

**A REVIEW OF SOME SALIENT PROVISIONS OF THE UNITED NATIONS CONVENTION ON  
CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS\***

**Abstract**

*This paper deals with a review of some salient provisions of the United Nations Convention on Contracts for the International Sale of Goods. The paper commences with an Introduction, Sphere of Application and General Provisions (Articles 1–13), Formation of the Contract (Articles 14–24), Sale of Goods (Articles 25–88), final Provisions (Articles 89–101), a Critique and final Conclusion.*

**Keywords:** Review, Salient Provisions, United Nations Convention, Contracts, International Sale of Goods.

**1. Introduction**

The United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention)<sup>1</sup> is a treaty that codifies uniform international sales laws. It has been ratified by 91 states, which account for a significant proportion of world trade, making it one of the most successful international uniform laws. Liechtenstein was the most recent state to adopt the Convention, having acceded to it on 30 April 2019. The CISG was developed by the United Nations Commission on International Trade Law (UNCITRAL), and was signed in Vienna in 1980. The CISG is sometimes referred to as the Vienna Convention (but this is not to be confused with other treaties signed in Vienna). It came into force as a multilateral treaty on 1<sup>st</sup> day of January 1988 after being ratified by 11 countries<sup>2</sup> The CISG has been regarded as a success for the UNCITRAL, as the Convention has been accepted by states from ‘every geographical region, every stage of economic development and every major legal, social and economic system’<sup>3</sup> Countries that have ratified the CISG are referred to within the treaty as ‘Contracting States’. Of the uniform law conventions, the CISG has been described as having ‘the greatest influence on the law of worldwide trans-border commerce’<sup>4</sup> It has also been described as a great legislative achievement<sup>5</sup> and the ‘most successful international document so far’ in unified international sales law,<sup>6</sup> in part due to its flexibility in allowing Contracting States the option of taking exception to certain specified articles. This flexibility was instrumental in convincing states with disparate legal traditions to subscribe to an otherwise uniform code. While certain State parties to the CISG have lodged declarations<sup>7</sup> the vast majority – 69 of the current 91 Contracting States – have chosen to accede to the Convention without any declaration. India, South Africa, Nigeria, and the United Kingdom are the major trading countries or the areas that have not yet ratified the CISG The CISG is written using ‘plain language that refers to things and events for which there are words of common content’<sup>8</sup> This was a conscious intent to allow national legal systems to be transcended through the use of a common legal *lingua franca* and avoids the ‘words associated with specific domestic legal nuances’<sup>9</sup> Further, it facilitated the translation into the UN’s six official languages.<sup>10</sup> As it is customary in UN conventions all 6 languages are equally authentic<sup>11</sup>

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<sup>1</sup>United Nations Convention on Contracts for the International Sale of Goods, Vienna, 11 April 1980, S.Treaty Document Number 98-9 (1984), UN Document Number A/CONF 97/19, 1489 UNTS 3. The full text of the CISG is available in pdf format at [http://www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html) at 22 December 2007.

<sup>2</sup> Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, the United States, Yugoslavia, and Zambia

<sup>3</sup> John Felemegas, ‘The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation (2000)’ *Pace Review of the Convention on Contracts for the International Sale of Goods* (CISG) 115.

<sup>4</sup> Peter Schlechtriem, ‘Requirements of Application and Sphere of Applicability of the CISG’ (2005) 36 *Victoria University of Wellington Law Review* 781.

<sup>5</sup> Joseph Lookofsky, ‘Loose Ends and Contorts in International Sales: Problems in the Harmonization of Private Law Rules’ (1991) 39 *American Journal of Comparative Law* 403.

<sup>6</sup> Bruno Zeller, *CISG and the Unification of International Trade Law* (1st ed, 2007) 94.

<sup>7</sup>See list of signatories and their declarations at [http://www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html) .

<sup>8</sup> John Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (3rd ed. 1999) 88.

<sup>9</sup> John Felemegas, ‘The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation (2000)’ *Pace Review of the Convention on Contracts for the International Sale of Goods* (CISG) 115.

<sup>10</sup> Arabic, Chinese, English, French, Russian, and Spanish / non-official translations of the CISG See: [http://www.fr-lawfirm.de/links/pages/UN-Kaufrecht/Texte\\_Uebersetzungen/](http://www.fr-lawfirm.de/links/pages/UN-Kaufrecht/Texte_Uebersetzungen/).

<sup>11</sup> Article 101.

The CISG is divided into four parts and the provisions of these parts are hereunder discussed in order to gain a better understanding of the importance of the Convention.

### **2. Part I: Sphere of Application and General Provisions (Articles 1–13)**

The CISG applies to contracts of the sale of goods between parties whose places of business are in different States, when the States are Contracting States (Article 1(1) (a)). Given the significant number of Contracting States, this is the usual path to the CISG's applicability. The CISG also applies if the parties are situated in different countries (which need not be Contracting States) and the conflict of law rules lead to the application of the law of a Contracting State<sup>12</sup> For example, a contract between a Japanese trader and a Brazilian trader may contain a clause that arbitration will be in Sydney under Australian law<sup>13</sup> with the consequence that the CISG would apply. A number of States have declared they will not be bound by this condition<sup>14</sup> The CISG is intended to apply to commercial goods and products only. With some limited exceptions, the CISG does not apply to personal, family, or household goods, nor does it apply to auctions, ships, aircraft<sup>15</sup> or intangibles<sup>16</sup> and services<sup>17</sup> The position of computer software is 'controversial'<sup>18</sup> and will depend upon various conditions and situations<sup>19</sup> Importantly, parties to a contract may exclude or vary the application of the CISG<sup>20</sup> Interpretation of the CISG is to take account of the 'international character' of the Convention, the need for uniform application, and the need for good faith in international trade. Disputes over interpretation of the CISG are to be resolved by applying the 'general principles' of the CISG, or where there are no such principles but the matters are governed by the CISG (a gap *praeter legem*) by applying the rules of private international law.<sup>21</sup> A key point of controversy was whether or not a contract requires a written memorial to be binding. The CISG allows for a sale to be oral or unsigned<sup>22</sup> but in some countries, contracts are not valid unless written. In many nations, however, oral contracts are accepted, and those States had no objection to signing, so States with a strict written requirement exercised their ability to exclude those articles relating to oral contracts, enabling them to sign as well<sup>23</sup> The CISG is not a complete qualification by its own definition<sup>24</sup> these gaps must be filled in by the applicable national law under due consideration of the conflict of law rules applicable at the place of jurisdiction.<sup>25</sup>

### **3. Part II: Formation of the Contract (Articles 14–24)**

An offer to contract must be addressed to a person, be sufficiently definite – that is, describe the goods, quantity, and price – and indicate an intention for the offeror to be bound on acceptance<sup>26</sup> The CISG does not appear to recognise common law unilateral contracts<sup>27</sup> but, subject to clear indication by the offeror, treats any proposal not addressed to a specific person as only an invitation to make an offer<sup>28</sup> Further, where there is no explicit price or procedure to implicitly determine price, then the parties are assumed to have agreed upon a price based upon that

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<sup>12</sup> Article 1 (b).

<sup>13</sup> More correctly, the law of New South Wales as mandated in Sale of Goods (Vienna Convention) Act 1986 (NSW).

<sup>14</sup> Specifically, China, Germany, Czech Republic, Saint Vincent and the Grenadines, Singapore, Slovakia, and the United States of America. See [http://www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html) at 22 December 2007.

<sup>15</sup> Article 2

<sup>16</sup> From Article 2 (d) and (f), intangibles such as stocks, shares, investment securities, negotiable instruments or money, and electricity.

<sup>17</sup> Article 3- However, Sale of Goods contracts under the CISG may include services (e.g., transport, erection, supervision, training) up to 50% of the agreed contract price at the date of the signature of the contract (See Verweyen/Foerster/Toufar Handbuch des Internationalen Warenkaufs UN-Kaufrechts (CISG) 2. Auflage, 2008 2.1.1 p. 46)

<sup>18</sup> Peter Schlechtriem, 'Requirements of Application and Sphere of Applicability of the CISG' (2005) 36 *Victoria University of Wellington Law Review* 781.

<sup>19</sup> Frank Diedrich, 'Maintaining Uniformity in International Uniform Law Via Autonomous Interpretation: Software Contracts and the CISG' (1996) 8 *Pace International Law Review* 303, 321, 322

<sup>20</sup> Articles 6, 12

<sup>21</sup> Article 7.

<sup>22</sup> Article 11

<sup>23</sup> Specifically, Argentina, Belarus, Chile, China, Hungary, Latvia, Lithuania, Paraguay, Russian Federation, and Ukraine are not bound by Article 11.

<sup>24</sup> Article 5, 1–78

<sup>25</sup> In the toolbox (CD-Rom, which is attached to the Verweyen, Foerster, Toufar Handbuch des Internationalen Warenkaufs UN-Kaufrecht (CISG) 2. Auflage, 2008, the parties can easily identify the gaps and how they will be filled under the assumption of Swiss or German applicable law. This toolbox also comprises a software to determine the application of the CISG

<sup>26</sup> Article 14

<sup>27</sup> See, for example, *Carlill v. Carbolic Smoke Ball Company* (1892) 2 QB 484.

<sup>28</sup> Article 14 (2)

'generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances'<sup>29</sup> Generally, an offer may be revoked provided the withdrawal reaches the offeree before or at the same time as the offer, or before the offeree has sent an acceptance.<sup>30</sup> Some offers may not be revoked; for example when the offeree reasonably relies upon the offer as being irrevocable.<sup>31</sup> The CISG requires a positive act to indicate acceptance; silence or inactivity are not an acceptance<sup>32</sup> The CISG attempts to resolve the common situation where an offeree's reply to an offer accepts the original offer, but attempts to change the conditions. The CISG says that any change to the original conditions is a rejection of the offer—it is a counter-offer—unless the modified terms do not materially alter the terms of the offer. Changes to price, payment, quality, quantity, delivery, liability of the parties, and arbitration conditions may all materially alter the terms of the offer<sup>33</sup>

#### **4. Part III: Sale of Goods (Articles 25–88)**

Articles 25–88; sale of goods, obligations of the seller, obligations of the buyer, passing of risk, obligations are common to both buyer and seller. The CISG defines the duty of the seller, 'stating the obvious'<sup>34</sup> as 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<sup>35</sup> Similarly, the duty of the buyer is to take all steps 'which could reasonably be expected'<sup>36</sup> to take delivery of the goods, and to pay for them.<sup>37</sup> Generally, the goods must be of the quality, quantity, and description required by the contract, be suitably packaged and fit for purpose<sup>38</sup> The seller is obliged to deliver goods that are not subject to claims from a third party for infringement of industrial or intellectual property rights in the State where the goods are to be sold.<sup>39</sup> The buyer is obliged to promptly examine the goods and, subject to some qualifications, must advise the seller of any lack of conformity within 'a reasonable time' and no later than within two years of receipt<sup>40</sup> The CISG describes when the risk passes from the seller to the buyer<sup>41</sup> but it has been observed that in practice most contracts define the 'seller's delivery obligations quite precisely by adopting an established shipment term,<sup>42</sup> such as FOB<sup>43</sup> and CIF<sup>44</sup> Remedies of the buyer and seller depend upon the character of a breach of the contract. If the breach is fundamental, then the other party is substantially deprived of what it expected to receive under the contract. Provided that an objective test shows that the breach could not have been foreseen,<sup>45</sup> then the contract may be avoided<sup>46</sup> and the aggrieved party may claim damages<sup>47</sup> Where part performance of a contract has occurred, then the performing party may recover any payment made or good supplied;<sup>48</sup> this contrasts with the common law where there is generally no right to recover a good supplied unless title has been retained or damages are inadequate, only a right to claim the value of the good.<sup>49</sup> If the breach is not fundamental, then the contract is not avoided and remedies may be sought including claiming damages, specific performance, and adjustment of price.<sup>50</sup> Damages that may be awarded conform to the common law rules in *Hadley v Baxendale*<sup>51</sup> but it has been argued the test of foreseeability is substantially broader<sup>52</sup> and

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<sup>29</sup> Article 55

<sup>30</sup> Articles 15, 16 (1)

<sup>31</sup> Article 16 (2)

<sup>32</sup> Article 18

<sup>33</sup> Article 19

<sup>34</sup> Jacob Ziegel and Claude Samson 'Report to the Uniform Law Conference of Canada on Convention on Contracts for the International Sale of Goods' (1981) *Toronto* 168–305.

<sup>35</sup> Article 30

<sup>36</sup> Article 60

<sup>37</sup> Article 53

<sup>38</sup> Article 35

<sup>39</sup> Articles 41, 42

<sup>40</sup> Articles 38, 39, 40

<sup>41</sup> Articles 66, 67, 68, 69, 70

<sup>42</sup> Jacob Ziegel and Claude Samson 'Report to the Uniform Law Conference of Canada on Convention on Contracts for the International Sale of Goods' (1981) *Toronto* 168–305

<sup>43</sup> FOB – Free on Board (named port of shipment)

<sup>44</sup> CIF – Cost, Insurance & Freight (named port of destination)

<sup>45</sup> Article 25

<sup>46</sup> Article 49, 64

<sup>47</sup> Articles 74, 75, 76, 77

<sup>48</sup> Article 81

<sup>49</sup> Cf *Doulton Potteries v Bronotte* (1971) 1 NSWLR 591 for example of damages as inadequate

<sup>50</sup> Articles 45, 46, 47, 48, 50, 51, 52, 61, 62, 63, 65, 74, 75, 76, 77

<sup>51</sup> (1854) 9 Exch 341

<sup>52</sup> Jacob Ziegel and Claude Samson 'Report to the Uniform Law Conference of Canada on Convention on Contracts for the International Sale of Goods' (1981) *Toronto* 168–305

consequently more generous to the aggrieved party. The CISG excuses a party from liability to a claim of damages where a failure to perform is attributable to an impediment beyond the party's, or a third party sub-contractor's, control that could not have been reasonably expected<sup>53</sup> Such an extraneous event might elsewhere be referred to as *force majeure*, and frustration of the contract. Where a seller has to refund the price paid, then the seller must also pay interest to the buyer from the date of payment<sup>54</sup> It has been said the interest rate is based on rates current in the seller's State' since the obligation to pay interest partakes of the seller's obligation to make restitution and not of the buyer's right to claim damages',<sup>55</sup> though this has been debated. In a mirror of the seller's obligations, where a buyer has to return goods the buyer is accountable for any benefits received<sup>56</sup>

#### 5. Part IV: Final Provisions (Articles 89–101)

Articles 89–101 (final provisions) include how and when the Convention comes into force, permitted reservations and declarations, and the application of the Convention to international sales where both States concerned have the same or similar law on the subject. The Articles contained in Part IV along with the Preamble, are sometime characterized as being addressed 'primarily to States',<sup>57</sup> not to business people attempting to use the Convention for international trade. They may, however, have a significant impact upon the CISG's practical applicability<sup>58</sup> thus requiring careful scrutiny when determining each particular case.

#### 6. Criticisms:

Although the Convention has been accepted by a large number of States, it has being the subject of some criticisms. For example, the drafting nations have been accused of being incapable of agreement on a code that 'concisely and clearly states universal principles of sales law', and through the Convention's invitation to interpret taking regard of the Convention's 'international character',<sup>59</sup> gives judges the opportunity to develop 'diverse meaning'.<sup>60</sup> The CISG has been described as 'a variety of vague standards and compromises that appear inconsistent with commercial interests'.<sup>61</sup>

#### 7. Conclusion

Greater acceptance of the CISG will come from three directions. Firstly, it is likely that within the global legal profession, as the numbers of new lawyers educated in the CISG increases, the existing Contracting States will embrace the CISG, appropriately interpret the articles, and demonstrate a greater willingness to accept precedents from other Contracting States. Secondly, business people will increasingly pressure both lawyers and governments to make sales of goods disputes less expensive, and reduce the risk of being forced to use a legal system that may be completely alien to their own. Both of these objectives can be achieved through use of the CISG. Finally, UNCITRAL will arguably need to develop a mechanism to further develop the Convention and to resolve conflicting interpretation issues. This will make it more attractive to both business people and potential Contracting States.

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<sup>53</sup> Article 79

<sup>54</sup> Article 84 (1)

<sup>55</sup> Commentary on the Draft Convention on Contracts for the International Sale of Goods, Prepared by the Secretariat, UN Doc. A/CONF.97/5 (1979).

<sup>56</sup> Article 84 (2)

<sup>57</sup> Peter Winship, 'Commentary on Professor Kastely's Rhetorical Analysis (1988) 8 *Northwestern Journal of Law & Business* 623, 628

<sup>58</sup> Ulrich G. Schroeter, 'Backbone or Backyard of the Convention? The CISG's Final Provisions', in: C.B. Andersen & U.G. Schroeter (eds.), *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday*, London: Wildy, Simmonds & Hill (2008), 425 at 426.

<sup>59</sup> Article 7 (1)

<sup>60</sup> Arthur Rosett, 'CSIG laid Bare: A Lucid Guide to a Muddy Code' (1988) 21 *Cornell International Law Journal* 575

<sup>61</sup> Clayton Gillette and Robert Scott, 'The Political Economy of International Sales Law' (2005) 25 *International Review of Law and Economics* 44