power plants, railways, airports, industrial parks, water and sanitation and hospitals but also through extensive and consistent projects over long periods of time aimed at legal technical assistance, also in the field of trade law. In that context, JICA and UNCITRAL-RCAP cooperated for the first time in 2014 by delivering jointly a capacity building workshop and technical meetings assisting the reform of the arbitration law of Myanmar.
Notwithstanding such important achievements and contributions that Japan has made, much remains to work on, and thereby ample opportunities exist for collaboration between Japan and UNCITRAL in several core areas. These include cooperating in providing integrated trade law reforms, which are vital to institution-building in developing States, thus contributing to the realization of the Sustainable Development Goals (SDGs) as adopted in Resolution A/RES/70/1 of the General Assembly in 2015. Another key area concerns “aid for trade”, in particular raising legal rights in the context of cross-border trade, pursuing long-term capacity-building in least developed countries (LDCs), landlocked developing countries (LLDCs) as well as in the small island developing States (SIDS) in the Asia-Pacific region. These would contribute significantly to ensuring legal uniformity and general economic stability in the region, which would be beneficial both to those States as well as the common economic development of prosperity of all, including Japan.

Indeed, such efforts can be made both with the government, as well as in engagement with civil society. One of the recent initiatives of the Regional Centre concerns the establishment of UNCITRAL National Coordination Committees (UNCCs) in different countries in the Asia-Pacific region, which are meant to serve as national expertise centres on international trade norms and standards, in particular those elaborated by UNCITRAL, for the sake of coordinating the sharing of formal and informal information regarding efforts towards harmonization of international trade law as well as disseminating domestically such standards. In 2015, Japan has set up its own recognized national coordination committee – the “Global Private Law Forum” (GPLF), in response to the increasing variety, multiplicity, and diversity of contemporary efforts toward international harmonization of private law. GPLF is one of the three currently existing UNCCs in the world, alongside Australia and India. The Regional Centre has been in close collaboration with GPLF on various activities in the promotion of UNCITRAL texts, which we believe will continue.

The pinnacle of such cooperation is the publication of this bilingual selection of UNCITRAL texts, in Japanese and English. With this publication, we provide, for the very first time, several texts in Japanese language, contributing to expand accessibility to the legal professional and academic communities of Japan, hopefully promoting
additional research, knowledge sharing and adoption of UNCITRAL texts. This has been one of the first dreams of the Regional Centre, and it would not have been possible without the support of the GPLF, and the relentless work of Professors Hiroo Sono and Tomotaka Fujita. A word is also due to my predecessor and esteemed colleague, Mr Luca Castellani, who initiated this project, and to the generous contributions and abnegated work in preparing this publication of Mana Takahashi (Consultant), Shunsuke Sato (Intern, University of Maine, United States), Yumiko Shirayama (Intern, University of London - London School of Economics and Political Science, United Kingdom), Yuko Honda (Intern, University of London - School of Oriental and African Studies, United Kingdom) and Tsukahara Asuka (Intern, Keio Gijuku Daigaku).

We are most grateful for this collective strenuous effort in producing this important joint English-Japanese language publication of UNCITRAL texts. This sets an important example for similar publications in the future, making UNCITRAL texts available in different regional languages, facilitating knowledge and awareness of such texts in different countries, which would in turn further enhance the progressive harmonization and modernization of international trade law, in pursuance of rule-based international trade, access to justice, and ultimately, the purposes of the United Nations in maintaining international peace, security and in developing friendly relations among nations.

João Ribeiro
Head, Regional Centre for Asia and the Pacific
United Nations Commission on International Trade Law
はしがき

国際連合国際商取引法委員会（UNCITRAL）は、1966年12月17日の国連総会決議により、国際商取引法の段階的なハーモナイゼーションと統一の促進を目的として設立された国際連合の組織（総会の補助機関）である。設立以来、国際取引法の領域では、国連システムの中で中心的な役割を果たす機関とみなされており、グローバル化が進むなかで、ますますその重要性を増している。

UNCITRALの作成した文書は、国連公用語である6か国語による正文があるが、日本語版は作成されていない。しかし、日本語訳があることについては、これらの文書について日本での認知度を高めるためには重要である。本書は、そのような考えから、UNCITRALアジア太平洋地域センター（UNCITRAL-RCAP）及びグローバル私法フォーラム（GPLF）が協力して、UNCITRALが国際商取引法のハーモナイゼーションと統一の促進のために作成してきた各種テキストの中から、特に日本にとって重要であると思われるものについて、英語の正文と日本語訳を対訳形式で集めたものである。

本書には、日本の条約締結、国内立法、取引実務にとって重要と思われる文書を収録した（ただし、重要であっても分量等の都合上、収録を見送らざるを得なかった文書もある。）。収録したのは、仲裁・調停、売買、担保、破産、運送、電子商取引の分野における法統一文書16件である。これらの領域のほか、国際支払と政府調達についても、UNCITRALの法統一文書はあるが、これらは収録していない。テキストの選定は、UNCITRAL-RCAP及びGPLFによるものであり、UNCITRAL又はUNCITRAL事務局によるものではない。

編集作業には、我々両名のほか、これまでUNCITRAL-RCAPに在籍した歴代の日本人コンサルタントやインターンがあたった。ここでは、なかでも関与の深かった高橋麻奈（名古屋大学法学研究科博士後期課程）、佐藤俊介（メイン大学政策と国際関係大学院）、白山裕美子（弁護士〔アンダーソン・毛利・友常法律事務所〕）の名を記しておきたい。また、編集にあたっては、GPLFのメンバーである高杉直教授（同志社大学）と西谷祐子教授（京都大学）にも協力を得た。

本書に収録した日本語訳は、日本政府による公定訳のあるもの（条約であって国会に提出されたことがあるもの）については、それぞれによる。それ以外については、それぞれの分野の専門家による翻訳を使用した（編者の責任において最低限の形式の統一は図ったが、訳自体は、訳者の責任によるものである）。それらのなかには、既に他の出版物に掲載されたものを転載させていただいたものもある（後掲・初出一覧参照）。本書への掲載を快くお認めくださった、訳者及び出版者の皆様には厚く御礼申し上げたい。

2016年12月

グローバル私法フォーラム（GPLF）
共同代表 藤田友敬（東京大学教授）
曽野裕夫（北海道大学教授）
グローバル私法フォーラムとは

21世紀に入り、その対象領域、方法・手段、担い手を「多様化」「多元化」「分散化」させながら、活発となっている、私法の国際的統一・ハーモニゼーション、民事法ルールの国際的形成活動の実態を迅速かつ正確に把握するため、これらの諸活動に関するフォーマル、インフォーマルな情報を集約・整理し、共有するための拠点となることを意図して、2014年10月に設立された専門家集団である。

（本書の刊行についてはJSPS科学研究費15H01917の助成を受けた。）
目 次

Foreword ............................................................................................................................................. i
はしがき ............................................................................................................................................... v
目 次 ................................................................................................................................................ vii
日本語訳の初出一覧 ........................................................................................................................ ix
UNCITRAL 作成文書一覧 .................................................................................................................. xi

Ⅰ 仲 裁 ............................................................................................................................................. 1
A 外国仲裁判断の承認及び執行 ........................................................................................................... 1
  1. 外国仲裁判断の承認及び執行に関する条約（ニューヨーク、1958 年）（ニューヨーク条約） ................................................................................................................................. 1
  2. 外国仲裁判断の承認及び執行に関する条約（ニューヨーク、1958 年）第 2 条 2 及び第 7 条 1 の解釈に関する勧告（2006 年） ............................................................................. 11

B 国際商事仲裁 ................................................................................................................................ 15
  3. UNCITRAL 国際商事仲裁モデル法（1985 年）2006 年改正版 .............................................. 15
  4. UNCITRAL 仲裁規則（2013 年に採択された第 1 条第 4 項付） ............................................. 48

C 投資仲裁 ....................................................................................................................................... 86
  5. 条約に基づく投資家対国家仲裁の透明性に関する国際連合条約（ニューヨーク、2014 年）（モーリシャス透明性条約） ................................................................. 86
  6. 条約に基づく投資家対国家仲裁の透明性に関する UNCITRAL 規則（透明性規則） 96

D 調 停 ............................................................................................................................................. 108
  7. UNCITRAL 国際商事調停モデル法（2002 年） ................................................................. 108

Ⅱ 売 買 ............................................................................................................................................. 119
  8. 国際物品売買契約に関する国際連合条約（ウィーン、1980 年）（CISG） .......................... 119
  9. 1980 年改正議定書により改正された国際物品売買における時効期間に関する条約（ニューヨーク、1974 年） ................................................................. 167
  10. 損害賠償額の予定条項に関する統一規則 ............................................................................. 189

Ⅲ 電子商取引 .................................................................................................................................... 193
  11. 国際契約における電子通信の使用に関する国際連合条約（ニューヨーク、2005 年）（国連電子通信条約、e-CC） ................................................................. 193
12. UNCITRAL 電子商取引モデル法（1996年）（1998年に追加された第5条の2付）212
13. UNCITRAL 電子署名モデル法（2001年）228

Ⅳ 運送 ........................................................................................................................................239
14. 全部又は一部が海上運送による国際物品運送契約に関する国際連合条約（ニューヨーク、2008年）（ロッテルダム・ルールズ）239

Ⅴ 担保 ........................................................................................................................................315
15. 国際取引における債権譲渡に関する国際連合条約（ニューヨーク、2001年）315

Ⅵ 倒産 ........................................................................................................................................355
16. UNCITRAL 国際倒産モデル法（1997年）355

Ⅶ 支払 ........................................................................................................................................376

Ⅲ 政府調達 ................................................................................................................................377
日本語訳の初出一覧

I 仲裁

A 外国仲裁判断の承認及び執行

1. 外国仲裁判断の承認及び執行に関する条約（ニューヨーク、1958年）（ニューヨーク条約）
   【訳】公定訳（昭和36年条約第10号）

2. 外国仲裁判断の承認及び執行に関する条約（1958年）第2条2及び第7条1の解釈に関する勧告（2006年）
   【訳】曾野裕夫（北海道大学教授）・高橋麻奈（名古屋大学法学研究科博士後期課程）

B 国際商事仲裁

3. UNCITRAL国際商事仲裁モデル法（1985年）2006年改正版
   【訳】中村達也（国士舘大学教授）

4. UNCITRAL仲裁規則（2013年に採択された第1条第4項付）
   【訳】矢澤昇治（専修大学教授）
   初出：矢澤昇治「UNCITRAL仲裁規則（2013年に採択された第1条4項付）」専修法学論集126号（2016年）321-362頁に掲載された翻訳を一部改訂したもの。

C 投資仲裁

5. 条約に基づく投資家対国家仲裁の透明性に関する国際連合条約（ニューヨーク、2014年）（モーリシャス透明性条約）
   【訳】濵本正太郎（京都大学教授）
   初出：濵本正太郎「条約に基づく投資家対国家仲裁の透明性に関するUNCITRAL規則および同規則の実施に関する条約（その1）～（その6）」JCAジャーナル62巻4号18頁、5号24頁、6号27頁（2015年）に掲載された翻訳を改訂したもの。改訂にあたっては、二杉健斗氏（京都大学大学院法学研究科博士後期課程）の協力を得た。

6. 条約に基づく投資家対国家仲裁の透明性に関するUNCITRAL規則（透明性規則）
   【訳】濵本正太郎（京都大学教授）
   初出：濵本正太郎「条約に基づく投資家対国家仲裁の透明性に関するUNCITRAL規則および同規則の実施に関する条約（その1）～（その6）」JCAジャーナル62巻11号3頁、12号3頁（以上、2014年）、62巻1号23頁、62巻2号28頁、62巻3号3頁、62巻4号18頁（以上、2015年）に掲載された翻訳を改訂したもの。改訂にあたっては、二杉健斗氏（京都大学大学院法学研究科博士後期課程）の協力を得た。

D 調停

7. UNCITRAL国際商事調停モデル法（2002年）
   【訳】三木浩一（慶應義塾大学教授）
   初出：三木浩一「UNCITRAL国際商事調停モデル法の解説（1）～（9・完）」NBL74号37頁、755号47頁、756号53頁、758号57頁、760号55頁、761号60頁、762号66頁、763号53頁、764号46頁（以上、2003年）
Ⅱ 売買
8. 国際物品売買契約に関する国際連合条約（ウィーン、1980年）（CISG）
【訳】公定訳（平成20年条約第8号）

9. 1980年改正議定書により改正された国際物品売買における時効期間に関する条約（ニューヨーク、1974年）
【訳】曽野裕夫（北海道大学教授）

10. 損害賠償額の予定条項に関する統一規則（1983年）
【訳】曽野裕夫（北海道大学教授）

Ⅲ 電子商取引
11. 国際契約における電子通信の使用に関する国際連合条約（ニューヨーク、2005年）（国連電子通信条約、e-CC）
【訳】岩崎一生（名古屋大学名誉教授）

12. UNCITRAL 電子商取引モデル法（1996年）
【訳】内田貴（東京大学名誉教授）
初出：内田貴『電子商取引と法（4・完）』NBL 603号28頁（1996年）の付録（37-44頁）

13. UNCITRAL 電子署名モデル法（2001年）
【訳】八尾晃（元大阪商業大学教授）

Ⅳ 運送
14. 全部又は一部が海上運送による国際物品運送契約に関する国際連合条約（ニューヨーク、2008年）（ロッテルダム・ルールズ）
【訳】池山明義（弁護士[阿部・阪田法律事務所]）
初出：藤田友敬編著『アジア太平洋地域におけるロッテルダム・ルールズ』（商事法務・2014年）351-439頁

Ⅴ 担保
15. 国際取引における債権譲渡に関する国際連合条約（ニューヨーク、2001年）
【訳】池田真朗（武蔵野大学教授・慶應義塾大学名誉教授）
初出：池田真朗『債権譲渡と電子化・国際化』（弘文堂・2010年）435-470頁

Ⅵ 倒産
16. UNCITRAL 国際倒産モデル法（1997年）
【訳】山本和彦（一橋大学教授）
初出：山本和彦『国際倒産法制』（商事法務・2002年）201-331頁
I International Commercial Arbitration & Conciliation

Conventions

Model laws

Contractual texts
- UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (effective date: 1 April 2014)
- UNCITRAL Arbitration Rules
- UNCITRAL Conciliation Rules (1980)

Explanatory texts
- UNCITRAL Notes on Organizing Arbitral Proceedings (2016)
- Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules (as revised in 2010)
- Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958 (2006)
- Recommendations to assist arbitral institutions and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules

II International Sale of Goods (CISG) & Related Transactions

Conventions

Contractual texts
- Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance (1983)
Explanatory texts

III Electronic Commerce

Conventions

Model laws
- UNCITRAL Model Law on Electronic Signatures (2001)

Legislative guides and recommendations
- Recommendations to Governments and international organizations concerning the legal value of computer records (1985)

Explanatory texts

IV International Transport of Goods

Conventions

Model provisions
- Unit of account provision and provisions for the adjustment of the limit of liability in international transport and liability conventions (1982)

V Security Interests

Conventions
Model laws
- UNCITRAL Model Law on Secured Transactions (2016)

Legislative guides and recommendations
- UNCITRAL Legislative Guide on Secured Transactions (2007)

VI Insolvency

Model laws

Legislative guides and recommendations
- UNCITRAL Legislative Guide on Insolvency Law, Part Four: Directors' obligations in the period approaching insolvency (2013)

Explanatory texts
- UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective

VII International Payments

Conventions

Model laws
- UNCITRAL Model Law on International Credit Transfers (1992)

Explanatory texts
- Recognizing and Preventing Commercial Fraud: Indicators of Commercial Fraud (2013)
VIII Procurement & Infrastructure Development

Model laws
- UNCITRAL Model Law on Public Procurement (2011)
  Guide to Enactment (2012)
  Guidance on Procurement Regulations (2013)
  Glossary (2013)

Legislative guides and recommendations

Model provisions

Explanatory texts

※ 上記に加え、UNCITRAL 総会第 49 会期（2016 年）において、新しい分野の文書として、オンライン紛争処理（ODR）に関する説明文書（"Technical Notes on Online Dispute Resolution (2016)"）が採択されているが、本書作成時点で採択された最終的な文書は公開されていない。
１．外国仲裁判断の承認及び執行に関する条約

Ⅰ 仲 裁


なお「外国仲裁判断の承認及び執行に関する条約」（ニューヨーク、1958年）は、UNCITRALの設立前の条約であるが、現在ではUNCITRALが、その普及及び解釈の統一のため尽力しており、同条約に関する解釈勧告として、「外国仲裁判断の承認及び執行に関する条約第2条2及び第7条1の解釈に関する勧告」（2006年）を公表している。

本書には、ゴチック体で表記した文書の対訳を収録した。（藤田友敬）

A 外国仲裁判断の承認及び執行

1. 外国仲裁判断の承認及び執行に関する条約（ニューヨーク、1958年）（ニューヨーク条約）

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention")

【概要】本条約は、国連主催の外交会議が1958年6月10日にニューヨークにおいて採択したもので、仲裁合意の承認、そして外国仲裁判断及び内国判断と認められない仲裁判断の承認執行に関する共通の法的基盤を創設している。「内国判断と認められない仲裁判断」という文言は、執行国で下された仲裁判断であって、その国の法によれば、たとえば外国仲裁手続法の適用などの渉外的要素をもつために、「外国」仲裁判断として扱われるものを含む趣旨である。本条約の主たる目的は、締約国に対して、外国仲裁判断及び内国判断と認められない仲裁判断が、原則として国内仲裁判断と同様に承認執行されるよう義務付けることにある。また、本条約の副次的な目的は、締約国の裁判所に対して、当事
仲裁
A. 外国仲裁判断の承認及び執行

者が紛争を仲裁廷に付託する旨の合意に反して裁判所にアクセスするのを拒否し、仲裁合意に完全な効力を与えるよう求めることにある。

2016年12月1日現在、156か国が本条約の締約国となっており、日本も本条約を締結している（昭和36年条約第10号）。（西谷祐子）

第1条

1. この条約は、仲裁判断の承認及び執行が求められる国以外の国の領域内においてされ、かつ、自然人であると法人であるとを問わず、当事者の間の紛争から生じた判断の承認及び執行について適用する。この条約は、また、仲裁判断の承認及び執行が求められる国において内国判断と認められない判断についても適用する。

2. 「仲裁判断」とは、各事案ごとに選定された仲裁人によってされた判断のほか、当事者から付託を受けた常設仲裁機関がした判断を含むものとする。

3. いかなる国も、この条約に署名し、これを批准し、若しくはこれに加入し、又は第10条の規定に基づき適用の拡張を通告するに当たり、他の締約国の領域においてされた判断の承認及び執行についてのこの条約を適用する旨を相互主義の原則に基づき宣言することができる。また、いかなる国も、契約に基づくものであるかどうかを問わず、その国の国内法により商事と認められる法律関係から生ずる紛争についてののみこの条約を適用する旨を宣言することができる。

条文

第1条

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.
Article II
1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III
Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

第2条
1. 各締約国は、契約に基づくものであるかどうかを問わず、仲裁による解決が可能である事項に関する一定の法律関係につき、当事者の間にすでに生じているか、又は生ずることのある紛争の全部又は一部を仲裁に付託することを当事者が約した書面による合意を承認するものとする。
2. 「書面による合意」とは、契約中の仲裁条項又は仲裁の合意であって、当事者が署名したもの又は交換された書簡若しくは電報に載っているものを含むものとする。
3. 当事者がこの条にいう合意をした事項について訴えが提起されたときは、締約国の裁判所は、その合意が無効であるか、失効しているか、又は履行不能であると認められる場合を除き、当事者の一方の請求により、仲裁に付託すべきことを当事者に命じなければならない。

第3条
各締約国は、次の諸条に定める条件の下に、仲裁判断を拘束力のあるものとして承認し、かつ、その判断が援用される領域の手続規則に従って執行するものとする。この条約が適用される仲裁判断の承認又は執行については、内国仲裁判断の承認又は執行について課せられるよりも実質的に厳重な条件又は高額の手数料若しくは課徴金を課してはならない。
I 仲裁
A. 外国仲裁判决的承認及執行

awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
(a) The duly authenticated original award or a duly certified copy thereof;
(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
(b) The party against whom the award is
invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding, on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public interest.

仲裁判人の選定若しくは仲裁手続について適當な通告を受けなかったこと又はその他の理由により防禦することが不可能であったこと。

(c) 判断が、仲裁付託の条項に定められていない紛争若しくはその条項の範囲内にない紛争に関するものである又は仲裁付託の範囲を超える事項に関する判定を含むこと。ただし、仲裁に付託された事項に関する判定が付託されなかった事項に関する判定から分離することができる場合には、仲裁に付託された事項に関する判定を含む判断の部分は、承認し、かつ、執行することができるものとする。

(d) 仲裁機関の構成又は仲裁手続が、当事者の合意に従っていなかったこと又は、そのような合意がなかったときは、仲裁が行なわれた国の法令に従っていなかったこと。

(e) 判断が、まだ当事者を拘束するものとなるに至っていないこと又は、その判断がされた国若しくはその判断の基礎となった法令の属する国の権限のある機関により、取り消された若しくは停止されたこと。

2. 仲裁判断の承認及び執行は、承認及び執行が求められた国の権限のある機関が次のことを認める場合においても、拒否することができる。

(a) 紛争の対象である事項がその国の法令により仲裁による解決が不可能なものであること。

(b) 判斷の承認及び執行が、その国の公の秩序に反すること。
policy of that country.

Article VI
If an application for the setting, aside or suspension of the award has been made to a competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII
1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII
1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on be-
half of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

**Article IX**

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article X**

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI
In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice

3. 署名、批准又は加入の際にこの条約の適用を及ぼさなかった領土については、各関係国は、憲法上の理由により必要があるときは、その領域の政府の同意を得ることを条件として、その領域にこの条約の適用を及ぼすため必要な措置を執ることの可能性を考慮するものとする。

第11条
連邦制又は非単一制の国の場合には、次の規定を適用する。

(a) この条約の条項で連邦の機関の立法権の範囲内にあるものについては、連邦の政府の義務は、この範囲では連邦制の国でない締約国の義務と同一とする。

(b) この条約の条項で、州又は邦の立法権の範囲内にあり、かつ、連邦の憲法上立法措置を執ることを義務づけられていないものについては、連邦の政府は、州又は邦の適当な機関に対し、できる限りすみやかに、好意的な勧告を附してその条項を通報しなければならない。

(c) この条約の締約国である連邦制の国は、国際連合事務総長を通じて伝達される他の締約国の要求により、この条約の個々の条項に関する連邦及びその構成単位の法令及び慣行についての説明を
of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninety-first day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been initiated, and legislative or other measures shall show the extent to which effect has been given to such provision by legislative or other action.

第12条

1. この条約は、第3番目の批准書又は加入書の寄託の日から90日目に効力を生ずる。

2. 第3番目の批准書又は加入書の寄託の後、この条約を批准し又はこれに加入する各国については、この条約は、その国の批准書又は加入書の寄託の後90日目に効力を生ずる。

第13条

1. 締約国は、国際連合事務総長にあてた文書による通告により、この条約を廃棄することができる。廃棄は、事務総長が通告を受領した日の後1年で効力を生ずる。

2. 第10条の規定に基づき宣言又は通告を為した国は、その後いつでも、国際連合事務総長にあてた通告により、事務総長がその通告を受領した日の後1年でこの条約の適用を関係領域に及ぼすことを終止する旨を宣言することができる。

3. この条約は、廃棄が効力を生ずる前に承認又は執行の手続が開始された仲裁判断については、引き続き適用する。
been instituted before the denunciation takes effect.

Article XIV
A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV
The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:
(a) Signatures and ratifications in accordance with article VIII;
(b) Accessions in accordance with article IX;
(c) Declarations and notifications under articles I, X and XI;
(d) The date upon which this Convention enters into force in accordance with article XII;
(e) Denunciations and notifications in accordance with article XIII.

Article XVI
1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

【訳】公定訳（昭和36年条約第10号）
2. 外国仲裁判断の承認及び執行に関する条約（ニューヨーク、1958年）第2条2及び第7条1の解釈に関する勧告（2006年）

Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958 (2006)

【概要】 本勧告は、2006年7月6日にUNCITRALが採択したもので、電子商取引の利用の拡大、そしてニューヨーク条約よりも有利な仲裁合意の方式、仲裁手続き、仲裁判断の執行を定める各国の制定法や判例法の成立を踏まえて作成された。本勧告は、締約国に対して、ニューヨーク条約第2条2に定める仲裁合意の書面性に関する事情を例示と解して、この規定を適用しようとする促している。また、本勧告は、ニューヨーク条約よりも有利な仲裁判断の承認執行制度を創設するUNCITRAL国際商事仲裁モデル法改正第7条を採択することも推奨しており、ニューヨーク条約第7条1に定める優遇性の原則を確認している。

(西谷祐子)

条 文  訳

The United Nations Commission on International Trade Law,

Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the object of promoting the progressive harmonization and unification of the law of international trade by, inter alia, promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade,

Conscious of the fact that the different legal, social and economic systems of the world, together with different levels of development, are represented in the Commission,

Recalling successive resolutions of the General Assembly reaffirming the mandate of
the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in this field,

Convinced that the wide adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958 \(^1\) has been a significant achievement in the promotion of the rule of law, particularly in the field of international trade,

Recalling that the Conference of Plenipotentiaries which prepared and opened the Convention for signature adopted a resolution, which states, inter alia, that the Conference “considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes”,

Bearing in mind differing interpretations of the form requirements under the Convention that result in part from differences of expression as between the five equally authentic texts of the Convention,

Taking into account article VII, paragraph 1, of the Convention, a purpose of which is to enable the enforcement of foreign arbitral awards to the greatest extent, in particular by recognizing the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention,

Considering the wide use of electronic commerce,
Taking into account international legal instruments, such as the 1985 UNCITRAL Model Law on International Commercial Arbitration, as subsequently revised, particularly with respect to article 7, the UNCITRAL Model Law on Electronic Commerce, the UNCITRAL Model Law on Electronic Signatures and the United Nations Convention on the Use of Electronic Communications in International Contracts,

Taking into account also enactments of domestic legislation, as well as case law, more favourable than the Convention in respect of form requirement governing arbitration agreements, arbitration proceedings and the enforcement of arbitral awards,

Considering that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards,

1. Recommends that article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be applied recognizing that the circumstances described therein are not

のちに改正された1985年の国際商事仲裁に関するUNCITRALモデル法（特に第7条に関する改正）、電子商取引に関するUNCITRALモデル法、電子署名に関するUNCITRALモデル法、国際契約における電子通信の使用に関する国際連合条約などの国際的法律文書を考慮し、

仲裁合意、仲裁判決の執行を規律する方式要件に関して、この条約よりも緩やかな国内立法の制定及び判例法も考慮し、

この条約の解釈に当たっては、仲裁判決の承認及び執行を促進する必要性を顧慮しなければならないことを考慮し、

1. 1958年6月10日にニューヨークで作成された「外国仲裁裁判の承認及び執行に関する条約」第2条2は、そこに規定されている事情が網羅的でないことを認識して適用すべきことを勧告する。

---

3 Ibid., Sixty-first Session, Supplement No. 17 (A/61/17), annex I.
6 General Assembly resolution 60/21, annex.
exhaustive;

2. Recommends also that article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, should be applied to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

【訳】曽野裕夫（北海道大学教授）
高橋麻奈（名古屋大学大学院法学研究科博士後期課程）
B 国際商事仲裁

3. UNCITRAL国際商事仲裁モデル法（1985年）2006年改正版


【概要】本モデル法は、1985年6月21日にUNCITRALが採択し、2006年7月7日に一部改正したもので、各国が国際商事仲裁の特殊性及びその要請に配慮して仲裁法を改正及び現代化できるよう支援することを目的としている。本モデル法は、仲裁合意から、仲裁廷の構成及び権限、裁判所の関与、そして仲裁判断の承認執行に至るまでの仲裁手続のすべての段階を対象としている。本モデル法は、世界中のすべての地域の国家及び異なる政治・経済体制において受け入れられた、国際仲裁実務における重要な共通の準則を反映している。

本モデル法の2006年版においては、第1条(2)、第7条、第35条(2)が改正されているほか、第17条に代えて新しく第4A章が、そして新しく第2A条が追加されている。改正第7条は、国際契約実務によりよく合致するように、仲裁合意の方式要件を現代化している。また、新しい第4A章は、仲裁のための保全措置についてより包括的な規定を置いている。

2016年12月1日現在、73か国（103法域）が本モデル法に基づく立法をしており、日本の仲裁法（平成15年法138号）も、本モデル法に基づくものである。（西谷祐子）

正文

CHAPTER I. GENERAL PROVISIONS

第1章 総則

Article 1. Scope of application

第1条 適用範囲

(1) This Law applies to international

条文訳

1 Article headings are for reference purposes only and are not to be used for purposes of interpretation.

1 各条文の見出しは専ら参考のためであって、解釈のために用いてはならない。
I 仲裁
B. 国際商事仲裁

commercial arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 17 H, 17 I, 17 J, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(Article 1(2) has been amended by the Commission at its thirty-ninth session, in 2006)

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of

The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

2 「商事」という語は、商事的性格のすべての関係から生じる事項を含むように広く解釈しなければならず、契約から生じるか否かを問わない。商事的性格の関係は次の取引を含むが、これに限られない。物品若しくは役務の供給又はこれらの交換のための商取引、販売契約、商事代理、ファクタリング、リース契約、建設工事、コンサルティング、エンジニアリング、ライセンシング、投資、金融、銀行業務、保険、開発契約又はコンセッション、合弁事業その他の形態の産業協力又は業務協力、航空機、船舶、鉄道又は道路による物品又は旅客の運送。
the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this article:
(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
(b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:
(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
(c) "court" means a body or organ of the judicial system of a State;
(d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize
I 仲裁
B. 国際商事仲裁

a third party, including an institution, to make that determination;

(e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Law, other than in articles 25(a) and 32(2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 2 A. International origin and general principles
(As adopted by the Commission at its thirty-ninth session, in 2006)

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

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a

限を与える権利を含む。

(e) この法律の規定において、当事者が合意した事実若しくは合意することができる事実又はその他の方法で当事者の合意に言及している場合、その合意は、当該合意中に言及された仲裁規則を含む。

(f) 第25条(a)及び第43条(2)(a)を除くこの法律の規定が請求について定めている場合、それは反対請求にも適用され、答弁について定めている場合、それは反対請求に対する答弁にも適用される。

第2A条 国際的な起源及び一般原則
(2006年第39会期において委員会により採択された)

(1) この法律の解釈に当っては、その国際的起源及びその適用における統一性の促進の必要性並びに信義誠実の遵守を考慮しなければならない。

(2) この法律が規律する事項であって、この法律に解決が明示されていない問題は、この法律の基礎にある一般原則に従って解決されなければならない。

第3条 書面による通知の受領

(1) 当事者間に別段の合意がない限り、

(a) 書面による通知は、それが名宛人に配達されたとき、又は、その営業所、常居所又は郵送先に配達されたときに、受領されたものとみなす。これらのいずれも、相当な調査によっても分からない場合には、書面による通知は、書留郵便又
written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefore, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]
CHAPTER II.
ARBITRATION AGREEMENT

Option I
Article 7. Definition and form of arbitration agreement
(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data.
interchange (EDI), electronic mail, telegram, telex or telecopy.

(5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

---

Option II

Article 7. Definition of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

“Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced...
or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III.
COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to
agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a
sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge
(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure
(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of
the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).
Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV.

JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be
beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

CHAPTER IV A. INTERIM MEASURES AND PRELIMINARY ORDERS
(As adopted by the Commission at its thirty-ninth session, in 2006)

Section 1. Interim measures

Article 17. Power of arbitral tribunal to order interim measures
(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.
(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:
(a) Maintain or restore the status quo
I 仲裁
B. 国際商事仲裁

pending determination of the dispute;
(b) Take action that would prevent, or refrain
from taking action that is likely to cause,
current or imminent harm or prejudice to
the arbitral process itself;
(c) Provide a means of preserving assets out
of which a subsequent award may be
satisfied; or
(d) Preserve evidence that may be relevant
and material to the resolution of the dispute.

Article 17 A. Conditions for granting interim
measures

(1) The party requesting an interim measure
under article 17(2)(a), (b) and (c) shall satisfy
the arbitral tribunal that:

(a) Harm not adequately reparable by an
award of damages is likely to result if the
measure is not ordered, and such harm
substantially outweighs the harm that is
likely to result to the party against whom
the measure is directed if the measure is
granted; and

(b) There is a reasonable possibility that the
requesting party will succeed on the merits
of the claim. The determination on this
possibility shall not affect the discretion of
the arbitral tribunal in making any
subsequent determination.

(2) With regard to a request for an interim
measure under article 17(2)(d), the
requirements in paragraphs (1)(a) and (b) of
this article shall apply only to the extent the
arbitral tribunal considers appropriate.

(b) 現在の若しくは切迫した損害又は仲
裁手続の妨害を防ぐ行為をすること、又
はそれらを生じさせるおそれのある行
為をやめること
(c) 将来の仲裁判断を実現するために必
要な資産の保全手段を提供すること、又
は
(d) 紛争の解決に関連しかつ重要となり
うる証拠を保全すること

第17A条 暫定保全措置を認めるための要件

(1) 第17条(2)(a)、(b)及び(c)に基づく暫
定保全措置を申し立てる当事者は、次に掲
げる事項を仲裁廷に証明しなければなら
ない。

(a) 暫定的保全措置が命じられなければ、
損害賠償を命じる仲裁判断によっては
十分に償えない損害が生じる可能性が
あり、かつ、その損害が、当該措置が認
められた場合にその名宛人である当事
者に生じうる損害を十分に上回ること、
及び、
(b) 申立人の本案請求が認められる合理
的な可能性があること。但し、かかる可
能性に関する決定は、仲裁廷が後に決定
を行うに際しての裁量に影響を与えな
い。

(2) 第17条(2)(d)に基づく暫定保全措置の
申立てについては、本条(1)(a)及び(b)の
要件は、仲裁廷が適当と判断する場合にの
み適用する。
Section 2. Preliminary orders

Article 17 B. Applications for preliminary orders and conditions for granting preliminary orders

(1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)(a), is the harm likely to result from the order being granted or not.

Article 17 C. Specific regime for preliminary orders

(1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation
thereto.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

(4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

(5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

Section 3. Provisions applicable to interim measures and preliminary orders

Article 17 D. Modification, suspension, termination

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal’s own initiative.

Article 17 E. Provision of security

(1) The arbitral tribunal may require the party requesting an interim measure to provide
Appropriate security in connection with the measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

第17F条 開示

(1) 仲裁廷は、すべての当事者に対し、暫定保全措置が申し立てられ又は認められた基礎に関する事情のいかなる重要な変更も、速やかにこれを開示するよう求めることができる。

(2) 予備保全命令を申し立てた当事者は、仲裁廷に対し、同命令を認めるか否か又は同命令を維持するか否かについての仲裁廷の決定に関連しうるすべての事情を開示しなければならず、この義務は、命令の名宛人となる当事者が自ら反論するための機会を与えられるまで継続する。それ以後は、本条(1)が適用される。

Article 17 F. Disclosure

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal’s determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.

Article 17 G. Costs and damages

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

第17G条 費用及び損害

暫定保全措置又は予備保全命令を申し立てる当事者は、仲裁廷が、事情を照らして当該措置又は当該命令は認められるべきではなかったと事后に判断したときは、当該措置又は当該命令によっていかなる当事者に対して生じたいかなる費用及び損害であっても、これについて責任を負う。仲裁廷は、仲裁手続のいかなる時点においても、かかる費用及び損害の賠償を命じることができる。
Section 4. Recognition and enforcement of interim measures

Article 17 H. Recognition and enforcement

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17 I.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

(3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Article 17 I. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an interim measure is refused if it is necessary to protect the rights of third parties.

3 The conditions set forth in article 17 I are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.

3 第17I条に定められた要件は、裁判所が暫定保全措置を拒否することができる事情の数を限定する趣旨である。ある国がより少ない執行の拒否事由を採用することは、このモデル法の規定が達成しようとする法制度の調和の水準と抵触するものではない。
measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that:

(i) Such refusal is warranted on the grounds set forth in article 36(1)(a)(i), (ii), (iii) or (iv); or

(ii) The arbitral tribunal’s decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

(iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) If the court finds that:

(i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or

(ii) Any of the grounds set forth in article 36(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the
interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

Section 5. Court-ordered interim measures

Article 17 J. Court-ordered interim measures

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

CHAPTER V.
CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power
to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by
a party, any hearing and any award, decision or other communication by the arbitral tribunal.  

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.  

Article 23. Statements of claim and defence  

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.  

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.  

Article 24. Hearings and written proceedings  

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted in any other manner.  

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.  

第 23 条 申立て及び答弁の陳述  

(1) 当事者が合意し又は仲裁廷が決定した期間内に、申立人は、自己の申立ての根拠となる事実、争点及び求める救済について陳述しなければならず、また、被申立人は、これらの事項に関する答弁の陳述をしなければならない。但し、当事者間にかかる陳述の内容について別段の合意がある場合は、この限りでない。当事者は自己の陳述とともに、関連があると認められるすべての書類を提出し、又は後に提出する文書その他の証拠を示すことができる。  

(2) 当事者間に別段の合意がない限り、いずれの当事者も、仲裁手続が行われている間、自己の申立て又は答弁を変更し又は追加することができる。但し、仲裁廷が、その時機に遅れたことを考慮して、かかる変更を許すことが不適当と認める場合は、この限りでない。  

第 24 条 口頭審理及び書面による手続  

(1) 当事者の合意に反しない限り、仲裁廷は、証拠の提出又は弁論のための口頭審理を行うか又は手続を文書その他の資料に基づき行うかを決定しなければならない。但し、当事者が口頭審理を行わない旨を合
on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.
Article 26. Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the
dispute in accordance with such rules of law
as are chosen by the parties as applicable to
the substance of the dispute. Any
designation of the law or legal system of a
given State shall be construed, unless
otherwise expressed, as directly referring to
the substantive law of that State and not to its
conflict of laws rules.

(2) Failing any designation by the parties, the
arbitral tribunal shall apply the law determined
by the conflict of laws rules which it considers
applicable.

(3) The arbitral tribunal shall decide ex aequo
et bono or as amiable compositeur only if the
parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall
decide in accordance with the terms of the
contract and shall take into account the usages
of the trade applicable to the transaction.

Article 29. Decision making by panel of
arbitrators

In arbitral proceedings with more than one
arbitrator, any decision of the arbitral tribunal
shall be made, unless otherwise agreed by the
parties, by a majority of all its members.
However, questions of procedure may be decided
by a presiding arbitrator, if so authorized by the
parties or all members of the arbitral tribunal.

Article 30. Settlement

(1) If, during arbitral proceedings, the parties
settle the dispute, the arbitral tribunal shall
terminate the proceedings and, if requested by
the parties and not objected to by the arbitral
tribunal, record the settlement in the form of

すべきものとして選択した法の規範に従って紛争を解決しなければならない。一定
の国の法律又は法体系のいかなる指定も、
別段の合意が明示されていない限り、その
国の実質法を直接指定したものであって、
その国の抵触規則を指定したものではないと解釈しなければならない。

(2) 当事者による指定がないときは、仲裁
廷は、適用されると認める抵触規則によっ
て決定される法を適用しなければならない。

(3) 仲裁廷は、全当事者の明示の授権があ
る場合に限り、衡平と善により、又は友誼
的仲裁人として判断する。

(4) いかなる場合にも、仲裁廷は契約の条
項に従って判断し、当該取引に適用される
商慣習を考慮しなければならない。

第 29 条 仲裁人の合議体による決定

複数の仲裁人による仲裁手続においては、
仲裁廷のいかなる決定も、当事者間で別段の
合意がない限り、その構成員の過半数による
ものとする。但し、手続問題については、当
事者又は仲裁廷の全構成員によって授権さ
れたときは、仲裁廷の長が決定することができる。

第 30 条 和解

(1) 当事者が仲裁手続において紛争につい
て和解した場合には、仲裁廷は手続を終了
し、かつ全当事者の要請により、仲裁廷に
異議がないときは、その和解を合意に基づ
く仲裁判断の形式で記録しなければなら

39
I. 仲裁  
B. 国際商事仲裁

an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and contents of award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for

(2) 合意に基づく仲裁判断は、第 31 条の規定に従って作成し、かつ、それが仲裁判断である旨を記載しなければならない。かかる仲裁判断は、本案に関する他のいかなる仲裁判断とも同じ地位および効力を有する。

第 31 条 仲裁判断の形式及び内容

(1) 仲裁判断は書面によるものとし、仲裁人が署名しなければならない。複数の仲裁人による仲裁手続においては、仲裁廷の全構成員の過半数の署名があれば足りる。但し、署名のないことについて、その理由を記載しなければならない。

(2) 仲裁判断は、当事者が理由を付すことを要しない旨を合意し、又は仲裁判断が 30 条の合意に基づく仲裁判断である場合を除き、その根拠となる理由を記載しなければならない。

(3) 仲裁判断には、日付及び第 20 条(1)に従って決定された仲裁地を記載しなければならない。仲裁判断は、その地においてなされたものとみなす。

(4) 仲裁判断がなされたときは、本条(1)に従って仲裁人が署名した謄本を各当事者に交付しなければならない。
the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or interpretation requested.
give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.
(a) the party making the application furnishes proof that:
(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or
(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

ができる。

(a) 取消しの申立てをした当事者が次の事由の存在を証明した場合

(i) 第 7 条に定める仲裁合意の当事者が、制限行為能力者であったこと、又はその仲裁合意が、当事者がその準拠法として指定した法律若しくはその指定がなかったときはこの国の法律により有効でないこと、又は

(ii) 取消しの申立てをした当事者が、仲裁人の選任若しくは仲裁手続について適当な通告を受けなかったこと、又はその他の理由により防御することが不可能であったこと、又は

(iii) 仲裁判断が、仲裁付託の条項に定められていない紛争若しくはその条項の範囲内にない紛争に関するものであること又は仲裁に付託された範囲を超える事項に関する判断を含むこと。但し、仲裁に付託された事項に関する判断が、付託されなかった事項に関する判断から区分することができない場合には、仲裁に付託されなかった事項に関する判断を含む仲裁判断の部分のみを取り消すことができる、又は

(iv) 仲裁廷の構成又は仲裁手続が、当事者の合意に従っていなかったこと、又はかかる合意がないときは、この法律に従っていなかったこと。但し、当事者の合意がこの法律の規定のうち、当事者が排除することのできない規定に反している場合は、この限りでない、又は

(b) 裁判所が次の場合を認めた場合
I 仲裁
B. 国际商事仲裁

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the (i) 紛争の対象事項がこの国の法律により仲裁による解決が不可能であること、又は、
(ii) 仲裁判断がこの国の公序に反すること。

(3) 取消しの申立ては、申立てをする当事者が仲裁判断を受領した日から、又は第33条に基づく申立てをしたときは、仲裁廷がその申立てを処理した日から3か月を経過した後は、することができない。

(4) 裁判所は、仲裁判断の取消しを求められた場合において、適当と認めかつ当事者の申立てがあるときは、仲裁廷に仲裁手続の再開の機会を与え、又は、仲裁廷が取消事由を除去するために必要と考えるその他の措置をとるために、その定める期間取消しの手続を停止することができる。

第8章 仲裁判断の承認及び執行

第35条 承認及び執行

(1) 仲裁判断は、それがなされた国のいかんにかかわらず、拘束力あるものとして承認され、管轄を有する仲裁所に対する書面による申立てによって、本条及び第36条の規定に従い、執行されるものとする。

(2) 仲裁判断に依拠し又はその執行を申し立てる当事者は、仲裁判断の原本又はその謄本を提出しなければならない。仲裁判断がこの国の公用語で作成されていないと
Article 35. Translation

(2) The court may request the party to supply a translation thereof into such language.  

(Article 35(2) has been amended by the Commission at its thirty-ninth session, in 2006)

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

4 The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.

4 本項が定める条件は最も厳格な基準を定めることを意図したものである。したがって、ある国がより緩やかな条件を維持することは、このモデル法の規定が達成しようとしている法制度の調和と抵触するものではない。
I 仲裁
B. 国際商事仲裁

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or
enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

3. **UNCITRAL 国際商事仲裁モデル法**

を延期することができ、かつ仲裁判断の承認又は執行を求めている当事者の申立てにより、他方の当事者に対して相当な担保を提供するよう命じることができる。

本翻訳に当たっては、澤田壽夫編『解説 国際取引法令集』（三省堂、1994）[澤田壽夫訳] 438-444 頁及び高桑昭『国際商事仲裁法の研究』（信山社、2000）408-427 頁、また 2006 年改正条文については、三木浩一「UNCITRAL 国際商事仲裁モデル法 2006 年改正の概要（上）」 JCA ジャーナル 54 巻 6 号（2007）2 頁、3-10 頁の訳文をそれぞれ参考にさせていただいた。

【訳】中村達也（國士舘大學教授）
Section I. Introductory rules

Scope of application*

Article 1

1. Where parties have agreed that disputes between them in respect of a defined legal
   relationship are to be settled by arbitration, this Part applies.

* A model arbitration clause for contracts can be found in the annex to the Rules.

* 本規則の附属書に、契約のためのモデル仲裁条項がある。
relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

2. The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.

3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

4. For investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, these Rules include the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (“Rules on Transparency”), subject to article I of the Rules on Transparency.

Notice and calculation of periods of time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its
I 仲裁
B. 国際商事仲裁

transmission.

2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.

3. In the absence of such designation or authorization, a notice is:
   (a) Received if it is physically delivered to the addressee; or
   (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee’s last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee’s electronic address.

2. 宛先が一方当事者により特に指定され、また、仲裁廷により認可されたときにはすべての通知は、当該当事者の当該宛先に送達されるものとする、また、このように送達されたときには、受領されたとみなされるものとする。ファクシミリやEメールなどの電子的手段による送達は、そのように指定されまたは認可された宛先にのみされる。

3. そのような指定や認可がないときには、通知は、
   (a) 名宛人に物理的に配達されたときに、もしくは、
   (b) 名宛人の就業地、常居所もしくは郵便宛先に配達されたときに、受領されたとみなされる。

4. 合理的な努力を尽くした後で、配達が本条第2項または第3項にしたがい実施されなかったときには、通知は、名宛人の最後の知られた就業地、常居所もしくは郵便宛先に、書留郵便または配達記録または試みられた配達の記録を提供する他の手段により送付されたときには、受領されたとみなされる。

5. 通知がそれが本条第2項ないし第4項にしたがい送達され、または、第4項にしたがい送達が試みられた日に受領されたとみなされるものとする。電子的手段によりなされた通知が、そのようになされた仲裁の通知が名宛人の電子アドレスに到達する日に受領されると専ら受領されたとみなされるときは、この限りでない。
6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or nonbusiness days occurring during the running of the period of time are included in calculating the period.

Notice of arbitration

Article 3

1. The party or parties initiating recourse to arbitration (hereinafter called the “claimant”) shall communicate to the other party or parties (hereinafter called the “respondent”) a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following:
   (a) A demand that the dispute be referred to arbitration;
   (b) The names and contact details of the parties;
   (c) Identification of the arbitration agreement that is invoked;
   (d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

第3条 仲裁の通知

1. 仲裁に付託し始める 1 名または複数の当事者（以下、「申立人」という。）は、他の 1 名または複数の当事者（以下、「相手方」以下、「相手方」という。）に対して、仲裁の通知書を送達するものとする。

2. 仲裁手続は、仲裁の通知が相手方ににより受領された日に開始するとみなされるものとする。

3. 仲裁の通知には、以下に掲げる事項を含むものとする：
   (a) 紛争が仲裁に付託されるとの請求
   (b) 当事者の氏名と連絡先の詳細
   (c) 援用される仲裁合意の同一証明
   (d) 紛争が生じた、または、関連する契約書または他の法的文書の同一証明、そのような契約書または文書が存在しないときには、相関関係の簡略な記載
I 仲裁
B. 国際商事仲裁

(e) A brief description of the claim and an indication of the amount involved, if any; (e) 申請の簡略な記載と関連する金額の指示
(f) The relief or remedy sought; (f) 救済方法もしくは求める救済
(g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon. (g) 当事者が事前にそれに同意していないときには、仲裁人の数、言語ならびに仲裁地

4. The notice of arbitration may also include: 4. 仲裁の通知には、また、以下に掲げる事項を含めうる。

(a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1; (a) 第6条第1項に言及される任命機関の指定の提案
(b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1; (b) 第8条第1項に言及される単独の仲裁人の任命の提案
(c) Notification of the appointment of an arbitrator referred to in article 9 or 10. (c) 第9条または第10条に言及される仲裁人の任命の通知

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal. 5. 仲裁廷の構成は、仲裁の通知書の不完全に関する議論により妨げられてはならない。この議論については、仲裁廷により最終的に解決されるものとする。

Response to the notice of arbitration 第4条 仲裁の通知に対する答弁

Article 4 第4条

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include: 1. 仲裁の通知の受領後30日以内に、相手方は、以下に掲げる事項を含む仲裁の通知への答弁書を申立人に送付するものとする。

(a) The name and contact details of each respondent; (a) 各相手方の氏名と連絡の詳細
(b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g). (b) 第3条第3項(c)ないし(g)により仲裁の通知に言及された情報への答弁
2. The response to the notice of arbitration may also include
   (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
   (b) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;
   (c) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
   (d) Notification of the appointment of an arbitrator referred to in article 9 or 10;
   (e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought.
   (f) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent’s failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

**Representation and assistance**

**Article 5**

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all
Designating and appointing authorities

Article 6

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the “PCA”), one of whom would serve as appointing authority.

2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.

3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

4. Except as referred to in article 41, paragraph

第6条 指名かつ任命する機関

1. 当事者が既に任命した機関の選択について合意していなければ、当事者、いつでもハーグ常設裁判所(以下、「PCA」という。)の事務総長を含む、その中1つが任命する機関として業務を行う1つないし複数の施設と人の名前を提案することができる。

2. 前項にしたがってなされた提案が他のすべての当事者による受領後30日以内に、すべての当事者が任命する機関の選択について合意しなかったときには、いかなる当事者もPCAの事務総長に任命機関を指名するよう求めることができる。

3. 本規則が、当事者が任命機関に関する事項に言及しなければならない期限を定めたときに、かつ、いかなる任命機関も合意され、また、指定されなかったときは、その期限は、当事者が任命機関に合意しないも指定する手続きを開始した日から、そのような合意または指定の日まで伸張される。

4. 第41条第4項に言及される場合を除き、
4. if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party’s request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party’s request to do so, any party may request the Secretary-General of the PCA to designate a substitute appointing authority.

5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.

6. When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.
Section II. Composition of the arbitral tribunal

Number of arbitrators

Article 7

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

2. Notwithstanding paragraph 1, if no other parties have responded to a party’s proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

Appointment of arbitrators (articles 8 to 10)

Article 8

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In
making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

(a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;

(b) Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

(c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

(d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

2. If within 30 days after the receipt of a party’s notification of the appointment of an arbitrator the other party has not notified the
I 仲裁
B. 国際商事仲裁

first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8.

Article 10

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.
**Disclosures by and challenge of arbitrators**

*(articles 11 to 13)*

*Article 11*

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

*Article 12*

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

*Article 13*

1. A party that intends to challenge an arbitrator may do so only for reasons of which it becomes aware after the appointment has been made.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

Model statements of independence pursuant to article 11 can be found in the annex to the Rules.

**仲裁判人の開示と忌避（第 11〜13 条）**

*第 11 条*

ある者が仲裁人としてのあり得る任命に関連して申し込まれたときには、その者は、その公平性または独立性に関する正当化される疑問を生じうる状況を開示するものとする。仲裁人は、その者の任命のときから、また、仲裁手続を通じて、当事者または他の仲裁人に遅滞なくそのような状況を開示するものとする。ただし、それらの者がこれらの状況についてその者から知らされていたときには、この限りでない。

*第 12 条*

1. 仲裁人の公平性または独立性に関して正当な疑問を生ずる状況が存在するときは、仲裁人は忌避されうる。

2. 当事者により任命された仲裁人は、任命がなされた後で知り得た理由でのみ、忌避されうる。

3. 仲裁人が行為することを怠り、または、仲裁人の職務を履践することが法律上または事実上不可能な場合には、第 13 条に定められた仲裁人の忌避に関する手続が適用されるものとする。

*第 13 条*

1. 仲裁人を忌避しようとする者は、忌避される
arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

**Replacement of an arbitrator**

**Article 14**

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being challenged.

2. The notice of challenge is sent to the other parties, the challenged arbitrator, and the other arbitrators. The notice of challenge shall state the reasons for the challenge.

3. When an arbitrator is challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

4. If within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

第 14 条 仲裁人のの改選

1. 本条第 2 項の下で、仲裁人が仲裁手続の途中で代替された場合には、代替する仲裁人は、代替された仲裁人の任命と選択に適用される第 8 条ないし第 11 条に定める手続にしたがい任命され、選択されるものとする。この手続は、代替される仲裁人を任命する過程で、当事者が任命する、または、
replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

Repetition of hearings in the event of the replacement of an arbitrator

Article 15

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

Exclusion of liability

Article 16

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the
Section III. Arbitral proceedings

General provisions

Article 17

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties’ dispute.

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

4. All communications to the arbitral tribunal by one party shall be communicated by that
party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

**Place of arbitration**

Article 18

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

**Language**

Article 19

1. Subject to an agreement by the parties, the
I. 仲裁
B. 国際商事仲裁

arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statement of claim

Article 20

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.

2. The statement of claim shall include the following particulars:
   (a) The names and contact details of the parties;
   (b) A statement of the facts supporting the claim;

第 20 条 申立ての陳述

1. 申立人は、仲裁廷により決定された期限内に、相手方および各仲裁人に文書で記載された申立ての陳述書で通知することとする。申立人は、仲裁の通知書が、本条第2項ないし第4項の必要条件にも適合することを条件として、第3条に記載された仲裁の通知を申立ての陳述書として取り扱うことを選択することができる。

2. 申立ての陳述書には、以下の事項を含むものとする。
   (a) 当事者の氏名と詳細な連絡先
   (b) 申立ての根拠となる事実の記載
(c) The points at issue;
(d) The relief or remedy sought;
(e) The legal grounds or arguments supporting the claim.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.

4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Statement of defence
Article 21

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.

2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (art. 20, para. 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified
under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2(f), and a claim relied on for the purpose of a set-off.

Amendments to the claim or defence

Article 22

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Pleas as to the jurisdiction of the arbitral tribunal

Article 23

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement れらについての言及を含むものとする。

4. 答弁の陳述書、もしくは、仲裁手続の最後の段階で、仲裁廷が遅滞の状況の下で正当化されると決定するときには、仲裁廷がそれについて管轄を有することを条件として、相手方は、反対申立てをなし、相殺の目的で申立てに依拠することができる。

第 22 条 申立書と答弁書の補正

仲裁手続の進行中、当事者は、反対申立てまたは相殺を目的とする申立てを含む、その申立書または答弁書を修正しなければならないことができる。ただし、仲裁廷が、それをなすことによる遅滞、他の当事者への損害もしくはその他の状況に鑑み、その修正または補充を許容することが不適切であると考慮するときは、この限りでない。しかし、反対申立てまたは相殺を目的とする申立てを含む、その申立書または答弁書は、修正されまたは補充された申立書または答弁書が仲裁廷の管轄外となるような仕方で修正されまたは補充されえない。

第 23 条 仲裁廷の管轄に関する抗弁

仲裁廷は、仲裁合意の存在または有効性に関する異議を含む、仲裁廷の管轄権について裁判を有するものとする。その目的のために、契約の一部を更正する仲裁条項は、契約の他の条項から独立する合意して取り扱われるものとする。契約が無効で
independent of the other terms of the contract.
A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Further written statements

Article 24

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.
Periods of time

Article 25

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Interim measures

Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
   (a) Maintain or restore the status quo pending determination of the dispute;
   (b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
   (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
   (d) Preserve evidence that may be relevant and material to the resolution of the dispute.

3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:

   (a) 紛争の決定の継続中、現状を維持し、または、回復すること
   (b) (i) 現時のかつ甚大な損害、または、(ii) 仲裁手続そのものへの侵害、を引き起す恐れのある行為をなすことを阻止し、または、差し控える手段を講ずること
   (c) その後の仲裁判断が履行確保されうる財産を保存する手段を提供すること
   (d) 紛争解決に関連するまた重要でありうる証拠を保存すること

   前項(a) ないし(c) の下で仮の措置を求める当事者は、以下に掲げる事項を仲裁廷に得心させるものとする。
(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal’s own initiative.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the
circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Evidence

Article 27

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.

2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.

4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Hearings

Article 28
1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.

3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Experts appointed by the arbitral tribunal

Article 29

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert’s terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the
I 仲裁
B. 国際商事仲裁

time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert’s qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert’s appointment, a party may object to the expert’s qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

4. Upon receipt of the expert’s report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28
shall be applicable to such proceedings.

**Default**

**Article 30**

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

   (a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;

   (b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant’s allegations; the provisions of this subparagraph also apply to a claimant’s failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence.
Closure of hearings
Article 31
1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Waiver of right to object
Article 32
A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Section IV. The award
Decisions
Article 33
1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when
there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and effect of the award

Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.

2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Applicable law, amiable compositeur

第 34 条 仲裁判断の形式と効力

1. 仲裁廷は、異なる争点について、異なる時点で、別個の仲裁判断をなし得る。

2. すべての仲裁判断は、文書で作成され、両当事者に終局的であり、かつ、拘束力を有するものとする。両当事者は、遅滞なく、すべての仲裁判断を履行するものとする。

3. 仲裁廷は、仲裁判断が根拠とする理由を記載するものとする。ただし、両当事者がいかなる理由も与えられないことに合意したときは、この限りでない。

4. 仲裁判断書は、仲裁人により署名されるものとし、また、仲裁判断がなされた日を含み、また、仲裁地を明示するものとする。複数の仲裁人が存在し、かつ、その内のある者が署名できないときには、仲裁判断書には、署名の欠如の理由を記載するものとする。

5. 仲裁判断は、すべての当事者の合意に基づき、もしくは、その開示が、権利を保護し訴求するために、または、裁判所または権限を有する官庁の面前での法的手続に関連して、法的な義務を有するある当事者に求められている場合とその範囲において、公開される。

6. 仲裁人により署名された仲裁判断書の謄本は、仲裁廷により両当事者に送付されるものとする。
Article 35

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.

2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Settlement or other grounds for termination

Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall
have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5, shall apply.

Interpretation of the award
Article 37
1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

Correction of the award
Article 38
1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

2. The arbitral tribunal may within 30 days
I 仲裁
B. 国際商事仲裁

after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

Additional award

Article 39

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 6, shall apply.

Definition of costs

Article 40

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

2. The term “costs” includes only:
(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;

(b) The reasonable travel and other expenses incurred by the arbitrators;

(c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.

3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

Fees and expenses of arbitrators

Article 41

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining

(a) 第 41 条にしたがい、各仲裁人に関し
て別個に定められるべき、また、仲裁廷
自体により定められるべき仲裁廷の料
金

(b) 仲裁人により負担された相当な旅費
および他の費用

(c) 仲裁廷により求められた鑑定意見お
よび他の扶助の相当な費用

(d) 仲裁廷によりそのような費用が是認
される範囲で、証人の旅費および他の費
用

(e) 仲裁廷が、その費用額が相当であると
決定する範囲で、仲裁に関連して当事者
により負担された法律上および他の費
用

(f) 常設裁判所の事務総局の料金と費用
と同様に任命する機関の料金と費用

第 37 条ないし第 39 条の下で仲裁判断の
解釈、構成または追完に関連して、仲裁廷
は本条第 2 項 (b) ないし (f) に言及された費
用を負担させることができるか、いかなる
追加的料金も課することはできない。

1. 仲裁人の料金と費用は、紛争の金額、事項の複雑さ、仲裁人により消費された時間および事件の関連する他のすべての状況を考慮して、金額において相当であるものとする。

2. 任命機関が存在するとき、かつ、任命機関が国際的な事件における仲裁人のための報酬を決定するための図式または特別
the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.

3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

4.

(a) When informing the parties of the arbitrators’ fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;

(b) Within 15 days of receiving the arbitral tribunal’s determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Secretary-General of the PCA;
(c) If the appointing authority or the Secretary-General of the PCA finds that the arbitral tribunal’s determination is inconsistent with the arbitral tribunal’s proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal’s determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;

(d) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of article 38, paragraph 3, shall apply.

5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal’s fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal’s fees and expenses.

**Allocation of costs**

**Article 42**

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion

---

(d) 任命機関または常設裁判所の事務局長が、仲裁廷の決定は本条第3項の下で仲裁機関の提案(または、それの再調整)とは一致していない、もしくは、他の理由で明らかに過度であると認定するときには、その要請書の受領後45日以内に、仲裁廷の決定は本条第1項の基準を満たすために必要な何らかの調整をなすものとする。すべてのそのような調整は、仲裁廷に拘束力有するものとする。

(d) すべてのそのような調整は、仲裁廷によりその仲裁判断書に包含されるか、または、仲裁判断書がすでに出されたときには、第38条第3項の手続が適用される仲裁判断の更正で実施されるかの、どちらかであるものとする。

5. 本条第3項および第4項の下での手続を通じて、仲裁廷は第17条第1項にしたがい、仲裁の手続をなすものとする。

6. 本条第4項の下での要請は、仲裁廷の報酬と費用以外に、仲裁判断の決定に影響してはならない。また、仲裁廷の報酬と費用の決定に関する以外に、仲裁判断のすべての部分の承認と執行を遅滞させてはならない。

**第42条 費用の割当**

1. 仲裁の費用は、原則として、不成功に終わった当事者により負担されるものとする。しかし、仲裁廷は、事件の状況を考慮
each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Deposit of costs
Article 43

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a) to (c).

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the
4. UNCITRAL 仲裁規則

suspension or termination of the arbitral proceedings.
5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Annex

Model arbitration clause for contracts

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.

Note. Parties should consider adding:

(a) The appointing authority shall be ... [name of institution or person];
(b) The number of arbitrators shall be ... [one or three];
(c) The place of arbitration shall be ... [town and country];
(d) The language to be used in the arbitral proceedings shall be ...

Possible waiver statement

Note. If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an

可能な放棄の記載

註. 当事者が準拠法の下で利用できる、仲裁判断に対する救済を排除することを望むときは、その排除の有効性と条件が準拠法に依存していることを考慮して、以下に示唆するようなそのための規定を付加することを考慮することができる。
exclusion depend on the applicable law.

Waiver

The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

Model statements of independence pursuant to article 11 of the Rules

No circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

Circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to article 11 of the UNCITRAL Arbitration Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to

84
my attention during this arbitration.

*Note. Any party may consider requesting from the arbitrator the following addition to the statement of independence:*

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

【訳】矢澤昇治（専修大学教授）
C 投資仲裁

5. 条約に基づく投資家対国家仲裁の透明性に関する国際連合条約（ニューヨーク、2014年）（モーリシャス透明性条約）


【概要】「条約に基づく投資家対国家仲裁の透明性に関する国際連合条約」（モーリシャス透明性条約）は、2014年4月1日までに締結された投資条約の当事国が「条約に基づく投資家対国家仲裁の透明性に関するUNCITRAL規則」（透明性規則）の適用に同意することを表明する条約である。本条約は、2014年12月10日に国連総会で採択され、2015年3月17日にポートルイス市（モーリシャス）で署名のために開放された。2016年12月1日に現在未発効であり、日本は署名・締結をしていない。

2014年4月1日から効力を有する透明性規則は、投資条約に基づく投資家と国家の間の仲裁（投資家対国家仲裁）に関する情報を公開するための手続規則である。透明性規則は、2014年4月1日より前に締結された投資条約に基づく投資家対国家仲裁に関しては、ときに投資条約の当事国がその適用に合意する場合に適用される。本条約は、かかる合意を行うための効率的かつ柔軟性のある仕組みである。

本条約は、透明性に関する義務に関して、2014年4月1日より前に締結された既存の投資条約を補完するものである。本条約の中核的な規定である第2条が、本条約の適用範囲内の投資家対国家仲裁に透明性規則が適用される場合と方法を定めている。同条第1項（二国間または多数国間での適用）は、被申立国と申立人の国の本条約の当事国である場合についての一般的な適用ルールを規定し、同条第2項（適用の一方的な申し出）は、被申立国だけが本条約の当事国である場合（申立人である投資家の国が当事国でない場合）の透明性規則の適用を定める。投資仲裁がUNCITRAL仲裁規則に基づいて開始されているか否かは、本条約の適用に影響を与えない。（高杉直）

正本文

条文訳

Preamble

The Parties to this Convention, この条約の当事国は、
Recognizing the value of arbitration as a method of settling disputes that may arise in the context of international relations, and the extensive and wide-ranging use of arbitration for the settlement of investor-State disputes,

Also recognizing the need for provisions on transparency in the settlement of treaty-based investor-State disputes to take account of the public interest involved in such arbitrations,

Believing that the Rules on Transparency in Treaty-based Investor-State Arbitration adopted by the United Nations Commission on International Trade Law on 11 July 2013 (“UNCITRAL Rules on Transparency”), effective as of 1 April 2014, would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international investment disputes,

Noting the great number of treaties providing for the protection of investments or investors already in force, and the practical importance of promoting the application of the UNCITRAL Rules on Transparency to arbitration under those already concluded investment treaties,

Noting also article 1(2) and (9) of the UNCITRAL Rules on Transparency,

Have agreed as follows:

Article 1. Scope of application
1. This Convention applies to arbitration between an investor and a State or a regional economic integration organization conducted on the basis of an investment treaty concluded before 1 April 2014 (“investor-State arbitration”).

条約に基づく投資家対国家仲裁における公益を考慮するために投資家対国家紛争処理における透明性に関する規定が必要であることをも認め、国際連合国際商取引法委員会が採択し、2014年4月1日に発効した、条約に基づく投資家対国家仲裁における透明性に関する規則（「UNCITRAL透明性規則」）が、国際投資紛争の公正かつ効率的な処理のための調和された法的枠組を設立するために多大な貢献をなすであろうことを信じ、

投資又は投資家の保護を定める条約であって既に発効しているものが多大な数に上ること、及びこれら既に締結されている投資条約に基づく仲裁へのUNCITRAL透明性規則の適用を促進することが実践的に重要であることに留意し、UNCITRAL透明性規則第1条第2項および第9項にも留意し、次のとおり協定した。

第1条 適用範囲
1. この条約は、2014年4月1日より前に締結された投資条約に基づいて投資家と国家又は地域的な経済統合のための機関との間でなされる仲裁（以下、「投資家対国家仲裁」という。）に適用する。
2. The term “investment treaty” means any bilateral or multilateral treaty, including any treaty commonly referred to as a free trade agreement, economic integration agreement, trade and investment framework or cooperation agreement, or bilateral investment treaty, which contains provisions on the protection of investments or investors and a right for investors to resort to arbitration against contracting parties to that investment treaty.

II. 仲裁
C. 投資仲裁

2. 「投資条約」とは、一般に自由貿易協定、経済統合協定、貿易投資枠組若しくは協力協定又は二国間投資条約と呼ばれる条約であって、投資又は投資家の保護に関する規定及び投資家が当該条約当事者に対して仲裁を申し立てる権利を含むものをいう。

Article 2. Application of the UNCITRAL Rules on Transparency

Bilateral or multilateral application

1. The UNCITRAL Rules on Transparency shall apply to any investor-State arbitration, whether or not initiated under the UNCITRAL Arbitration Rules, in which the respondent is a Party that has not made a relevant reservation under article 3(1)(a) or (b), and the claimant is of a State that is a Party that has not made a relevant reservation under article 3(1)(a).

Unilateral offer of application

2. Where the UNCITRAL Rules on Transparency do not apply pursuant to paragraph 1, the UNCITRAL Rules on Transparency shall apply to an investor-State arbitration, whether or not initiated under the UNCITRAL Arbitration Rules, in which the respondent is a Party that has not made a reservation relevant to that investor-State arbitration under article 3(1), and the claimant agrees to the application of the UNCITRAL

第2条 UNCITRAL 透明性規則の適用

二国間又は多数国間での適用

1. UNCITRAL 透明性規則は、被申立国が第3条第1項(a)又は(b)に基づく関連する留保を付していない当事国であり、かつ、申立人の国が第3条第1項(a)に基づく関連する留保を付していない当事国である場合に、UNCITRAL仲裁規則により申し立てられたものであるか否かを問わず、あらゆる投資家対国家仲裁に適用する。

適用の一方的な申し出

2. UNCITRAL 透明性規則が第1項に従い適用されない場合は、UNCITRAL 透明性規則は、被申立国が第3条第1項に基づく関連する留保を付していない当事国であり、かつ、申立人が UNCITRAL 透明性規則の適用に同意するときに、UNCITRAL仲裁規則により申し立てられたものであるか否かを問わず、あらゆる投資家対国家仲裁に適用する。
Rules on Transparency.

Applicable version of the UNCITRAL Rules on Transparency

3. Where the UNCITRAL Rules on Transparency apply pursuant to paragraph 1 or 2, the most recent version of those Rules as to which the respondent has not made a reservation pursuant to article 3(2) shall apply.

Article 1(7) of the UNCITRAL Rules on Transparency

4. The final sentence of article 1(7) of the UNCITRAL Rules on Transparency shall not apply to investor-State arbitrations under paragraph 1.

Most favoured nation provision in an investment treaty

5. The Parties to this Convention agree that a claimant may not invoke a most favoured nation provision to seek to apply, or avoid the application of, the UNCITRAL Rules on Transparency under this Convention.

Article 3. Reservations

1. A Party may declare that:

(a) It shall not apply this Convention to investor-State arbitration under a specific investment treaty, identified by title and name of the contracting parties to that investment treaty;

(b) Article 2(1) and (2) shall not apply to investor-State arbitration conducted using a specific set of arbitration rules or
procedures other than the UNCITRAL Arbitration Rules, and in which it is a respondent;

(c) Article 2(2) shall not apply in investor-State arbitration in which it is a respondent.

2. In the event of a revision of the UNCITRAL Rules on Transparency, a Party may, within six months of the adoption of such revision, declare that it shall not apply that revised version of the Rules.

3. Parties may make multiple reservations in a single instrument. In such an instrument, each declaration made:

(a) In respect of a specific investment treaty under paragraph (1)(a);
(b) In respect of a specific set of arbitration rules or procedures under paragraph (1)(b);
(c) Under paragraph (1)(c); or
(d) Under paragraph (2);
shall constitute a separate reservation capable of separate withdrawal under article 4(6).

4. No reservations are permitted except those expressly authorized in this article.

Article 4. Formulation of reservations

1. Reservations may be made by a Party at any time, save for a reservation under article 3(2).

2. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously.
with the entry into force of this Convention in respect of the Party concerned.

3. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto shall take effect simultaneously with the entry into force of this Convention in respect of the Party concerned.

4. Except for a reservation made by a Party under article 3(2), which shall take effect immediately upon deposit, a reservation deposited after the entry into force of the Convention for that Party shall take effect twelve months after the date of its deposit.

5. Reservations and their confirmations shall be deposited with the depositary.

6. Any Party that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect upon deposit.

Article 5. Application to investor-State arbitrations

This Convention and any reservation, or withdrawal of a reservation, shall apply only to investor-State arbitrations that are commenced after the date when the Convention, reservation, or withdrawal of a reservation, enters into force or takes effect in respect of each Party concerned.

Article 6. Depositary

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

Article 7. Signature, ratification, acceptance,
approval, accession

1. This Convention is open for signature in Port Louis, Mauritius, on 17 March 2015, and thereafter at United Nations Headquarters in New York by any (a) State; or (b) regional economic integration organization that is constituted by States and is a contracting party to an investment treaty.

2. This Convention is subject to ratification, acceptance or approval by the signatories to this Convention.

3. This Convention is open for accession by all States or regional economic integration organizations referred to in paragraph 1 which are not signatories as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 8. Participation by regional economic integration organizations

1. When depositing an instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall inform the depositary of a specific investment treaty to which it is a contracting party, identified by title and name of the contracting parties to that investment treaty.

2. When the number of Parties is relevant in this Convention, a regional economic integration organization does not count as a Party in addition to its member States which are Parties.

Article 8. 参与地域経済統合機関

1. 批准書、受諾書、承認書又は加入書を寄託する際に、地域経済統合のための機関は、寄託者に、当該地域経済統合のための機関が当事者となっている投資条約（当該投資条約の名称及び当事国名により特定される。）を通告する。

2. この条約において当事国の数が関連する場合、地域経済統合のための機関は、当該地域経済統合のための機関の構成国である当事国に加えて算入されない。
Article 9. Entry into force
1. This Convention shall enter into force six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.
2. When a State or a regional economic integration organization ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State or regional economic integration organization six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 10. Amendment
1. Any Party may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Parties to this Convention with a request that they indicate whether they favour a conference of Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.
2. The conference of Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the

第9条 発効
1. この条約は、第3番目の批准書、受諾書、承認書又は加入書が寄託された日の後6か月で効力を生ずる。
2. いずれかの国家又は地域的な経済統合のための機関が、第3番目の批准書、受諾書、承認書又は加入書が寄託の後に、この条約を批准し、受諾し、承認し、又はこれに加入する場合には、本条約は、当該国又は地域的な経済統合のための機関の批准書、受諾書、承認書又は加入書が寄託された日の後6か月で、当該国又は地域的な経済統合のための機関について効力を生ずる。

第10条 改正
1. いずれの当事国も、本条約の改正を、国際連合事務総長に改正案を提出することにより、提案することができる。当事務総長は、直ちに、本条約の当事国に対し、その改正案を送付するものとし、当事務総長は、直接に、本条約の当事国に対し、その改正案を送付するものとし、当事務総長は、直接に、本条約の当事国に対しての賛否を示すよう請求する。その送付の日から後4箇月以内に当事国の3分の1以上がそのような会議の開催に賛成する場合には、当事務総長は国際連合の主催の下に会議を招集する。
2. 当事国会議は、各改正案につき、コンセンサス方式により合意に達するようあらゆる努力を払う。コンセンサスのためのあらゆる努力にもかかわらずコンセンサス
amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the Parties present and voting at the conference.

3. An adopted amendment shall be submitted by the Secretary-General of the United Nations to all the Parties for ratification, acceptance or approval.

4. An adopted amendment enters into force six months after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those Parties which have expressed consent to be bound by it.

5. When a State or a regional economic integration organization ratifies, accepts or approves an amendment that has already entered into force, the amendment enters into force in respect of that State or that regional economic integration organization six months after the date of the deposit of its instrument of ratification, acceptance or approval.

6. Any State or regional economic integration organization which becomes a Party to the Convention after the entry into force of the amendment shall be considered as a Party to the Convention as amended.

Article 11. Denunciation of this Convention

1. A Party may denounce this Convention at any time by means of a formal notification addressed to the depositary. The denunciation shall take effect twelve months after the notification is received by the depositary.

第 11 条 本条約の廃棄

1. 当事国は、いつでも、寄託者に宛てた正式の通告により、本条約を廃棄することができる。廃棄は、寄託者がその通告を受領した後12か月で効力を生ずる。
2. This Convention shall continue to apply to investor-State arbitrations commenced before the denunciation takes effect.

DONE 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 the present Convention.

【訳】濵本正太郎（京都大学教授）
6. 条約に基づく投資家対国家仲裁の透明性に関するUNCITRAL規則（透明性規則）

UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration

【概要】「条約に基づく投資家対国家仲裁の透明性に関するUNCITRAL規則」（透明性規則）は、投資条約に基づく投資家と国家の間の仲裁（投資家対国家仲裁）について情報を公開して、透明性を提供するための手続規則である。2013年7月11日にUNCITRALが採択し、2014年4月1日に発効した。

透明性規則は、2014年4月1日以前に締結された投資条約に従って申し立てられた投資家対国家仲裁に関しては、それがUNCITRAL仲裁規則に基づく申し立てであって、その投資条約の当事国または紛争の両当事者が透明性規則の適用に合意する場合に適用される。2014年4月1日以降に締結される投資条約に従って申し立てられる投資家対国家仲裁の関係では、それがUNCITRAL仲裁規則に基づく申し立てであれば、当事国による別段の合意があるときを除き、透明性規則が適用される。UNCITRAL仲裁規則以外の規則に基づいて申し立てられる投資家対国家仲裁やアドホックな投資家対国家仲裁においても、透明性規則の利用が可能である。

透明性規則の適用とUNCITRAL仲裁規則との関連を考慮し、UNCITRAL仲裁規則の改定版（2013年に採択された第1条第4項付）が、2014年4月1日から効力を有している。この改定（すなわち新たな第1条第4項の挿入）は、透明性規則をUNCITRAL仲裁規則に明確に組み入れるものである。

透明性規則に基づき公開されるべき情報は、UNCITRALウェブサイトを通じて公表される。（高杉直）

正文

条文

第1条 適用範囲

第1条　適用可能性

Article 1. Sphere of application

Applicability of the Rules
investments or investors ("treaty")* concluded on or after 1 April 2014 unless the Parties to the treaty** have agreed otherwise.

2. In investor-State arbitrations initiated under the UNCITRAL Arbitration Rules pursuant to a treaty concluded before 1 April 2014, these Rules shall apply only when:

(a) The parties to an arbitration (the "disputing parties") agree to their application in respect of that arbitration; or

(b) The Parties to the treaty or, in the case of a multilateral treaty, the State of the claimant and the respondent State, have agreed after 1 April 2014 to their application.

Application of the Rules

3. In any arbitration in which the Rules on Transparency apply pursuant to a treaty or to an agreement by the Parties to that treaty:

(a) The disputing parties may not derogate

*For the purposes of the Rules on Transparency, a “treaty” shall be understood broadly as encompassing any bilateral or multilateral treaty that contains provisions on the protection of investments or investors and a right for investors to resort to arbitration against Parties to the treaty, including any treaty commonly referred to as a free trade agreement, economic integration agreement, trade and investment framework or cooperation agreement, or bilateral investment treaty.

** For the purposes of the Rules on Transparency, any reference to “Party to the treaty” or “State” includes, for example, a regional economic integration organization where it is a Party to the treaty.
from these Rules, by agreement or otherwise, unless permitted to do so by the treaty;

(b) The arbitral tribunal shall have the power, besides its discretionary authority under certain provisions of these Rules, to adapt the requirements of any specific provision of these Rules to the particular circumstances of the case, after consultation with the disputing parties, if such adaptation is necessary to conduct the arbitration in a practical manner and is consistent with the transparency objective of these Rules.

Discretion and authority of the arbitral tribunal

4. Where the Rules on Transparency provide for the arbitral tribunal to exercise discretion, the arbitral tribunal in exercising such discretion shall take into account:

(a) The public interest in transparency in treaty-based investor-State arbitration and in the particular arbitral proceedings; and

(b) The disputing parties’ interest in a fair and efficient resolution of their dispute.

5. These Rules shall not affect any authority that the arbitral tribunal may otherwise have under the UNCITRAL Arbitration Rules to conduct the arbitration in such a manner as to promote transparency, for example by accepting submissions from third persons.

6. In the presence of any conduct, measure or other action having the effect of wholly undermining the transparency objectives of these Rules, the arbitral tribunal shall ensure that those objectives prevail.
6. 透明性規則

**Applicable instrument in case of conflict**

7. Where the Rules on Transparency apply, they shall supplement any applicable arbitration rules. Where there is a conflict between the Rules on Transparency and the applicable arbitration rules, the Rules on Transparency shall prevail. Notwithstanding any provision in these Rules, where there is a conflict between the Rules on Transparency and the treaty, the provisions of the treaty shall prevail.

8. Where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the disputing parties cannot derogate, that provision shall prevail.

**Application in non-UNCITRAL arbitrations**

9. These Rules are available for use in investor-State arbitrations initiated under rules other than the UNCITRAL Arbitration Rules or in ad hoc proceedings.

---

**第2条 仲裁手続開始時における情報公開**

99
treaty under which the claim is being made.

Article 3. Publication of documents
1. Subject to article 7, the following documents shall be made available to the public: the notice of arbitration, the response to the notice of arbitration, the statement of claim, the statement of defence and any further written statements or written submissions by any disputing party; a table listing all exhibits to the aforesaid documents and to expert reports and witness statements, if such table has been prepared for the proceedings, but not the exhibits themselves; any written submissions by the non-disputing Party (or Parties) to the treaty and by third persons, transcripts of hearings, where available; and orders, decisions and awards of the arbitral tribunal.

2. Subject to article 7, expert reports and witness statements, exclusive of the exhibits thereto, shall be made available to the public, upon request by any person to the arbitral tribunal.

3. Subject to article 7, the arbitral tribunal may decide, on its own initiative or upon request from any person, and after consultation with the disputing parties, whether and how to make available exhibits and any other documents provided to, or issued by, the arbitral tribunal not falling within paragraphs 1 or 2 above. This may include, for example, making such documents available at a specified site.
4. The documents to be made available to the public pursuant to paragraphs 1 and 2 shall be communicated by the arbitral tribunal to the repository referred to under article 8 as soon as possible, subject to any relevant arrangements or time limits for the protection of confidential or protected information prescribed under article 7. The documents to be made available pursuant to paragraph 3 may be communicated by the arbitral tribunal to the repository referred to under article 8 as they become available and, if applicable, in a redacted form in accordance with article 7. The repository shall make all documents available in a timely manner, in the form and in the language in which it receives them.

5. A person granted access to documents under paragraph 3 shall bear any administrative costs of making those documents available to that person, such as the costs of photocopying or shipping documents to that person, but not the costs of making those documents available to the public through the repository.

Article 4. Submission by a third person

1. After consultation with the disputing parties, the arbitral tribunal may allow a person that is not a disputing party, and not a non-disputing Party to the treaty (“third person(s)”), to file a written submission with the arbitral tribunal regarding a matter within the scope of the dispute.

2. A third person wishing to make a submission shall apply to the arbitral tribunal, and shall, in a concise written statement, which is in a
language of the arbitration and complies with any page limits set by the arbitral tribunal:

(a) Describe the third person, including, where relevant, its membership and legal status (e.g., trade association or other non-governmental organization), its general objectives, the nature of its activities and any parent organization (including any organization that directly or indirectly controls the third person);

(b) Disclose any connection, direct or indirect, which the third person has with any disputing party;

(c) Provide information on any government, person or organization that has provided to the third person (i) any financial or other assistance in preparing the submission; or (ii) substantial assistance in either of the two years preceding the application by the third person under this article (e.g. funding around 20 per cent of its overall operations annually);

(d) Describe the nature of the interest that the third person has in the arbitration; and

(e) Identify the specific issues of fact or law in the arbitration that the third person wishes to address in its written submission.

3. In determining whether to allow such a submission, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant:

(a) Whether the third person has a significant interest in the arbitral proceedings; and

(b) The extent to which the submission is relevant to the case.
would assist the arbitral tribunal in the determination of a factual or legal issue related to the arbitral proceedings by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties.

4. The submission filed by the third person shall:
   (a) Be dated and signed by the person filing the submission on behalf of the third person;
   (b) Be concise, and in no case longer than as authorized by the arbitral tribunal;
   (c) Set out a precise statement of the third person’s position on issues; and
   (d) Address only matters within the scope of the dispute.

5. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

6. The arbitral tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the third person.

Article 5. Submission by a non-disputing Party to the treaty

1. The arbitral tribunal shall, subject to paragraph 4, allow, or, after consultation with the disputing parties, may invite, submissions on issues of treaty interpretation from a non-disputing Party to the treaty.

第5条 非紛争当事者たる条約当事国による文書提出

1. 仲裁廷は、第4項の規定が適用されるところを条件として、非紛争当事者たる条約当事国が条約解釈に関する事項を扱う文書を提出することを認めなければならず、又は紛争当事者と協議した上で、そのような文書を提出することを非紛争当事者たる
2. The arbitral tribunal, after consultation with the disputing parties, may allow submissions on further matters within the scope of the dispute from a non-disputing Party to the treaty. In determining whether to allow such submissions, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant, the factors referred to in article 4, paragraph 3, and, for greater certainty, the need to avoid submissions which would support the claim of the investor in a manner tantamount to diplomatic protection.

3. The arbitral tribunal shall not draw any inference from the absence of any submission or response to any invitation pursuant to paragraphs 1 or 2.

4. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

5. The arbitral tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by a non-disputing Party to the treaty.

Article 6. Hearings

1. Subject to article 6, paragraphs 2 and 3, hearings for the presentation of evidence or for oral argument (“hearings”) shall be public.

2. Where there is a need to protect confidential information or the integrity of the arbitral process pursuant to article 7, the arbitral
tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.

3. The arbitral tribunal shall make logistical arrangements to facilitate the public access to hearings (including where appropriate by organizing attendance through video links or such other means as it deems appropriate). However, the arbitral tribunal may, after consultation with the disputing parties, decide to hold all or part of the hearings in private where this becomes necessary for logistical reasons, such as when the circumstances render any original arrangement for public access to a hearing infeasible.

Article 7. Exceptions to transparency

Confidential or protected information

1. Confidential or protected information, as defined in paragraph 2 and as identified pursuant to the arrangements referred to in paragraphs 3 and 4, shall not be made available to the public pursuant to articles 2 to 6.

2. Confidential or protected information consists of:
   (a) Confidential business information;
   (b) Information that is protected against being made available to the public under the treaty;
   (c) Information that is protected against being made available to the public, in the case of the information of the respondent State, under the law of the respondent State, and in the case of other information, under

第7条 透明性の例外

秘匿情報又は保護される情報

1. 第2項に定義され、第3項および第4項に定める方法により特定される秘匿情報又は保護される情報は、第2条ないし第6条に基づいて公衆が利用できるようにされなくてはならない。

2. 秘密情報又は保護される情報は、以下のものからなる。
   (a) 業務上の秘匿情報
   (b) 条約により公衆への公開から保護されている情報
   (c) 被申立国に関する情報については、当該被申立国の国内法により一般への公開から保護されている情報及び、それ以外の情報については、そのような情報の開示に適用されると仲裁廷が判断する
any law or rules determined by the arbitral tribunal to be applicable to the disclosure of such information; or

(d) Information the disclosure of which would impede law enforcement.

3. The arbitral tribunal, after consultation with the disputing parties, shall make arrangements to prevent any confidential or protected information from being made available to the public, including by putting in place, as appropriate:

(a) Time limits in which a disputing party, non-disputing Party to the treaty or third person shall give notice that it seeks protection for such information in documents;

(b) Procedures for the prompt designation and redaction of the particular confidential or protected information in such documents; and

(c) Procedures for holding hearings in private to the extent required by article 6, paragraph 2.

Any determination as to whether information is confidential or protected shall be made by the arbitral tribunal after consultation with the disputing parties.

4. Where the arbitral tribunal determines that information should not be redacted from a document, or that a document should not be prevented from being made available to the public, any disputing party, non-disputing Party to the treaty or third person that voluntarily introduced the document into the record shall be permitted to withdraw all or part of the document from the record of the
arbitral proceedings.

5. Nothing in these Rules requires a respondent State to make available to the public information the disclosure of which it considers to be contrary to its essential security interests.

Integrity of the arbitral process

6. Information shall not be made available to the public pursuant to articles 2 to 6 where the information, if made available to the public, would jeopardize the integrity of the arbitral process as determined pursuant to paragraph 7.

7. The arbitral tribunal may, on its own initiative or upon the application of a disputing party, after consultation with the disputing parties where practicable, take appropriate measures to restrain or delay the publication of information where such publication would jeopardize the integrity of the arbitral process because it could hamper the collection or production of evidence, lead to the intimidation of witnesses, lawyers acting for disputing parties or members of the arbitral tribunal, or in comparably exceptional circumstances.

Article 8. Repository of published information

The repository of published information under the Rules on Transparency shall be the Secretary-General of the United Nations or an institution named by UNCITRAL.

第8条 公開される情報の寄託所

本規則に基づいて公開される情報の寄託所は、国連事務総長又は UNCITRAL により指定される機関のいずれかとする。

【訳】濵本正太郎（京都大学教授）
D 調 停

7. UNCITRAL国際商事調停モデル法（2002年）

【概要】UNCITRALは、調停の手続規則を定める「UNCITRAL調停規則」を1980年に採択していた。しかし、これは紛争当事者の合意があって初めて適用されるものであった、法制度の調和を図るものではなかった。そこで、UNCITRALが各国における国際商事調停に関する法制度の国際的調和を図るために作成したのが、「国際商事調停に関するUNCITRALモデル法」（2002年）である。

本モデル法は、調停の開始から終了までの手続について定めるものであり、大部分が任意規定である。具体的には、調停人の選任、調停手続の開始と終了、調停人の行動に関する規律、秘密保持、他の手続における証拠の証容性、調停人による仲裁人としての活動の禁止、仲裁や訴訟の開始の制限、和解合意の執行力について規定している。また、オプショナルな規定として、調停手続開始による時効期間の進行停止についても規定を置いてい る。

2016年12月1日現在、16か国（28の法域）が、このモデル法に基づく国内立法を行っているが、日本は現在のところ本モデル法に基づく国内立法を行っていない。（曽野裕夫）
Article 1. Scope of application and definitions

1. This Law applies to international commercial conciliation.

2. For the purposes of this Law, “conciliator” means a sole conciliator or two or more conciliators, as the case may be.

3. For the purposes of this Law, “conciliation” means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons (“the

---

1 States wishing to enact this Model Law to apply to domestic as well as international conciliation may wish to consider the following changes to the text:

- Delete the word “international” in paragraph 1 of article 1; and
- Delete paragraphs 4, 5 and 6 of article 1.

2 The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

2 「商事」という語は、契約から生じるものであるか否かを問わず、商事的性格を有するすべての関係から生じる事項を包含するよう、広く解釈されなければならない。商事的性格を有する関係には、以下の諸取引を含むが、これらに限られるわけではない。物品または役務の提供または交換のための取引、販売契約、商事の代表または代理、ファクタリング、リース契約、土木建設、コンサルティング、エンジニアリング、ライセンシング、投資、金融業務、銀行業務、保険、開発契約またはコンセッション、合弁事業およびその他の形態の産業協力または事業協力、航空機・船舶・鉄道または道路による物品または旅客の運送。
conciliator”) to assist them in their attempt to
reach an amicable settlement of their dispute
arising out of or relating to a contractual or
other legal relationship. The conciliator does
not have the authority to impose upon the
parties a solution to the dispute.

4. A conciliation is international if:
(a) The parties to an agreement to conciliate
have, at the time of the conclusion of that
agreement, their places of business in
different States; or
(b) The State in which the parties have their
places of business is different from either:
(i) The State in which a substantial part of
the obligations of the commercial
relationship is to be performed; or
(ii) The State with which the subject matter
of the dispute is most closely connected.

5. For the purposes of this article:
(a) If a party has more than one place of
business, the place of business is that which
has the closest relationship to the agreement
to conciliate;
(b) If a party does not have a place of
business, reference is to be made to the
party’s habitual residence.

6. This Law also applies to a commercial
conciliation when the parties agree that the
conciliation is international or agree to the
applicability of this Law.

7. The parties are free to agree to exclude the
applicability of this Law.

8. Subject to the provisions of paragraph 9 of
this article, this Law applies irrespective of the
basis upon which the conciliation is carried
out, including agreement between the parties

110
whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

9. This Law does not apply to:
   (a) Cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement; and
   (b) […]

Article 2. Interpretation

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 3. Variation by agreement

Except for the provisions of article 2 and article 6, paragraph 3, the parties may agree to exclude or vary any of the provisions of this Law.

Article 4. Commencement of conciliation

Except for the provisions of article 2 and article 6, paragraph 3, the parties may agree to exclude or vary any of the provisions of this Law.
Conciliation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in conciliation proceedings.

If a party that invited another party to conciliate does not receive an acceptance of the invitation within thirty days from the day on which the invitation was sent, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to conciliate.

There shall be one conciliator, unless the parties agree that there shall be two or more conciliators.

The parties shall endeavour to reach agreement on a conciliator or conciliators, unless a different procedure for their appointment has been agreed upon.

When the conciliation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the conciliation is suspended.

Where the conciliation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time the conciliation ended without a settlement agreement.

The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:

<table>
<thead>
<tr>
<th>Article 5. Number and appointment of conciliators</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. There shall be one conciliator, unless the parties agree that there shall be two or more conciliators.</td>
</tr>
<tr>
<td>2. The parties shall endeavour to reach agreement on a conciliator or conciliators, unless a different procedure for their appointment has been agreed upon.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>第5条 調停人の数および選任</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 調停人は、当事者間に2人またはそれ以上の数の調停人とする旨の合意がある場合を除き、1人とする。</td>
</tr>
<tr>
<td>2. 当事者は、選任手続について別段の合意がある場合を除き、調停人の選任について合意に達するよう努力しなければならない。</td>
</tr>
</tbody>
</table>

3 The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:

Article X. Suspension of limitation period

1. When the conciliation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the conciliation is suspended.

2. Where the conciliation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time the conciliation ended without a settlement agreement.
3. Parties may seek the assistance of an institution or person in connection with the appointment of conciliators. In particular:
   (a) A party may request such an institution or person to recommend suitable persons to act as conciliator; or
   (b) The parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.

4. In recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, where appropriate, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

5. When a person is approached in connection with his or her possible appointment as conciliator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A conciliator, from the time of his or her appointment and throughout the conciliation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

Article 6. Conduct of conciliation
1. The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the conciliation is to be conducted.
2. Failing agreement on the manner in which the conciliation is to be conducted, the conciliator may conduct the conciliation proceedings in such a manner as the conciliator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

3. In any case, in conducting the proceedings, the conciliator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

4. The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute.

Article 7. Communication between conciliator and parties

The conciliator may meet or communicate with the parties together or with each of them separately.

Article 8. Disclosure of information

When the conciliator receives information concerning the dispute from a party, the conciliator may disclose the substance of that information to any other party to the conciliation. However, when a party gives any information to the conciliator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the conciliation.

Article 9. Confidentiality

Unless otherwise agreed by the parties, all
information relating to the conciliation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Article 10. Admissibility of evidence in other proceedings

1. A party to the conciliation proceedings, the conciliator and any third person, including those involved in the administration of the conciliation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

(a) An invitation by a party to engage in conciliation proceedings or the fact that a party was willing to participate in conciliation proceedings;

(b) Views expressed or suggestions made by a party in the conciliation in respect of a possible settlement of the dispute;

(c) Statements or admissions made by a party in the course of the conciliation proceedings;

(d) Proposals made by the conciliator;

(e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the conciliator;

(f) A document prepared solely for purposes of the conciliation proceedings.

2. Paragraph 1 of this article applies irrespective of the form of the information or evidence referred to therein.

3. The disclosure of the information referred to in paragraph 1 of this article shall not be

第 10 条 他の手続きにおける証拠の許容性

1. 調停手続の当事者、調停人、および調停手続に関与した者を含むあらゆる第三者は、仲裁手続、訴訟手続、またはその他の同様の手続において、以下に掲げるものにつき、これらを依拠し、これらを証拠として提出し、またはこれらについて証言もしくは供述をしてはならない。

(a) 当事者が行った調停手続開始の申出または当事者が調停手続への参加を望んでいたという事実

(b) 当該紛争の和解案に関して当事者が調停手続において表明した意見または行った提案

(c) 調停手続の過程において当事者が行った陳述または自白

(d) 調停人が行った提案

(e) 調停人が提示した和解案につき、当事者がこれを受け諾する意思を示したという事実

(f) もっぱら調停手続のために準備された書面

2. 本条 1 の規定は、同項各号に挙げられた情報または証拠につき、その形態に関わりなく適用される。

3. 仲裁庭、裁判所、または、その他の権限ある政府機関は、本条 1 に定める情報の開
ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph 1 of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.

4. The provisions of paragraphs 1, 2 and 3 of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the conciliation proceedings.

5. Subject to the limitations of paragraph 1 of this article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a conciliation.

Article 11. Termination of conciliation proceedings

The conciliation proceedings are terminated:

(a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;

(b) By a declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration;
(c) By a declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) By a declaration of a party to the other party or parties and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

Article 12. Conciliator acting as arbitrator

Unless otherwise agreed by the parties, the conciliator shall not act as an arbitrator in respect of a dispute that was or is the subject of the conciliation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

Article 13. Resort to arbitral or judicial proceedings

Where the parties have agreed to conciliate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to conciliate or as a termination of the conciliation proceedings.
Article 14. Enforceability of settlement agreement

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable . . . [the enacting State may insert a description of the method of enforcing settlement agreements or refer to provisions governing such enforcement].

4 When implementing the procedure for enforcement of settlement agreements, an enacting State may consider the possibility of such a procedure being mandatory.

4 当事者が、紛争について和解合意を締結したときは、その和解合意は、. . . の場合には、拘束力および執行力を有する。[立法をする国は、和解合意を執行する方法の詳細を挿入し、または、和解合意の執行を規律する条項を引用することができる。]
8. 国際物品売買契約に関する国際連合条約（ウィーン、1980年）（CISG）


【概要】 「国際物品売買契約に関する国際連合条約」（CISG）は、国際的な物品売買契約に適用される現代的かつ統一的な契約法ルールを定める条約である。1980年4月11日にウィーンで開催された国連主催の外交会議で採択され、1988年1月1日に発効している。2016年12月1日現在、85か国が締約国となっており、日本も2008年7月1日に71番目の締約国として加入し、2009年8月1日に効力を発生している（平成20年条約第8号）。

国際物品売買契に関する統一法の作成は、20世紀初頭から始められ、その最初の成果は私法統一協会（UNIDROIT）が作成し、1964年にハーグで採択された「国際物品売買についての統一法に関する条約」及び「国際物品売買契約の成立についての統一法に関する条約」であった。しかし、これらの2つのハーグ条約の締約国が少数にとどまったことから、UNCITRALが1968年から約10年の期間をかけて作成したのがCISGである。その作成に当たっては、大陸法と英米法、また、先進国と途上国の見解の相違を調和することが配慮された。このことがCISGの成功の要因のひとつであると考えられ、また、CISGはその後の各国の国内契約法立法にも影響を与えている。

CISGが適用されるのは、国際物品売買契約の売主と買主の営業所が異なる国にあり、それらの国がともに締約国である場合、又は、国際私法の準則によれば締約国の法が適用されることになる場合である（第1条）。なお、消費者売買など若干の適用除外がある（第
2条)。

CISGは、売買契約の成立と、売主と買主の権利義務関係のみを規律する（契約の有効性、所有権の移転については規律しない）。CISGが規律しない事項については、国際私法の準則によって定まる準拠法にゆだねられている。なお、CISGの規定の大部分は任意規定である。（曾野裕夫）

**正文**

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;

(1) この条約は、営業所が異なる国に所在する当事者間の物品売買契約について、次のいずれかの場合に適用する。
(a) これらの国がいずれも締約国である場合
(b) 国際私法の準則によれば締約国の法の適用が導かれる場合

(2) 当事者の営業所が異なる国に所在するという事実は、その事実が、契約から認められない場合又は契約の締結時以前における当事者間のあらゆる取引関係から若しくは契約の締結時以前に当事者によって明らかにされた情報から認められない場合には、考慮しない。

(3) 当事者の国籍及び当事者又は契約の民事的又は商事的な性質は、この条約の適用を決定するに当たって考慮しない。

第2条
この条約は、次の売買については、適用しない。
(a) 個人用、家族用又は家庭用に購入された物品の売買。ただし、売主が契約の締結時以前に当該物品がそのような使用のために購入されたことを知らず、かつ、知っているべきでもなかった場合には、この限りでない。
(b) 競り売買
(c) 強制執行その他法令に基づく売買
(d) 有価証券、商業証券又は通貨の売買
(e) 船、船舶、エアクッション船又は航
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 を含む。)に妥当な考慮を払う。

第 9 条

(1) 当事者は、合意した慣習及び当事者間で確立した慣行に拘束される。

(2) 当事者は、別段の合意がない限り、当事者双方が知り、又は知っているべきであった慣習であって、国際取引において、関係する特定の取引分野において同種の契約をする者に広く知られ、かつ、それらの者により通常遵守されているものが、默示的に当事者間の契約又はその成立に適用されることとしたものとする。

第 10 条

この条約の適用上、

(a) 営業所とは、当事者が 2 以上の営業所を有する場合には、契約の締結前以前に当事者双方が知り、又は想定していた事情を考慮して、契約及びその履行に最も密接な関係を有する営業所をいう。

(b) 当事者が営業所を有しない場合には、その常居所を基準とする。

第 11 条

売買契約は、書面によって締結し、又は証明することを要しないものとし、方式について他のいかなる要件にも服さない。売買契約
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 counter-offer.

(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

第 19 条

(1) 申込みに対する承諾を意図する応答であって、追加、制限その他の変更を含むものは、当該申込みの拒絶であるとともに、反対申込みとなる。

(2) 申込みに対する承諾を意図する応答は、追加的な又は異なる条件を含む場合であっても、当該条件が申込みの内容を実質的によらないときは、申込者が不当に遅滞することなくその相違について口頭で異議を述べ、又はその旨の通知を発した場合を除くほか、承諾となる。申込者がそのような異議を述べない場合には、契約の内
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 for 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.

その旨の通知を発した場合には、承諾としての効力を有する。

(2) 遅延した承諾が記載された書簡その他の書面が、通信状態が通常であったとしたならば期限までに申込者に到達したものである状況の下で発送されたことを示している場合には、当該承諾は、承諾としての効力を有する。ただし、当該申込者が自己の申込みを失効していたものをすることを遅滞なく相手方に対して口頭で知らせ、又はその旨の通知を発した場合は、この限りでない。

第 22 条
承諾は、その取りやめの通知が当該承諾の効力の生ずる時以前に申込者に到達する場合には、取りやめることができる。

第 23 条
契約は、申込みに対する承諾がこの条約に基づいて効力を生ずる時に成立する。

第 24 条
この部の規定の適用上、申込み、承諾の意思表示その他の意思表示が相手方に「到達した」時とは、申込み、承諾の意思表示その他の意思表示が、相手方に対して口頭で行われた時又は他の方法により相手方個人に対し、相手方の営業所若しくは郵便送付先に対し、若しくは相手方が営業所及び郵便送付先を有しない場合には相手方の常居所に対して届けられた時とする。
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.

(b) (a)に規定する場合以外の場合において、契約が特定物、特定の在庫から取り出される不特定物又は製造若しくは生産が行われる不特定物に関するものであり、かつ、物品が特定の場所に存在し、又は特定の場所で製造若しくは生産が行われることを当事者双方が契約の締結時に知っていただけたときは、その場所において物品を買主の処分にゆだねること。

(c) その他の場合には、売主が契約の締結時に営業所を有していた場所において物品を買主の処分にゆだねること。
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.

第 33 条
売主は、次のいずれかの時期に物品を引き渡さなければならない。

(a) 期日が契約によって定められ、又は期日を契約から決定することができる場合には、その期日

(b) 期間が契約によって定められ、又は期間を契約から決定することができる場合には、買主が引渡しの日を選択すべきことを状況が示していない限り、その期間内のいずれかの時

(c) その他の場合には、契約の締結後の合理的な期間内

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.

第 34 条
売主は、物品に関する書類を交付する義務を負う場合には、契約に定める時期及び場所において、かつ、契約に定める方式により、当該書類を交付しなければならない。売主は、その時期より前に当該書類を交付した場合において、買主に不合理な不便又は不合理な費用を生じさせないときは、その時期まで、当該書類の不適合を追完することができる。ただし、買主は、この条約に規定する損害賠償の請求をする権利を保持する。

Section II. Conformity of the goods and third party claims

第2節 物品の適合性及び第三者の権利又は請求

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

第 35 条
(1) 売主は、契約に定める数量、品質及び種類に適合し、かつ、契約に定める方法で収納され、又は包装された物品を引き渡さなければならない。
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 redirection or redispatch, 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.

第42条

(1) 売主は、自己が契約の締結時に知り、又は知らないことはあり得なかった工業所有権その他の知的財産権に基づく第三者の権利又は請求の対象となっていない物品を引き渡さなければならない。ただし、そのような権利又は請求が、次の国の法の下での工業所有権その他の知的財産権に基づく場合に限る。

(a) ある国において物品が転売され、又は他の方法によって使用されることを当事者双方が契約の締結時に想定していた場合には、当該国の法

(b) その他の場合には、買主が営業所を有する国の法

(2) 売主は、次の場合には、(1)の規定に基づく義務を負わない。

(a) 買主が契約の締結時に(1)に規定する権利又は請求を知り、又は知らないことはあり得なかった場合

(b) (1)に規定する権利又は請求が、買主の提供した技術的図面、設計、製法その他の指定に売主が従ったことによって生じた場合

第43条

(1) 買主は、第三者の権利又は請求を知り、又は知るべきであった時から合理的な期間内に、売主に対してそのような権利又は請求の性質を特定した通知を行わない場合
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) 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.
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.

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.

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.

The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

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.

Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any defect in the goods.

8. CISG

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 defect in the goods.

（1）買主は、売主に対してその義務の履行を請求することができる。ただし、買主がその請求と両立しない救済を求めた場合は、この限りでない。

（2）買主は、物品が契約に適合しない場合には、代替品の引渡しを請求することができる。ただし、その不適合が重大な契約違反となり、かつ、その請求を第 39 条に規定する通知の際に又はその後の合理的な期間内に行う場合に限る。

（3）買主は、物品が契約に適合しない場合には、すべての状況に照らして不合理であるときを除くほか、売主に対し、その不適合を修補によって追完することを請求することができる。その請求は、第 39 条に規定する通知の際に又はその後の合理的な期間内に行わなければならない。

第 47 条
（1）買主は、売主による義務の履行のための合理的な長さの付加期間を定めることができる。
（2）買主は、（1）の規定に基づいて定めた付加期間内に履行をしない旨の通知を売主から受けた場合を除くほか、当該付加期間内は、契約違反についてのいかなる救済も求めることができない。ただし、買主は、これにより、履行の遅滞について損害賠償の請求をする権利を奪われない。

第 48 条
（1）次条の規定が適用される場合を除くほか、売主は、引渡しの期日後も、不合理に
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.

(2) 売主は、買主に対して履行を受け入れるか否かについて知らせることを要求した場合において、売主が合理的な期間内にその要求に応じないときは、当該要求において示した期間内に履行をすることができる。買主は、この期間中に、売主による履行と両立しない救済を求めることができない。

(3) 一定の期間内に履行をする旨の売主の通知は、(2)に規定する買主の選択を知らせることの要求を含むものと推定する。

(4) (2) 又は (3) に規定する売主の要求又は通知は、買主がそれらを受けない限り、その効力を生じない。

第 49 条

(1) 買主は、次のいずれかの場合には、契約の解除の意思表示をすることができる。

(a) 契約又はこの条約に基づく売主の義務の不履行が重大な契約違反となる場合

(b) 引渡しがない場合において、買主が第 47 条第(1)項の規定に基づいて定めた付加期間内に売主が物品を引き渡さず、又は売主が当該付加期間内に引き渡さない場合
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 performance.

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.

第54条
代金を支払う買主の義務には、支払を可能とするため、契約又は法令に従って必要とされる措置をとるとともに手続を遵守することを含む。

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.

第55条
契約が有効に締結されている場合において、当該契約が明示的又は黙示的に、代金を定めず、又は代金の決定方法について規定していないときは、当事者は、反対の意思を示さない限り、関係する取引分野において同様の状況の下で売却された同種の物品について、契約の締結時に一般的に請求されていた価格を黙示的に適用したものとする。

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.

第56条
代金が物品の重量に基づいて定められる場合において、疑義があるときは、代金は、正味重量によって決定する。

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 increases 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 60
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
第 58 条
（1）買主は、いずれか特定の期日に代金を支払う義務を負わない場合には、売主が契約及びこの条約に従い物品又はその処分を支配する書類を買主の処分にゆだねた時に代金を支払わなければならない。売主は、その支払を物品又は書類の交付の条件とすることがができる。

（2）売主は、契約が物品の運送を伴う場合には、代金の支払と引換えでなければ物品又はその処分を支配する書類を買主に交付しない旨の条件を付して、物品を発送することができる。

（3）買主は、物品を検査する機会を有する時まで代金を支払う義務を負わない。ただし、当事者の合意した引渡し又は支払の手続が、買主がそのような機会を有することと両立しない場合は、この限りでない。

第 59 条
売主によるいかなる要求又はいかなる手続の遵守も要することなく、買主は、契約若しくはこの条約によって定められた期日又はこれらから決定することができる期日に代金を支払わなければならない。

第 2 節 引渡しの受領

第 60 条
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

第 64 条

(1) 売主は、次のいずれかの場合には、契約の解除の意思表示をすることができる。

(a) 契約又はこの条約に基づく買主の義務の不履行が重大な契約違反となる場合

(b) 売主が前条 (1) の規定に基づいて定めた付加期間内に買主が代金の支払義務若しくは物品の引渡しの受領義務を履行しない場合又は買主が当該付加期間内にそれらの義務を履行しない旨の意思表示をした場合

(2) 売主は、買主が代金を支払った場合については、次の時期に契約の解除の意思表示をしない限り、このような意思表示をする権利を失う。

(a) 買主による履行の遅滞については、売主が履行のあったことを知る前

(b) 履行の遅滞を除く買主による違反については、次の時から合理的な期間内

(i) 売主が当該違反を知り、又は知るべきであった時
(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 SELLER 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:

危険は、買主が物品を受け取った時に、又は買主が期限までに物品を受け取らないときは、物品が買主の処分にゆだねられ、かつ、引渡しを受領しないことによって買主が契約違反を行った時から買主に移転する。

(2) もっとも、買主が売主の営業所以外の場所において物品を受け取る義務を負うときは、危険は、引渡しの期限が到来し、かつ、物品がその場所において買主の処分にゆだねられたことを買主が知った時に移転する。

(3) 契約が特定されていない物品に関するものである場合には、物品は、契約上の物品として明確に特定される時まで買主の処分にゆだねられていないものとする。

第 70 条

売主が重大な契約違反を行った場合には、前 3 条の規定は、買主が当該契約違反を理由として求めることができる救済を妨げるものではない。

第 5 章 売主及び買主の義務に共通する規定

第 71 条

(1) 当事者の方は、次のいずれかの理由によって相手方がその義務の実質的な部分を履行しないであろうという事情が契約の締結後に明らかになった場合には、自己の義務の履行を停止することができる。
(a) a serious deficiency in his ability to 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 in 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) 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.
(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

(1) 物品を複数回に分けて引き渡す契約において、いずれかの引渡部分についての当事者の一方による義務の不履行が当該引渡部分についての重大な契約違反となる場合には、相手方は、当該引渡部分について契約の解除の意思表示をすることができる。

(2) いずれかの引渡部分についての当事者の一方による義務の不履行が将来の引渡部分について重大な契約違反が生ずると判断する十分な根拠を相手方に与える場合には、当該相手方は、将来の引渡部分について契約の解除の意思表示をすることができる。ただし、この意思表示を合理的な期間内に行う場合に限る。

(3) いずれかの引渡部分について契約の解除の意思表示をする買主は、当該引渡部分が既に引き渡された部分又は将来の引渡部分と相互依存関係にあることにより、契約の締結時に当事者双方が想定していた目的のために既に引き渡された部分又は将来の引渡部分を使用することができなくなった場合には、それらの引渡部分についても同時に契約の解除の意思表示をすることができる。

第 2 篇 損害賠償

第 74 条

当事者的一方による契約違反についての損害賠償の額は、当該契約違反により相手方が被った損失（得るはずであった利益の喪失を含む。）に等しい額とする。そのような損害賠償の額は、契約違反を行った当事者が契約の締結時に知り、又は知っているべきで
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

第 75 条

契約が解除された場合において、合理的な方法で、かつ、解除後の合理的な期間内に、買主が代替品を購入し、又は売主が物品を再売却したときは、損害賠償の請求をする当事者は、契約価格とこのような代替取引における価格との差額及び前条の規定に従って求めることができるその他の損害賠償を請求することができる。

第 76 条

(1) 契約が解除され、かつ、物品に時価がある場合において、損害賠償の請求をする当事者が前条の規定に基づく購入又は再売却を行っていないときは、当該当事者は、契約に定める価格と解除時における時価との差額及び第 74 条の規定に従って求めることができるその他の損害賠償を請求することができる。ただし、当該当事者が物品を受け取った後に契約を解除した場合には、解除時における時価に代えて物品を受け取った時における時価を適用する。

(2) (1) の規定の適用上、時価は、物品の引渡しが行われるべきであった場所における実勢価格とし、又は当該場所に時価がない場合には、合理的な代替地となるような他の場所における価格に物品の運送費用の差額を適切に考慮に入れたものとする。
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. Exemptions**

**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

(1) 当事者双方は、契約の解除により、損害賠償の義務を除くほか、契約に基づく義務を免れる。契約の解除は、紛争解決のための契約条項又は契約の解除の結果生ずる当事者の権利及び義務を律する他の契約条項に影響を及ぼさない。

第 82 条
(1) 買主は、受け取った時と実質的に同じ状態で物品を返還することができない場合には、契約の解除の意思表示をする権利及び売主に代替品の引渡しを請求する権利を失う。

(2) (1) の規定は、次の場合には、適用しない。

(a) 物品を返還することができないこと又は受け取った時と実質的に同じ状態で物品を返還することができないことが買主の作為又は不作為によるものでない場合

(b) 物品の全部又は一部が第 38 条に規定する検査によって滅失し、又は劣化した場合
(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.

(c) 買主が不適合を発見し、又は発見すべきであった時より前に物品の全部又は一部を通常の営業の過程において売却し、又は通常の使用の過程において消費し、若しくは改変した場合

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.

第 83 条

前条の規定に従い契約の解除の意思表示をする権利又は売主に代替品の引渡しを請求する権利を失った買主であっても、契約又はこの条約に基づく他の救済を求める権利を保持する。

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.

(1) 売主は、代金を返還する義務を負う場合には、代金が支払われた日からの当該代金の利息も支払わなければならない。

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

(2) 買主は、物品の全部又は一部から得たすべての利益を売主に対して返還しなければならない。

(a) if he must make restitution of the goods or part of them; or

(a) 買主が物品の全部又は一部を返還しなければならない場合

(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.

(b) 買主が物品の全部若しくは一部を返還することができない場合又は受け取った時と実質的に同じ状態で物品の全部若しくは一部を返還することができない場合において、契約の解除の意思表示をし、又は売主に代替品の引渡しを請求したとき。
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.

第 87 条

物品を保存するための措置をとる義務を負う当事者は、相手方の費用負担により物品を第三者の倉庫に寄託することができる。ただし、それに関して生ずる費用が不合理でない場合に限る。

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.

第 88 条

(1) 第 85 条又は第 86 条の規定に従い物品を保存する義務を負う当事者は、物品の占有の取戻し又は代金若しくは保存のための費用の支払を相手方が不合理に遅滞する場合には、適切な方法により当該物品を売却することができる。ただし、相手方に対し、売却する意図について合理的な通知を行った場合に限る。

(2) 物品が急速に劣化しやすい場合又はその保存に不合理な費用を伴う場合には、第 85 条又は第 86 条の規定に従い物品を保存する義務を負う当事者は、物品を売却するための合理的な措置をとらなければならない。当該当事者は、可能な限り、相手方に対し、売却する意図を通知しなければならない。

(3) 物品を売却した当事者は、物品の保存及び売却に要した合理的な費用に等しい額を売却代金から控除して保持する権利を有する。当該当事者は、その残額を相手方に対して返還しなければならない。

Part IV. Final provisions

Article 89

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

第 90 条

この条約は、既に発効し、又は今後発効する国際取極であって、この条約によって規律される事項に関する規定を含むものに優先しない。ただし、当事者双方が当該国際取極の締約国に営業所を有する場合に限る。

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.

第 91 条

(1) この条約は、国際物品売買契約に関する国際連合会議の最終日に署名のために開放し、1981 年 9 月 30 日まで、ニューヨークにある国際連合本部において、すべての国による署名のために開放しておく。

(2) この条約は、署名国によって批准され、受諾され、又は承認されなければならいない。

(3) この条約は、署名のために開放した日から、署名国でないすべての国による加入のために開放しておく。

(4) 批准書、受諾書、承認書及び加入書は、国際連合事務総長に寄託する。

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.

第 92 条

(1) 締約国は、署名、批准、受諾、承認又は加入の時に、自国が第 2 部の規定に拘束されないこと又は第 3 部の規定に拘束されないことを宣言することができる。
(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
depository 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

(2) 第２部又は第３部の規定に関して(1)の
規定に基づいて宣言を行った締約国は、当
該宣言が適用される部によって規律され
る事項については、第１条(1)に規定する
締約国とみなされない。

第93条

(1) 締約国は、自国の憲法に従いこの条約
が対象とする事項に関してそれぞれ異なる
法律が適用される2以上の地域をその領
域内に有する場合には、署名、批准、受諾、
承認又は加入の時に、この条約を自国の領
域内のすべての地域について適用するか
又は1若しくは2以上の地域についてのみ
適用するかを宣言することができるもの
とし、いつでも別の宣言を行うことによ
り、その宣言を修正することができる。

(2) (1)に規定する宣言は、寄託者に通報す
るものとし、この条約が適用される地域を
明示する。

(3) この条約がこの条の規定に基づく宣言
により締約国の1又は2以上の地域に適用
されるが、そのすべての地域には及んでお
らず、かつ、当事者の営業所が当該締約国
に所在する場合には、当該営業所がこの条
約の適用される地域に所在するときを除
くほか、この条約の適用上、当該営業所は、
締約国に所在しないものとみなす。

(4) 締約国が(1)に規定する宣言を行わな
い場合には、この条約は、当該締約国のす
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 the convention applicable to all territorial units of that State.

8. CISG
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.

第 96 条
売買契約が書面によって締結され、又は証明されるべきことを自国の法令に定めている締約国は、売買契約、合意によるその変更若しくは終了又は申込み、承諾その他の意思表示を書面による方法以外の方法で行うことを認める第 11 条、第 29 条又は第 2 部のいかなる規定も、当事者のいずれかが当該締約国に営業所を有する場合には第 12 条の規定に従って適用しないことを、いつでも宣言することができる。

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.

第 97 条
(1) 署名の時にこの条約に基づいて行われた宣言は、批准、受諾又は承認の時に確認されなければならない。

(2) 宣言及びその確認は、書面によるものとし、正式に寄託者に通報する。

(3) 宣言は、それを行った国について、この条約の効力発生と同時にその効力を生ずる。ただし、寄託者がこの条約の効力発生後に正式の通報を受領した宣言は、寄託者がそれを受領した日後 6 頃月の期間が満了する月の翌月の初日に効力を生ずる。第 94 条の規定に基づく相互の一方的な宣言は、寄託者が最も遅い宣言を受領した日後 6 頃月の期間が満了する日月の翌月の初日に効力を生ずる。
(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

(4) この条約に基づく宣言を行った国は、寄託者にあてた書面による正式の通告により、当該宣言をいつでも撤回することができる。その撤回は、寄託者が当該通告を受領した日の後6箇月の期間が満了する日の属する月の翌月の初日に効力を生ずる。

(5) 第94条の規定に基づいて行われた宣言の撤回は、その撤回が効力を生ずる日から、同条の規定に基づいて行われた他の国による相互の宣言の効力を失わせる。

第98条

この条約において明示的に認められた留保を除くほか、いかなる留保も認められない。

第99条

(1) この条約は、(6)の規定に従うることを条件として、第10番目の批准書、受諾書、承認書又は加入書（第92条の規定に基づく宣言を伴うものを含む。）が寄託された日の後12箇月の期間が満了する日の属する月の翌月の初日に効力を生ずる。

(2) いずれの国が、第10番目の批准書、受諾書、承認書又は加入書の寄託の後に、この条約を批准し、受諾し、承認し、又はこれに加入する場合には、この条約（適用が排除される部を除く。）は、(6)の規定に基づうことを条件として、当該国の批准書、受諾書、承認書又は加入書が寄託された日
(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.

(3) 1964年7月1日にハーグで作成された国際物品売買契約の成立についての統一法に関する条約（1964年ハーグ成立条約）及び1964年7月1日にハーグで作成された国際物品売買についての統一法に関する条約（1964年ハーグ売買条約）のいずれか一方又は両方の締約国であって、この条約を批准し、受諾し、承認又は加入の時に、オランダ政府に通告することにより、場合に応じて1964年ハーグ成立条約及び1964年ハーグ売買条約のいずれか一方又は両方を廃棄する。

(4) 1964年ハーグ売買条約の締約国であって、この条約を批准し、受諾し、承認し、又はこれに加入し、及び第92条の規定に基づき第2部の規定に拘束されることを宣言する、又は宣言したものは、その批准、受諾、承認又は加入の時に、オランダ政府に通告することにより、1964年ハーグ売買条約を廃棄する。

(5) 1964年ハーグ成立条約の締約国であって、この条約を批准し、受諾し、承認し、又はこれに加入し、及び第92条の規定に基づき第3部の規定に拘束されることを宣言する、又は宣言したものは、その批准、受諾、承認又は加入の時に、オランダ政府に通告することにより、1964年ハーグ成立条約を廃棄する。
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
coordination 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

条約を廃棄する。

(6) この条の規定の適用上、1964 年ハーグ
成立条約又は 1964 年ハーグ売買条約の締
約国によるこの条約の批准、受諾、承認又
はこれへの加入は、これらの 2 条約につい
tて当該締約国に求められる廃棄の通告が
効力を生ずる時まで、その効力を生じな
い。この条約の寄託者は、この点に関して
必要な調整を確保するため、当該 2 条約の
寄託者であるオランダ政府と協議する。

第 100 条

(1) この条約は、第 1 条(1)(a)に規定する
両国の締約国又は同条(1)(b)に規定する
締約国についてこの条約の効力が生じた
日以後に契約を締結するための申入れがあ
なされた場合に限り、その契約の成立につ
いて適用する。

(2) この条約は、第 1 条(1)(a)に規定する
両国の締約国又は同条(1)(b)に規定する
締約国についてこの条約の効力が生じた
日以後に締結された契約についてのみ適
用する。

第 101 条
(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.

1980年4月11日にウィーンで、ひとつ正文であるアラビア語、中国語、英語、フランス語、ロシア語及びスペイン語により原本1通を作成した。

以上の証拠として、下名の全権委員は、各自の政府から正当に委任を受けてこの条約に署名した。

【訳】公定訳（平成20年条約第8号）
9. 1980年改正議定書により改正された国際物品売買における時効期間に関する条約（ニューヨーク、1974年）


【概要】 国際物品売買契約から生ずる権利に基づく訴えの提起に対する期間制限について、各国の法制度には、英米法の出訴期限法と大陸法の消滅時効という法律構成の違い、期間の長さの違い、期間経過後の権利の規律の違いなど、各種の相違点が存在する。このことは、国際取引における権利行使に困難をもたらす障害となることから、この障害を除去して国際取引を促進することを目的として作成されたのが、「国際物品売買における時効期間に関する条約」（時効条約）である。本条約は、国際物品売買における時効期間を原則として4年とするほか、裁判及び仲裁手続の開始時効中断効を認め、時効の中断に国際的効力を与えるなど、国際取引における時効に特有の諸問題に解決を与えていている。


UNCITRAL事務局は、1980年議定書による改正内容を織り込んだ時効条約のテキストを作成しており、以下に掲載するのはその対訳である。（曽野裕夫）

正文

PREAMBLE

The States Parties to the present Convention,

Considering that international trade is an important factor in the promotion of friendly relations amongst States,

Believing that the adoption of uniform rules governing the limitation period in the international sale of goods would facilitate the...
development of world trade,

Have agreed as follows:

Part I. Substantive provisions

SPHERE OF APPLICATION

Article 1

(1) This Convention shall determine when claims of a buyer and a seller against each other arising from a contract of international sale of goods or relating to its breach, termination or invalidity can no longer be exercised by reason of the expiration of a period of time. Such a period of time is hereinafter referred to as "the limitation period".

(2) This Convention shall not affect a particular time-limit within which one party is required, as a condition for the acquisition or exercise of his claim, to give notice to the other party or perform any act other than the institution of legal proceedings.

(3) In this Convention:

(a) "buyer", "seller" and "party" mean persons who buy or sell, or agree to buy or sell, goods, and the successors to and assigns of their rights or obligations under the contract of sale;

(b) "creditor" means a party who asserts a claim, whether or not such a claim is for a sum of money;

(c) "debtor" means a party against whom a

信して、次のとおり協定した。

第1部 実体規定

適用範囲

第1条

(1) この条約は、買主及び売主の互いに対する請求権であって、国際物品売買契約から生じるもの又はその違反、終了若しくは無効に関するもので、一定の期間の満了を理由として行使することができなくなる時を定める。この期間を、以下において「時効期間」という。

(2) この条約は、当事者の方が自己の請求権を取得又は行使するための条件として定められている、相手方への通知又は一定の行為（法的手続の開始を除く）をするための期限に影響を及ぼさない。

(3) この条約において、

(a) 「買主」、「売主」、及び「当事者」とは、物品を購入又は売却する者、又は購入若しくは売却することに合意する者、並びに売買契約に基づくそれらの者の権利又は義務の承継者及び譲受人をいう。

(b) 「債権者」とは、それが何らかの額の金銭の支払を求めるものであるか否かを問わず、請求権を主張する当事者をいう。

(c) 「債務者」とは、債権者が請求権を主
 creditor asserts a claim;
(d) "breach of contract" means the failure of a party to perform the contract or any performance not in conformity with the contract;
(e) "legal proceedings" includes judicial, arbitral and administrative proceedings;
(f) "person" includes corporation, company, partnership, association or entity, whether private or public, which can sue or be sued;
(g) "writing" includes telegram and telex;
(h) "year" means a year according to the Gregorian calendar.

Article 2
For the purposes of this Convention:
(a) a contract of sale of goods shall be considered international if, at the time of the conclusion of the contract, the buyer and the seller have their places of business in different States;
(b) the fact that the parties have their places of business in different States shall 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;
(c) where a party to a contract of sale of goods has places of business in more than one State, the place of business shall be that which has the closest relationship to the contract and its performance, having regard

第2条
この条約の適用上、
(a) 物品売買契約は、その締結時に、販売及び売主の営業所が異なる国に所在する場合に、国際的である。
(b) 当事者の営業所が異なる国に所在するという事実は、その事実が、契約から認められない場合又は契約の締結時点以前における当事者間のあらゆる取引関係から若しくは契約の締結時以前に当事者によって明らかにされた情報から認められない場合には、考慮しない。
(c) 営業所とは、物品売買契約の当事者が2以上の国に営業所を有する場合には、契約締結時に当事者双方が知り、又は想定していた事情を考慮して、契約及びその履行に最も密接な関係を有する
to the circumstances known to or contemplated by the parties at the time of the conclusion of the contract;

(d) where a party does not have a place of business, reference shall be made to his habitual residence;

(e) neither the nationality of the parties nor the civil or commercial character of the parties or of the contract shall be taken into consideration.

Article 3

(1) This Convention shall apply only

(a) if, at the time of the conclusion of the contract, the places of business of the parties to a contract of international sale of goods are in Contracting States; or

(b) if the rules of private international law make the law of a Contracting State applicable to the contract of sale.

(2) This Convention shall not apply when the parties have expressly excluded its application.

Article 4

This Convention shall 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 5
This Convention shall not apply to claims based upon:
(a) death of, or personal injury to, any person;  
(b) nuclear damage caused by the goods sold;  
(c) a lien, mortgage or other security interest in property;  
(d) a judgement or award made in legal proceedings;  
(e) a document on which direct enforcement or execution can be obtained in accordance with the law of the place where such enforcement or execution is sought;  
(f) a bill of exchange, cheque or promissory note.

Article 6
(1) This Convention shall not apply to contracts in which the preponderant part of the obligations of the seller consists in the supply of labor or other services.

(2) Contracts for the supply of goods to be manufactured or produced shall be considered to be sales, unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.
Article 7
In the interpretation and application of the provisions of this Convention, regard shall be had to its international character and to the need to promote uniformity.

第7条
この条約の規定の解釈及び適用に当たっては、その国際的な性質及びその統一を促進する必要性を考慮する。

THE DURATION AND COMMENCEMENT OF THE LIMITATION PERIOD
時効期間の長さ及び起算

Article 8
The limitation period shall be four years.

第8条
時効期間は4年とする。

Article 9
(1) Subject to the provisions of articles 10, 11 and 12 the limitation period shall commence on the date of which the claim accrues.
(2) The commencement of the limitation period shall not be postponed by:
(a) a requirement that the party be given a notice as described in paragraph 2 of article 1, or
(b) a provision in an arbitration agreement that no right shall arise until an arbitration award has been made.

第9条
(1) 時効期間は、次条から第12条までの規定に従うことを条件として、請求権を行使することができる日から進行する。
(2) 時効期間の進行の開始は、次の事由により遅らされることはないと定める仲裁合意の規定
(a) 第1条(2)にいう、当事者への通知の条件、又は
(b) 仲裁判断がされるまではいかなる権利も発生しないと定める仲裁合意の規定

Article 10
(1) A claim arising from a breach of contract shall accrue on the date on which such breach occurs.
(2) A claim arising from a defect or other lack of conformity shall accrue on the date on which the goods are actually handed over to, or their tender is refused by, the buyer.
(3) A claim based on fraud committed before or at the time of the conclusion of the contract or during its performance shall accrue on the
date on which the fraud was or reasonably could have been discovered.

Article 11
If the seller has given an express undertaking relating to the goods which is stated to have effect for a certain period of time, whether expressed in terms of a specific period of time or otherwise, the limitation period in respect of any claim arising from the undertaking shall commence on the date on which the buyer notifies the seller of the fact on which the claim is based, but not later than on the date of the expiration of the period of the undertaking.

Article 12
(1) If, in circumstances provided for by the law applicable to the contract, one party is entitled to declare the contract terminated before the time for performance is due, and exercises this right, the limitation period in respect of a claim based on any such circumstances shall commence on the date on which the declaration is made to the other party. If the contract is not declared to be terminated before performance becomes due, the limitation period shall commence on the date on which performance is due.

(2) The limitation period in respect of a claim arising out of a breach by one party of a contract for the delivery of or payment for goods by instalments shall, in relation to each separate instalment, commence on the date on which the particular breach occurs. If, under the law applicable to the contract, one party is entitled to declare the contract terminated by
reason of such breach, and exercises this right, the limitation period in respect of all relevant instalments shall commence on the date on which the declaration is made to the other party.

CESSATION AND EXTENSION OF THE LIMITATION PERIOD

Article 13

The limitation period shall cease to run when the creditor performs any act which, under the law of the court where the proceedings are instituted, is recognized as commencing judicial proceedings against the debtor or as asserting his claim in such proceedings already instituted against the debtor, for the purpose of obtaining satisfaction or recognition of his claim.

Article 14

(1) Where the parties have agreed to submit to arbitration, the limitation period shall cease to run when either party commences arbitral proceedings in the manner provided for in the arbitration agreement or by the law applicable to such proceedings.

(2) In the absence of any such provision, arbitral proceedings shall be deemed to commence on the date on which a request that the claim in dispute be referred to arbitration is delivered at the habitual residence or place of business of the other party or, if he has no such residence or place of business, then at his last known residence or place of business.

Article 15
In any legal proceedings other than those mentioned in articles 13 and 14, including legal proceedings commenced upon the occurrence of:

(a) the death or incapacity of the debtor,
(b) the bankruptcy or any state of insolvency affecting the whole of the property of the debtor, or
(c) the dissolution or liquidation of a corporation, company, partnership, association or entity when it is the debtor,

the limitation period shall cease to run when the creditor asserts his claim in such proceedings for the purpose of obtaining satisfaction or recognition of the claim, subject to the law governing the proceedings.

Article 16

For the purposes of articles 13, 14 and 15, any act performed by way of counterclaim shall be deemed to have been performed on the same date as the act performed in relation to the claim against which the counterclaim is raised, provided that both the claim and the counterclaim relate to the same contract or to several contracts concluded in the course of the same transaction.

Article 17

(1) Where a claim has been asserted in legal proceedings within the limitation period in accordance with article 13, 14, 15 or 16, but such legal proceedings have ended without a
decision binding on the merits of the claim, the limitation period shall be deemed to have continued to run.

(2) If, at the time such legal proceedings ended, the limitation period has expired or has less than one year to run, the creditor shall be entitled to a period of one year from the date on which the legal proceedings ended.

Article 18

(1) Where legal proceedings have been commenced against one debtor, the limitation period prescribed in this Convention shall cease to run against any other party jointly and severally liable with the debtor, provided that the creditor informs such party in writing within that period that the proceedings have been commenced.

(2) Where legal proceedings have been commenced by a subpurchaser against the buyer, the limitation period prescribed in this Convention shall cease to run in relation to the buyer's claim over against the seller, if the buyer informs the seller in writing within that period that the proceedings have been commenced.

(3) Where the legal proceedings referred to in paragraphs 1 and 2 this article have ended, the limitation period in respect of the claim of the creditor or the buyer against the party jointly and severally liable or against the seller shall be deemed not to have ceased running by virtue of paragraphs 1 and 2 of this article, but the creditor or the buyer shall be entitled to an additional year from the date on which the legal proceedings ended, if at that time the

決定がされずに終了したときは、時効期間は進行を続けていたものとみなす。

(2) 前項の場合において、法的手続が終了した時に時効期間が既に満了し又は1年を超えない間に満了するときは、債権者は当該法的手続が終了した日から1年間の利益を与えられる。

第18条

(1) 法的手続が1人の債務者に対して開始された場合には、この条約に規定する時効期間は、その債務者と連帯して責任を負う他の者に対する関係でも進行を停止する。ただし、債権者がその者に対して、法的手続が開始されたことを、時効期間内に書面で通知した場合に限る。

(2) 法的手続が転買人により買主に対して開始された場合には、この条約に規定する時効期間は、買主の有する売主に対する請求権についても進行を停止する。ただし、買主が売主に対して、法的手続が開始されたことを、時効期間内に書面で通知した場合に限る。

(3) (1)及び(2)の法的手続が終了した場合においては、債権者又は買主が連帯して責任を負う者又は売主に対して有する請求権についての時効期間は、(1)及び(2)の規定にかかわらず進行を停止しなかったものとみなす。ただし、その法的手続が終了した時に、時効期間が既に満了し又は1年を超えない間に満了する場合には、債権者又は買主は当該法的手続が終了した日から1年間の利益を与えられる。
limitation period had expired or had less than one year to run.

Article 19
Where the creditor performs, in the State in which the debtor has his place of business and before the expiration of the limitation period, any act, other than the acts described in articles 13, 14, 15 and 16, which under the law of that State has the effect of recommencing a limitation period, a new limitation period of four years shall commence on the date prescribed by that law.

Article 20
(1) Where the debtor, before the expiration of the limitation period, acknowledges in writing his obligation to the creditor, a new limitation period of four years shall commence to run from the date of such acknowledgement.

(2) Payment of interest or partial performance of an obligation by the debtor shall have the same effect as an acknowledgement under paragraph (1) of this article if it can reasonably be inferred from such payment or performance that the debtor acknowledges that obligation.

Article 21
Where, as a result of a circumstance which is beyond the control of the creditor and which he could neither avoid nor overcome, the creditor has been prevented from causing the limitation period to cease to run, the limitation period shall be extended so as not to expire before the expiration of one year from the date on which the...
relevant circumstance ceased to exist.

MODIFICATION OF THE LIMITATION PERIOD BY THE PARTIES

Article 22
(1) The limitation period cannot be modified or affected by any declaration or agreement between the parties, except in the cases provided for in paragraph (2) of this article.

(2) The debtor may at any time during the running of the limitation period extend the period by a declaration in writing to the creditor. This declaration may be renewed.

(3) The provisions of this article shall not affect the validity of a clause in the contract of sale which stipulates that arbitral proceedings shall be commenced within a shorter period of limitation than that prescribed by this Convention, provided that such clause is valid under the law applicable to the contract of sale.

GENERAL LIMIT OF THE LIMITATION PERIOD

Article 23
Notwithstanding the provisions of this Convention, a limitation period shall in any event expire not later than ten years from the date on which it commenced to run under articles 9, 10, 11 and 12 of this Convention.

CONSEQUENCES OF THE EXPIRATION OF THE LIMITATION PERIOD
Article 24
Expiration of the limitation period shall be taken into consideration in any legal proceedings only if invoked by a party to such proceedings.

Article 25
(1) Subject to the provisions of paragraph (2) of this article and of article 24, no claim shall be recognized or enforced in any legal proceedings commenced after the expiration of the limitation period.
(2) Notwithstanding the expiration of the limitation period, one party may rely on his claim as a defence or for the purpose of set-off against a claim asserted by the other party, provided that in the latter case this may only be done:
(a) if both claims relate to the same contract or to several contracts concluded in the course of the same transaction; or
(b) if the claims could have been set-off at any time before the expiration of the limitation period.

Article 26
Where the debtor performs his obligation after the expiration of the limitation period, he shall not on that ground be entitled in any way to claim restitution even if he did not know at the time when he performed his obligation that the limitation period had expired.

Article 27
The expiration of the limitation period with respect to a principal debt shall have the same
effect with respect to an obligation to pay interest on that debt.

CALCULATION OF THE PERIOD

Article 28
(1) The limitation period shall be calculated in such a way that it shall expire at the end of the day on which the period commenced to run. If there is no such corresponding date, the period shall expire at the end of the last day of the last month of the limitation period.

(2) The limitation period shall be calculated by reference to the date of the place where the legal proceedings are instituted.

Article 29
Where the last day of the limitation period falls on an official holiday or other dies non juridicus precluding the appropriate legal action in the jurisdiction where the creditor institutes legal proceedings or asserts a claim as envisaged in articles 13, 14 or 15, the limitation period shall be extended so as not to expire until the end of the first day following that official holiday or dies non juridicus on which such proceedings could be instituted or on which such a claim could be asserted in that jurisdiction.

INTERNATIONAL EFFECT

Article 30
The acts and circumstances referred to in articles 13 through 19 which have taken place in one Contracting State shall have effect for the
purposes of this Convention in another Contracting State, provided that the creditor has taken all reasonable steps to ensure that the debtor is informed of the relevant act or circumstances as soon as possible.

Part II. Implementation

Article 31

(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 or accession, declare that this Convention shall 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 shall be notified to the Secretary-General of the United Nations and shall state expressly the territorial units to which the Convention applies.

(3) If a Contracting State described in paragraph (1) of this article makes no declaration at the time of signature, ratification or accession, the Convention shall have effect within all territorial units of that State.

(4) 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 to a contract is located in that State, this place of business shall, for the purposes of this Convention, be considered not to be in a Contracting State, unless it is in a territorial unit of that State.
Article 32
Where in this Convention reference is made to the law of a State in which different systems of law apply, such reference shall be construed to mean the law of the particular legal system concerned.

Article 33
Each Contracting State shall apply the provisions of this Convention to contracts concluded on or after the date of the entry into force of this Convention.

Part III. Declarations and reservations

Article 34
(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 shall not apply to contracts of international sale of goods 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 shall not apply to contracts of international sale of goods where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under Article 34 of this Convention has not made a declaration under Article 34 of this Convention, such a State shall be deemed to be a Contracting State with respect to the Convention in the sense of Article 34.
declaration under paragraph (2) of this article subsequently becomes a Contracting State, the declaration made shall, as from the date on which this 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 35
A Contracting State may declare, at the time of the deposit of its instrument of ratification or accession, that it will not apply the provisions of this Convention to actions for annulment of the contract.

Article 36
Any State may declare, at the time of the deposit of its instrument of ratification or accession, that it shall not be compelled to apply the provisions of article 24 of this Convention.

Article 36 bis (Article XII of the Protocol)
Any State may declare at the time of the deposit of its instrument of accession or its notification under article 43 bis that it will not be bound by the amendments to article 3 made by article I of the 1980 Protocol. A declaration made under this article shall be in writing and be formally notified to the depositary.

Article 37
This Convention shall 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 seller and buyer have their places of business in States parties to such agreement.

Article 38

(1) A Contracting State which is a party to an existing convention relating to the international sale of goods may declare, at the time of the deposit of its instrument of ratification or accession, that it will apply this Convention exclusively to contracts of international sale of goods as defined in such existing convention.

(2) Such declaration shall cease to be effective on the first day of the month following the expiration of twelve months after a new convention on the international sale of goods, concluded under the auspices of the United Nations, shall have entered into force.

Article 39

No reservation other than those made in accordance with articles 34, 35, 36, 36 bis and 38 shall be permitted.

Article 40

(1) Declarations made under this Convention shall be addressed to the Secretary-General of the United Nations and shall take effect simultaneously with the entry of this Convention into force in respect of the State concerned, except declarations made thereafter. The latter declarations shall take effect on the first day of the month following the expiration of six months after the date of
their receipt by the Secretary-General of the United Nations. Reciprocal unilateral declarations under article 34 shall take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the Secretary-General of the United Nations.

(2) Any State which has made a declaration under this Convention may withdraw it at any time by a notification addressed to the Secretary-General of the United Nations. Such withdrawal shall 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 Secretary-General of the United Nations. In the case of a declaration made under article 34 of this Convention, such withdrawal shall also render inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Part IV. Final clauses

Article 41
This Convention shall be open until 31 December 1975 for signature by all States at the Headquarters of the United Nations.

Article 42
This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 43

9. 時効条約

条の規定に基づく相互の一方的な宣言は、国際連合事務総長が最も遅い宣言を受領した日の後6箇月の期間が満了する日の属する月の翌月の初日に効力を生ずる。

(2) この条約に基づく宣言を行った国は、国際連合事務総長に宛てた通報により、当該宣言をいつでも撤回することができる。その撤回は、国際連合事務総長が当該通告を受領した日の後6箇月の期間が満了する日の属する月の翌月の初日に効力を生ずる。この条約の第34条に基づく宣言についても、その撤回は、その撤回が効力を生ずる日から、同条の規定に基づいて他の国が行なったいかなる相互の一方的な宣言の効力も失わせる。

第4部 最終規定

第41条
この条約は、1975年12月31日まで、国際連合本部において、すべての国による署名のために開放する。

第42条
この条約は、批准されなければならない。批准書は、国際連合事務総長に寄託する。

第43条
This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 43 bis (Article X of the Protocol)
If a State ratifies or accedes to the 1974 Limitation Convention after the entry into force of the 1980 Protocol, the ratification or accession shall also constitute a ratification or an accession to the Convention as amended by the 1980 Protocol if the State notifies the depositary accordingly.

Article 43 ter (Article X of the Protocol)
Accession to the 1980 Protocol by any State which is not a Contracting Party to the 1974 Limitation Convention shall have the effect of accession to that Convention as amended by the Protocol, subject to the provisions of article 44 bis.

Article 44
(1) This Convention shall enter into force on the first day of the month following the expiration of six months after the date of the deposit of the tenth instrument of ratification or accession.
(2) For each State ratifying or acceding to this Convention after the deposit of the tenth instrument of ratification or accession, this Convention shall enter into force on the first day of the month following the expiration of six months after the date of the deposit of its instrument of ratification or accession.

(1) この条約は、第10番目の批准書又は加入書が寄託された日の後6箇月の期間が満了する日の属する月の翌月の初日に効力を生ずる。
(2) 第10番目の批准書又は加入書の寄託の後に、この条約を批准し、又はこれに加入する国については、この条約は、当該国の批准書又は加入書が寄託された日の後6箇月の期間が満了する日の属する月の翌月の初日に効力を生ずる。
Article 44 bis (Article XI of the Protocol)

Any State which becomes a Contracting Party to the 1974 Limitation Convention, as amended by the 1980 Protocol, shall, unless it notifies the depositary to the contrary, be considered to be also a Contracting Party to the Convention, unamended, in relation to any Contracting Party to the Convention not yet a Contracting Party to the 1980 Protocol.

Article 45

(1) Any Contracting State may denounce this Convention by notifying the Secretary-General of the United Nations to that effect.

(2) The denunciation shall take effect on the first day of the month following the expiration of twelve months after receipt of the notification by the Secretary-General of the United Nations.

Article 45 bis (Article XIII (3) of the Protocol)

Any Contracting State in respect of which the 1980 Protocol ceases to have effect by the application of paragraphs (1) and (2) of article XIII of 1980 Protocol shall remain a Contracting Party to the 1974 Limitation Convention, unamended, unless it denounces the unamended Convention in accordance with article 45 of that Convention.

Article 46

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
Nations.

【訳】曾野裕夫（北海道大学教授）
10. 損害賠償額の予定条項に関する統一規則

Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance

【概要】 損害賠償額の予定条項や違約罰条項は国際契約において広く用いられるが、そのような「不履行時に支払うべき額についての合意条項」の効力を認めるか否か、認める場合における裁判所による減額の可否、予定額を超える実損についての賠償請求の可否といった点は、国によって扱いが異なる。「損害賠償額の予定条項に関する統一規則」（1983年）は、これらの点を明確化する規則であって、当事者が本統一規則の適用に合意することによって、損害賠償額の予定条項等の計算可能性を高めることができるようすることを目的としたものである。（曽野裕夫）

第1条 適用範囲

第1条 この規則は、当事者の一方（債務者）が履行をしない場合に相手方（債権者）は債務者から約定額の支払を受ける権利を有するとの合意を含む国際的契約に適用される。その支払が罰としてなされるものであるか損害填補としてなされるものであるかは問わない。

第2条 この規則の適用上、

(a) 契約締結時において、当事者の営業所が異なる国に所在する場合に、その契約は国際的なものとする。

(b) 当事者の営業所が異なる国に所在するという事実は、その事実が、契約から認められない場合又は契約の締結時以前における当事者間のあらゆる取引関

PART ONE: SCOPE OF APPLICATION

Article 1
These Rules apply to international contracts in which the parties have agreed that, upon a failure of performance by one party (the obligor), the other party (the obligee) is entitled to an agreed sum from the obligor, whether as a penalty or as compensation.

Article 2
For the purposes of these Rules:
(a) A contract shall be considered international if, at the time of the conclusion of the contract, the parties have their places of business in different States;
(b) 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
deals between, or from information disclosed by, the parties at any time before or at the conclusion of the contract;

(c) 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 these Rules.

Article 3
For the purposes of these Rules:

(a) If a party has more than one place of business, his 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 4
These Rules do not apply to contracts concerning goods, other property or services which are to be supplied for the personal, family or household purposes of a party, unless the other party, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the contract was concluded for such purposes.

PART TWO: SUBSTANTIVE PROVISIONS

Article 5
The obligee is not entitled to the agreed sum if

第3条
この規則の適用上、

(a) 営業所とは、当事者が2以上の営業所を有する場合には、契約の締結時以前に当事者双方が知り、又は想定していた事情を考慮して、契約及びその履行に最も密接な関係を有する営業所をいう。

(b) 当事者が営業所を有しない場合には、その常居所を基準とする。

第4条
この規則は、当事者の一方の個人用、家族用又は家庭用に供給される物品その他の財産又は役務に関する契約については、適用しない。ただし、相手方が契約の締結時以前に当該契約がそのような目的のために締結されたことを知らず、かつ、知っているべきでもなかった場合には、この限りではない。

第5条
債務者が不履行について責任を負わない
10. 損害賠償額の予定に関する統一規則

the obligor is not liable for the failure of performance.

第6条

(1) 契約が、履行の遅滞の場合に債権者は約定額の支払を受ける権利を有すると規定する場合は、債権者は債務の履行及び約定額の支払の両方を求める権利を有する。

(2) 契約が、履行の遅滞以外の不履行の場合に債権者は約定額の支払を受ける権利を有すると規定する場合は、債権者は債務の履行又は約定額の支払のいずれかのみを求める権利を有する。ただし、当該約定額が、その不履行による損害の塡補に当たるとみることが合理的でない場合には、債権者は債務の履行及び約定額の支払の両方を求める権利を有する。

第7条

債権者が約定額の支払を求める権利を有する場合には、債権者は当該約定額によって塡補された損失については、損害賠償を請求することができない。もっとも、損失の額が当該約定額を実質的に超える場合には、債権者は、当該約定額によって塡補されない損失について、損害賠償を請求することができる。

第8条

裁判所又は仲裁廷は、約定額を減額することができない。ただし、債権者が受けた損失と約定額に実質的な不均衡がある場合にはこの限りではない。

第9条
The Parties may derogate from or vary the effect of articles 5, 6 and 7 of these Rules.

当事者は、この規則の第5条から第7条までの規定の適用を制限し、又はその効力を変更することができる。

【訳】曽野裕夫（北海道大学教授）
電子商取引に関する法統一にかかる UNCITRAL の文書は、条約として、「国際契約における電子通信の使用に関する国際連合条約」（国連電子通信条約、e-CC）（2005年）、モデル法として、「UNCITRAL 電子署名モデル法」（2001年）、「UNCITRAL 電子商取引モデル法」（1996年）があるほか、「コンピュータ記録の法的価値に関する各国政府及び国際機関に対する勧告」（1985年）、「電子商取引の信頼の促進：電子認証及び電子署名の国際的利用についての法的諸問題」（2007年）といった勧告・説明文書がある。本書には、ゴチック体で表記した文書の対訳を収録した。（藤田友敬）

11. 国際契約における電子通信の使用に関する国際連合条約（ニューヨーク、2005年）（国連電子通信条約、e-CC）


【概要】「国際契約における電子通信の使用に関する国際連合条約」（国連電子通信条約、e-CC）は、電子的手段を用いて締結された契約や契約関係者の間でなされた通信が、伝統的な書面によるそれと同様に、有効でエンフォースできるようにすることにより、国際取引における電子通信の使用を容易にすることを目的に作られたものである。本条約は、2005年11月23日に採択され、2013年3月1日に発効している。2016年12月1日現在、7か国が締約国となっているが、日本は署名・締結していない。

本条約は、「UNCITRAL 電子商取引モデル法」、「UNCITRAL 電子署名モデル法」といった、この領域における先行する UNCITRAL 文書に依拠して作成されたものであり、非差別性、技術的中立性及び機能的同等性という3つの基本原則に基づくものである。

条約本体に加えて、UNCITRAL 事務局の手による注釈（explanatory note）が公表されている。（藤田友敬）

条文訳

The States Parties to this Convention,

Reaffirming their belief that international trade on the basis of equality and mutual benefit...
is an important element in promoting friendly relations among States,

Noting that the increased use of electronic communications improves the efficiency of commercial activities, enhances trade connections and allows new access opportunities for previously remote parties and markets, thus playing a fundamental role in promoting trade and economic development, both domestically and internationally,

Considering that problems created by uncertainty as to the legal value of the use of electronic communications in international contracts constitute an obstacle to international trade,

Convinced that the adoption of uniform rules to remove obstacles to the use of electronic communications in international contracts, including obstacles that might result from the operation of existing international trade law instruments, would enhance legal certainty and commercial predictability for international contracts and help States gain access to modern trade routes,

Being of the opinion that uniform rules should respect the freedom of parties to choose appropriate media and technologies, taking account of the principles of technological neutrality and functional equivalence, to the extent that the means chosen by the parties comply with the purpose of the relevant rules of law,

Desiring to provide a common solution to remove legal obstacles to the use of electronic communications in a manner acceptable to States with different legal, social and economic
systems.

Have agreed as follows:

CHAPTER I.
SPHERE OF APPLICATION

Article 1. Scope of application
1. This Convention applies to the use of electronic communications in connection with the formation or performance of a contract between parties whose places of business are in different States.

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 the parties 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. Exclusions
1. This Convention does not apply to electronic communications relating to any of the following:

(a) Contracts concluded for personal, family or household purposes;

(b) (i) Transactions on a regulated exchange;
(ii) foreign exchange transactions;
(iii) inter-bank payment systems, inter-bank payment agreements or

195
clearance and settlement systems relating to securities or other financial assets or instruments;
(iv) the transfer of security rights in sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary.

2. This Convention does not apply to bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money.

2. 本条約は、為替手形、約束手形、委託貨物運送状、船荷証券、倉庫証券、または、他の持参人もしくは受益者に物品の引渡しもしくは金銭の支払いを請求する権利を付与する一切の譲渡可能な証書もしくは文書には適用しない。

Article 3.  Party autonomy
The parties may exclude the application of this Convention or derogate from or vary the effect of any of its provisions.

第 3 条 当事者自治
当事者は、本条約の適用を除外し、本条約のいずれかの規定から逸脱し、または、本条約のいずれかの規定の効果を変更することができる。

CHAPTER II.  GENERAL PROVISIONS

Article 4.  Definitions
For the purposes of this Convention:
(a) “Communication” means any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract;
(b) “Electronic communication” means any communication that the parties make by means of data messages;
(c) "Data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy;

(d) "Originator" of an electronic communication means a party by whom, or on whose behalf, the electronic communication has been sent or generated prior to storage, if any, but it does not include a party acting as an intermediary with respect to that electronic communication;

(e) "Addressee" of an electronic communication means a party who is intended by the originator to receive the electronic communication, but does not include a party acting as an intermediary with respect to that electronic communication;

(f) "Information system" means a system for generating, sending, receiving, storing or otherwise processing data messages;

(g) "Automated message system" means a computer program or an electronic or other automated means used to initiate an action or respond to data messages or performances in whole or in part, without review or intervention by a natural person each time an action is initiated or a response is generated by the system;

(h) "Place of business" means any place where a party maintains a non-transitory establishment to pursue an economic activity.

(c) 「データ通報」とは、電子データの相互交換、電子メール、電信、テレックスまたはファクシミリを含むが、これらに限定されない電子的、磁気的、光学的または類似の方法により発生、送信、受信または蓄積された情報を意味する。

(d) 電子通信の「発信人」とは、当該電子通信を送信、または、場合により、その蓄積に先立って発生させた当事者、または、その者ために当該電子通信が送信された当事者を意味するが、当該電子通信につき媒介者として行動した当事者を含まないものとする。

(e) 電子通信の「名宛人」とは、当該電子通信を受信すべき当事者として発信人が意図していた当事者を意味するが、当該電子通信につき媒介者として行動している当事者は含まないものとする。

(f) 「情報装置」は、データ通報を発生、送信、受信、蓄積、または、その他の方法による処理を行う装置を意味する。

(g) 「自動通報装置」は、当該装置による行為もしくは反応の起動の際に、その都度自然人による検査もしくは介入を受けることなく、データ通報の発生、もしくはデータ通報に対する全部もしくは一部の返信もしくは履行のために使用される電子計算機プログラム、または、電子的もしくは他の自動化された方法を意味する。

(h) 「営業の場所」は、当事者が特定の場所外への物品または役務の臨時的な供給以外の経済活動を行うために保有
activity other than the temporary provision of goods or services out of a specific location.

Article 5. Interpretation
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 6. Location of the parties
1. For the purposes of this Convention, a party's place of business is presumed to be the location indicated by that party, unless another party demonstrates that the party making the indication does not have a place of business at that location.

2. If a party has not indicated a place of business and has more than one place of business, then the place of business for the purposes of this Convention is that which has the closest relationship to the relevant contract, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract.

3. If a natural person does not have a place of business, reference is to be made to the

すする恒久的な施設を意味する。

第5条 解釈
1. 本条約の解釈においては、その国際的な性質、その適用の統一性を促進する必要、および国際取引における信義の順守に対する配慮を行うものとする。

2. 本条約が適用される事項に関する疑義であって本条約により一義的に解決できないものは、本条約の基礎をなす一般原則、そうした一般原則がないときは、国際私法の準則により決定される準拠法にしたがい解決するものとする。

第6条 当事者の所在地
1. 本条約の適用上、当事者の営業の場所は、当該当事者が表示した場所にはその営業の場所がないことを相手方当事者が立証しない限り、当該当事者が表示した場所と推定するものとする。

2. 当事者が営業の場所を表示せず、かつ、複数の営業の場所を有する場合、本条約の適用上、当事者の営業の場所は、当該契約に最も密接な関係を有する営業の場所とする。その決定においては、当該契約の締結前または締結時に、当事者全員により知られた、または、想定された事情を考慮するものとする。

3. 自然人が営業の場所を有しない場合、当該自然人の常居所を当該自然人の営業の
11. 国際電子通信条約 (e-CC)

person’s habitual residence.

4. A location is not a place of business merely because that is:
   (a) where equipment and technology supporting an information system used by a party in connection with the formation of a contract are located; or
   (b) where the information system may be accessed by other parties.

5. The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.

4. 特定の場所が、次に掲げる理由のみでは営業の場所とはされないものとする：
   (a) 契約の締結に関連して当事者により使用された情報装置を構成する機器および支援する技術が所在したこと；または
   (b) 相手方当事者による当該情報装置に対する接続が可能であったこと。

5. 当事者が特定の国に関係するドメイン名または電子メール宛先を使用した事実のみでは、当該当事者の営業の場所がその国に所在すると推定する根拠とはならないものとする。

Article 7. Information requirements

Nothing in this Convention affects the application of any rule of law that may require the parties to disclose their identities, places of business or other information, or relieves a party from the legal consequences of making inaccurate, incomplete or false statements in that regard.

第 7 条 情報開示の要件

本条約のいずれの規定も、当事者に対してその身許、営業の場所、もしくはその他の情報の開示を要求することができる法規範の適用に影響を与えるものでもなく、または、当事者がそれらのことにつき不正確な、不完全な、もしくは虚偽の陳述をしたしたことについての法的結果から当事者を救済するものでもない。

CHAPTER III. USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL CONTRACTS

第 3 章 国際契約における電子通信の使用

Article 8. Legal recognition of electronic communications

1. A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.

2. Nothing in this Convention requires a party
to use or accept electronic communications, but a party’s agreement to do so may be inferred from the party’s conduct.

Article 9. Form requirements
1. Nothing in this Convention requires a communication or a contract to be made or evidenced in any particular form.
2. Where the law requires that a communication or a contract should be in writing, or provides consequences for the absence of a writing, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.
3. Where the law requires that a communication or a contract should be signed by a party, or provides consequences for the absence of a signature, that requirement is met in relation to an electronic communication if:
   (a) A method is used to identify the party and to indicate that party’s intention in respect of the information contained in the electronic communication; and
   (b) The method used is either:
       (i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
       (ii) Proven in fact to have fulfilled the
functions described in subparagraph (a) above, by itself or together with further evidence.

4. Where the law requires that a communication or a contract should be made available or retained in its original form, or provides consequences for the absence of an original, that requirement is met in relation to an electronic communication if:

(a) There exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form, as an electronic communication or otherwise; and

(b) Where it is required that the information it contains be made available, that information is capable of being displayed to the person to whom it is to be made available.

5. For the purposes of paragraph 4 (a):

(a) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display; and

(b) The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

Article 10. Time and place of dispatch and receipt of electronic communications

1. The time of dispatch of an electronic communication is the time when it leaves an

4. 法規範が、通信もしくは契約につき、その原本が利用可能であること、もしくは、保存されるべきことを要求する場合、または、その原本を欠くことの結果を規定している場合、次の事項のすべてに該当するときは、その要件は、電子通信との関連においては充足されているものとする：

(a) 通信または契約に含まれる情報が、電子通信または他のものとして、その最終的な形式で初めて発生させられた時点から、その完全性についての信頼に足る保証が存在すること；ならびに

(b) 通信または契約に含まれる情報の利用が求められたときに、その情報が、利用の対象者に対し表示可能であること。

5. 4(a)の適用上：

(a) 完全性の判定基準は、当該情報が、完全かつ、裏書の追加ならびに通信、蓄積および表示の通常の過程において発生する変更を除き、変更なく保持されてい るか否かによらなければならない。

(b) 要求される信頼性の判定は、当該情報が発生させられた目的および関連するすべての事情に照らして行わなければならない。
information system under the control of the originator or of the party who sent it on behalf of the originator, or, if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time when the electronic communication is received.

2. The time of receipt of an electronic communication is the time when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee’s electronic address.

3. An electronic communication is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business, as determined in accordance with article 6.

4. Paragraph 2 of this article applies notwithstanding that the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is deemed to be received under paragraph 3 of this article.
Article 11. Invitations to make offers

A proposal to conclude a contract made through one or more electronic communications which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems, including proposals that make use of interactive applications for the placement of orders through such information systems, is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

第 11 条 申込みの誘因

单数または複数の特定の当事者に宛てられたものではなく、情報装置を使用する当事者により広く受信可能なものであり、かかる情報装置による発注のための対話方式の機器の使用の提案を含む単数または複数の電子通信による契約の締結を含む提案は、それが受諾された場合には拘束される当事者の意思を明確に表示するものでない限り、申込みの誘因と考えられるものとする。

Article 12. Use of automated message systems for contract formation

A contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, shall not be denied validity or enforceability on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.

第 12 条 契約締結のための自動通信装置の使用

自動通信装置と自然人の対話、または自動通信装置間の対話により締結された契約は、当該自動通信装置により実行された個々の動作またはその結果である契約を自然人が校閲または介入していなかったことのみを理由に、その有効性または強行性を否定されてはならない。

Article 13. Availability of contract terms

Nothing in this Convention affects the application of any rule of law that may require a party that negotiates some or all of the terms of a contract through the exchange of electronic communications to make available to the other party those electronic communications which contain the contractual terms in a particular manner, or relieves a party from the legal consequences of its failure to do so.

第 13 条 契約条項の利用可能性

本条約のいずれの条項も、電子通信の交換による、いくつかのまたは全ての契約条項の交渉を行う相手方当事者に、特定の方法による契約条項を含む電子通信を相手方当事者に利用可能にさせることを要求する、または、そうしなかった場合における法的結果から当事者を救済するよういかなる法規範の適用にも影響を及ぼすものではない。

Article 14. Error in electronic communications

第 14 条 電子通信における誤謬
1. Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:

(a) The person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and

(b) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.

2. Nothing in this article affects the application of any rule of law that may govern the consequences of any error other than as provided for in paragraph 1.

CHAPTER IV. FINAL PROVISIONS

Article 15. Depositary

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

Article 16. Signature, ratification, acceptance
or approval

1. This Convention is open for signature by all States at United Nations Headquarters in New York from 16 January 2006 to 16 January 2008.

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

3. This Convention is open for accession by all States that 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 17. Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the regional economic integration organization shall not count as a Contracting State in addition to its member States that are Contracting States.

2. The regional economic integration organization shall, at the time of signature,
ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” in this Convention applies equally to a regional economic integration organization where the context so requires.

4. This Convention shall not prevail over any conflicting rules of any regional economic integration organization as applicable to parties whose respective places of business are located in States members of any such organization, as set out by declaration made in accordance with article 21.

Article 18. Effect in domestic territorial units

1. If a Contracting State has two or more territorial units in which 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

により規制される特定の事項のうち、その参加国から管轄権を移管されたものを特定する宣言を受託者に対して行わなければなら。地域経済統合組織は、本項に規定する宣言において特定した管轄権の配分についてのすべて変更を、管轄権の新たな配分を含め、遅滞なく受託者に通知しなければならない。

3. 本条約における「締約国」または「締約諸国」への言及は、文脈上要求される場合、地域経済統合組織に対しても等しく適用される。

4. 本条約は、第21条にしたがい行われた宣言に規定されるように、当事者の特定の営業の場所が、地域経済統合組織の参加国に所在するために適用される当該地域経済統合組織の抵触する規範に優越するものではない。

第18条 国内が複数法域の場合の効果

1. 締約国は、本条約が対象とする事項に関して、それぞれ異なる法制が適用される2以上の地域をその領域内に有する場合に、署名、批准、受諾、承認または加入の時に、本条約を自国の領域内のすべての地域について適用するかは、または、1もしくは2以上の地域についてのみ適用するかを宣言することができるものとし、いつでも別の宣言を行うことにより、その宣言を修正することができる。

2. これらの宣言は、受託者に通知される
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 19. Declarations on the scope of application

1. Any Contracting State may declare, in accordance with article 21, that it will apply this Convention only:
   (a) When the States referred to in article 1, paragraph 1, are Contracting States to this Convention; or
   (b) When the parties have agreed that it applies.

2. Any Contracting State may exclude from the scope of application of this Convention the matters it specifies in a declaration made in accordance with article 21.

Article 20. Communications exchanged under other international conventions

1. The provisions of this Convention apply to

207
the use of electronic communications in connection with the formation or performance of a contract to which any of the following international conventions, to which a Contracting State to this Convention is or may become a Contracting State, apply:

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958);

Convention on the Limitation Period in the International Sale of Goods (New York, 14 June 1974) and Protocol thereto (Vienna, 11 April 1980);

United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980);

United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 19 April 1991);

United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 11 December 1995);


2. The provisions of this Convention apply further to electronic communications in connection with the formation or performance of a contract to which another international convention, treaty or agreement not specifically referred to in paragraph 1 of this article, and to which a Contracting State to this Convention is or may become a Contracting State, applies, unless the State has declared, in accordance with article 21, that it will not be bound by this paragraph.
3. A State that makes a declaration pursuant to paragraph 2 of this article may also declare that it will nevertheless apply the provisions of this Convention to the use of electronic communications in connection with the formation or performance of any contract to which a specified international convention, treaty or agreement applies to which the State is or may become a Contracting State.

4. Any State may declare that it will not apply the provisions of this Convention to the use of electronic communications in connection with the formation or performance of a contract to which any international convention, treaty or agreement specified in that State’s declaration, to which the State is or may become a Contracting State, applies, including any of the conventions referred to in paragraph 1 of this article, even if such State has not excluded the application of paragraph 2 of this article by a declaration made in accordance with article 21.

Article 21. Procedure and effects of declarations

1. Declarations under article 17, paragraph 4, article 19, paragraphs 1 and 2, and article 20, paragraphs 2, 3 and 4, may be made at any time. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and their confirmations are to be in writing and to 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.

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

Article 22. Reservations
No reservations may be made under this Convention.

Article 23. Entry into force
1. This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 24. Time of application

第22条 留保
本条約の下においては、留保は、行うことができない。

第23条 発効
1. 本条約は、批准、受諾、承認または加入の第３番目の文書の寄託の日から６カ月を経過した日の翌月の第１日に発効する。

2. 本条約の批准、受諾、承認または加入の第三番目の文書の寄託の日の後に、本条約の批准、受諾、承認または加入が行われる場合、本条約は、当該国につき、その批准、受諾、承認または加入の文書の寄託の日から６カ月を経過した日の翌月の第１日に発効する。

第24条 適用の時期
This Convention and any declaration apply only to electronic communications that are made after the date when the Convention or the declaration enters into force or takes effect in respect of each Contracting State.

Article 25. Denunciations
1. A Contracting State may denounce this 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 New York this twenty-third day of November two thousand and five, 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.

2005年11月23日ニューヨークにおいて、とくに正文であるアラビア語、中国語、英語、フランス語、ロシア語及びスペイン語により原本1通を作成した。

以上の証拠として、下名の全権委員は、各自の政府から正当に委任を受けてこの条約に署名した。

【訳】岩崎一生（名古屋大学名誉教授）
【概要】「UNCITRAL 電子商取引モデル法」は、各国の立法者に対して、国際的に受け入れられる一群の規律を提供するものである。電子的手段を用いてなされる取引を可能かつ容易にすべく、電子商取引に対する法的障害を取り除き、電子商取引の法的予見可能性を高めることに目指すものである。とりわけ書面性を要求する法律上の強行法的規定によってもたらされる法的障害を克服することが意図されている。本モデル法は、現代の電子商取引法制の基礎をなす①非差別性、②技術的中立性及び③機能的同等性の3つの基本原則をはじめて採択したことで知られている。その他に、電子的方法で締結された契約の成立・有効性、データメッセージの帰属、データメッセージの受信の確認、データメッセージの発信・受信の時と場所等に関する規定が置かれている。

本モデル法は1996年6月12日に採択されたが、1998年には追加的な規定が採択された。また各国が電子署名に関する立法を行う上で参考となる情報を提供する事務局作成文書「UNCITRAL 電子商取引モデル法に関する制定ガイド」も公表されている。

2016年12月1日現在、67か国（143法域）が本モデル法に基づく国内立法を行っているが、日本は現在のところ同モデル法に基づく国内立法を行っていない。（藤田友敬）
This Law** applies to any kind of information in the form of a data message used in the context*** of commercial**** activities.

** This Law does not override any rule of law intended for the protection of consumers.

*** The Commission suggests the following text for States that might wish to extend the applicability of this Law:

"This Law applies to any kind of information in the form of a data message, except in the following situations: [...]."

**** The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

---

Article 2. Definitions

For the purposes of this Law:

(a) “Data message” means information generated, sent, received or stored by electronic data interchange (EDI), electronic mail, telegraph, international commerce)にかかわる場合に、適用される。」

---

本法**は商事****活動において***用いられる、データメッセージの形体のすべての種類の情報に適用される。
electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

(b) “Electronic data interchange (EDI)” means the electronic transfer from computer to computer of information using an agreed standard to structure the information;

(c) “Originator” of a data message means a person by whom, or on whose behalf, the data message purports to have been sent or generated prior to storage, if any, but it does not include a person acting as an intermediary with respect to that data message;

(d) “Addressee” of a data message means a person who is intended by the originator to receive the data message, but does not include a person acting as an intermediary with respect to that data message;

(e) “Intermediary”, with respect to a particular data message, means a person who, on behalf of another person, sends, receives or stores that data message or provides other services with respect to that data message;

(f) “Information system” means a system for generating, sending, receiving, storing or otherwise processing data messages.

Article 3. Interpretation

(1) In the interpretation of this Law, regard is

(b)「電子デーティ交換（EDI）」とは、情報を構造化するために合意された基準を用いてなされる、コンピュータ間の情報の電子的移動をいう。

(c)データメッセージの「オリジネーター」とは、その者によって、またはその者のために、データメッセージが、保存される場合にはそれに先立って、送信され、または創出されたと称されている者であって、当該データメッセージに関して媒介者として行為している者以外の者をいう。

(d)データメッセージの「名宛人」とは、あるデータメッセージを受信することがオリジネーターによって意図されている者で、そのデータメッセージとの関係で媒介人として行為している者以外の者をいう。

(e)特定のデータメッセージとの関係で、「媒介人」とは、他人のためにデータメッセージを送信し、受信し、もしくは保管し、または当該データメッセージとの関係でその他の役務を提供する者をいう。

(f)「情報システム」とは、データメッセージを創出し、送信し、受信し、保管し、またはその他の処理をするためのシステムをいう。
to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 4. Variation by agreement

(1) As between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as otherwise provided, the provisions of chapter III may be varied by agreement.

(2) Paragraph (1) does not affect any right that may exist to modify by agreement any rule of law referred to in chapter II.

CHAPTER II. APPLICATION OF LEGAL REQUIREMENTS TO DATA MESSAGES

Article 5. Legal recognition of data messages

Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.

Article 5 bis. Incorporation by reference

(as adopted by the Commission at its thirty-first session, in June 1998)

Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is not contained in the data message purporting to give rise to such legal effect, but is merely referred to in that data message.
Article 6. Writing
(1) Where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference.
(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being in writing.
(3) The provisions of this article do not apply to the following: [...].

Article 7. Signature
(1) Where the law requires a signature of a person, that requirement is met in relation to a data message if:
(a) a method is used to identify that person and to indicate that person’s approval of the information contained in the data message; and
(b) that method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.
(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.
(3) The provisions of this article do not apply to the following: [...].

Article 8. Original
(1) Where the law requires information to be presented or retained in its original form, that requirement is met by a data message if:

(a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as a data message or otherwise; and

(b) where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented.

(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form.

(3) For the purposes of subparagraph (a) of paragraph (1):

(a) the criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and

(b) the standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

(4) The provisions of this article do not apply to the following: [...]
application of the rules of evidence shall apply so as to deny the admissibility of a data message in evidence:

(a) on the sole ground that it is a data message; or

(b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.

(2) Information in the form of a data message shall be given due evidential weight. In assessing the evidential weight of a data message, regard shall be had to the reliability of the manner in which the data message was generated, stored or communicated, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor.

Article 10. Retention of data messages

(1) Where the law requires that certain documents, records or information be retained, that requirement is met by retaining data messages, provided that the following conditions are satisfied:

(a) the information contained therein is accessible so as to be usable for subsequent reference; and

(b) the data message is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and

(c) such information, if any, is retained as
enables the identification of the origin and
destination of a data message and the date
and time when it was sent or received.

(2) An obligation to retain documents, records
or information in accordance with paragraph
(1) does not extend to any information the sole
purpose of which is to enable the message to
be sent or received.

(3) A person may satisfy the requirement
referred to in paragraph (1) by using the
services of any other person, provided that the
conditions set forth in subparagraphs (a), (b)
and (c) of paragraph (1) are met.

CHAPTER III. COMMUNICATION OF
DATA MESSAGES

Article 11. Formation and validity of contracts

(1) In the context of contract formation, unless
otherwise agreed by the parties, an offer and
the acceptance of an offer may be expressed
by means of data messages. Where a data
message is used in the formation of a contract,
that contract shall not be denied validity or
enforceability on the sole ground that a data
message was used for that purpose.

(2) The provisions of this article do not apply
to the following: [...]

Article 12. Recognition by parties of data
messages

(1) As between the originator and the addressee
of a data message, a declaration of will or
other statement shall not be denied legal
effect, validity or enforceability solely on the
Article 13. Attribution of data messages

(1) A data message is that of the originator if it was sent by the originator itself.

(2) As between the originator and the addressee, a data message is deemed to be that of the originator if it was sent:

(a) by a person who had the authority to act on behalf of the originator in respect of that data message; or

(b) by an information system programmed by, or on behalf of, the originator to operate automatically.

(3) As between the originator and the addressee, an addressee is entitled to regard a data message as being that of the originator, and to act on that assumption, if:

(a) in order to ascertain whether the data message was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or

(b) the data message as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify data messages as its own.
(4) Paragraph (3) does not apply:

(a) as of the time when the addressee has both received notice from the originator that the data message is not that of the originator, and had reasonable time to act accordingly; or

(b) in a case within paragraph (3)(b), at any time when the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the data message was not that of the originator.

(5) Where a data message is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the data message as received as being what the originator intended to send, and to act on that assumption. The addressee is not so entitled when it knew or should have known, had it exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the data message as received.

(6) The addressee is entitled to regard each data message received as a separate data message and to act on that assumption, except to the extent that it duplicates another data message and the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the data message was a duplicate.

Article 14. Acknowledgement of receipt

第14条 受信の確認
Paragraphs (2) to (4) of this article apply where, on or before sending a data message, or by means of that data message, the originator has requested or has agreed with the addressee that receipt of the data message be acknowledged.

(2) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by

(a) any communication by the addressee, automated or otherwise, or

(b) any conduct of the addressee, sufficient to indicate to the originator that the data message has been received.

(3) Where the originator has stated that the data message is conditional on receipt of the acknowledgement, the data message is treated as though it has never been sent, until the acknowledgement is received.

(4) Where the originator has not stated that the data message is conditional on receipt of the acknowledgement, and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time, the originator:

(a) may give notice to the addressee stating that no acknowledgement has been received and specifying a reasonable time by which the acknowledgement must be received; and

(b) if the acknowledgement is not received within the time specified in subparagraph (a) of this paragraph.
(a), may, upon notice to the addressee, treat the data message as though it had never been sent, or exercise any other rights it may have.

(5) Where the originator receives the addressee’s acknowledgement of receipt, it is presumed that the related data message was received by the addressee. That presumption does not imply that the data message corresponds to the message received.

(6) Where the received acknowledgement states that the related data message met technical requirements, either agreed upon or set forth in applicable standards, it is presumed that those requirements have been met.

(7) Except in so far as it relates to the sending or receipt of the data message, this article is not intended to deal with the legal consequences that may flow either from that data message or from the acknowledgement of its receipt.

Article 15. Time and place of dispatch and receipt of data messages

(1) Unless otherwise agreed between the originator and the addressee, the dispatch of a data message occurs when it enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.

(2) Unless otherwise agreed between the originator and the addressee, the time of receipt of a data message is determined as follows:
   (a) if the addressee has designated an
information system for the purpose of receiving data messages, receipt occurs:

(i) at the time when the data message enters the designated information system; or

(ii) if the data message is sent to an information system of the addressee that is not the designated information system, at the time when the data message is retrieved by the addressee;

(b) if the addressee has not designated an information system, receipt occurs when the data message enters an information system of the addressee.

(3) Paragraph (2) applies notwithstanding that the place where the information system is located may be different from the place where the data message is deemed to be received under paragraph (4).

(4) Unless otherwise agreed between the originator and the addressee, a data message is deemed to be dispatched at the place where the originator has its place of business, and is deemed to be received at the place where the addressee has its place of business. For the purposes of this paragraph:

(a) if the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business;

(b) if the originator or the addressee does not have a place of business, reference is to be made to its habitual residence.

(5) The provisions of this article do not apply to the extent that they are inconsistent with the provisions of Sections 1 and 2 of the Civil Code.
Part II. Electronic commerce in specific areas

CHAPTER I. CARRIAGE OF GOODS

Article 16. Actions related to contracts of carriage of goods

Without derogating from the provisions of part one of this Law, this chapter applies to any action in connection with, or in pursuance of, a contract of carriage of goods, including but not limited to:

(a) furnishing the marks, number, quantity or weight of goods;
(b) notifying a person of terms and conditions of the contract;
(c) giving instructions to a carrier;
(d) giving any other notice or statement in connection with the performance of the contract;
(e) undertaking to deliver goods to a named person or a person authorized to claim

(i) stating or declaring the nature or value of goods;
(ii) issuing a receipt for goods;
(iii) confirming that goods have been loaded;
(iv) claiming delivery of goods;
(v) authorizing release of goods;
(vi) giving notice of loss of, or damage to, goods;
(vii) giving any other notice or statement in connection with the performance of the contract;
(viii) undertaking to deliver goods to a named person or a person authorized to claim
delivery;
(f) granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods;

(g) acquiring or transferring rights and obligations under the contract.

Article 17. Transport documents

(1) Subject to paragraph (3), where the law requires that any action referred to in article 16 be carried out in writing or by using a paper document, that requirement is met if the action is carried out by using one or more data messages.

(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for failing either to carry out the action in writing or to use a paper document.

(3) If a right is to be granted to, or an obligation is to be acquired by, one person and no other person, and if the law requires that, in order to effect this, the right or obligation must be conveyed to that person by the transfer, or use of, a paper document, that requirement is met if the right or obligation is conveyed by using one or more data messages, provided that a reliable method is used to render such data message or messages unique.
(4) For the purposes of paragraph (3), the standard of reliability required shall be assessed in the light of the purpose for which the right or obligation was conveyed and in the light of all the circumstances, including any relevant agreement.

(5) Where one or more data messages are used to effect any action in subparagraphs (f) and (g) of article 16, no paper document used to effect any such action is valid unless the use of data messages has been terminated and replaced by the use of paper documents. A paper document issued in these circumstances shall contain a statement of such termination. The replacement of data messages by paper documents shall not affect the rights or obligations of the parties involved.

(6) If a rule of law is compulsorily applicable to a contract of carriage of goods which is in, or is evidenced by, a paper document, that rule shall not be inapplicable to such a contract of carriage of goods which is evidenced by one or more data messages by reason of the fact that the contract is evidenced by such data message or messages instead of by a paper document.

(7) The provisions of this article do not apply to the following: [...].
13. UNCITRAL電子署名モデル法（2001年）
UNCITRAL Model Law on Electronic Signatures (2001)

【概要】「UNCITRAL 電子署名モデル法」は、電子署名と手書きの署名とが同じように扱われるための技術的信頼性の基準を確立することで、電子署名の使用を可能かつ容易にすることを目的とする。本モデル法は、電子署名の法的取扱いを実効的に定め、その法的地位を確実なものとするために、各国が現代的、調和的でありかつ公正な立法枠組みを確立することを手助けするものである。本モデル法も、「UNCITRAL 電子商取引モデル法」と同様、非差別性、技術的中立性及び機能的同等性という3つの基本原則に依拠するものである。

本モデル法は、2001年7月5日に採択された。また各国が電子署名に関する立法を行う上で参考となる情報を提供する、事務局作成文書「UNCITRAL 電子署名モデル法に関する制定ガイド」も公表されている。

2016年12月1日現在、32か国が本モデル法に基づくか影響を受けた国内立法を行っている。日本は現在のところ本モデル法に基づく国内立法を行っていない。（藤田友敬）

条文訳

Article 1. Sphere of application

This Law applies where electronic signatures are used in the context of commercial activities.

第1条 適用領域

この法は、商業活動に関連して電子署名が使用される場合に適用される。この法は、

* The Commission suggests the following text for States that might wish to extend the applicability of this Law: "This Law applies where electronic signatures are used, except in the following situations: [...]."

* 本委員会は、本法の適用を拡大しようとする国に対して次の文言を提案する。

「この法は、次の場合を除いて、電子署名が使用される場合に適用される： […]。」

** The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

** 「商業」という用語は、契約であるか否かを問わず、商業的性質を有する全ての関係から生
activities. It does not override any rule of law intended for the protection of consumers.

Article 2. Definitions

For the purposes of this Law:

(a) “Electronic signature” means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory’s approval of the information contained in the data message;

(b) “Certificate” means a data message or other record confirming the link between a signatory and signature creation data;

(c) “Data message” means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

(d) “Signatory” means a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents;

(e) “Certification service provider” means a person that issues certificates and may provide other services related to electronic signature verification.

낸 상황을 포함하려는 광범위한 해석은 이루어져야 한다. 상업적성질을 갖는 사항은 다른 사항 다음에 우선하지 않는다: 물건이나 서비스의 제공, 거래에 있어 매매를 통해 이루어지는 상가의 거래, 판매, 분업, 출시, 합동, 사업, 렌트, 전산, 컨설팅, 엔지니어링, 라이센스, 투자, 라이프, 은행, 보험, 개발, 협약 또는 협업, 그 외의 산업적, 영업적 공동행위, 항공, 해양, 철도, 도로 운송.
signatures;

(f) “Relying party” means a person that may act on the basis of a certificate or an electronic signature.

(f) 「信頼する関係者」とは、証明書又は電子署名に基づいて行為する者をいう。

Article 3. Equal treatment of signature technologies

Nothing in this Law, except article 5, shall be applied so as to exclude, restrict or deprive of legal effect any method of creating an electronic signature that satisfies the requirements referred to in article 6, paragraph 1, or otherwise meets the requirements of applicable law.

第3条 署名技術の平等な取扱い

第5条をのぞき、この法は、第6条第1項で言及されている要件を満たすか、又は準拠法上の要件に合致する電子署名作成方法の法的効力を、除外、限定、剥奪するために適用されることはない。

Article 4. Interpretation

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

第4条 解釈

1. この法の解釈に当たっては、その国際的な原点並びにその適用における統一及び信義の遵守を促進する必要性を考慮する。

2. この法が規律する事項に関する問題であって、この法において明示的に解決されていないものについては、この法の基礎を成す一般原則に従って解決する。

Article 5. Variation by agreement

The provisions of this Law may be derogated from or their effect may be varied by agreement, unless that agreement would not be valid or effective under applicable law.

第5条 本法と異なる合意

この法の規定は、合意により適用を制限し、又はその効力を変更することができる。ただし、その合意が準拠法の下で効力を有さない場合は、この限りでない。

Article 6. Compliance with a requirement for a signature

1. Where the law requires a signature of a person, that requirement is met in relation to a data message if an electronic signature is used that is as reliable as was appropriate for the

1. 法が人の署名を要件とする場合において、使用される電子署名が、信頼できるものであり、かつ、データメッセージが作成又は交信された目的のために、関係する合
purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.

2. Paragraph 1 applies whether the requirement referred to therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

3. An electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in paragraph 1 if:
   (a) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;
   (b) The signature creation data were, at the time of signing, under the control of the signatory and of no other person;
   (c) Any alteration to the electronic signature, made after the time of signing, is detectable; and
   (d) Where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

4. Paragraph 3 does not limit the ability of any person:
   (a) To establish in any other way, for the purpose of satisfying the requirement referred to in paragraph 1, the reliability of an electronic signature; or
   (b) To adduce evidence of the non-reliability of an electronic signature.

5. The provisions of this article do not apply to the following: [...].
Article 7. Satisfaction of article 6
1. [Any person, organ or authority, whether public or private, specified by the enacting State as competent] may determine which electronic signatures satisfy the provisions of article 6 of this Law.

2. Any determination made under paragraph 1 shall be consistent with recognized international standards.

3. Nothing in this article affects the operation of the rules of private international law.

Article 8. Conduct of the signatory
1. Where signature creation data can be used to create a signature that has legal effect, each signatory shall:
   
   (a) Exercise reasonable care to avoid unauthorized use of its signature creation data;

   (b) Without undue delay, utilize means made available by the certification service provider pursuant to article 9 of this Law, or otherwise use reasonable efforts, to notify any person that may reasonably be expected by the signatory to rely on or to provide services in support of the electronic signature if:

   (i) The signatory knows that the signature creation data have been compromised; or

   (ii) The circumstances known to the signatory give rise to a substantial risk that the signature creation data may have been compromised;

   (c) Where a certificate is used to support the
electronic signature, exercise reasonable
care to ensure the accuracy and
completeness of all material representations
made by the signatory that are relevant to
the certificate throughout its life cycle or
that are to be included in the certificate.

2. A signatory shall bear the legal
consequences of its failure to satisfy the
requirements of paragraph 1.

Article 9. Conduct of the certification service
provider

1. Where a certification service provider
provides services to support an electronic
signature that may be used for legal effect as a
signature, that certification service provider
shall:

(a) Act in accordance with representations
made by it with respect to its policies and
practices;

(b) Exercise reasonable care to ensure the
accuracy and completeness of all material
representations made by it that are relevant
to the certificate throughout its life cycle or
that are included in the certificate;

(c) Provide reasonably accessible means that
enable a relying party to ascertain from the
certificate:

(i) The identity of the certification service
provider;

(ii) That the signatory that is identified in
the certificate had control of the signature
creation data at the time when the
certificate was issued;

(iii) That signature creation data were
valid at or before the time when the

ために使用される場合には、証明書のラ
イフサイクルを通じて関連するか、又は
当該証明書に含まれる、署名者による全
ての重要な表示の正確性及び全部性の
確保のために、合理的な注意を払うこと。

2. 署名者は、第1項の要件を充足しないこ
との法的結果を負担する。

第9条 認証サービスプロバイダーの行為

1. 認証サービスプロバイダーが署名とし
ての法的効力のために使用できる電子署
名に裏付けを与えるサービスを提供する
場合には、認証サービスプロバイダーは、
次のことを行わなければならない。

(a) 認証サービスプロバイダーによって、
その方針と実務として示された表明に
従って行動すること。

(b) 証明書のライフサイクルを通して関
連するか、又は当該証明書に含まれる、
署名者による全ての重要な表示の正確
性及び全部性の確保のために合理的な
注意を払うこと。

(c) 証明書を信頼する関係者が、次の事項
を確認するための合理的に利用できる
手段を提供すること。

(i) 認証サービスプロバイダーの特定

(ii) 証明書が発行された時に、証明書
で特定された署名者が署名作成デー
タを自己の管理下においていたこと。

(iii) 証明書が発行された時又はそれ
より前の時点において、署名作成デー
certificate was issued;
(d) Provide reasonably accessible means that enable a relying party to ascertain, where relevant, from the certificate or otherwise:

(i) The method used to identify the signatory;
(ii) Any limitation on the purpose or value for which the signature creation data or the certificate may be used;
(iii) That the signature creation data are valid and have not been compromised;
(iv) Any limitation on the scope or extent of liability stipulated by the certification service provider;
(v) Whether means exist for the signatory to give notice pursuant to article 8, paragraph 1 (b), of this Law;
(vi) Whether a timely revocation service is offered;
(e) Where services under subparagraph (d) (v) are offered, provide a means for a signatory to give notice pursuant to article 8, paragraph 1 (b), of this Law and, where services under subparagraph (d) (vi) are offered, ensure the availability of a timely revocation service;
(f) Utilize trustworthy systems, procedures and human resources in performing its services.

2. A certification service provider shall bear the legal consequences of its failure to satisfy the requirements of paragraph 1.

Article 10. Trustworthiness
For the purposes of article 9, paragraph 1 (f), (d)証明書を信頼する関係者に、必要に応じて、証明書又はその他の方法から次のことを確認するための合理的に利用できる手段を提供すること。

(i) 署名者の特定に使用する方法
(ii) 署名作成データ又は証明書の使用目的や価値についての制限
(iii) 署名作成データが有効であり、漏洩したことがないこと。
(iv) 認証サービスプロバイダーが定める責任範囲の制限
(v) 本法第8条第1項(b)に従った通知を署名者がする手段の存否
(vi) 適時の取消サービスの提供の有無
(e) 第1項(d) (v)に基づくサービスが提供される場合には、本法第8条第1項(b)に従った通知を署名者が行う手段を提供すること、及び同項(d) (vi)に基づくサービスが提供される場合には、適時取消サービスの利用可能性を保証すること。
(f) サービスを遂行するために信頼できるシステム、手続、及び人財資源を用いること。

2. 認証サービスプロバイダーは第1項の要件を充足しないことの法的結果を負担する。
of this Law in determining whether, or to what extent, any systems, procedures and human resources utilized by a certification service provider are trustworthy, regard may be had to the following factors:

(a) Financial and human resources, including existence of assets;
(b) Quality of hardware and software systems;
(c) Procedures for processing of certificates and applications for certificates and retention of records;
(d) Availability of information to signatories identified in certificates and to potential relying parties;
(e) Regularity and extent of audit by an independent body;
(f) The existence of a declaration by the State, an accreditation body or the certification service provider regarding compliance with or existence of the foregoing; or
(g) Any other relevant factor.

Article 11. Conduct of the relying party
A relying party shall bear the legal consequences of its failure:

(a) To take reasonable steps to verify the reliability of an electronic signature; or
(b) Where an electronic signature is supported by a certificate, to take reasonable steps:
   (i) To verify the validity, suspension or revocation of the certificate; and
   (ii) To observe any limitation with respect to the certificate.
Article 12. Recognition of foreign certificates and electronic signatures

1. In determining whether, or to what extent, a certificate or an electronic signature is legally effective, no regard shall be had:
   (a) To the geographic location where the certificate is issued or the electronic signature created or used; or
   (b) To the geographic location of the place of business of the issuer or signatory.

2. A certificate issued outside [the enacting State] shall have the same legal effect in [the enacting State] as a certificate issued in [the enacting State] if it offers a substantially equivalent level of reliability.

3. An electronic signature created or used outside [the enacting State] shall have the same legal effect in [the enacting State] as an electronic signature created or used in [the enacting State] if it offers a substantially equivalent level of reliability.

4. In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of paragraph 2 or 3, regard shall be had to recognized international standards and to any other relevant factors.

5. Where, notwithstanding paragraphs 2, 3 and 4, parties agree, as between themselves, to the use of certain types of electronic signatures or certificates, that agreement shall be recognized as sufficient for the purposes of cross-border recognition, unless that agreement would not
be valid or effective under applicable law. 合意が準拠法の下で効力を有さないときは、この限りでない。

【訳】八尾 晃（元大阪商業大学教授）
IV 運送
Ⅳ 運 送

国際物品運送に関する法統一にかかる UNCITRAL の文書（本書ではこのうちゴチック体のものを収録した）は、条約として、「国際海上物品運送に関する国際連合条約」（1978年）（ハンブルク・ルールズ）、「国際取引におけるターミナル・オペレーターの責任に関する国際連合条約」（1991年）（未発効）、「全部又は一部が海上運送による国際物品運送契約に関する国際連合条約」（2008年）（ロッテルダム・ルールズ）がある。ハンブルク・ルールズは、1992年に発効しているが主要海運国は締約国となっておらず、ターミナル・オペレーター条約は、批准が進まず、発効の見通しはたっていない。

また、将来の国際条約において、国際運送における責任限度額を定める際に国際通貨基金（IMF）の特別引出権（SDR）によって表示するための計算単位に関する規制のモデル条項として、「計算単位条項及び国際運送及び責任に関する条約中の責任限度の調整条項」（1982年）がある。

本書には、ゴチック体で表記した文書の対訳を収録した。（藤田友敬）

14. 全部又は一部が海上運送による国際物品運送契約に関する国際連合条約（ニューヨーク、2008年）（ロッテルダム・ルールズ）


【概要】「全部又は一部が海上運送による国際物品運送契約に関する国際連合条約」（ロッテルダム・ルールズ）は、「船荷証券に関するある規則の統一のための国際条約」（ヘーグ・ルールズ）とその改正議定書あるいは「国連国際海上物品運送条約」（ハンブルク・ルール）といった従来の国際的規律に代わる、国際海上物品運送法制に関する新しい国際条約である。2002年からUNCITRALにおいて審議され、2008年12月国連総会の承認により成立した。2009年9月、ロッテルダム（オランダ）において署名式典が行われ、以後署名のために開設されたが、2016年12月1日現在未発効である。署名式の行われた地にちなんで、ロッテルダム・ルールズと呼ばれる。日本は署名・締結をしていない。

本条約は96条からなる大部のものである、運送契約について生じる様々な法律問題統一的かつ包括的な法制度を提供するもので、運送人はもとより、荷送人・荷受人の義務・責任について規定し、また海上運送区間を含むドア・トゥ・ドアの運送に対応できるように複合運送的側面をも扱っている。さらに海上物品運送にかかる近時の技術的進展を踏まえ、電子商取引に関する諸規定、コンテナ化を前提とした規律、譲渡性のない運送書類、運送品
The States Parties to this Convention,

Reaffirming their belief that international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Convinced that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, significantly contributes to universal economic cooperation among all States on a basis of equality, equity and common interest, and to the well-being of all peoples,


Mindful of the technological and commercial developments that have taken place since the adoption of those conventions and of the need to consolidate and modernize them,

Noting that shippers and carriers do not have the benefit of a binding universal regime to support the operation of contracts of maritime carriage involving other modes of transport,
Believing that the adoption of uniform rules to govern international contracts of carriage wholly or partly by sea will promote legal certainty, improve the efficiency of international carriage of goods and facilitate new access opportunities for previously remote parties and markets, thus playing a fundamental role in promoting trade and economic development, both domestically and internationally,

Have agreed as follows:

Chapter 1. General provisions

Article 1. Definitions
For the purposes of this Convention:

1. “Contract of carriage” means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.

2. “Volume contract” means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.

3. “Liner transportation” means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.

4. “Non-liner transportation” means any
transformation that is not liner transportation.

5. “Carrier” means a person that enters into a contract of carriage with a shipper.

6. (a) “Performing party” means a person other than the carrier that performs or undertakes to perform any of the carrier’s obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, keeping, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control.

(b) “Performing party” does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier.

7. “Maritime performing party” means a performing party to the extent that it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.

8. “Shipper” means a person that enters into a contract of carriage with a carrier.

9. “Documentary shipper” means a person, other than the shipper, that accepts to be named as “shipper” in the transport document or electronic transport record.

10. “Holder” means:
14. ロッテルダム・ルールズ

(a) A person that is in possession of a negotiable transport document; and (i) if the document is an order document, is identified in it as the shipper or the consignee, or is the person to which the document is duly endorsed; or (ii) if the document is a blank endorsed order document or bearer document, is the bearer thereof; or

(b) The person to which a negotiable electronic transport record has been issued or transferred in accordance with the procedures referred to in article 9, paragraph 1.

11. “Consignee” means a person entitled to delivery of the goods under a contract of carriage or a transport document or electronic transport record.

12. “Right of control” of the goods means the right under the contract of carriage to give the carrier instructions in respect of the goods in accordance with chapter 10.

13. “Controlling party” means the person that pursuant to article 51 is entitled to exercise the right of control.

14. “Transport document” means a document issued under a contract of carriage by the carrier that:

(a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and

(b) Evidences or contains a contract of carriage.

15. “Negotiable transport document” means a transport document that indicates, by wording

(10.3)譲渡可能運送書類を占有する者であって、

(a) 当該書類が指図式書類である場合、当該書類において荷送人若しくは受人として特定されている者又は適式に当該書類の裏書を受けた者、又は

(b) 当該書類が白地式裏書がされた指図式書類又は持参人式書類である場合には、当該書類の持参人

(b) 第2条の手続に従って譲渡可能電子的運送記録の発行又は譲渡を受けた者

11. 「荷受人」とは、運送契約又は運送書類若しくは電子的運送記録に基づいて、物品の引渡を受ける権利を有する者をいう。

12. 「運送品処分権」とは、第10章の規定に従って運送人に物品に関する指示を与える運送契約に基づく権利をいう。

13. 「運送品処分権者」とは、第51条の規定に従って運送品処分権を行使する権利を有する者をいう。

14. 「運送書類」とは、運送契約に基づき運送人により発行される書類であって、以下の双方に該当するものである。

(a) 運送契約に基づく運送又は履行者による物品の受取を証するものであること

(b) 運送契約を証する又は内容とするものであること

15. 「譲渡可能運送書類」とは、「指図人宛」若しくは「譲渡可能」等の文言又は当該書
such as “to order” or “negotiable” or other appropriate wording recognized as having the same effect by the law applicable to the document, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being “non-negotiable” or “not negotiable”.

16. “Non-negotiable transport document” means a transport document that is not a negotiable transport document.

17. “Electronic communication” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.

18. “Electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that:

(a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and

(b) Evidences or contains a contract of carriage.

19. “Negotiable electronic transport record” means an electronic transport record:

類に適用される法により同様の効果を有すると認められるその他の適切な文言により、物品が、荷送人の指図人宛、荷受人の指図人宛又は持参人宛として委託された旨表示された運送書類であって、「譲渡不能」又は「譲渡不可」と明記されていないものをいう。

16. 「譲渡不能運送書類」とは、譲渡可能運送書類ではない運送書類をいう。

17. 「電子的通信」とは、電子的、光学的、デジタル又は類似する手段によって作成、送信、受信又は保存される情報であって、通信された情報が後に参照して使用するためにアクセス可能なものをいう。

18. 「電子的運送記録」とは、運送契約に基づき運送人により電子的通信によって発行される、1又は複数のメッセージの形態をとる情報であって、以下の双方に該当するものをいい、添付されて当該電子的運送記録に論理的に結合される情報又はその他の方法で運送人による電子的運送記録の発行と同時若しくはその後に当該電子的運送記録に関連付けられる情報あって、当該電子的運送記録の一部となるものを含む。

(a) 運送契約に基づく運送人又は履行者による物品の受取を証するものであること

(b) 運送契約を証する又は内容とするものであること

19. 「譲渡可能電子的運送記録」とは、電子的運送記録であって、以下の双方に該当するものをいう。
(a) That indicates, by wording such as “to order”, or “negotiable”, or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being “non-negotiable” or “not negotiable”; and

(b) The use of which meets the requirements of article 9, paragraph 1.

20. “Non-negotiable electronic transport record” means an electronic transport record that is not a negotiable electronic transport record.

21. The “issuance” of a negotiable electronic transport record means the issuance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity.

22. The “transfer” of a negotiable electronic transport record means the transfer of exclusive control over the record.

23. “Contract particulars” means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record.

24. “Goods” means the wares, merchandise, and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and container not supplied by or on behalf of the carrier.

(a) 「指図人宛」若しくは「譲渡可能」等の文言又は当該記録に適用される法により同様の効果を有すると認められるその他の適切な文言により、物品が、荷送人の指図人宛又は荷受人の指図人宛として委託された旨表示された記録であって、「譲渡不能」又は「譲渡不可」と明記されていないものであること

(b) その利用が第9条1 に規定する要件に合致するものであること

20. 「譲渡不能電子的運送記録」とは、譲渡可能電子的運送記録ではない電子的運送記録をいう。

21. 譲渡可能電子的運送記録の「発行」とは、当該記録が作成されてから無効となるまでの間排他的支配の対象となることが確保されている手続に従った当該記録の発行をいう。

22. 譲渡可能電子的運送記録の「譲渡」とは、当該記録に対する排他的支配の譲渡をいう。

23. 「契約明細」とは、運送書類又は電子的運送記録に含まれる、運送契約又は物品に関する情報(条項、注記、署名及び裏書を含む) をいう。

24. 「物品」とは、運送人が運送契約に基づいて運送を引き受けるあらゆる種類の製品、商品及び物件をいい、包装並びに運送人に供給され、荷送人に受けるために供給されたものではない全ての機器及びコンテナを含む。
25. “Ship” means any vessel used to carry goods by sea.

26. “Container” means any type of container, transportable tank or flat, swapbody, or any similar unit load used to consolidate goods, and any equipment ancillary to such unit load.

27. “Vehicle” means a road or railroad cargo vehicle.

28. “Freight” means the remuneration payable to the carrier for the carriage of goods under a contract of carriage.

29. “Domicile” means (a) a place where a company or other legal person or association of natural or legal persons has its (i) statutory seat or place of incorporation or central registered office, whichever is applicable, (ii) central administration or (iii) principal place of business, and (b) the habitual residence of a natural person.

30. “Competent court” means a court in a Contracting State that, according to the rules on the internal allocation of jurisdiction among the courts of that State, may exercise jurisdiction over the dispute.

Article 2. Interpretation of this Convention

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.

Article 3 Form requirements

The notices, confirmation, consent, agreement,
declaration and other communications referred to in articles 19, paragraph 2; 23, paragraphs 1 to 4; 36, subparagraphs 1 (b), (c) and (d); 40, subparagraph 4 (b); 44; 48, paragraph 3; 51, subparagraph 1 (b); 59, paragraph 1; 63; 66; 67, paragraph 2; 75, paragraph 4; and 80, paragraphs 2 and 5, shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

Article 4. Applicability of defences and limits of liability

1. Any provision of this Convention that may provide a defence for, or limit the liability of, the carrier applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted in respect of loss of, damage to, or delay in delivery of goods covered by a contract of carriage or for the breach of any other obligation under this Convention against:

(a) The carrier or a maritime performing party;
(b) The master, crew or any other person that performs services on board the ship; or
(c) Employees of the carrier or a maritime performing party.

2. Any provision of this Convention that may provide a defence for the shipper or the documentary shipper applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted against the shipper, the documentary shipper, (c)及び(d)、第40条4(b)、第44条、第48条3、第51条1(b)、第59条1、第63条、第66条、第67条2、第75条4並びに第80条2及び5に規定する通知、確認、同意、合意、宣言及びその他の通信は、書面でされなければならない。電子的通信は、これらの目的のため使用することができるが、当該方法の使用につき通信を発信する者及びその通信を受信する者の同意がある場合に限る。

第4条 抗弁及び責任制限の適用

1. 運送人の抗弁又は責任制限を規定する本条約の一切の規定は、契約、不法行為、その他何に基づくかを問わず、以下に規定する何れかの者に対する、運送契約の対象たる物品の滅失、損傷若しくは延着に関して又は本条約上のその他の義務違反を理由として提起される全ての訴訟又は仲裁手続において適用される。

(a) 運送人又は海事履行者

(b) 船長、船員又は船舶上で役務を履行するその他全ての者

(c) 運送人又は海事履行者の被用者

2. 荷送人又は書類上の荷送人の抗弁を規定する本条約の一切の規定は、契約、不法行為、その他何に基づくかを問わず、荷送人、書類上の荷送人又はそれらの下請人、代理人若しくは被用者に対して提起される全ての訴訟又は仲裁手続において適用
Chapter 2. Scope of applications

Article 5. General scope of application

1. Subject to article 6, this Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage, any one of the following places is located in a Contracting State:

   (a) The place of receipt;  
   (b) The port of loading;  
   (c) The place of delivery; or  
   (d) The port of discharge.

2. This Convention applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, or any other interested parties.

Article 6. Specific exclusions

1. This Convention does not apply to the following contracts in liner transportation:

   (a) Charter parties; and  
   (b) Other contracts for the use of a ship or of any space thereon.

2. This Convention does not apply to contracts of carriage in non-liner transportation except when:

   (a) There is no charter party or other contract between the parties for the use of a ship or of any space thereon; and  
   (b) A transport document or an electronic

or their subcontractors, agents or employees.
transport record is issued.

Article 7. Application to certain parties

Notwithstanding article 6, this Convention applies as between the carrier and the consignee, controlling party or holder that is not an original party to the charter party or other contract of carriage excluded from the application of this Convention. However, this Convention does not apply as between the original parties to a contract of carriage excluded pursuant to article 6.

Chapter 3. Electronic transport records

Article 8. Use and effect of electronic transport records

Subject to the requirements set out in this Convention:

(a) Anything that is to be in or on a transport document under this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper; and

(b) The issuance, exclusive control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document.

Article 9 Procedures for use of negotiable electronic transport records

1. The use of a negotiable electronic transport record shall be subject to procedures that provide for:

(a) The method for the issuance and the
transfer of that record to an intended holder;
(b) An assurance that the negotiable electronic transport record retains its integrity;
(c) The manner in which the holder is able to demonstrate that it is the holder; and
(d) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10, paragraph 2, or 47, subparagraphs (a) (ii) and (c), the electronic transport record has ceased to have any effect or validity.

2. The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable.

Article 10. Replacement of negotiable transport document or negotiable electronic transport record

1. If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record:
(a) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;
(b) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and
(c) The negotiable transport document ceases thereafter to have any effect or validity.

2. If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document:
(a) The carrier shall issue to the holder, in
place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and

(b) The electronic transport record ceases thereafter to have any effect or validity.

Chapter 4. Obligation of the carrier

Article 11. Carriage and delivery of the goods

The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee.

Article 12. Period of responsibility of the carrier

1. The period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.

2. (a) If the law or regulations of the place of receipt require the goods to be handed over to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party.

(b) If the law or regulations of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the consignee.

(b) The electronic transport record ceases thereafter to have any effect or validity.

Chapter 4. 運送人の義務

第 11 条 物品の運送及び引渡

運送人は、本条約に従い、且つ、運送契約の規定に従って、物品を仕向地まで運送し荷受人に引き渡さなければならない。

第 12 条 運送人の責任期間

1. 本条約における物品に関する運送人の責任期間は、運送人又は履行者が運送のために物品を受け取った時に開始し、物品が引き渡された時に終了する。

2. (a) 受取地の法令により、当局又はその他第三者に物品を引き渡さなければならないならず、運送人がそれらから物品を受け取る場合には、運送人の責任期間は、運送人が当該当局又はその他第三者から物品を受け取った時に開始する。

(b) 引渡地の法令により、運送人が当局又はその他第三者に物品を引き渡さなければならないならず、荷受人がそれらから物品を受け取る場合には、運送人の責任期間は、運送人が当該当局又はその他第三者に物品を引き渡した時に終了する。
to the authority or other third party.

3. For the purpose of determining the carrier’s period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it provides that:

(a) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or

(b) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.

Article 13. Specific obligations

1. The carrier shall during the period of its responsibility as defined in article 12, and subject to article 26, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods.

2. Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 4 and to chapters 5 to 7, the carrier and the shipper may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. Such an agreement shall be referred to in the contract particulars.

Article 14. Specific obligations applicable to the voyage by sea

The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to:
(a) Make and keep the ship seaworthy;
(b) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and
(c) Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

Article 15. Goods that may become a danger

Notwithstanding articles 11 and 13, the carrier or a performing party may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying, or rendering goods harmless, if the goods are, or reasonably appear likely to become during the carrier’s period of responsibility, an actual danger to persons, property or the environment.

Article 16. Sacrifice of the goods during the voyage by sea

Notwithstanding articles 11, 13, and 14, the carrier or a performing party may sacrifice goods at sea when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.

Chapter 5. Liability of the carrier for loss, damage or delay

Article 17. Basis of liability

1. The carrier is liable for loss of or damage to
the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier’s responsibility as defined in chapter 4.

2. The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in article 18.

3. The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:

(a) Act of God;
(b) Perils, dangers, and accidents of the sea or other navigable waters;
(c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;
(d) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 18;
(e) Strikes, lockouts, stoppages, or restraints of labour;
(f) Fire on the ship;
(g) Latent defects not discoverable by due diligence;
(h) Act or omission of the shipper, the

任期間に内に、物品の滅失、損傷若しくは延着又はそれらの原因となった若しくはそれらに寄与した事象が生じたことを証明したときは、運送人は、当該滅失、損傷又は延着について責任を負う。

2. 運送人は、滅失、損傷又は延着の原因又は原因の一が自己の過失又は第 18 条に規定する何れかの者の過失に帰しうることを証明したときは、本条 1 による責任の全部又は一部を免れる。

3. 運送人は、本条 2 に規定する過失の不存在の証明に代えて、以下の 1 又は複数の事象が滅失、損傷又は延着の原因となった又はそれに寄与したことを証明したときも、本条 1 の規定による責任の全部又は一部を免れる。

(a) 天災
(b) 海上その他の可航水域の危険及び事故
(c) 戦争、武力紛争、海賊行為、テロリズム、暴動及び内乱
(d) 検疫上の制限、政府、公的機関又は公権力による介入又は妨害（運送人又は第 18 条に規定する何れかの者の責に帰し得ない拘留、アрест又は差押を含む）
(e) 同盟罷業、作業所閉鎖、作業の停止又は妨害
(f) 船舶上の火災
(g) 相当の注意を尽くしても発見することのできない隠れた欠陥
(h) 荷送人、書類上の荷送人、運送品処分
documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to article 33 or 34;

(i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;

(j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

(k) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;

(l) Saving or attempting to save life at sea;

(m) Reasonable measures to save or attempt to save property at sea;

(n) Reasonable measures to avoid or attempt to avoid damage to the environment; or

(o) Acts of the carrier in pursuance of the powers conferred by articles 15 and 16.

4. Notwithstanding paragraph 3 of this article, the carrier is liable for all or part of the loss, damage, or delay:

(a) If the claimant proves that the fault of the carrier or of a person referred to in article 18 caused or contributed to the event or circumstance on which the carrier relies; or

(b) If the claimant proves that an event or circumstance not listed in paragraph 3 of this article contributed to the loss, damage,
or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in article 18.

5. The carrier is also liable, notwithstanding paragraph 3 of this article, for all or part of the loss, damage, or delay if:

(a) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by (i) the unseaworthiness of the ship; (ii) the improper crewing, equipping, and supplying of the ship; or (iii) the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and

(b) The carrier is unable to prove either that:
   (i) none of the events or circumstances referred to in subparagraph 5 (a) of this article caused the loss, damage, or delay; or
   (ii) it complied with its obligation to exercise due diligence pursuant to article 14.

6. When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.

Article 18. Liability of the carrier for other

or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in article 18.

5. The carrier is also liable, notwithstanding paragraph 3 of this article, for all or part of the loss, damage, or delay if:

(a) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by (i) the unseaworthiness of the ship; (ii) the improper crewing, equipping, and supplying of the ship; or (iii) the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and

(b) The carrier is unable to prove either that:
   (i) none of the events or circumstances referred to in subparagraph 5 (a) of this article caused the loss, damage, or delay; or
   (ii) it complied with its obligation to exercise due diligence pursuant to article 14.

6. When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.

Article 18. Liability of the carrier for other

or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in article 18.

5. The carrier is also liable, notwithstanding paragraph 3 of this article, for all or part of the loss, damage, or delay if:

(a) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by (i) the unseaworthiness of the ship; (ii) the improper crewing, equipping, and supplying of the ship; or (iii) the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and

(b) The carrier is unable to prove either that:
   (i) none of the events or circumstances referred to in subparagraph 5 (a) of this article caused the loss, damage, or delay; or
   (ii) it complied with its obligation to exercise due diligence pursuant to article 14.

6. When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.
persons

The carrier is liable for the breach of its obligations under this Convention caused by the acts or omissions of:

(a) Any performing party;
(b) The master or crew of the ship;
(c) Employees of the carrier or a performing party; or
(d) Any other person that performs or undertakes to perform any of the carrier’s obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control.

Article 19. Liability of maritime performing parties

1. A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this Convention and is entitled to the carrier’s defences and limits of liability as provided for in this Convention if:

(a) The maritime performing party received the goods for carriage in a Contracting State, or delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State; and
(b) The occurrence that caused the loss, damage or delay took place: (i) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship; and either (ii) while the maritime performing party had custody of the goods; or (iii) at any other time to the extent that it...
was participating in the performance of any of the activities contemplated by the contract of carriage.

2. If the carrier agrees to assume obligations other than those imposed on the carrier under this Convention, or agrees that the limits of its liability are higher than the limits specified under this Convention, a maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits.

3. A maritime performing party is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person to which it has entrusted the performance of any of the carrier’s obligations under the contract of carriage under the conditions set out in paragraph 1 of this article.

4. Nothing in this Convention imposes liability on the master or crew of the ship or on an employee of the carrier or of a maritime performing party.

Article 20. Joint and several liability

1. If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several but only up to the limits provided for under this Convention.

2. Without prejudice to article 61, the aggregate liability of all such persons shall not exceed the overall limits of liability under this Convention.

Article 21. Delay

1. 運送人が、本条約により運送人に課される義務以外の義務を引き受けることに合意した場合又は本条約に規定する責任制限よりも高額の責任制限に合意した場合には、海事履行者は、当該合意に拘束されない。ただし、当該義務又は当該高額の責任制限を承認することに明示的に同意したときは、この限りでない。

3. 海事履行者は、本条1に規定する条件の下で、自己が運送契約に基づく運送人の何らかの義務の履行を委託した者の作為又は不作為によって生じた本条約上の海事履行者の義務の違反について責任を負う。

4. 本条約は、船長若しくは船員又は運送人若しくは海事履行者の被用者に何ら責任を課すものではない。

第20条 共同且つ各別の責任

1. 運送又は1若しくは複数の海事履行者が物品の滅失、損傷又は延着について責任を負うときは、それらの者は共同して且つ各別に責任を負う。ただし、本条約が規定する制限額を限度とする。

2. それらの者の責任の総額は、本条約に基づく責任限度額の総額を超えることができない。ただし、第61条の規定の適用を妨げない。

第21条 延着
Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed.

延着は、物品が合意された期間内に運送契約に規定された仕向地で引き渡されなかった場合に生ずるものとする。

Article 22. Calculation of compensation
1. Subject to article 59, the compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery established in accordance with article 43.

2. The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery.

3. In case of loss of or damage to the goods, the carrier is not liable for payment of any compensation beyond what is provided for in paragraphs 1 and 2 of this article except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of chapter 16.

第 22 条 賠償額の計算
1. 第 59 条に従うことを条件として、運送人が物品の滅失又は損傷に関して支払う賠償額は、第 43 条に従って定められた引渡の時及び場所における当該物品の価額を参照して算定する。

2. 物品の価額は、商品取引所の相場に従って決定し、そのような相場がないときは市場価格に従って決定し、商品取引所の相場も市場価格もないときは引渡地における同種且つ同品質の物品の正常な価額を参照して決定する。

3. 物品の滅失又は損傷の場合には、運送人及び荷送人が第 16 章の限度内で異なる方式で賠償額を計算することに合意した場合を除き、運送人は、本条 1 及び(2)に規定する以上の賠償額を支払う義務を負わない。

Article 23. Notice in case of loss, damage or delay
1. The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods.

第 23 条 滅失、損傷又は延着の場合の通知
1. 運送人は、物品の引渡の前若しくは引渡の時に、又は滅失若しくは損傷が外観上明らかでない場合には引渡後引渡地における 7営業日以内に、滅失若しくは損傷の概況を示す通知が運送人又は物品を引き渡した履行者に対してなされなかったときは、反証のない限り、契約明細に記載され
goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods.

2. Failure to provide the notice referred to in this article to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this Convention, nor shall it affect the allocation of the burden of proof set out in article 17.

3. The notice referred to in this article is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to which they have been delivered and the carrier or the maritime performing party against which liability is being asserted.

4. No compensation in respect of delay is payable unless notice of loss due to delay was given to the carrier within twenty-one consecutive days of delivery of the goods.

5. When the notice referred to in this article is given to the performing party that delivered the goods, it has the same effect as if that notice was given to the carrier, and notice given to the carrier has the same effect as a notice given to a maritime performing party.

6. In the case of any actual or apprehended loss or damage, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods.

Chapter 6. Additional provisions relating to...
to particular stages of carriage

Article 24. Deviation

When pursuant to applicable law a deviation constitutes a breach of the carrier’s obligations, such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this Convention, except to the extent provided in article 61.

Article 25. Deck cargo on ships

1. Goods may be carried on the deck of a ship only if:

(a) Such carriage is required by law;

(b) They are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles; or

(c) The carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question.

2. The provisions of this Convention relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck pursuant to paragraph 1 of this article, but the carrier is not liable for loss of or damage to such goods, or delay in their delivery, caused by the special risks involved in their carriage on deck when the goods are carried in accordance with subparagraphs 1 (a) or (c) of this article.

3. If the goods have been carried on deck in cases other than those permitted pursuant to
paragraph 1 of this article, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defences provided for in article 17.

4. The carrier is not entitled to invoke subparagraph 1 (c) of this article against a third party that has acquired a negotiable transport document or a negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.

5. If the carrier and shipper expressly agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage, or delay resulted from their carriage on deck.

Article 26. Carriage preceding or subsequent to sea carriage

When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier’s period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or circumstance causing delay:

(a) Pursuant to the provisions of such international instrument would have applied to all or any of the carrier’s activities if the shipper had made a separate and direct
contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;

(b) Specifically provide for the carrier’s liability, limitation of liability, or time for suit; and

(c) Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument.

Chapter 7. Obligations of the shipper to the carrier

Article 27. Delivery for carriage

1. Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property.

2. The shipper shall properly and carefully perform any obligation assumed under an agreement made pursuant to article 13, paragraph 2.

3. When a container is packed or a vehicle is loaded by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or vehicle, and in such a way that they will not cause harm to persons or property.
Article 28. Cooperation of the shipper and the carrier in providing information and instructions

The carrier and the shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of the goods if the information is in the requested party’s possession or the instructions are within the requested party’s reasonable ability to provide and they are not otherwise reasonably available to the requesting party.

Article 29. Shipper’s obligation to provide information, instructions and documents

1. The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:
   (a) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and
   (b) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

2. Nothing in this article affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

第 28 条 情報及び指示の提供についての荷送人と運送人の協力

運送人と荷送人は、物品の適切な取扱及び運送のために必要な情報及び指示の提供要請に対し、情報が要請を受けた当事者により保有されている場合又は指示が要請を受けた当事者の合理的提供能力の範囲内である場合であって、要請した当事者がその他の方法で合理的に入手不可能であるときは、互いに応答しなければならない。

第 29 条 荷送人の情報、指示及び書類の提供義務

1. 荷送人は、運送人に対し、運送人がその他の方法で合理的に入手不可能であり、且つ以下の目的のために合理的に必要である、物品に関する情報、指示及び書類を、適時に提供しなければならない。
   (a) 物品の適切な取扱及び運送（運送人又は履行者が取るべき予防措置を含む）
   (b) 予定された運送に関連する法令又はその他の公的機関の規制を運送人が遵守すること（ただし、運送人が、荷送人に対し、自己が要求する情報、指示及び書類を適時に通知することを条件とする）

2. 本条は、予定された運送に関連する法令又はその他の公的機関の規制に基づく、物品に関する情報、指示及び書類を提供する具体的義務には、影響を及ぼさない。
Article 30. Basis of shipper’s liability to the carrier

1. The shipper is liable for loss or damage sustained by the carrier if the carrier proves that such loss or damage was caused by a breach of the shipper’s obligations under this Convention.

2. Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to articles 31, paragraph 2, and 32, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault or to the fault of any person referred to in article 34.

3. When the shipper is relieved of part of its liability pursuant to this article, the shipper is liable only for that part of the loss or damage that is attributable to its fault or to the fault of any person referred to in article 34.

Article 31. Information for compilation of contract particulars

1. The shipper shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including the particulars referred to in article 36, paragraph 1; the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if any; and the name of the person to whose order the transport document or electronic transport record is to be issued, if any.
2. The shipper is deemed to have guaranteed the accuracy at the time of receipt by the carrier of the information that is provided according to paragraph 1 of this article. The shipper shall indemnify the carrier against loss or damage resulting from the inaccuracy of such information.

Article 32. Special rules on dangerous goods
When goods by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment:
(a) The shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss or damage resulting from such failure; and
(b) The shipper shall mark or label dangerous goods in accordance with any law, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure.

Article 33. Assumption of shipper’s rights and obligations by the documentary shipper
1. A documentary shipper is subject to the obligations and liabilities imposed on the shipper pursuant to this chapter and pursuant
to article 55, and is entitled to the shipper’s rights and defences provided by this chapter and by chapter 13.

2. Paragraph 1 of this article does not affect the obligations, liabilities, rights or defences of the shipper.

Article 34. Liability of the shipper for other persons

The shipper is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations, but the shipper is not liable for acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations.

Chapter 8. Transport documents and electronic transport records

Article 35. Issuance of the transport document or the electronic transport record

Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper’s option:

(a) A non-negotiable transport document or, subject to article 8, subparagraph (a), a
non-negotiable electronic transport record; or
(b) An appropriate negotiable transport document or, subject to article 8, subparagraph (a), a negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one.

Article 36. Contract particulars

1. The contract particulars in the transport document or electronic transport record referred to in article 35 shall include the following information, as furnished by the shipper:
   (a) A description of the goods as appropriate for the transport;
   (b) The leading marks necessary for identification of the goods;
   (c) The number of packages or pieces, or the quantity of goods; and
   (d) The weight of the goods, if furnished by the shipper.

2. The contract particulars in the transport document or electronic transport record referred to in article 35 shall also include:
   (a) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;
   (b) The name and address of the carrier;
   (c) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the shipper.
ship, or on which the transport document or
electronic transport record was issued; and
(d) If the transport document is negotiable,
the number of originals of the negotiable
transport document, when more than one
original is issued.

3. The contract particulars in the transport
document or electronic transport record
referred to in article 35 shall further include:
(a) The name and address of the consignee, if
named by the shipper;
(b) The name of a ship, if specified in the
contract of carriage;
(c) The place of receipt and, if known to the
carrier, the place of delivery; and
(d) The port of loading and the port of
discharge, if specified in the contract of
carriage.

4. For the purposes of this article, the phrase
“apparent order and condition of the goods” in
subparagraph 2 (a) of this article refers to the
order and condition of the goods based on:
(a) A reasonable external inspection of the
goods as packaged at the time the shipper
delivers them to the carrier or a performing
party; and
(b) Any additional inspection that the carrier
or a performing party actually performs
before issuing the transport document or
electronic transport record.

Article 37. Identity of the carrier
1. If a carrier is identified by name in the
contract particulars, any other information in
the transport document or electronic transport
record relating to the identity of the carrier

14. ロッテルダム・ルールズ

269
shall have no effect to the extent that it is inconsistent with that identification.

2. If no person is identified in the contract particulars as the carrier as required pursuant to article 36, subparagraph 2 (b), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies this bareboat charterer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address. The bareboat charterer may rebut any presumption of being the carrier in the same manner.

3. Nothing in this article prevents the claimant from proving that any person other than a person identified in the contract particulars or pursuant to paragraph 2 of this article is the carrier.

Article 38. Signature

1. A transport document shall be signed by the carrier or a person acting on its behalf.

2. An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier’s authorization of the electronic transport record.
Article 39. Deficiencies in the contract particulars

1. The absence or inaccuracy of one or more of the contract particulars referred to in article 36, paragraphs 1, 2 or 3, does not of itself affect the legal character or validity of the transport document or of the electronic transport record.

2. If the contract particulars include the date but fail to indicate its significance, the date is deemed to be:
   (a) The date on which all of the goods indicated in the transport document or electronic transport record were loaded on board the ship, if the contract particulars indicate that the goods have been loaded on board a ship; or
   (b) The date on which the carrier or a performing party received the goods, if the contract particulars do not indicate that the goods have been loaded on board a ship.

3. If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them, the contract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or a performing party received them.

Article 40. Qualifying the information relating to the goods in the contract particulars

1. The carrier shall qualify the information referred to in article 36, paragraph 1, to indicate that the carrier does not assume...
responsibility for the accuracy of the information furnished by the shipper if:

(a) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is false or misleading; or

(b) The carrier has reasonable grounds to believe that a material statement in the transport document or electronic transport record is false or misleading.

2. Without prejudice to paragraph 1 of this article, the carrier may qualify the information referred to in article 36, paragraph 1, in the circumstances and in the manner set out in paragraphs 3 and 4 of this article to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper.

3. When the goods are not delivered for carriage to the carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed container or vehicle and the carrier or a performing party actually inspects them, the carrier may qualify the information referred to in article 36, paragraph 1, if:

(a) The carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or

(b) The carrier has reasonable grounds to believe the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it

について運送人が責任を負わないことを示さなければならない。

(a) 運送人が、運送書類又は電子的運送記録の重要な記載が誤りであるか又は誤解を招くものであることを現実に知っているとき

(b) 運送人が、運送書類又は電子的運送記録の重要な記載が誤りであるか又は誤解を招くものであると信じる合理的な根拠を有するとき

2．運送人は、本条3及び4に規定する場合に、当該各項に規定する方法により第36条1に規定する情報について留保を付して、荷送人から通告された情報の正確性について運送人が責任を負わないことを示すことができる。ただし、本条1の規定の適用を妨げない。

3. 物品が閉扉されたコンテナ若しくは車輌に積み込まれて運送人若しくは履行者に対し運送のため引き渡されたのではない場合、又は閉扉されたコンテナ若しくは車輌に積み込まれて引き渡されているが運送人若しくは履行者が現実に物品を検査する場合であって、以下に規定するときは、運送人は、第36条1に規定する情報について留保を付することはできる。

(a) 運送人が荷送人から通告された情報の確認のため物理的見地から実務的な又は商業的見地から合理的な方法がないとき。このとき運送人は、何の情報を確認できなかったかを示すことができる。

(b) 運送人が荷送人から通告された情報が不正確であると信じる合理的な根拠を有するとき。このとき運送人は、自己が正確な情報と合理的に考える内容を
reasonably considers accurate information.

4. When the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, the carrier may qualify the information referred to in:

(a) Article 36, subparagraphs 1 (a), (b), or (c), if:
   (i) The goods inside the container or vehicle have not actually been inspected by the carrier or a performing party; and
   (ii) Neither the carrier nor a performing party otherwise has actual knowledge of its contents before issuing the transport document or the electronic transport record; and
(b) Article 36, subparagraph 1 (d), if:
   (i) Neither the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment that the container or vehicle would be weighed and the weight would be included in the contract particulars; or
   (ii) There was no physically practicable or commercially reasonable means of checking the weight of the container or vehicle.

---

Article 41. Evidentiary effect of the contract particulars

Except to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in article 40, the contract particulars have evidentiary effect.  

---

第41条 契約明細の証拠的効力

契約明細について、第40条に規定する場合に、同条に規定する方法により留保が付される場合を除き、
40:
(a) A transport document or an electronic transport record is prima facie evidence of the carrier’s receipt of the goods as stated in the contract particulars;
(b) Proof to the contrary by the carrier in respect of any contract particulars shall not be admissible, when such contract particulars are included in:
(i) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith; or
(ii) A non-negotiable transport document that indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith;
(c) Proof to the contrary by the carrier shall not be admissible against a consignee that in good faith has acted in reliance on any of the following contract particulars included in a non-negotiable transport document or a non-negotiable electronic transport record:
(i) The contract particulars referred to in article 36, paragraph 1, when such contract particulars are furnished by the carrier;
(ii) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and
(iii) The contract particulars referred to in article 36, paragraph 2.

Article 42. “Freight prepaid”
If the contract particulars contain the statement “freight prepaid” or a statement of a similar nature, the carrier cannot assert against the holder or the consignee the fact that the freight has not been paid. This article does not apply if the holder or the consignee is also the shipper.

Chapter 9. Delivery of the goods

Article 43. Obligation to accept delivery
When the goods have arrived at their destination, the consignee that demands delivery of the goods under the contract of carriage shall accept delivery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of the trade and the circumstances of the carriage, delivery could reasonably be expected.

Article 44. Obligation to acknowledge receipt
On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or the performing party in the manner that is customary at the place of delivery. The carrier may refuse delivery if the consignee refuses to acknowledge such receipt.

Article 45. Delivery when no negotiable transport document or negotiable electronic transport record is issued
When neither a negotiable transport document

契約明細が「運賃前払済」又はこれに類似する記載を含む場合には、運送人は、所持人又は受受人に対して、運賃が支払われていない事実を主張することができない。本条は、所持人又は受受人が運送人でもある場合には、適用されない。

第9章 物品の引渡

第43条 引渡を受ける義務
物品が仕向地に到着したときは、運送契約に基づき引渡を請求した受受人は、運送契約において合意された時又は期間内及び場所において、又は、当該合意がない場合には、契約条項、取引慣習、慣行及び実務、並びに運送に関する状況を考慮して引渡が合理的に期待される時及び場所において、物品の引渡を受けなければならない。

第44条 受領を確認する義務
物品を受け渡す運送人又は履行者の要請があるときは、荷受人は、引渡地における慣習的方法により、運送人又は履行者から物品を受領したことを確認しなければならない。荷受人が受領の確認を拒絶する場合には、運送人は引渡を拒絶することができる。

第45条 譲渡可能運送書類又は譲渡可能電子的運送記録が発行されていない場合の引渡
譲渡可能運送書類又は譲渡可能電子的運送記録が発行されていない場合の引渡
nor a negotiable electronic transport record has been issued:

(a) The carrier shall deliver the goods to the consignee at the time and location referred to in article 43. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier;

(b) If the name and address of the consignee are not referred to in the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address;

(c) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the controlling party and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier

運送は以下の規定によるものとする。

(a) 運送人は、第43条に規定する時及び場所において、荷受人に対し物品を引き渡さなければならない。荷受人と主張する者が運送人の要請に応じて自己が荷受人であることを適切に証明しないときは、運送人は引渡を拒絶することができる。

(b) 契約明細に荷受人の名称及び住所が規定されていない場合には、運送品処分権者は、運送人に対し、物品が仕向地に到着する前又は到着時に、荷受人の名称及び住所を通知しなければならない。

(c) (i) 荷受人が、到着通知を受け取ったにもかかわらず、物品の仕向地到着後も運送人に対し第43条に規定する時又は期間内にその引渡を請求しない、(ii) 運送人が、荷受人であると主張する者が自己が荷受人であることを適切に証明しないという理由で、引渡を拒絶する、又は (iii) 運送人が、合理的な努力に auchかわらず引渡の指示を受けるための荷受人の所在を突き止めることができないという理由で、物品の引渡ができない場合には、運送人は、運送品処分権者に対し、その旨を通知し、物品の引渡につき指示を求めることができる。ただし、第48条1の適用を妨げない。

運送人が、合理的な努力にもかかわらず運送品処分権者の所在を突き止めることができない場合には、運送人は、荷送人に対し、その旨を通知し、物品の引渡につき指示を求めることができる。
is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(d) The carrier that delivers the goods upon instruction of the controlling party, the shipper or the documentary shipper pursuant to subparagraph (c) of this article is discharged from its obligations to deliver the goods under the contract of carriage.

Article 46. Delivery when a non-negotiable transport document that requires surrender is issued

When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:

(a) The carrier shall deliver the goods at the time and location referred to in article 43 to the consignee upon the consignee properly identifying itself on the request of the carrier and surrender of the non-negotiable document. The carrier may refuse delivery if the person claiming to be the consignee fails to properly identify itself on the request of the carrier, and shall refuse delivery if the non-negotiable document is not surrendered. If more than one original of the non-negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity;

(b) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having
received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(c) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper pursuant to subparagraph (b) of this article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered to it.

Article 47. Delivery when a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document or a negotiable electronic transport record has been issued:
   (a) The holder of the negotiable transport document
document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods at the time and location referred to in article 43 to the holder:

(i) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in article 1, subparagraph 10 (a) (i), upon the holder properly identifying itself; or

(ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder of the negotiable electronic transport record;

(b) The carrier shall refuse delivery if the requirements of subparagraph (a) (i) or (a) (ii) of this paragraph are not met;

(c) If more than one original of the negotiable transport document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by article 9, paragraph 1.

2. Without prejudice to article 48, paragraph 1, if the negotiable transport document or the negotiable electronic transport record expressly states that the goods may be

2. 譲渡可能運送書類又は譲渡可能電子的運送記録において、運送書類又は電子的運送記録の提出なく物品が引き渡され得る旨明記されている場合には、以下の規定が
delivered without the surrender of the transport document or the electronic transport record, the following rules apply:

(a) If the goods are not deliverable because
   (i) the holder, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be a holder does not properly identify itself as one of the persons referred to in article 1, subparagraph 10 (a)(i), or (iii) the carrier is, after reasonable effort, unable to locate the holder in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(b) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper in accordance with subparagraph 2 (a) of this article is discharged from its obligation to deliver the goods under the contract of carriage to the holder, irrespective of whether the negotiable transport document has been surrendered to it, or the person claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder;

適用される。ただし、第48条1の適用を妨げない。

(a)(i) 所持人が、到着通知を受け取ったにもかかわらず、物品の仕向地到着後も運送人に対し第43条に規定する時又は期間内にその引渡を請求しない、(ii) 運送人が、所持人であると主張する者が自己が第1条10(a)(i)に規定する者の一人であることを適切に証明しないという理由で、引渡を拒絶する、又は(iii) 運送人が、合理的な努力にもかかわらず引渡の指示を受けるための所持人の所在を突き止めることができないという理由で、物品の引渡ができない場合には、運送人は、荷送人に対し、その旨を通知し、物品の引渡につき指示を求ることができる。

運送人が、合理的な努力にもかかわらず荷送人の所在を突き止めることができない場合には、運送人は、書類上の荷送人に対し、その旨を通知し、物品の引渡につき指示を求ることができる。

(b) 本条2(a)に基づいて、荷送人又は書類上の荷送人の指図に従って物品を引き渡した運送人は、譲渡可能運送書類が運送人に提出されたか否かにかかわらず、また、譲渡可能電子的運送記録に基づいて引渡を請求する者が第9条1に規定する手続きに従って自己が所持人であることを証明したか否かにかかわらず、運送契約に基づく所持人に対する物品の引渡義務を免れる。
(c) The person giving instructions under subparagraph 2 (a) of this article shall indemnify the carrier against loss arising from its being held liable to the holder under subparagraph 2 (e) of this article. The carrier may refuse to follow those instructions if the person fails to provide adequate security as the carrier may reasonably request;

(d) A person that becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to subparagraph 2 (b) of this article, but pursuant to contractual or other arrangements made before such delivery acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods;

(e) Notwithstanding subparagraphs 2 (b) and 2 (d) of this article, a holder that becomes a holder after such delivery, and that did not have and could not reasonably have had knowledge of such delivery at the time it became a holder, acquires the rights incorporated in the negotiable transport document or negotiable electronic transport record. When the contract particulars state the expected time of arrival of the goods, or indicate how to obtain information as to whether the goods have been delivered, it is presumed that the holder at the time that it became a holder had or could reasonably have had knowledge of the delivery of the goods.
Article 48. Goods remaining undelivered

1. For the purposes of this article, goods shall be deemed to have remained undelivered only if, after their arrival at the place of destination:
   (a) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in article 43;
   (b) The controlling party, the holder, the shipper or the documentary shipper cannot be found or does not give the carrier adequate instructions pursuant to articles 45, 46 and 47;
   (c) The carrier is entitled or required to refuse delivery pursuant to articles 44, 45, 46 and 47;
   (d) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or
   (e) The goods are otherwise undeliverable by the carrier.

2. Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:
   (a) To store the goods at any suitable place;
   (b) To unpack the goods if they are packed in containers or vehicles, or to act otherwise in respect of the goods, including by moving them; and
   (c) To cause the goods to be sold or destroyed in accordance with the practices

第48条 引渡未了の物品

1. 本条においては、物品は、仕向地到着後、以下の何れかの場合に限り引渡未了であるとみなされる。
   (a) 荷受人が、第43条に規定する時及び場所において、本章に従って物品の引渡を受けないとき
   (b) 運送品処分権者、所持人、荷送人又は書類上の荷送人が発見できず、又はそれらの者が第45条ないし第47条に従った適切な指示を運送人に与えないとき
   (c) 運送人が第44条ないし第47条に従って、引渡を拒絶できるとき、又は拒絶しなければならないとき
   (d) 運送人が、引渡が要請されている地の法令により、物品を荷受人に対し引き渡すことが許されないとき
   (e) その他運送人が物品を引き渡すことが不可能であるとき

2. 物品が引渡未了の場合には、運送人は、物品に対する権利を有する者の危険及び費用により、当該物品につき、以下に規定する全ての措置を含め、関連状況から合理的に要求される措置をとることができる。ただし、それにより、運送人が荷送人、運送品処分権者又は荷受人に対して有するその他の権利は、害されない。
   (a) 適切な場所に物品を保管すること
   (b) 物品がコンテナ若しくは車輌に積み込まれているときは、これを開扉すること、又はその他物品に関する措置（物品の移動を含む）をとること
   (c) 物品が現に所在する場所の実務により又は法令に従って、物品を売却又は破
or pursuant to the law or regulations of the place where the goods are located at the time.

3. The carrier may exercise the rights under paragraph 2 of this article only after it has given reasonable notice of the intended action under paragraph 2 of this article to the person stated in the contract particulars as the person, if any, to be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to the carrier: the consignee, the controlling party or the shipper.

4. If the goods are sold pursuant to subparagraph 2 (c) of this article, the carrier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the deduction of any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods.

5. The carrier shall not be liable for loss of or damage to goods that occurs during the time that they remain undelivered pursuant to this article unless the claimant proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps.

Article 49. Retention of goods

Nothing in this Convention affects a right of the carrier or a performing party that may exist pursuant to the law or regulations of the place where the goods are located at the time.

第49条 物品の留置

本条約は、運送契約又は適用ある法に基づき存在しうる、運送人が弁済期に
pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

Chapter 10. Rights of the controlling party

Article 50. Exercise and extent of right of control

1. The right of control may be exercised only by the controlling party and is limited to:

   (a) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;

   (b) The right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and

   (c) The right to replace the consignee by any other person including the controlling party.

2. The right of control exists during the entire period of responsibility of the carrier, as provided in article 12, and ceases when that period expires.

Article 51. Identity of the controlling party and transfer of the right of control

1. Except in the cases referred to in paragraphs 2, 3 and 4 of this article:

   (a) The shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates the consignee, the documentary shipper or another person as the controlling party;

   (b) The controlling party is entitled to transfer the right of control to another person. The transfer becomes effective with

第10章 運送品処分権者の権利

第50条 運送品処分権の行使及び範囲

1. 運送品処分権は、運送品処分権者のみにより行使されるものとし、その内容は以下に規定する権利に限る。

   (a) 運送契約の変更に当たらない範囲で、物品に関する指図を与え又は変更する権利

   (b) 予定された寄港地において、又は陸上運送に関しては経由地において、物品の引渡を受ける権利

   (c) 荷受人を、運送品処分権者を含む他の者に代替する権利

2. 運送品処分権は、第12条に規定する運送人の全責任期間中に存在し、当該期間が終了した時に消滅する。

第51条 運送品処分権者の特定及び運送品処分権の譲渡

1. 本条2ないし4に規定する場合を除き、以下の規定が適用される。

   (a) 荷送人が、運送品処分権者である。ただし、荷送人が、運送契約を締結した時に、荷受人、書類上の荷送人又はその他者の者を運送品処分権者として指定したときは、この限りでない。

   (b) 運送品処分権者は、運送品処分権を他の者に譲渡することができる。譲渡は、譲渡人による譲渡通知により、運送人と
respect to the carrier upon its notification of the transfer by the transferor, and the transferee becomes the controlling party; and

(c) The controlling party shall properly identify itself when it exercises the right of control.

2. When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:

(a) The shipper is the controlling party and may transfer the right of control to the consignee named in the transport document by transferring the document to that person without endorsement. If more than one original of the document was issued, all originals shall be transferred in order to effect a transfer of the right of control; and

(b) In order to exercise its right of control, the controlling party shall produce the document and properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

3. When a negotiable transport document is issued:

(a) The holder or, if more than one original of the negotiable transport document is issued, the holder of all originals is the controlling party;

(b) The holder may transfer the right of control by transferring the negotiable transport document to another person in accordance with article 57. If more than one
original of that document was issued, all
originals shall be transferred to that person
in order to effect a transfer of the right of
control; and

(c) In order to exercise the right of control,
the holder shall produce the negotiable
transport document to the carrier, and if the
holder is one of the persons referred to in
article 1, subparagraph 10 (a) (i), the holder
shall properly identify itself. If more than
one original of the document was issued, all
originals shall be produced, failing which
the right of control cannot be exercised.

4. When a negotiable electronic transport
record is issued:
(a) The holder is the controlling party;
(b) The holder may transfer the right of
control to another person by transferring the
negotiable electronic transport record in
accordance with the procedures referred to
in article 9, paragraph 1; and
(c) In order to exercise the right of control,
the holder shall demonstrate, in accordance
with the procedures referred to in article 9,
paragraph 1, that it is the holder.

Article 52. Carrier’s execution of instructions
1. Subject to paragraphs 2 and 3 of this article,
the carrier shall execute the instructions
referred to in article 50 if:

(a) The person giving such instructions is
entitled to exercise the right of control;
(b) The instructions can reasonably be
executed according to their terms at the

場合には、運送品処分権を有効に譲渡するには全ての原本を譲渡しなければならない。

运送品処分権を行使するためには、所持者は、運送人に対し譲渡可能運送書類を提示しなければならず、且つ、所持人が第1条10(a)(i)に規定する者の一である場合には、適切に身分を証明しなければならない。複数の書類原本が発行されている場合には、全ての原本が提示されなければならず、そうでない場合には、運送品処分権を行使することはできない。

4. 譲渡可能電子的運送記録が発行されている場合には、以下の規定が適用される。
(a) 所持人が、運送品処分権者である。
(b) 所持人は、第9条1に規定する手続に従って譲渡可能電子的運送記録を譲渡することにより、運送品処分権他の者に譲渡することができる。
(c) 運送品処分権を行使するためには、所持人は、第9条1に規定する手続に従って、自己が所持人であることを証明しなければならない。

第52条 指図の運送人による実行
1. 運送人は、以下の何れにも該当する場合
には、2及び3の規定に従うことを条件とし
て、第50条に規定する指図を実行しなけれ
ばならない。
(a) 当該指図をする者が、運送品処分権を
行使できる者であること
(b) 指図が、運送人に到達した時点におい
て、その内容に従い合理的に実行可能で
moment that they reach the carrier; and
(c) The instructions will not interfere with
the normal operations of the carrier,
including its delivery practices.

2. In any event, the controlling party shall
reimburse the carrier for any reasonable
additional expense that the carrier may incur
and shall indemnify the carrier against loss or
damage that the carrier may suffer as a result
of diligently executing any instruction
pursuant to this article, including
compensation that the carrier may become
liable to pay for loss of or damage to other
goods being carried.

3. The carrier is entitled to obtain security from
the controlling party for the amount of
additional expense, loss or damage that the
carrier reasonably expects will arise in
connection with the execution of an
instruction pursuant to this article. The carrier
may refuse to carry out the instructions if no
such security is provided.

4. The carrier’s liability for loss of or damage
to the goods or for delay in delivery resulting
from its failure to comply with the instructions
of the controlling party in breach of its
obligation pursuant to paragraph 1 of this
article shall be subject to articles 17 to 23, and
the amount of the compensation payable by
the carrier shall be subject to articles 59 to 61.

Article 53. Deemed delivery

Goods that are delivered pursuant to an
instruction in accordance with article 52,
paragraph 1, are deemed to be delivered at the
place of destination, and the provisions of

あらゆること
(c) 指図が、引渡の実務を含む運送人の通常の業務執行を妨げないこと

2. いかなる場合においても、運送品処分権者は、運送人に対し、本条に従って指図を忠実に実行した結果として運送人に生じた合理的な追加的費用を補填し、その結果として運送人が蒙った損失又は損害（運送中の他の物品の滅失又は損傷について運送人が支払責任を負うことになった損害賠償を含む）を補償しなければならない。

3. 運送人は、本条に従って指図を実行する関連で生じると運送人が合理的に予測する追加的な費用、損失又は損害に相当する額について、運送品処分権者から担保の提供を受けることができる。担保が提供されない場合には、運送人は、指図の実行を拒絶することができる。

4. 本条1に規定する義務に違反して運送品処分権者の指図に従わなかったことに起因する、物品の滅失、損傷又は延滞についての運送人の責任は、第17条ないし第23条の規定に従い、運送人により支払われるべき損害賠償額は、第59条ないし第61条の規定に従う。

第53条 みなし引渡
第52条に基づく指図に従って引き渡された物品は、仕向地において引き渡されたものとみなされ、当該引き渡に関しては、第9章の各規定が、当該物品に適用される。
chapter 9 relating to such delivery apply to such goods.

Article 54. Variations to the contract of carriage

1. The controlling party is the only person that may agree with the carrier to variations to the contract of carriage other than those referred to in article 50, subparagraphs 1 (b) and (c).

2. Variations to the contract of carriage, including those referred to in article 50, subparagraphs 1 (b) and (c), shall be stated in a negotiable transport document or in a non-negotiable transport document that requires surrender, or incorporated in a negotiable electronic transport record, or, upon the request of the controlling party, shall be stated in a non-negotiable transport document or incorporated in a non-negotiable electronic transport record. If so stated or incorporated, such variations shall be signed in accordance with article 38.

Article 55. Providing additional information, instructions or documents to carrier

1. The controlling party, on request of the carrier or a performing party, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the shipper and not otherwise reasonably available to the carrier that the carrier may reasonably need to perform its obligations under the contract of carriage.

2. If the carrier, after reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate
information, instructions or documents to the carrier, the shipper shall provide them. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper shall provide such information, instructions or documents.

Article 56. Variation by agreement

The parties to the contract of carriage may vary the effect of articles 50, subparagraphs 1 (b) and (c), 50, paragraph 2, and 52. The parties may also restrict or exclude the transferability of the right of control referred to in article 51, subparagraph 1 (b).

Chapter 11. Transfer of rights

Article 57. When a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person:

(a) Duly endorsed either to such other person or in blank, if an order document; or
(b) Without endorsement, if: (i) a bearer document or a blank endorsed document; or (ii) a document made out to the order of a named person and the transfer is between the first holder and the named person.

2. When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it be made
out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in article 9, paragraph 1.

Article 58. Liability of holder

1. Without prejudice to article 55, a holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder.

2. A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the negotiable electronic transport record.

3. For the purposes of paragraphs 1 and 2 of this article, a holder that is not the shipper does not exercise any right under the contract of carriage solely because:
   (a) It agrees with the carrier, pursuant to article 10, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or
   (b) It transfers its rights pursuant to article 57.

Chapter 12. Limits of liability

Article 59. Limits of liability

3. For the purposes of paragraphs 1 and 2 of this article, a holder that is not the shipper does not exercise any right under the contract of carriage solely because:
   (a) It agrees with the carrier, pursuant to article 10, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or
   (b) It transfers its rights pursuant to article 57.
1. Subject to articles 60 and 61, paragraph 1, the carrier’s liability for breaches of its obligations under this Convention is limited to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this article has been agreed upon between the carrier and the shipper.

2. When goods are carried in or on a container, pallet or similar article of transport used to consolidate goods, or in or on a vehicle, the packages or shipping units enumerated in the contract particulars as packed in or on such article of transport or vehicle are deemed packages or shipping units. If not so enumerated, the goods in or on such article of transport or vehicle are deemed one shipping unit.

3. The unit of account referred to in this article is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in this article are to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is a member of the International Monetary Fund is to be

---

1. 1条60条及び第61条1に従うことを条件として、本条約に基づく義務の違反に対する運送人の責任は、1包若しくは1船積単位につき875計算単位又は請求若しくは紛争の対象となっている物品の総重量1キログラムにつき3計算単位のいずれか高い方の額を限度とする。ただし、物品の価額が荷送人によって通告され契約明細に含められた場合、又は運送人と荷送人にによって本条に規定する額よりも高額の責任限度額が合意された場合には、この限りではない。

2. 物品が、物品をまとめるために使用されるコンテナ、パレット若しくはこれらに類似の輸送用器具、又は車両の内部又は上部に積み込まれて運送される場合、当該輸送用器具又は車両の内部又は上部に積み込まれたものとして契約明細に記載された包又は船積単位が、包又は船積単位とみなされる。そのような記載がない場合、当該輸送用器具又は車両の内部又は上部に積み込まれた物品が、1船積単位とみなされる。

3. 本条に規定する計算単位は、国際通貨基金により定められる特別引出権とする。本条に規定する額は、判決若しくは仲裁判断の日又は当事者が合意した日における国内通貨の価値によって当該通貨に換算される。国際通貨基金の加盟国である締約国通貨の特別引出権表示による価値は、国際通貨基金の操作及び取引のために国際通貨基金の適用する評価方法であって換算の日において効力を有しているものにより計算する。国際通貨基金の加盟国でな
calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State.

Article 60. Limits of liability for loss caused by delay
Subject to article 61, paragraph 2, compensation for loss of or damage to the goods due to delay shall be calculated in accordance with article 22 and liability for economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed. The total amount payable pursuant to this article and article 59, paragraph 1, may not exceed the limit that would be established pursuant to article 59, paragraph 1, in respect of the total loss of the goods concerned.

Article 61. Loss of the benefit of limitation of liability
1. Neither the carrier nor any of the persons referred to in article 18 is entitled to the benefit of the limitation of liability as provided in article 59, or as provided in the contract of carriage, if the claimant proves that the loss resulting from the breach of the carrier’s obligation under this Convention was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and

第60条 延着を原因として生じた損害についての責任制限
第61条2に従うことを条件として、延着により生じた物品の滅失又は損傷についての損害賠償は第22条の規定に従って計算されるものとし、延着により生じた経済的損失についての責任は、延着した物品につき支払われるべき運賃額の2.5倍相当額に制限されるものとする。本条及び第59条1の規定に基づき賠償すべき総額は、当該物品の全部滅失に関して第59条1に従って定められる制限額を超えてはならない。

第61条 責任制限の利益の喪失
1. 本条約上の運送人の義務の違反に起因する損失が、責任制限の権利を主張する者自身の、当該損失を生じさせる意図をもって、又は無謀に且つ当該損失が生じる蓋然性のあることを認識して行った作為若しくは不作為に帰すべきものをあることを、請求者が証明したときは、運送人及び第18条に規定する全ての者は、第59条又は運送契約に規定された責任制限の利益を受けることができない。
with knowledge that such loss would probably result.

2. Neither the carrier nor any of the persons mentioned in article 18 is entitled to the benefit of the limitation of liability as provided in article 60 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result.

Chapter 13. Time for suit

Article 62. Period of time for suit

1. No judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Convention may be instituted after the expiration of a period of two years.

2. The period referred to in paragraph 1 of this article commences on the day on which the carrier has delivered the goods or, in cases in which no goods have been delivered or only part of the goods have been delivered, on the last day on which the goods should have been delivered. The day on which the period commences is not included in the period.

3. Notwithstanding the expiration of the period set out in paragraph 1 of this article, one party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.

Article 63. Extension of time for suit

2. 延着が、責任制限の権利を主張する者自身の、延着による損失を生じさせる意図をもって、又は無謀に且つ当該損失が生じる蓋然性のあることを認識して行った作為若しくは不作為に起因したものであることを、請求者が証明したときは、運送人及び第18条に規定する全ての者は、第60条に規定された責任制限の利益を受けることができない。

第13章 出訴期間

第62条 出訴期間

1. 本条約上の義務違反から生じる請求又は紛争に関する訴訟手続又は仲裁手続は、2年の期間満了後には開始することができない。

2. 本条1に規定する期間は、運送人が物品を引き渡した日から起算し、物品が全部引き渡されなかった場合又は一部のみ引き渡された場合には、物品が引き渡されるべきであった最後の日から起算する。期間の起算の初日は、算入しない。

3. 本条1に規定する期間の満了後であっても、当事者は、自己の請求を、他方当事者が主張する請求に対する抗弁として又は当該請求と相殺する目的で主張することができる。
The period provided in article 62 shall not be subject to suspension or interruption, but the person against which a claim is made may at any time during the running of the period extend that period by a declaration to the claimant. This period may be further extended by another declaration or declarations.

第62条に規定する期間は、停止又は中断されない。ただし、請求の相手方は、期間進行中いつでも、請求者に対する宣言により当該期間を延長することができる。この期間は、別の宣言によりさらに延長することもできる。

Article 64. Action for indemnity
An action for indemnity by a person held liable may be instituted after the expiration of the period provided in article 62 if the indemnity action is instituted within the later of:

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or
(b) Ninety days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

第64条 求償の訴え
責任を負うとされた者による求償の訴えは、以下に規定するうちより遅い期間の満了以前に提起される場合には、第62条に規定する期間の満了後であっても提起することができる。

(a) 手続が開始される管轄地の適用法により許容される期間
(b) 求償の訴えを提起する者が損害賠償の支払を行った日又はその者が自己に対する訴えにおいて訴状の送達を受けた日の何れか早い日から起算して90日間

Article 65. Actions against the person identified as the carrier
An action against the bareboat charterer or the person identified as the carrier pursuant to article 37, paragraph 2, may be instituted after the expiration of the period provided in article 62 if the action is instituted within the later of:

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or
(b) Ninety days commencing from the day when the carrier has been identified, or the registered owner or bareboat charterer has

第65条 運送人と特定された者に対する訴え
裸傭船者又は第37条2により運送人と特定された者に対する訴えは、以下に規定するうちより遅い期間の満了以前に提起される場合には、第62条に規定する期間の満了後であっても提起することができる。

(a) 手続が開始される管轄地の適用法により許容される期間
(b) 第37条2に従い、運送人が特定された日、又は登録船主若しくは裸傭船者が自己が運送人である旨の推定を覆した日
rebutted the presumption that it is the carrier, pursuant to article 37, paragraph 2.

Chapter 14. Jurisdiction

Article 66. Actions against the carrier

Unless the contract of carriage contains an exclusive choice of court agreement that complies with article 67 or 72, the plaintiff has the right to institute judicial proceedings under this Convention against the carrier:

(a) In a competent court within the jurisdiction of which is situated one of the following places:
   (i) The domicile of the carrier;
   (ii) The place of receipt agreed in the contract of carriage;
   (iii) The place of delivery agreed in the contract of carriage; or
   (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship; or

(b) In a competent court or courts designated by an agreement between the shipper and the carrier for the purpose of deciding claims against the carrier that may arise under this Convention.

Article 67. Choice of court agreements

1. The jurisdiction of a court chosen in accordance with article 66, subparagraph (b), is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction:

Chapter 14. Jurisdiction

第14章 裁判管轄

第66条 運送人に対する訴え

運送契約が第67条又は第72条に適合する専属的管轄合意を含む場合を除き、原告は、運送人に対し、以下の何れかの裁判所において、本条約に基づく訴訟手続を開始する権利を有する。

(a) 以下の何れかの場所の一を管轄地域とする権限ある裁判所

(i) 運送人のドミサイル
   (ii) 運送契約で合意された受取地
   (iii) 運送契約で合意された引渡地
   (iv) 物品が最初に船舶に船積された港
   若しくは物品が最後に船舶から荷揚された港

(b) 本条約の下で生じる運送人に対する請求につき決定するため荷送人及び運送人の合意により指定された権限ある裁判所

第67条 管轄合意

1. 第66条(b)に従って選択された裁判所の管轄権は、当事者がそれを専属的とする合意をし、且つ当該合意が以下に規定する双方の要件を満たす場合のみ、合意した契約当事者間の紛争につき専属的管轄を有する。
(a) Is contained in a volume contract that clearly states the names and addresses of the parties and either (i) is individually negotiated or (ii) contains a prominent statement that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing that agreement; and

(b) Clearly designates the courts of one Contracting State or one or more specific courts of one Contracting State.

2. A person that is not a party to the volume contract is bound by an exclusive choice of court agreement concluded in accordance with paragraph 1 of this article only if:

(a) The court is in one of the places designated in article 66, subparagraph (a);

(b) That agreement is contained in the transport document or electronic transport record;

(c) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; and

(d) The law of the court seized recognizes that that person may be bound by the exclusive choice of court agreement.

Article 68. Actions against the maritime performing party

The plaintiff has the right to institute judicial proceedings under this Convention against the maritime performing party in a competent court within the jurisdiction of which is situated one of the following places:

(a) The domicile of the maritime performing party;
subject to articles 71 and 72, no judicial proceedings under this Convention against the carrier or a maritime performing party may be instituted in a court not designated pursuant to article 66 or 68.

Article 70. Arrest and provisional or protective measures

Nothing in this Convention affects jurisdiction with regard to provisional or protective measures, including arrest. A court in a State in which a provisional or protective measure was taken does not have jurisdiction to determine the case upon its merits unless:

(a) The requirements of this chapter are fulfilled; or

(b) An international convention that applies in that State so provides.

Article 71. Consolidation and removal of actions

1. Except when there is an exclusive choice of court agreement that is binding pursuant to article 67 or 72, if a single action is brought against both the carrier and the maritime performing party arising out of a single
occurrence, the action may be instituted only in a court designated pursuant to both article 66 and article 68. If there is no such court, such action may be instituted in a court designated pursuant to article 68, subparagraph (b), if there is such a court.

2. Except when there is an exclusive choice of court agreement that is binding pursuant to article 67 or 72, a carrier or a maritime performing party that institutes an action seeking a declaration of non-liability or any other action that would deprive a person of its right to select the forum pursuant to article 66 or 68 shall, at the request of the defendant, withdraw that action once the defendant has chosen a court designated pursuant to article 66 or 68, whichever is applicable, where the action may be recommenced.

Article 72. Agreement after a dispute has arisen and jurisdiction when the defendant has entered an appearance

1. After a dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.

2. A competent court before which a defendant appears, without contesting jurisdiction in accordance with the rules of that court, has jurisdiction.

Article 73. Recognition and enforcement

1. A decision made in one Contracting State by a court having jurisdiction under this Convention shall be recognized and enforced in another Contracting State in accordance with the law of such latter Contracting State.
when both States have made a declaration in accordance with article 74.

2. A court may refuse recognition and enforcement based on the grounds for the refusal of recognition and enforcement available pursuant to its law.

3. This chapter shall not affect the application of the rules of a regional economic integration organization that is a party to this Convention, as concerns the recognition or enforcement of judgements as between member States of the regional economic integration organization, whether adopted before or after this Convention.

Article 74. Application of chapter 14

The provisions of this chapter shall bind only Contracting States that declare in accordance with article 91 that they will be bound by them.

Chapter 15. Arbitration

Article 75. Arbitration agreements

1. Subject to this chapter, parties may agree that any dispute that may arise relating to the carriage of goods under this Convention shall be referred to arbitration.

2. The arbitration proceedings shall, at the option of the person asserting a claim against the carrier, take place at:
   (a) Any place designated for that purpose in the arbitration agreement; or
   (b) Any other place situated in a State where any of the following places is located:
      (i) The domicile of the carrier;
      (ii) The place of receipt agreed in the
contract of carriage;
(iii) The place of delivery agreed in
the contract of carriage; or
(iv) The port where the goods are initially
loaded on a ship or the port where the
goods are finally discharged from a ship.

3. The designation of the place of arbitration in
the agreement is binding for disputes between
the parties to the agreement if the agreement is
contained in a volume contract that clearly
states the names and addresses of the parties
and either:
(a) Is individually negotiated; or
(b) Contains a prominent statement that
there is an arbitration agreement and
specifies the sections of the volume contract
containing the arbitration agreement.

4. When an arbitration agreement has been
concluded in accordance with paragraph 3 of
this article, a person that is not a party to the
volume contract is bound by the designation
of the place of arbitration in that agreement
only if:
(a) The place of arbitration designated in the
agreement is situated in one of the places
referred to in subparagraph 2 (b) of this
article;
(b) The agreement is contained in the
transport document or electronic transport
record;
(c) The person to be bound is given timely and
adequate notice of the place of arbitration;
and
(d) Applicable law permits that person to be
bound by the arbitration agreement.

5. The provisions of paragraphs 1, 2, 3 and 4 of

(iii) 運送契約で合意された引渡地
(iv) 物品が最初に船舶に荷揚された港
若しくは物品が最後に船舶から荷揚された港

3. 合意による仲裁地の指定は、それが当事者の名称及び住所を明記した数量契約の中に含まれている場合で、以下の何れかの要件を満たすときに、合意した当事者間の紛争につき拘束力がある。
(a) 個別に交渉がされたこと
(b) 仲裁合意がある旨の顕著な記載があり、仲裁合意を含む当該数量契約の条項が特定されていること

4. 本条3に従った仲裁合意が締結された場合、数量契約の当事者ではない者は、以下の全ての要件を満たす場合のみ、当該合意の仲裁地の指定に拘束される。
(a) 当該合意で指定された仲裁の場所が、本条2(b)に規定される場所の一つに所在すること
(b) 当該合意が、運送書類又は電子的運送記録に記載されていること
(c) その者が、仲裁地について適時に適切な通知を受けたこと
(d) 適用ある法が、その者が仲裁合意に拘束されることを認めていること

5. 本条1ないし4の規定は、全ての仲裁条項
this article are deemed to be part of every
arbitration clause or agreement, and any term
of such clause or agreement to the extent that
it is inconsistent therewith is void.

Article 76  Arbitration agreement in non-liner
transportation
1. Nothing in this Convention affects the
enforceability of an arbitration agreement in a
contract of carriage in non-liner transportation
to which this Convention or the provisions of
this Convention apply by reason of:
(a) The application of article 7; or
(b) The parties’ voluntary incorporation of
this Convention in a contract of carriage
that would not otherwise be subject to this
Convention.
2. Notwithstanding paragraph 1 of this article,
an arbitration agreement in a transport
document or electronic transport record to
which this Convention applies by reason of
the application of article 7 is subject to this
chapter unless such a transport document or
electronic transport record:
(a) Identifies the parties to and the date of the
charter party or other contract excluded
from the application of this Convention by
reason of the application of article 6; and
(b) Incorporates by specific reference the
clause in the charter party or other contract
that contains the terms of the arbitration
agreement.

Article 77  Agreement to arbitrate after a
dispute has arisen
Notwithstanding the provisions of this chapter

and chapter 14, after a dispute has arisen the parties to the dispute may agree to resolve it by arbitration in any place.

Article 78. Application of chapter 15
The provisions of this chapter shall bind only Contracting States that declare in accordance with article 91 that they will be bound by them.

Chapter 16. Validity of contractual terms

Article 79. General provisions

1. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:

(a) Directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Convention;

(b) Directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Convention; or

(c) Assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in article 18.

2. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:

(a) Directly or indirectly excludes, limits or increases the obligations under this Convention of the shipper, consignee, controlling party, holder or documentary shipper; or

(b) Directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or
documentary shipper for breach of any of its obligations under this Convention.

Article 80. Special rules for volume contracts

1. Notwithstanding article 79, as between the carrier and the shipper, a volume contract to which this Convention applies may provide for greater or lesser rights, obligations and liabilities than those imposed by this Convention.

2. A derogation pursuant to paragraph 1 of this article is binding only when:

(a) The volume contract contains a prominent statement that it derogates from this Convention;

(b) The volume contract is (i) individually negotiated or (ii) prominently specifies the sections of the volume contract containing the derogations;

(c) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with this Convention without any derogation under this article; and

(d) The derogation is neither (i) incorporated by reference from another document nor (ii) included in a contract of adhesion that is not subject to negotiation.

3. A carrier’s public schedule of prices and services, transport document, electronic transport record or similar document is not a volume contract pursuant to paragraph 1 of this article, but a volume contract may incorporate such documents by reference as terms of the contract.
IV 運送

4. Paragraph 1 of this article does not apply to rights and obligations provided in articles 14, subparagraphs (a) and (b), 29 and 32 or to liability arising from the breach thereof, nor does it apply to any liability arising from an act or omission referred to in article 61.

5. The terms of the volume contract that derogate from this Convention, if the volume contract satisfies the requirements of paragraph 2 of this article, apply between the carrier and any person other than the shipper provided that:

(a) Such person received information that prominently states that the volume contract derogates from this Convention and gave its express consent to be bound by such derogations; and

(b) Such consent is not solely set forth in a carrier’s public schedule of prices and services, transport document or electronic transport record.

6. The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled.

Article 81. Special rules for live animals and certain other goods

Notwithstanding article 79 and without prejudice to article 80, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if:

(a) The goods are live animals, but any such exclusion or limitation will not be effective if the claimant proves that the loss of or damage to the goods, or delay in delivery,
resulted from an act or omission of the carrier or of a person referred to in article 18, done with the intent to cause such loss of or damage to the goods or such loss due to delay or done recklessly and with knowledge that such loss or damage or such loss due to delay would probably result; or

(b) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and that no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.

Chapter 17. Matters not governed by this convention

Article 82. International conventions governing the carriage of goods by other modes of transport

Nothing in this Convention affects the application of any of the following international conventions in force at the time this Convention enters into force, including any future amendment to such conventions, that regulate the liability of the carrier for loss of or damage to the goods:

(a) Any convention governing the carriage of goods by air to the extent that such convention according to its provisions applies to any part of the contract of carriage;

(b) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and that no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.
(b) Any convention governing the carriage of goods by road to the extent that such convention according to its provisions applies to the carriage of goods that remain loaded on a road cargo vehicle carried on board a ship;

(c) Any convention governing the carriage of goods by rail to the extent that such convention according to its provisions applies to carriage of goods by sea as a supplement to the carriage by rail; or

(d) Any convention governing the carriage of goods by inland waterways to the extent that such convention according to its provisions applies to a carriage of goods without trans-shipment both by inland waterways and sea.

Article 83. Global limitation of liability

Nothing in this Convention affects the application of any international convention or national law regulating the global limitation of liability of vessel owners.

Article 84. General average

Nothing in this Convention affects the application of terms in the contract of carriage or provisions of national law regarding the adjustment of general average.

Article 85. Passengers and luggage

This Convention does not apply to a contract of carriage for passengers and their luggage.

Article 86. Damage caused by nuclear incident

No liability arises under this Convention for...
damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:


(b) Under national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

Chapter 18. Final clauses

Article 87. Depositary


(b) 当該損害に対する責任に適用ある国内法。ただし、当該国内法が、全ての点において、パリ条約、ウィーン条約、又は原子力損害に関する補完的補償に関する条約と同等以上に被害者に有利である場合に限る。
The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 88. Signature, ratification, acceptance, approval or accession

1. This Convention is open for signature by all States at Rotterdam, the Netherlands, on 23 September 2009, and thereafter at the Headquarters of the United Nations in New York.

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

3. This Convention is open for accession by all States that 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 89. Denunciation of other conventions

1. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the International Convention for the Unification of certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924, to the Protocol to amend the International Convention for the Unification of certain Rules of Law relating to Bills of Lading, signed at Brussels on 23 February 1968, or to the Protocol to amend the International Convention for the Unification of certain Rules of Law relating to Bills of Lading as Modified by the Amending Protocol

第88条 署名、批准、受諾、承認又は加入

1. 本条約は、2009年9月23日オランダのロッテルダムにおいて、その後はニューヨークの国際連合本部において、全ての国による署名のために開放する。

2. 本条約は、署名国によって、批准され、受諾され、又は承認されなければならいない。

3. 本条約は、署名のために開放された日から、署名国でない全ての国による加入のために開放しておく。

4. 批准書、受諾書、承認書及び加入書は、国際連合事務総長に寄託する。

第89条 他の条約の廃棄

1. 本条約を批准、受諾、承認又は本条約に加入する国であって、

1924年8月25日にブラッセルで署名された船荷証券に関するある規則の統一のための国際条約、

1968年2月23日に署名された1924年8月25日にブラッセルで署名された船荷証券に関するある規則の統一のための国際条約を改正する議定書、又は

1979年12月21日にブラッセルで署名された1968年2月23日の議定書によって改正された1924年8月25日の船荷証券に関するある規則の統一のための国際条約を改正す
of 23 February 1968, signed at Brussels on 21 December 1979, shall at the same time denounce that Convention and the protocol or protocols thereto to which it is a party by notifying the Government of Belgium to that effect, with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

2. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the United Nations Convention on the Carriage of Goods by Sea concluded at Hamburg on 31 March 1978 shall at the same time denounce that Convention by notifying the Secretary-General of the United Nations to that effect, with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

3. For the purposes of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the instruments listed in paragraphs 1 and 2 of this article that are notified to the depositary after this Convention has entered into force are not effective until such denunciations as may be required on the part of those States in respect of these instruments have become effective. The depositary of this Convention shall consult with the Government of Belgium, as the depositary of the instruments referred to in paragraph 1 of this article, so as to ensure necessary coordination in this respect.
Article 90. Reservations

No reservation is permitted to this Convention.

第90条 留保

本条約においては、留保は認められない。

Article 91. Procedure and effect of declarations

1. The declarations permitted by articles 74 and 78 may be made at any time. The initial declarations permitted by article 92, paragraph 1, and article 93, paragraph 2, shall be made at the time of signature, ratification, acceptance, approval or accession. No other declaration is permitted under this Convention.

2. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3. Declarations and their confirmations are to be in writing and to be formally notified to the depositary.

4. 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.

5. Any State that makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. The withdrawal of a declaration, or its modification where permitted by this Convention, takes 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.

第91条 宣言の手続及び効果

1. 第74条及び第78条で認められる宣言は、いつでもこれを行うことができる。第92条1及び第93条2で認められる最初の宣言は、署名、批准、受諾、承認又は加入の際に、これを行わなければならない。その他の宣言は、本条約においては、認められない。

2. 署名の時に行われた宣言は、批准、受諾又は承認の時に確認されなければならない。

3. 宣言及びその確認は、書面によるものとして、正式に寄託者に通報する。

4. 宣言は、それを行った国についての本条約の効力発生と同時にその効力を生ずる。ただし、寄託者が当該国についての本条約の発効後に正式の通報を受領した宣言は、寄託者がそれを受領した日の後6か月の期間が満了する日の属する月の翌月の初日に効力を生ずる。

5. 本条約の下での宣言を行った国は、寄託者に宛てた書面による正式の通報により、いつでも当該宣言を撤回することができる。宣言の撤回、又は本条約によりそれが認められる場合にはその変更は、寄託者が通報を受領した日の後6か月の期間が満了する日の属する月の翌月の初日に効力を生ずる。
Article 92. Effect in domestic territorial units

1. If a Contracting State has two or more territorial units in which 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. When a Contracting State has declared pursuant to this article that this Convention extends to one or more but not all of its territorial units, a place located in a territorial unit to which this Convention does not extend is not considered to be in a Contracting State for the purposes of this Convention.

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

Article 93. Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights
and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. When the number of Contracting States is relevant in this Convention, the regional economic integration organization does not count as a Contracting State in addition to its member States which are Contracting States.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration pursuant to this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” in this Convention applies equally to a regional economic integration organization when the context so requires.

Article 94. Entry into force

1. This Convention enters into force on the first day of the month following the expiration of one year after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.

2. For each State that becomes a Contracting State to this Convention after the date of the deposit of the twentieth instrument of
ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

3. Each Contracting State shall apply this Convention to contracts of carriage concluded on or after the date of the entry into force of this Convention in respect of that State.

Article 95. Revision and amendment
1. At the request of not less than one third of the Contracting States to this Convention, the Secretary-General of the United Nations shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 96. Denunciation of this Convention
1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. If a longer period 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 New York, this eleventh day of December two thousand and eight, 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.

2008年12月11日にニューヨークで、ひとしく正文であるアラビア語、中国語、英語、フランス語、ロシア語及びスペイン語により原本1通を作成した。

以上の証拠として、下名の全権委員は、各自の政府から正当に委任を受けて本条約に署名した。

【訳】池山明義（弁護士〔阿部・阪田法律事務所〕）
Ⅴ 担保

UNCITRAL は、設立当初から担保法分野における法統一の可能性を模索してきたが、1990 年代までは法統一作業を行うことが困難とみられたことから具体的な作業は行われていなかった。1990 年代に入って、低コストの資金調達を可能にする共通の法的基盤を提供することによって国際取引を促進することの重要性が改めて認識されたことから、担保法分野の法統一文書作成作業が始まり、その最初の成果となったのが、2001 年に採択された「国際取引における債権譲渡に関する国際連合条約」（債権譲渡条約）である。この条約は、国際的な金銭債権の譲渡及び金銭債権の国際的譲渡を対象として、債権譲渡を用いた資金調達に統一的なルールを提供するものである。

UNCITRAL は同条約採択後、各国の国内担保法の現代化と国際的な調和を支援する文書の作成を開始し、2007 年に「担保取引に関する UNCITRAL 立法ガイド」、2010 年に同立法ガイドを補完する「知的財産担保に関する補遺」、2013 年に「担保権登記制度の実施に関する UNCITRAL 立法」を作成した。そのうえで、2016 年には債権譲渡条約と立法ガイド等の原則と整合性を有するモデル法として、「担保取引に関する UNCITRAL モデル法」を採択している。

本書には、ゴチック体で表記した文書の対訳を収録した。（曽野裕夫）

15. 国際取引における債権譲渡に関する国際連合条約（ニューヨーク、2001年）


【概要】国際規模での債権譲渡による資金調達（ファクタリングや債権譲渡担保など）にとって、債権譲渡の優先順位の基準をはじめとする債権譲渡法の内容や準拠法決定ルールが国によって異なることによる不確実性は、阻害要因となると考えられる。本条約は、このような法的障害を除去することによって、債権譲渡を用いた低コストでの資金調達を可能にし、国際取引の発展を促進することを目的とするものである。

本条約は、国際的な金銭債権の譲渡（譲渡人と債務者が異なる国に所在する場合）及び金銭債権の国際的な譲渡（譲渡人と譲受人が異なる国に所在する場合）を対象とし、譲渡人・譲受人・債務者間の法律関係を明確化するとともに、競合する権利者間（譲受人や差押債権者の優劣関係を決めるための国際私法ルール）を定め、附属書において優劣関係について締約国が任意で選択可能な 3 つの実体ルールを規定している。
V 担保

また、将来債権の譲渡や債権の包括的譲渡を承認し、譲渡制限特約の対外効を制限するなどの規定を有する。

2016年12月1日現在、3か国が署名、1か国が加入しているが、5か国の批准・加入等が効力発生要件となっており、本条約は未発効である。日本は本条約の署名・締結をしていない。（曽野裕夫）

正文

条文

PREAMBLE

The Contracting States,

Reaffirming their conviction that international trade on the basis of equality and mutual benefit is an important element in the promotion of friendly relations among States,

Considering that problems created by uncertainties as to the content and the choice of legal regime applicable to the assignment of receivables constitute an obstacle to international trade,

Desiring to establish principles and to adopt rules relating to the assignment of receivables that would create certainty and transparency and promote the modernization of the law relating to assignments of receivables, while protecting existing assignment practices and facilitating the development of new practices,

Desiring also to ensure adequate protection of the interests of debtors in assignments of receivables,

Being of the opinion that the adoption of uniform rules governing the assignment of receivables would promote the availability of capital and credit at more affordable rates and thus facilitate the development of international trade,
15. 債権譲渡条約

Have agreed as follows:

CHAPTER I.

SCOPE OF APPLICATION

Article 1. Scope of application

1. This Convention applies to:

(a) Assignments of international receivables and to international assignments of receivables as defined in this chapter, if, at the time of conclusion of the contract of assignment, the assignor is located in a Contracting State; and

(b) Subsequent assignments, provided that any prior assignment is governed by this Convention.

2. This Convention applies to subsequent assignments that satisfy the criteria set forth in paragraph 1 (a) of this article, even if it did not apply to any prior assignment of the same receivable.

3. This Convention does not affect the rights and obligations of the debtor unless, at the time of conclusion of the original contract, the debtor is located in a Contracting State or the law governing the original contract is the law of a Contracting State.

4. The provisions of chapter V apply to assignments of international receivables and to international assignments of receivables as defined in this chapter independently of paragraphs 1 to 3 of this article. However, those provisions do not apply if a State makes a declaration under article 39.

5. The provisions of the annex to this Convention apply as provided in article 42.
Article 2. Assignment of receivables
For the purposes of this Convention:
(a) “Assignment” means the transfer by agreement from one person (“assignor”) to another person (“assignee”) of all or part of or an undivided interest in the assignor’s contractual right to payment of a monetary sum (“receivable”) from a third person (“the debtor”). The creation of rights in receivables as security for indebtedness or other obligation is deemed to be a transfer;
(b) In the case of an assignment by the initial or any other assignee (“subsequent assignment”), the person who makes that assignment is the assignor and the person to whom that assignment is made is the assignee.

Article 3. Internationality
A receivable is international if, at the time of conclusion of the original contract, the assignor and the debtor are located in different States. An assignment is international if, at the time of conclusion of the contract of assignment, the assignor and the assignee are located in different States.

Article 4. Exclusions and other limitations
1. This Convention does not apply to assignments made:
(a) To an individual for his or her personal, family or household purposes;
(b) As part of the sale or change in the ownership or legal status of the business out of which the assigned receivables arose.

第 2 条 債権の譲渡
この条約の適用上、
(a) 「譲渡」とは、一方（「譲渡人」）から他方（「譲受人」）に対し、譲渡人の第三者（「債務者」）に対する契約上の金銭支払請求権（「債権」）の全部若しくは一部又はその全体についての支配権を合意によって移転することをいう。負債又はその他の義務の担保としての権利の設定は、移転とみなす。
(b) 最初の又はその他の譲受人による譲渡（「後続譲渡」）においては、譲渡する者を譲渡人といい、譲渡される者を譲受人という。

第 3 条 国際性
債権は、原因契約の締結時に譲渡人及び債務者が異なる国に所在する場合に国際的なものとする。譲渡は、譲渡契約の締結時に譲渡人及び譲受人が異なる国に所在する場合に国際的なものとする。

第 4 条 除外事項
1. この条約は、次の譲渡には適用しない。
(a) 個人的、家族的又は日常的な目的のため個人に対してされる譲渡
(b) 譲渡される債権が発生した営業の売買又は所有形態若しくは法的変更の一部としてされる譲渡
2. This Convention does not apply to assignments of receivables arising under or from:

(a) Transactions on a regulated exchange;

(b) Financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

(c) Foreign exchange transactions;

(d) Inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;

(e) The transfer of security rights in, sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary;

(f) Bank deposits;

(g) A letter of credit or independent guarantee.

3. Nothing in this Convention affects the rights and obligations of any person under the law governing negotiable instruments.

4. Nothing in this Convention affects the rights and obligations of the assignor and the debtor under special laws governing the protection of parties to transactions made for personal, family or household purposes.

5. Nothing in this Convention:

(a) Affects the application of the law of a State in which real property is situated to either:

(i) An interest in that real property to the
extent that under that law the assignment of a receivable confers such an interest; or

(ii) The priority of a right in a receivable to the extent that under that law an interest in the real property confers such a right; or

(b) Makes lawful the acquisition of an interest in real property not permitted under the law of the State in which the real property is situated.

CHAPTER II.
GENERAL PROVISIONS

Article 5. Definitions and rules of interpretation

For the purposes of this Convention:

(a) “Original contract” means the contract between the assignor and the debtor from which the assigned receivable arises;

(b) “Existing receivable” means a receivable that arises upon or before conclusion of the contract of assignment and “future receivable” means a receivable that arises after conclusion of the contract of assignment;

(c) “Writing” means any form of information that is accessible so as to be usable for subsequent reference. Where this Convention requires a writing to be signed, that requirement is met if, by generally accepted means or a procedure agreed to by the person whose signature is required, the writing identifies that person and indicates that person’s approval of the information.
contained in the writing;
(d) “Notification of the assignment” means a communication in writing that reasonably identifies the assigned receivables and the assignee;
(e) “Insolvency administrator” means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer the reorganization or liquidation of the assignor’s assets or affairs;
(f) “Insolvency proceeding” means a collective judicial or administrative proceeding, including an interim proceeding, in which the assets and affairs of the assignor are subject to control or supervision by a court or other competent authority for the purpose of reorganization or liquidation;
(g) “Priority” means the right of a person in preference to the right of another person and, to the extent relevant for such purpose, includes the determination whether the right is a personal or a property right, whether or not it is a security right for indebtedness or other obligation and whether any requirements necessary to render the right effective against a competing claimant have been satisfied;
(h) A person is located in the State in which it has its place of business. If the assignor or the assignee has a place of business in more than one State, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more
than one State, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person;

(i) “Law” means the law in force in a State other than its rules of private international law;

(j) “Proceeds” means whatever is received in respect of an assigned receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods;

(k) “Financial contract” means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices or any other financial instrument, any repurchase or securities lending transaction, and any other transaction similar to any transaction referred to above entered into in financial markets and any combination of the transactions mentioned above;

(l) “Netting agreement” means an agreement between two or more parties that provides for one or more of the following:

(i) The net settlement of payments due in the same currency on the same date whether by novation or otherwise;

(ii) Upon the insolvency or other default by a party, the termination of all outstanding transactions at their replacement or fair market values, conversion of such sums into a single

人が営業所を持たない場合には、その常居所による。

(i) 「法律」とは、ある国において効力を有する法律で、国際私法の規則ではないものをいう。

(j) 「proceeds（代償、代替財産）」とは、譲渡される債権に関して受け取られるあらゆるものをいい、全部若しくは一部の支払であるか又はその他の弁済態様であるかを問わない。proceedsに関して受け取られるあらゆるものを含むが、返却された物品を含まない。

(k) 「金融契約」は、直物取引、先物取引、オプション取引又はスワップ取引であって、利率、商品、通貨、株式、社債、指数、その他の金融商品を伴うもの、買戻し又は証券貸借の取引その他類似の取引であって金融市場に入るものを及ぶこれらの取引を組み合せたものをいう。

(l) 「ネッティング合意」は、次のいずれかを可能とする2以上の当事者間の合意をいう。

(i) 更改その他の方法による同日に同一通貨により満期となる支払のネッティング決済

(ii) 当事者の倒産その他の債務不履行の場合における、入れ替え又は公正な市場の価値によるすべての未決済の取引の終了、未決済の取引額の単一通貨への両替及び当事者の一方から他
currency and netting into a single payment by one party to the other; or (iii) The set-off of amounts calculated as set forth in subparagraph (i) (ii) of this article under two or more netting agreements; (m) “Competing claimant” means:

(i) Another assignee of the same receivable from the same assignor, including a person who, by operation of law, claims a right in the assigned receivable as a result of its right in other property of the assignor, even if that receivable is not an international receivable and the assignment to that assignee is not an international assignment; (ii) A creditor of the assignor; or (iii) The insolvency administrator.

Article 6. Party autonomy
Subject to article 19, the assignor, the assignee and the debtor may derogate from or vary by agreement provisions of this Convention relating to their respective rights and obligations. Such an agreement does not affect the rights of any person who is not a party to the agreement.

Article 7. Principles of interpretation
1. In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, 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 that 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.

CHAPTER III. EFFECTS OF ASSIGNMENT

Article 8. Effectiveness of assignments

1. An assignment is not ineffective as between the assignor and the assignee or as against the debtor or as against a competing claimant, and the right of an assignee may not be denied priority, on the ground that it is an assignment of more than one receivable, future receivables or parts of or undivided interests in receivables, provided that the receivables are described:

(a) Individually as receivables to which the assignment relates; or

(b) In any other manner, provided that they can, at the time of the assignment or, in the case of future receivables, at the time of conclusion of the original contract, be identified as receivables to which the assignment relates.

2. Unless otherwise agreed, an assignment of one or more future receivables is effective without a new act of transfer being required to assign each receivable.

3. Except as provided in paragraph 1 of this article, article 9 and article 10, paragraphs 2 and 3, this Convention does not affect any
Article 9. Contractual limitations on assignments

1. An assignment of a receivable is effective notwithstanding any agreement between the initial or any subsequent assignor and the debtor or any subsequent assignee limiting in any way the assignor’s right to assign its receivables.

2. Nothing in this article affects any obligation or liability of the assignor for breach of such an agreement, but the other party to such agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

3. This article applies only to assignments of receivables:
   (a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;
   (b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;
   (c) Representing the payment obligation for a credit card transaction; or
   (d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.
Article 10. Transfer of security rights

1. A personal or property right securing payment of the assigned receivable is transferred to the assignee without a new act of transfer. If such a right, under the law governing it, is transferable only with a new act of transfer, the assignor is obliged to transfer such right and any proceeds to the assignee.

2. A right securing payment of the assigned receivable is transferred under paragraph 1 of this article notwithstanding any agreement between the assignor and the debtor or other person granting that right, limiting in any way the assignor’s right to assign the receivable or the right securing payment of the assigned receivable.

3. Nothing in this article affects any obligation or liability of the assignor for breach of any agreement under paragraph 2 of this article, but the other party to that agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not a party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

4. Paragraphs 2 and 3 of this article apply only to assignments of receivables:
   (a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;
   (b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary

第 10 条 担保権の移転

1. 譲渡される債権の支払を担保する人的又は物的権利は、新たな移転行為なくして譲受人に移転する。その権利が、それを規律する法律に基づき、新たな移転行為によってのみ移転し得る場合には、譲渡人は譲受人に当該権利及び proceeds を移転する義務を負う。

2. 譲渡される債権の支払を担保する権利は、譲渡人と債務者又は当該権利を設定する者との間でなされる、当該債権又は当該債権の支払を担保する権利を譲渡する譲渡人の権利を制限するいかなる合意にかかわらず、前項の規定に従い移転される。

3. この条の規定は、前項に基づくいかなる合意についての違反に対する譲渡人の義務又は責任にも影響を及ぼさない。ただし、譲渡人以外のその合意の当事者は、その違反のみを理由として原因契約又は譲渡契約を取り消すことができない。前項の合意の当事者以外の者は、その合意を知っていたことのみを原因として責任を負わない。

4. 第 2 項及び前項の規定は、次の債権の譲渡にのみ適用される。
   (a) 物品若しくは金融サービスを除くサービスの供給契約若しくは賃貸借契約、建築契約又は不動産の売買契約若しくは賃貸借契約である原因契約から生じる債権
   (b) 工業その他の知的財産権若しくは財産情報の売買、賃貸借又は使用許諾を目的とする原因契約から生じる債権
15. 債権譲渡条約

information;
(c) Representing the payment obligation for a credit card transaction; or
(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

5. The transfer of a possessory property right under paragraph 1 of this article does not affect any obligations of the assignor to the debtor or the person granting the property right with respect to the property transferred existing under the law governing that property right.

6. Paragraph 1 of this article does not affect any requirement under rules of law other than this Convention relating to the form or registration of the transfer of any rights securing payment of the assigned receivable.

CHAPTER IV.
RIGHTS, OBLIGATIONS AND DEFENCES

Section I. Assignor and assignee

Article 11. Rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are determined by the terms and conditions set forth in that agreement, including any rules or general conditions referred to therein.

2. The assignor and the assignee are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.
3. In an international assignment, the assignor and the assignee are considered, unless otherwise agreed, implicitly to have made applicable to the assignment a usage that in international trade is widely known to, and regularly observed by, parties to the particular type of assignment or to the assignment of the particular category of receivables.

Article 12. Representations of the assignor
1. Unless otherwise agreed between the assignor and the assignee, the assignor represents at the time of conclusion of the contract of assignment that:
   (a) The assignor has the right to assign the receivable;
   (b) The assignor has not previously assigned the receivable to another assignee; and
   (c) The debtor does not and will not have any defences or rights of set-off.
2. Unless otherwise agreed between the assignor and the assignee, the assignor does not represent that the debtor has, or will have, the ability to pay.

Article 13. Right to notify the debtor
1. Unless otherwise agreed between the assignor and the assignee, the assignor or the assignee or both may send the debtor notification of the assignment and a payment instruction, but after notification has been sent only the assignee may send such an instruction.
2. Notification of the assignment or a payment instruction sent in breach of any agreement
referred to in paragraph 1 of this article is not ineffective for the purposes of article 17 by reason of such breach. However, nothing in this article affects any obligation or liability of the party in breach of such an agreement for any damages arising as a result of the breach.

Article 14. Right to payment
1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent:

(a) If payment in respect of the assigned receivable is made to the assignee, the assignee is entitled to retain the proceeds and goods returned in respect of the assigned receivable;

(b) If payment in respect of the assigned receivable is made to the assignor, the assignee is entitled to payment of the proceeds and also to goods returned to the assignor in respect of the assigned receivable; and

(c) If payment in respect of the assigned receivable is made to another person over whom the assignee has priority, the assignee is entitled to payment of the proceeds and also to goods returned to such person in respect of the assigned receivable.

2. The assignee may not retain more than the value of its right in the receivable.

Section II. Debtor

Article 15. Principle of debtor protection
1. Except as otherwise provided in this Article 14条支払請求権
1. 譲渡人と譲受人との間で別段の合意がない限り、かつ譲渡通知が送付されたか否かにかかわらず、譲受人は譲渡された債権に関する支払権を有する。”

(a) 譲渡された債権に関する支払が譲受人に対してされる場合、譲渡された債権に関するproceeds及び返却された物品を保持する権利

(b) 譲渡された債権に関する支払が譲受人に対してされる場合、譲受人に関するproceedsの支払に対する権利及び譲渡人に返却された物品に対する権利

(c) 譲渡された債権の支払が譲受人が優先権を有する第三者に対してされる場合、譲渡人に関するproceedsの支払及び第三者へ返却された物品に対する権利

2. 譲受人は、債権に関する権利の価値以上のものを保持することができない。
Convention, an assignment does not, without the consent of the debtor, affect the rights and obligations of the debtor, including the payment terms contained in the original contract.

2. A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not change:
   (a) The currency of payment specified in the original contract; or
   (b) The State specified in the original contract in which payment is to be made to a State other than that in which the debtor is located.

Article 16. Notification of the Debtor

1. Notification of the assignment or a payment instruction is effective when received by the debtor if it is in a language that is reasonably expected to inform the debtor about its contents. It is sufficient if notification of the assignment or a payment instruction is in the language of the original contract.

2. Notification of the assignment or a payment instruction may relate to receivables arising after notification.

3. Notification of a subsequent assignment constitutes notification of all prior assignments.

Article 17. Debtor’s discharge by payment

1. Until the debtor receives notification of the assignment, the debtor is entitled to be discharged by paying in accordance with the original contract.

第 16 条 債務者への通知

1. 譲渡通知又は支払指示は、その内容を債務者に理解させることができ合理的に期待しうる言語でされた場合は、債務者によって受領された時に効力を有する。譲渡通知又は支払指示が原因契約の言語による場合には、前段の言語でされたものとする。

2. 譲渡通知又は支払指示は、通知後に生ずる債権に関するものも許容される。

3. 後続譲渡の通知は、あらゆるそれ以前の譲渡の通知となる。

第 17 条 債務者の支払による免責

1. 債務者は、譲渡通知を受けるまでの間、原因契約従った支払により免責される。
2. After the debtor receives notification of the assignment, subject to paragraphs 3 to 8 of this article, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such payment instruction.

3. If the debtor receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, the debtor is discharged by paying in accordance with the last payment instruction received from the assignee before payment.

4. If the debtor receives notification of more than one assignment of the same receivable made by the same assignor, the debtor is discharged by paying in accordance with the first notification received.

5. If the debtor receives notification of one or more subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments.

6. If the debtor receives notification of the assignment of a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or in accordance with this article as if the debtor had not received the notification. If the debtor pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.

7. If the debtor receives notification of the assignment from the assignee, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such payment instruction.

---

2. 債務者は、譲渡通知を受領した後は、第3項から第8項までに従い、譲受人に対する支払いによってのみ免責される。ただし、譲渡通知又はその後の譲受人による書面であって債務者がこれを受取ったものに別段の指示がある場合は、当該指示に従った支払による。

3. 債務者が同一の譲渡人による同一の債権の単一の譲渡に関する2以上の支払指示を受け取った場合には、債務者は支払前に譲受人から受け取った最後の支払指示に従う支払により免責される。

4. 債務者が同一の譲渡人による同一の債権の2以上の譲渡に関する通知を受け取った場合には、債務者は、最初に受け取った通知に従う支払により免責される。

5. 債務者が1又は複数の後続譲渡の通知を受け取った場合には、債務者は、最後の後続譲渡についての通知に従う支払により免責される。

6. 債務者が1又は複数の債権における一部又はその不可分の利益についての支配権に関する譲渡通知を受け取った場合には、その通知に従った支払により、又はあたかも債務者が通知を受け取っていなかったかのようにこの条文に従った支払により、免責される。債務者が通知に従って支払をした場合には、支払われた部分又は不可分の利益についての支配権の範囲でのみ免責される。

7. 債務者が譲受人から譲渡通知を受けた場合には、債務者は第一譲渡人から第一譲
entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment from the initial assignor to the initial assignee and any intermediate assignment have been made and, unless the assignee does so, the debtor is discharged by paying in accordance with this article as if the notification from the assignee had not been received. Adequate proof of an assignment includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place.

8. This article does not affect any other ground on which payment by the debtor to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor.

Article 18. Defences and rights of set-off of the debtor

1. In a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against the assignee all defences and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor could avail itself as if the assignment had not been made and such claim were made by the assignor.

2. The debtor may raise against the assignee any other right of set-off, provided that it was available to the debtor at the time notification of the assignment was received by the debtor.

3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor may raise pursuant to article 9 or 10...
against the assignor for breach of an agreement limiting in any way the assignor’s right to make the assignment are not available to the debtor against the assignee.

Article 19. Agreement not to raise defences or rights of set-off

1. The debtor may agree with the assignor in a writing signed by the debtor not to raise against the assignee the defences and rights of set-off that it could raise pursuant to article 18. Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.

2. The debtor may not waive defences:
   (a) Arising from fraudulent acts on the part of the assignee; or
   (b) Based on the debtor’s incapacity.

3. Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the assignee is determined by article 20, paragraph 2.

Article 20. Modification of the original contract

1. An agreement concluded before notification of the assignment between the assignor and the debtor that affects the assignee’s rights is effective as against the assignee, and the assignee acquires corresponding rights.

2. An agreement concluded after notification of the assignment between the assignor and the debtor that affects the assignee’s rights is ineffective as against the assignee unless:
(a) The assignee consents to it; or
(b) The receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

3. Paragraphs 1 and 2 of this article do not affect any right of the assignor or the assignee arising from breach of an agreement between them.

---

Article 21. Recovery of payments

Failure of the assignor to perform the original contract does not entitle the debtor to recover from the assignee a sum paid by the debtor to the assignor or the assignee.

Section III. Third parties

Article 22. Law applicable to competing rights

With the exception of matters that are settled elsewhere in this Convention and subject to articles 23 and 24, the law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.

Article 23. Public policy and mandatory rules

1. The application of a provision of the law of the State in which the assignor is located may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.

2. The rules of the law of either the forum State or any other State that are mandatory.
irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding article 22. A State may deposit at any time a declaration identifying any such preferential right.

Article 24. Special rules on proceeds

1. If proceeds are received by the assignee, the assignee is entitled to retain those proceeds to the extent that the assignee’s right in the assigned receivable had priority over the right of a competing claimant in the assigned receivable.

2. If proceeds are received by the assignor, the right of the assignee in those proceeds has priority over the right of a competing claimant in those proceeds to the same extent as the assignee’s right had priority over the right in the assigned receivable of that claimant if:

(a) The assignor has received the proceeds under instructions from the assignee to hold the proceeds for the benefit of the assignee; and

(b) The proceeds are held by the assignor for
the benefit of the assignee separately and are reasonably identifiable from the assets of the assignor, such as in the case of a separate deposit or securities account containing only proceeds consisting of cash or securities.

3. Nothing in paragraph 2 of this article affects the priority of a person having against the proceeds a right of set-off or a right created by agreement and not derived from a right in the receivable.

Article 25. Subordination
An assignee entitled to priority may at any time subordinate its priority unilaterally or by agreement in favour of any existing or future assignees.

CHAPTER V. AUTONOMOUS CONFLICT-OF-LAWS RULES

Article 26. Application of chapter V
The provisions of this chapter apply to matters that are:
(a) Within the scope of this Convention as provided in article 1, paragraph 4; and
(b) Otherwise within the scope of this Convention but not settled elsewhere in it.

Article 27. Form of a contract of assignment
1. A contract of assignment concluded between persons who are located in the same State is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of the State in which it is

又は証券から成る proceeds のみのための分離預金口座又は証券口座のように、譲渡人の資産から分離されてかつ合理的に特定されて保持されるとき

3. 前項の規定は、proceeds に対して相殺権を有する者の優先権、又は合意によって創出され、債権に関する権利に由来しない権利を有する者の優先権に影響を及ぼさない。

第 25 条 順位の放棄又は譲渡
優先権を持つ譲受人は、何時でも、一方的な意思表示又は合意により、現在又は将来の譲受人のためにその優先権を放棄又は譲渡することができる。

第 5 章 独立の抵触規定

第 26 条 第 5 章の適用
この章の規定は次の事項に適用される。

(a) 第 1 条第 4 項によりこの条約の範囲内に属する事項
(b) 第 1 条第 4 項によらずにこの条約が適用される事項であって、この条約の他の部分では解決されない事項

第 27 条 譲渡契約の形式
1. 同一の国に所在する人の間で締結された譲渡契約は、当該契約を規律する法律又は当該契約が締結された国の法律の要件を満たすときは、当事者間において形式上有効である。
2. A contract of assignment concluded between persons who are located in different States is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of one of those States.

Article 28. Law applicable to the mutual rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are governed by the law chosen by them.

2. In the absence of a choice of law by the assignor and the assignee, their mutual rights and obligations arising from their agreement are governed by the law of the State with which the contract of assignment is most closely connected.

Article 29. Law applicable to the rights and obligations of the assignee and the debtor

The law governing the original contract determines the effectiveness of contractual limitations on assignment as between the assignee and the debtor, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and whether the debtor's obligations have been discharged.

Article 30. Law applicable to priority

1. The law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant.

第 28 条 譲渡人と譲受人間の相互の権利及び義務の準拠法

1. 譲渡人と譲受人との合意から生じた相互の権利及び義務は、譲渡人及び譲受人により選択された法律によって規律される。

2. 譲渡人及び譲受人による法律の選択がない場合、譲渡人及び譲受人の合意から生じた相互の権利及び義務は、当該譲渡契約が最も密接な関連を有する国の法律によって規律される。

第 29 条 譲受人と債務者間の権利及び義務の準拠法

譲受人と債務者間の譲渡に関する契約上の制限の効力、譲受人と債務者の関係、譲渡を債務者に対して主張できる条件及び債務者の免責に関する問題は、原因契約を規律する法律によって決定される。

第 30 条 優先権に関する準拠法

1. 競合する権利の主張者の権利に対する譲渡される債権の譲受人の権利の優先権は、譲渡人が所在する国の法律により規律される。
2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding paragraph 1 of this article.

Article 31. Mandatory rules
1. Nothing in articles 27 to 29 restricts the application of the rules of the law of the forum State in a situation where they are mandatory irrespective of the law otherwise applicable.

2. Nothing in articles 27 to 29 restricts the application of the mandatory rules of the law of another State with which the matters settled in those articles have a close connection if and insofar as, under the law of that other State, those rules must be applied irrespective of the law otherwise applicable.

Article 32. Public policy
With regard to matters settled in this chapter, the application of a provision of the law specified in this chapter may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.
CHAPTER VI.
FINAL PROVISIONS

Article 33. Depositary
The Secretary-General of the United Nations is the depositary of this Convention.

Article 34. Signature, ratification, acceptance, approval, accession
1. This Convention is open for signature by all States at the Headquarters of the United Nations in New York until 31 December 2003.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open to accession by all States that 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 35. Application to territorial units
1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may at any time declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.
2. Such declarations are to state expressly the territorial units to which this Convention extends.
3. If, by virtue of a declaration under this article, this Convention does not extend to all...
territorial units of a State and the assignor or the debtor is located in a territorial unit to which this Convention does not extend, this location is considered not to be in a Contracting State.

4. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the law governing the original contract is the law in force in a territorial unit to which this Convention does not extend, the law governing the original contract is considered not to be the law of a Contracting State.

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

Article 36. Location in a territorial unit

If a person is located in a State which has two or more territorial units, that person is located in the territorial unit in which it has its place of business. If the assignor or the assignee has a place of business in more than one territorial unit, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one territorial unit, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person.

A State with two or more territorial units may specify by declaration at any time other rules for determining the location of a person within that State.
Article 37. Applicable law in territorial units

Any reference in this Convention to the law of a State means, in the case of a State which has two or more territorial units, the law in force in the territorial unit. Such a State may specify by declaration at any time other rules for determining the applicable law, including rules that render applicable the law of another territorial unit of that State.

第37条 地域単位における準拠法

この条約における国の法律の指定は、2以上の地域単位を有する国の場合、地域単位において効力を有する法律の指定を意味する。国は宣言によって、いつでも準拠法を決定する他の規則を明定することができる。ただし当該国の別の地域単位の法律を適用可能とする規定を含むことを妨げない。

Article 38. Conflicts with other international agreements

1. This Convention does not prevail over any international agreement that has already been or may be entered into and that specifically governs a transaction otherwise governed by this Convention.

2. Notwithstanding paragraph 1 of this article, this Convention prevails over the Unidroit Convention on International Factoring (“the Ottawa Convention”). To the extent that this Convention does not apply to the rights and obligations of a debtor, it does not preclude the application of the Ottawa Convention with respect to the rights and obligations of that debtor.

第38条 他の国際約束との抵触

1. この条約は、この条約が規律する取引を特別に規律するいかなる既存の又は将来の国際約束に優先しない。

2. 前項にかかわらず、この条約は、国際ファクタリングに関するユニドロワ条約（「オタワ条約」）に優先する。ただし、この条約が債務者の権利及び義務に適用されない範囲において、この条約は、債務者の権利及び義務に関するオタワ条約の適用を妨げない。

Article 39. Declaration on application of chapter V

A State may declare at any time that it will not be bound by chapter V.

第39条 第5章の適用に関する宣言

国は、いつでも第5章に拘束されない旨宣言することができる。

Article 40. Limitations relating to Governments and other public entities

A State may declare at any time that it will not be bound or the extent to which it will not be

第40条 政府その他の公的機関に関する制限

国は、いつでも譲渡される債権の支払を担保する又は物的な権利を設定した債
bound by articles 9 and 10 if the debtor or any person granting a personal or property right securing payment of the assigned receivable is located in that State at the time of conclusion of the original contract and is a Government, central or local, any subdivision thereof, or an entity constituted for a public purpose. If a State has made such a declaration, articles 9 and 10 do not affect the rights and obligations of that debtor or person. A State may list in a declaration the types of entity that are the subject of a declaration.

Article 41. Other exclusions

1. A State may declare at any time that it will not apply this Convention to specific types of assignment or to the assignment of specific categories of receivables clearly described in a declaration.

2. After a declaration under paragraph 1 of this article takes effect:

   (a) This Convention does not apply to such types of assignment or to the assignment of such categories of receivables if the assignor is located at the time of conclusion of the contract of assignment in such a State; and

   (b) The provisions of this Convention that affect the rights and obligations of the debtor do not apply if, at the time of conclusion of the original contract, the debtor is located in such a State or the law governing the original contract is the law of such a State.

3. This article does not apply to assignments of receivables listed in article 9, paragraph 3.

第 41 条 他の除外事項

1. 国は、いつでも宣言中に明白に掲げた特定の類型の譲渡、又は宣言中に明白に掲げた特定の種類の債権の譲渡にこの条約を適用しない旨宣言することができる。

2. 前項に基づく宣言は、次の効力を生じる。

   (a) この条約は、譲渡人が譲渡契約締結時にそのような国に所在する場合、その類型の譲渡又はその種類の債権の譲渡に適用されない。

   (b) 債務者の権利義務に影響するこの条約の規定は、原因契約締結時に債務者がそのような国に所在し、又は原因契約を規律する法がそのような国の法である場合、適用されない。

3. この条は、第 9 条第 3 項において掲げる債権の譲渡には適用されない。
Article 42. Application of the annex

1. A State may at any time declare that it will be bound by:
   (a) The priority rules set forth in section I of the annex and will participate in the international registration system established pursuant to section II of the annex;
   (b) The priority rules set forth in section I of the annex and will effectuate such rules by use of a registration system that fulfils the purposes of such rules, in which case, for the purposes of section I of the annex, registration pursuant to such a system has the same effect as registration pursuant to section II of the annex;
   (c) The priority rules set forth in section III of the annex;
   (d) The priority rules set forth in section IV of the annex; or
   (e) The priority rules set forth in articles 7 and 9 of the annex.

2. For the purposes of article 22:
   (a) The law of a State that has made a declaration pursuant to paragraph 1 (a) or (b) of this article is the set of rules set forth in section I of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;
   (b) The law of a State that has made a declaration pursuant to paragraph 1 (c) of this article is the set of rules set forth in section III of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;
   (c) The law of a State that has made a declaration pursuant to paragraph 1 (d) or (e) of this article is the set of rules set forth in section IV of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;
declaration pursuant to paragraph 1 (d) of this article is the set of rules set forth in section IV of the annex, as affected by any declaration made pursuant to paragraph 5 of this article; and

(d) The law of a State that has made a declaration pursuant to paragraph 1 (e) of this article is the set of rules set forth in articles 7 and 9 of the annex, as affected by any declaration made pursuant to paragraph 5 of this article.

3. A State that has made a declaration pursuant to paragraph 1 of this article may establish rules pursuant to which contracts of assignment concluded before the declaration takes effect become subject to those rules within a reasonable time.

4. A State that has not made a declaration pursuant to paragraph 1 of this article may, in accordance with priority rules in force in that State, utilize the registration system established pursuant to section II of the annex.

5. At the time a State makes a declaration pursuant to paragraph 1 of this article or thereafter, it may declare that:

(a) It will not apply the priority rules chosen under paragraph 1 of this article to certain types of assignment or to the assignment of certain categories of receivables; or

(b) It will apply those priority rules with modifications specified in that declaration.

6. At the request of Contracting or Signatory States to this Convention comprising not less than one third of the Contracting and Signatory States, the depositary shall convene
a conference of the Contracting and Signatory States to designate the supervising authority and the first registrar and to prepare or revise the regulations referred to in section II of the annex.

Article 43. Effect of declaration

1. Declarations made under articles 35, paragraph 1, 36, 37 or 39 to 42 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 to 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.

4. A State that makes a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes 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. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case
is to cause a rule in this Convention, including any annex, to become applicable:

(a) Except as provided in paragraph 5 (b) of this article, that rule is applicable only to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor applies only in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

6. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become inapplicable:

(a) Except as provided in paragraph 6 (b) of this article, that rule is inapplicable to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor is inapplicable in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the

(a) 次号に定める場合を除き、第1条第1項(a)にいう締約国に対して、宣言又は撤回が効力を生じた日又はその日以降に締結された譲渡契約による譲渡についてのみ、その規則は適用される。

(b) 第1条第3項にいう締約国に対して、宣言又は撤回が効力を生じた日又はその日以降に締結された原因契約についてのみ、債務者の権利及び義務を扱う規則は適用される。

6. 関係国に対して、条約の発効後効力を生じる第35条第1項、第36条、第37条又は第39条から第42条までに基づく宣言又はその撤回においては、その効力はいずれの場合においても附属書を含むこの条約の規則を適用されないこととする。

(a) 次号に定める場合を除き、第1条第1項(a)にいう締約国に対して、宣言又は撤回が効力を生じた日又はその日以降に締結された譲渡契約による譲渡について、その規則は適用されない。

(b) 第1条第3項にいう締約国に対して、宣言又は撤回が効力を生じた日又はその日以降に締結された原因契約について、債務者の権利及び義務を扱う規則は適用されない。
Contracting State referred to in article 1, paragraph 3.

7. If a rule rendered applicable or inapplicable as a result of a declaration or withdrawal referred to in paragraph 5 or 6 of this article is relevant to the determination of priority with respect to a receivable for which the contract of assignment is concluded before such declaration or withdrawal takes effect or with respect to its proceeds, the right of the assignee has priority over the right of a competing claimant to the extent that, under the law that would determine priority before such declaration or withdrawal takes effect, the right of the assignee would have priority.

Article 44. Reservations

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

Article 45. Entry into force

1. This Convention enters into force on the first day of the month following the expiration of six months from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession with the depositary.

2. For each State that becomes a Contracting State to this Convention after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to assignments

7. 第5項又は前項に規定する宣言又は撤回の結果、適用されることとされた、又は適用されないこととされた規則が、その宣言又は撤回が効力を生じる前に締結された譲渡契約の債権に関して、又は proceedsに関して、優先権の決定に関係がある場合、譲受人の権利は、その宣言又は撤回の前に優先権を決定する法律に基づき、それが優先権を有する限度で競合する権利の主張者の権利に優先する。

第44条 留保
この条約において、明示の規定がある場合を除き、留保は認められない。

第45条 発効
1. この条約は、寄託者への批准、受諾、承認又は加入についての第5番目の文書の寄託日から経過した翌月の初日に効力を生じる。

2. 批准、受諾、承認又は加入についての第5番目の文書の寄託日以後、この条約の締約国となる国に対しては、この条約は、当該国の名で適式な文書で寄託された日から6か月を経過した翌月の初日に効力を生じる。

3. この条約は、第1条第1項(a)にいう締
if the contract of assignment is concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor apply only to assignments of receivables arising from original contracts concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority in the absence of this Convention, the right of the assignee would have priority.

Article 46. Denunciation

1. A Contracting State may denounce this Convention at any time by written notification addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.
3. This Convention remains applicable to assignments if the contract of assignment is concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), provided that the provisions of this Convention that deal with the rights and obligations of the debtor remain applicable only to assignments of receivables arising from original contracts concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority under this Convention, the right of the assignee would have priority.

Article 47. Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States to revise or amend it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.
Section I. Priority rules based on registration

Article 1. Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which data about the assignment are registered under section II of this annex, regardless of the time of transfer of the receivable. If no such data are registered, priority is determined by the order of conclusion of the respective contracts of assignment.

Article 2. Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned, and data about the assignment were registered under section II of this annex, before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Section II. Registration

Article 3. Establishment of a registration system

A registration system will be established for the registration of data about assignments, even if the receivable is not international, and the registration authority and supervisory authority shall establish rules for the registration of data about assignments.
従い、譲渡に関するデータの登録のための登録システムが設立される。この附属書に基づき登録機関及び監督機関が制定する規則は、この附属書に沿うものとなる。その規則は、登録システムを実施する方法及び実施に関する紛争を解決するための手続の細則を定める。

第4条 登録
1. 何人も、この附属書と規則に従い、登録機関に譲渡に関するデータを登録することができる。規則に基づき、登録されたデータは、譲渡人及び譲受人を特定し、かつ譲渡される債権を簡潔に記載するものとする。

2. 債権が登録時に存在しているかどうかにかかわらず、一の登録は、譲渡人の譲受人に対する既存の又は将来の債権の1又は複数の譲渡を含むことができる。

3. 登録は関係する譲渡の前にすることができる。規則は譲渡がなされなかった場合における登録の取消のための手続を確立する。

4. 登録又はその修正は、検索する者が第1項のデータを得ることができる時から有効となる。登録する者は、規則に基づく選択に従い、登録の有効期間を定めることができる。この定めのない場合、登録は5年間有効である。
registration is effective for a period of five years.

5. Regulations will specify the manner in which registration may be renewed, amended or cancelled and regulate such other matters as are necessary for the operation of the registration system.

6. Any defect, irregularity, omission or error with regard to the identification of the assignor that would result in data registered not being found upon a search based on a proper identification of the assignor renders the registration ineffective.

Article 5. Registry searches

1. Any person may search the records of the registry according to identification of the assignor, as set forth in the regulations, and obtain a search result in writing.

2. A search result in writing that purports to be issued by the registry is admissible as evidence and is, in the absence of evidence to the contrary, proof of the registration of the data to which the search relates, including the date and hour of registration.

Section III. Priority rules based on the time of the contract of assignment

Article 6. Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order of conclusion of the respective contracts of assignment.
Article 7. Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Article 8. Proof of time of contract of assignment

The time of conclusion of a contract of assignment in respect of articles 6 and 7 of this annex may be proved by any means, including witnesses.

Section IV. Priority rules based on the time of notification of assignment

Article 9. Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which notification of the respective assignments is received by the debtor. However, an assignee may not obtain priority over a prior assignment of which the assignee had knowledge at the time of conclusion of the contract of assignment to that assignee by notifying the debtor.

Article 10. Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned before the commencement of such insolvency proceeding, attachment, judicial act or similar act.
the insolvency administrator or creditors of the assignor.

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned and notification was received by the debtor before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

DONE at New York, this 12th day of December two thousand one, 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 the present Convention.

【訳】池田真朗（武蔵野大学教授・慶應義塾大学名誉教授）
VI 倒産

倒産処理は、国際協力の必要性が認識されるながら、法統一に向けた取り組みが図れていった分野であるが、UNCITRAL は、1990 年代以降、この分野における法統一に取り組んでいる。その最初の成果が、「国際倒産に関する UNCITRAL モデル法」（1997 年）である。2016 年 12 月 1 日現在、41 か国（43 法域）がこのモデル法に基づく立法をしており、日本の「外国倒産処理手続の承認援助に関する法律」（平成 12 年法律 129 号）も、このモデル法に基づくものである。

なお、このモデル法については、同時に同モデル法の「制定及び解釈ガイド」が作成され、2011 年には裁判官支援を目的とした説明文書「国際倒産に関する UNCITRAL モデル法：裁判官の視点」も作成された。これらは、ともに 2013 年に改定されている。また、2009 年には実務家と裁判官支援を目的とした「国際倒産協力に関する UNCITRAL 実務ガイド」も作成されている。

国際倒産に関する以上の文書作成に加え、UNCITRAL は、各国が効率的かつ実効的な国内倒産法を制定することが、金融危機を防ぎ、超過債務の迅速かつ秩序立った整理を現するために必要であると考えられることから、各国の倒産法が採用すべき原則をまとめた「倒産法に関する UNCITRAL 立法ガイド」を作成している。この立法ガイドは、効果的な倒産法の主要目的や中核的規定についての第 1 部と第 2 部（2004 年採択）、グループ企業の倒産に関する第 3 部（2010 年採択）、倒産間際の取締役の責任に関する第 4 部（2013 年採択）から成る。

本書には、ゴシック体で標記した文書の対訳を収録した。（曽野裕夫）

16. UNCITRAL 国際倒産モデル法（1997年）

UNCITRAL Model Law on Cross-Border Insolvency (1997)

【概要】「UNCITRAL 国際倒産モデル法」（1997 年）は、各国が、国際倒産手続をより効率的に処理するための現代的な法的枠組みを整えることを援助する目的で作られたものである。日本は、本モデル法を基礎として、「外国倒産処理手続の承認援助に関する法律」（平成 12 年法律 129 号）を制定している。2016 年 12 月 1 日現在、日本を含め 41 か国（43 法域）が、本モデル法に基づく立法を行っている。

本モデル法は、各国の倒産実体法を統一することを目的とするものではなく、また法域毎の国内倒産手続の差異は尊重しつつ、異なる管轄の間協力と調整を可能にし促進するものである。本モデル法は、内国手続へのアクセス、外国倒産手続の承認、救済（援助）及
び外国倒産手続への協力の4つの基本的要素からなる。すなわち、まず外国管財人・外国債権者が本モデル法を実施する国内倒産への参加のあり方について定める。次に、本モデル法は、外国倒産手続の承認の要件を定めると同時に、外国手続を主従に区別し、外国倒産手続の承認について両者に異なる効果を付与する。第3に本モデル法は、国際倒産の公正で秩序正しい処理のために必要と考えられる救済方法を規定している。たとえば承認申立から承認までの間に裁判所により裁量的に与えられる救済、主手続の承認による自動執行停止、承認後主手続・従手続の係属する裁判所により裁量的に与えられる救済等である。最後に、債務者の財産所在国の裁判所間の協力と債務者に関する平行倒産手続の間の調整についても規律している。（藤田友敬）

正文

PREAMBLE

The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

(a) Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;

(b) Greater legal certainty for trade and investment;

(c) Fair and efficient administration of cross-border insolventcies that protects the interests of all creditors and other interested persons, including the debtor;

(d) Protection and maximization of the value of the debtor's assets; and

(e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

第1章 総則

CHAPTER I. GENERAL PROVISIONS
Article 1. Scope of application

1. This Law applies where:

   (a) Assistance is sought in this State by a foreign court or a foreign representative in connection with a foreign proceeding; or

   (b) Assistance is sought in a foreign State in connection with a proceeding under [identify laws of the enacting State relating to insolvency]; or

   (c) A foreign proceeding and a proceeding under [identify laws of the enacting State relating to insolvency] in respect of the same debtor are taking place concurrently; or

   (d) Creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under [identify laws of the enacting State relating to insolvency].

2. This Law does not apply to a proceeding concerning [designate any types of entities, such as banks or insurance companies, that are subject to a special insolvency regime in this State and that this State wishes to exclude from this Law].

Article 2. Definitions

For the purposes of this Law:

(a) “Foreign proceeding” means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

(b) “Foreign main proceeding” means a
foreign proceeding taking place in the State where the debtor has the centre of its main interests;

(c) “Foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of this article;

(d) “Foreign representative” means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;

(e) “Foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;

(f) “Establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

Article 3. International obligations of this State

To the extent that this Law conflicts with an obligation of this State arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

第3条 この国の国際的義務

本法律が、この国が一又は複数の他の国との間で締結している条約その他の形式の取決めから発生する義務と矛盾する限度で、当該条約その他の取決めの要請が優先する。
Article 4. [Competent court or authority]a
The functions referred to in this Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by [specify the court, courts, authority or authorities competent to perform those functions in the enacting State].

Article 5. Authorization of [insert the title of the person or body administering reorganization or liquidation under the law of the enacting State] to act in a foreign State
A [insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State] is authorized to act in a foreign State on behalf of a proceeding under [identify laws of the enacting State relating to insolvency], as permitted by the applicable foreign law.

Article 6. Public policy exception
Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State.

---
a A state where certain functions relating to insolvency proceedings have been conferred upon government-appointed officials of bodies might wish to include in article 4 or elsewhere in chapter I the following provision:
Nothing in this Law affects the provisions in force in the State governing the authority of [insert the title of the government-appointed person or body].

---

16. UNCITRAL 国際倒産モデル法
Article 7. Additional assistance under other laws

Nothing in this Law limits the power of a court or a [insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State] to provide additional assistance to a foreign representative under other laws of this State.

Article 8. Interpretation

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

CHAPTER II.
ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN THIS STATE

Article 9. Right of direct access

A foreign representative is entitled to apply directly to a court in this State.

Article 10. Limited jurisdiction

The sole fact that an application pursuant to this Law is made to a court in this State by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the courts of this State for any purpose other than the application.

Article 11. Application by a foreign representative to commence a proceeding under [identify laws of the enacting State relating to insolvency]

A foreign representative is entitled to apply to
commence a proceeding under [identify laws of the enacting State relating to insolvency] if the conditions for commencing such a proceeding are otherwise met.

Article 12. Participation of a foreign representative in a proceeding under [identify laws of the enacting State relating to insolvency]

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under [identify laws of the enacting State relating to insolvency].

Article 13. Access of foreign creditors to a proceeding under [identify laws of the enacting State relating to insolvency]

1. Subject to paragraph 2 of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under [identify laws of the enacting State relating to insolvency] as creditors in this State.

2. Paragraph 1 of this article does not affect the ranking of claims in a proceeding under [identify laws of the enacting State relating to Part one. UNCITRAL Model Law on Cross-Border Insolvency 7 insolvency], except that the claims of foreign creditors shall not be ranked lower than [identify the class of general non-preference claims, while providing that a foreign claim is to be ranked lower than the general non-preference claims if an equivalent local claim (e.g. claim for a penalty or deferred-payment claim) has a rank lower than...
Article 14. Notification to foreign creditors of a proceeding under [identify laws of the enacting State relating to insolvency]

1. Whenever under [identify laws of the enacting State relating to insolvency] notification is to be given to creditors in this State, such notification shall also be given to the known creditors that do not have addresses in this State. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

2. Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other,

b The enacting State may wish to consider the following alternative wording to replace paragraph 2 of article 13:

“2. Paragraph 1 of this article does not affect the ranking of claims in a proceeding under [identify laws of the enacting State relating to insolvency] or the exclusion of foreign tax and social security claims from such a proceeding. Nevertheless, the claims of foreign creditors other than those concerning tax and social security obligations shall not be ranked lower than [identify the class of general non-preference claims, while providing that a foreign claim is to be ranked lower than the general non-preference claims if an equivalent local claim (e.g. claim for a penalty or deferred-payment claim) has a rank lower than the general non-preference claims].”

b 立法国は第13条第2項に代えて、以下の文言を新たに設けることができる。
similar formality is required.

3. When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:

(a) Indicate a reasonable time period for filing claims and specify the place for their filing;
(b) Indicate whether secured creditors need to file their secured claims; and
(c) Contain any other information required to be included in such a notification to creditors pursuant to the law of this State and the orders of the court.

CHAPTER III.
RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

Article 15. Application for recognition of a foreign proceeding

1. A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.

2. An application for recognition shall be accompanied by:
   (a) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
   (b) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
   (c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the

3. 手続開始の通知が外国債権者に対してなされなければならないときは、当該通知は、以下の事項を含むものでなければならない。

(a) 債権を届け出る合理的な期間及び届出の場所
(b) 担保債権者の担保債権の届出の要否
(c) この国の法律及び裁判所の命令により、債権者への選知に含めることを必要とするその他すべての情報

第3章 外国手続きの承認及び救済

第15条 外国手続き承認の申立て

1. 外国管財人は、自らが任命された外国手続きの承認を裁判所に申し立てることができる。

2. 承認の申立てには、以下のいずれかのものを添付しなければならない。
   (a) 外国手続きを開始し、外国管財人を任命する裁判の認証謄本
   (b) 外国手続き及び外国管財人の任命の存在を証する外国裁判所の証明書
   (c) (a) 及び (b) 所定の証拠を欠く場合には、外国手続き及び外国管財人の任命の存在に関する、裁判所が受け入れうるその
existence of the foreign proceeding and of
the appointment of the foreign
representative.

3. An application for recognition shall also be
accompanied by a statement identifying all
foreign proceedings in respect of the debtor
that are known to the foreign representative.

4. The court may require a translation of
documents supplied in support of the
application for recognition into an official
language of this State.

Article 16. Presumptions concerning
recognition

1. If the decision or certificate referred to in
paragraph 2 of article 15 indicates that the
foreign proceeding is a proceeding within the
meaning of subparagraph (a) of article 2 and
that the foreign representative is a person or
body within the meaning of subparagraph (d)
of article 2, the court is entitled to so presume.

2. The court is entitled to presume that
documents submitted in support of the
application for recognition are authentic,
whether or not they have been legalized.

3. In the absence of proof to the contrary, the
debtor’s registered office, or habitual residence
in the case of an individual, is presumed to be
the centre of the debtor’s main interests.

Article 17. Decision to recognize a foreign
proceeding

1. Subject to article 6, a foreign proceeding shall
be recognized if:

(a) The foreign proceeding is a proceeding

3. An application for recognition shall also be
accompanied by a statement identifying all
foreign proceedings in respect of the debtor
that are known to the foreign representative.

4. The court may require a translation of
documents supplied in support of the
application for recognition into an official
language of this State.

Article 16. Presumptions concerning
recognition

1. If the decision or certificate referred to in
paragraph 2 of article 15 indicates that the
foreign proceeding is a proceeding within the
meaning of subparagraph (a) of article 2 and
that the foreign representative is a person or
body within the meaning of subparagraph (d)
of article 2, the court is entitled to so presume.

2. The court is entitled to presume that
documents submitted in support of the
application for recognition are authentic,
whether or not they have been legalized.

3. In the absence of proof to the contrary, the
debtor’s registered office, or habitual residence
in the case of an individual, is presumed to be
the centre of the debtor’s main interests.

Article 17. Decision to recognize a foreign
proceeding

1. Subject to article 6, a foreign proceeding shall
be recognized if:

(a) The foreign proceeding is a proceeding

3. An application for recognition shall also be
accompanied by a statement identifying all
foreign proceedings in respect of the debtor
that are known to the foreign representative.

4. The court may require a translation of
documents supplied in support of the
application for recognition into an official
language of this State.

Article 16. Presumptions concerning
recognition

1. If the decision or certificate referred to in
paragraph 2 of article 15 indicates that the
foreign proceeding is a proceeding within the
meaning of subparagraph (a) of article 2 and
that the foreign representative is a person or
body within the meaning of subparagraph (d)
of article 2, the court is entitled to so presume.

2. The court is entitled to presume that
documents submitted in support of the
application for recognition are authentic,
whether or not they have been legalized.

3. In the absence of proof to the contrary, the
debtor’s registered office, or habitual residence
in the case of an individual, is presumed to be
the centre of the debtor’s main interests.
within the meaning of subparagraph (a) of article 2;
(b) The foreign representative applying for recognition is a person or body within the meaning of subparagraph (d) of article 2;
(c) The application meets the requirements of paragraph 2 of article 15; and
(d) The application has been submitted to the court referred to in article 4.

2. The foreign proceeding shall be recognized:

(a) As a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
(b) As a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of article 2 in the foreign State.

3. An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

4. The provisions of articles 15, 16, 17 and 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Article 18. Subsequent information
From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of:

(a) Any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative’s appointment; and
(b) Any other foreign proceeding regarding

第18条 補充的な情報
外国手続の承認申立ての後、外国管財人は、以下の事項を速やかに裁判所に通知しなければならない。

(a) 承認された外国手続又は外国管財人の任命に関するすべての実質的変更
(b) 外国管財人に知られるに至った同一債
Article 19. Relief that may be granted upon application for recognition of a foreign proceeding

1. From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:
   (a) Staying execution against the debtor’s assets;
   (b) Entrusting the administration or realization of all or part of the debtor’s assets located in this State to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;
   (c) Any relief mentioned in paragraph 1 (c), (d) and (g) of article 21.

2. [Insert provisions (or refer to provisions in force in the enacting State) relating to notice.]

3. Unless extended under paragraph 1 (f) of article 21, the relief granted under this article terminates when the application for recognition is decided upon.

4. The court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.
Article 20. Effects of recognition of a foreign main proceeding

1. Upon recognition of a foreign proceeding that is a foreign main proceeding:
   (a) Commencement or continuation of individual actions or individual proceedings concerning the debtor’s assets, rights, obligations or liabilities is stayed;
   (b) Execution against the debtor’s assets is stayed; and
   (c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

2. The scope, and the modification or termination, of the stay and suspension referred to in paragraph 1 of this article are subject to [refer to any provisions of law of the enacting State relating to insolvency that apply to exceptions, limitations, modifications or termination in respect of the stay and suspension referred to in paragraph 1 of this article].

3. Paragraph 1 (a) of this article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

4. Paragraph 1 of this article does not affect the right to request the commencement of a proceeding under [identify laws of the enacting State relating to insolvency] or the right to file claims in such a proceeding.

Article 21. Relief that may be granted upon recognition of a foreign proceeding

1. Upon recognition of a foreign proceeding, whether main or non-main, where necessary to...
protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including:

(a) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor’s assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1 (a) of article 20;

(b) Staying execution against the debtor’s assets to the extent it has not been stayed under paragraph 1 (b) of article 20;

(c) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1 (c) of article 20;

(d) Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities;

(e) Entrusting the administration or realization of all or part of the debtor’s assets located in this State to the foreign representative or another person designated by the court;

(f) Extending relief granted under paragraph 1 of article 19;

(g) Granting any additional relief that may be available to [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] under the laws of this State.

2. Upon recognition of a foreign proceeding,

2. 手続の主従にかかわらず、外国手続の承
whether main or non-main, the court may, at
the request of the foreign representative, entrust
the distribution of all or part of the debtor’s
assets located in this State to the foreign
representative or another person designated by
the court, provided that the court is satisfied
that the interests of creditors in this State are
adequately protected.

3. In granting relief under this article to a
representative of a foreign non-main
proceeding, the court must be satisfied that the
relief relates to assets that, under the law of this
State, should be administered in the foreign
non-main proceeding or concerns information
required in that proceeding.

Article 22. Protection of creditors and other
interested persons

1. In granting or denying relief under article 19
or 21, or in modifying or terminating relief
under paragraph 3 of this article, the court must
be satisfied that the interests of the creditors
and other interested persons, including the
debtor, are adequately protected.

2. The court may subject relief granted under
article 19 or 21 to conditions it considers
appropriate.

3. The court may, at the request of the foreign
representative or a person affected by relief
granted under article 19 or 21, or at its own
motion, modify or terminate such relief.

Article 23. Actions to avoid acts detrimental to
creditors

1. Upon recognition of a foreign proceeding, the
foreign representative has standing to initiate [refer to the types of actions to avoid or otherwise render ineffective acts detrimental to creditors that are available in this State to a person or body administering a reorganization or liquidation].

2. When the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the action relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding.

Article 24. Intervention by a foreign representative in proceedings in this State

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of this State are met, intervene in any proceedings in which the debtor is a party.

CHAPTER IV.
COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

Article 25. Cooperation and direct communication between a court of this State and foreign courts or foreign representatives

1. In matters referred to in article 1, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State].

2. The court is entitled to communicate directly
with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26. Cooperation and direct communication between the [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] and foreign courts or foreign representatives

1. In matters referred to in article 1, a [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] shall, in the exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

2. The [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

Article 27. Forms of cooperation

Cooperation referred to in articles 25 and 26 may be implemented by any appropriate means, including:

(a) Appointment of a person or body to act at the direction of the court;

(b) Communication of information by any means considered appropriate by the court;

(c) Coordination of the administration and supervision of the debtor’s assets and affairs;

(d) Approval or implementation by courts of
agreements concerning the coordination of proceedings;
(e) Coordination of concurrent proceedings regarding the same debtor;
(f) [The enacting State may wish to list additional forms or examples of cooperation].

CHAPTER V.
CONCURRENT PROCEEDINGS

Article 28. Commencement of a proceeding under [identify laws of the enacting State relating to insolvency] after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, a proceeding under [identify laws of the enacting State relating to insolvency] may be commenced only if the debtor has assets in this State; the effects of that proceeding shall be restricted to the assets of the debtor that are located in this State and, to the extent necessary to implement cooperation and coordination under articles 25, 26 and 27, to other assets of the debtor that, under the law of this State, should be administered in that proceeding.

Article 29. Coordination of a proceeding under [identify laws of the enacting State relating to insolvency] and a foreign proceeding

Where a foreign proceeding and a proceeding under [identify laws of the enacting State relating to insolvency] are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:
(a) When the proceeding in this State is taking place at the time the application for recognition of the foreign proceeding is filed,

(i) Any relief granted under article 19 or 21 must be consistent with the proceeding in this State; and

(ii) If the foreign proceeding is recognized in this State as a foreign main proceeding, article 20 does not apply;

(b) When the proceeding in this State commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,

(i) Any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in this State; and

(ii) If the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph 1 of article 20 shall be modified or terminated pursuant to paragraph 2 of article 20 if inconsistent with the proceeding in this State;

(c) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 30. Coordination of more than one foreign proceeding
In matters referred to in article 1, in respect of more than one foreign proceeding regarding the same debtor, the court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:

(a) Any relief granted under article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(b) If a foreign main proceeding is recognized after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding;

(c) If, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognized, the court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Article 31. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under [identify laws of the enacting State relating to insolvency], proof that the debtor is insolvent.

Article 32. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights in...
rem, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under [identify laws of the enacting State relating to insolvency] regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

除き、外国の倒産関連法の下での手続において、自らの債権の一部について配当を受領した債権者は、同一の順位の他の債権者に対する配当が自らが既に受領した配当よりもその率において下回っている限りにおいて、同一の債務者に関する［立法国の倒産関連法律を特定］の下での手続において、同一債権に係る配当を受領することができない。

【訳】山本和彦（一橋大学教授）
UNCITRAL は、国際的な支払い及びそれと関連する金融取引の領域における法統一にも尽力し、以下のような文書を作成してきた。まず手形・小切手に関して、英米法と大陸法にルールの違いを克服し、国際的な決済のために手形・小切手が用いられた場合の不確実性を除去するため、「国際為替手形及び国際約束手形に関する国際連合条約」（1998年12月9日国連総会によって採択）がある（2016年12月1日現在未発効。日本は署名・締結していない）。次に国際的な銀行振込について、UNCITRAL は、1986年に、事務局作成にかかる「EFTに関するUNCITRAL リーガル・ガイド」を公表し、さらに1992年5月15日、「国際振込に関するUNCITRAL モデル法」を採択した。スタンドバイ信用状に関して、「独立保証状及びスタンドバイ信用状に関する国際連合条約」（1995年12月11日国連総会によって採択）を作成した。同条約は2000年1月1日に発効しており、2016年12月1日現在8か国が締約国となっているが、日本は署名・締結していない。最後に、増加する国際的な商業詐欺に対処するため、UNCITRAL 事務局は、商業詐欺にしばしば伴うあるいは商業詐欺となりうる数々の行動を特定し、指標としてまとめた「商業詐欺の認識及び防止：商業詐欺であることを示す指標」（2013年）を公表している。（藤田友敬）
Ⅷ 政府調達

本書には収録していないが、UNCITRAL は、政府調達や民間資本を活用した社会資本整備（いわゆる PFI）についても、国内法整備を支援する文書を作成している。

政府調達については、1993 年と 1994 年に作成したモデル法を改定した「政府調達に関する UNCITRAL モデル法」（2011 年）と、それを補完する「制定ガイド」（2012 年）、「政府調達規則に関する指針」（2013 年）、「用語集」（2013 年）がある。これらは、政府調達における客観性、公正性、国際的な競争、透明性を実現することによって、支払に対する最も価値の高いサービスの提供（value for money）を可能にすることを目的とするものである。

社会資本整備については、1987 年に作成された「工業施設建設のための国際契約起草に関する UNCITRAL リーガルガイド」（プラント建設契約の交渉・締結上の留意点を整理した当事者支援文書）を嚆矢として、その後、「民間資本を活用した社会資本整備に関する UNCITRAL 立法ガイド」（2000 年）と、同立法ガイドを補完する「民間資本を活用した社会資本整備に関する UNCITRAL モデル条文」（2003 年）が作成されている。これらは、社会資本整備への国際投資を含む民間の投資の促進に対する配慮（法令等の透明性、財産権の尊重等）と、ホスト国の公務に対する配慮（公共サービスの継続的・無差別の供給、環境・健康・安全・品質基準の遵守等）のバランスを図る法的枠組みを提供することを目的とするものである。（曽野裕夫）