

Application of CISG in the International Commercial Contracts

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Abstract

International sale contracts are parts of international commercial contracts. Drafting international sale agreement is being treated as a complex issue among lawyers and legal experts. The draftsman requires choosing a uniform law for drafting international sale contracts to avoid any conflict of laws between different Jurisdictional forums (i.e., domestic and international forums). Legal experts may choose the United Nations Convention on Contracts for the International Sale of Goods (CISG) 1980 to insert it into international sale contracts for its unique application character. CISG has been accessed by 94 countries (as of 25 February 2021) like Australia, the USA, China, Singapore, etc. Application of CISG into international sale contracts will ensure equal footing between contractual parties, fairness, reasonableness, justification, and international standard of interpretation subject to good faith under Article 7 of CISG. The main objective of CISG is to avoid trade barriers and promote uniformity of international sale laws among different jurisdictions. Scholars and legal experts supported that CISG is a successful sale convention among all other sale treaties. The present research paper aims to justify applying CISG into international sale contracts to promote the harmonization of sale laws among the trade community.

Key Words: CISG, International Sale Contracts, Harmonisation, Interpretation, Application.

PAPER/ARTICLE INFO

RECEIVED ON: 26-05-2021
ACCEPTED ON: 24-06-2021

Reference to this paper
should be made as follows:

Alam, Md. Habib, (2021),
"Application of CISG in the
International Commercial
Contracts", *Int. J. of Trade
and Commerce-IIARTC*, Vol.
10, No. 1, pp: 51-57

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DOI: 10.46333/ijtc/10/1/4

1. Introduction

United Nations Convention on Contracts for the International Sale of Goods is known as Vienna Convention 1980 or CISG. CISG was adopted on 11 April 1980 and enforced on 1 January 1988.¹ As of 25 February 2021, CISG has been signed by 94 states like the USA, Israel, Australia, Canada, China, Egypt, France, Japan, Singapore, etc.² The preamble of CISG provides '...the broad objectives....establishment of a New International Economic Order....on the basis of equality and mutual benefit...contribute to the removal of legal barriers in international trade and promote the development of international trade.'³ The preamble of CISG emphasizes avoiding trade obstacles and promote business globally.

Scholars have considered CISG as a successful trade convention (i.e., self-executing treaty) for its hybrid character.⁴ According to Janos Martonyi 'CISG may therefore be not only a bridge between treaty made uniform law and international commercial practice, not only between common law and civil law, not only- in a more general sense- between different legal culture, concepts, and language but also between the past and the future. In other words, it is not only a bridge but anticipation and anchor for the future.'⁵

The above discussion provides an idea to readers that CISG may be treated as a successful treaty for international commercial contracts. Before illustrating the applicability of CISG in the international sale contracts, the readers will be given an idea of a brief history of CISG in the next heading.

2. Historical Background of CISG

The CISG was adopted through 3 stages (The UNCITRAL Working Group 1970-1977, Review by the full Commission 1977-1978, The 1980 Vienna Diplomatic Conference).⁶

In 1930, the International Institute for the Unification of Private Law in Rome formed a working group of European Scholars to draft a uniform international sale law. The drafting group paused their drafting work during Second World War and continued their work again after the Second World War. In 1964, a Uniform Law on the International Sale of Goods (ULIS) and Uniform Law on the Formation of Contracts for the International Sale of Goods (ULFC) was drafted. Both ULIS and ULFC were not successful treaties because of the non-ratification and non-acceptance of

¹https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg, Date accessed 25/02/2021.

²https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status, Date accessed 25/02/2021.

³<https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>, Date accessed 25/02/2021.

⁴Clayton P. Gillette, Steven D. Walt, *The CISG: history, methodology, and construction*, <https://www.cambridge.org/core/books/un-convention-on-contracts-for-the-international-sale-of-goods/cisg-history-methodology-and-construction/9F8D1CA654AE6172883A71500FF4F657>, Date accessed 25/02/2021.

⁵Thirty-five Years of Uniform Sales Law: Trends and Perspectives, https://www.uncitral.org/pdf/english/texts/sales/cisg/35_Years_of_Uniform_Sales_Law-E.pdf, Date accessed 25/02/2021.

⁶Summary of UNCITRAL Legislative history of the CISG, <https://cisgw3.law.pace.edu/cisg/linkd.html#:~:text=%E2%80%9CThe%20%5BCISG%5D%20resulted%20from,it%20by%20the%20UNCITRAL%20Secretariat.%5D> Date accessed 25/02/2021.

adoptability trends by trading countries. To overcome these difficulties, UNCITRAL drafted a new uniform sale law (CISG) by 1977 and finalized it in 1980. In 1981, CISG was signed by 21 trading nations.⁷ This is how CISG was adopted, and till now (as of 25 February 2021), 94 states accessed CISG.

In the next session, I will discuss the applicability of CISG in international commercial contractual deeds or agreements.

3. CISG's Jurisdictional Capabilities

CISG's jurisdictional capability means the sphere of application of CISG in international sale contracts among contracting states and non-contracting states of CISG.

By examining Article 1 of CISG⁸ and from my point of view, readers may draw up the following key observations:

- Article 1(1)(a) of CISG: CISG will be applicable when both party's business places are situated in contracting states of CISG.
- Article 1(1)(b) of CISG: CISG will be applicable when one of the parties has a business place in a contracting state of CISG, and another party has a business place in a non-contracting state of CISG subject to the application of private international law or conflict of laws.
- Article 1(2) of CISG: Party's different business places may be ignored if they have not been mentioned expressly or impliedly by the contract.
- Article 1(3) of CISG: Party's nationality or business character may not be considered while applying CISG in international commercial contracts.

After investigating Article 1 of CISG, readers must know how scholars pointed out their thoughts through scholarly writings. In the next paragraph, I will discuss the academic views on Article 1 of CISG.

Scholars suggested Article 1 of the CISG differentiates the domestic sale law and international sale law. Both buyer and seller must conduct their business in different countries (i.e., international transactions should have prevailed between two states). Article 1(1)(a) of CISG applies when parties are conducting their business through business places situated within contracting states of CISG, and a suit has been filed in either of the party's state subject to non-application of conflict of laws. Article 1(1)(b) of CISG applies when parties are performing their business through business places situated in contracting states and non-contracting states of CISG subject to the application of conflict of laws.⁹

From my perspective, the application of CISG through arbitration may also be initiated when both contractual parties desire to conduct their business through business places situated in

⁷Farnsworth, E. (1984), 'The Vienna Convention: History and Scope', *International Lawyer (ABA)*, 18(1): 17-20.

⁸<https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>, Date accessed 25/02/2021.

⁹Kevin Bell (1996), 'The Sphere of Application of the Vienna Convention on Contracts for the International Sale of Goods', *Pace International Law Review*, 8(1): 244-249.

different non-contracting states of CISG or vice-versa.¹⁰ Application of CISG in Arbitration will also minimize the conflict of law disputes.¹¹

Other legal scholars supported the suggestions mentioned above regarding the application of CISG and arbitration. Peter Butler commented 'The 1980 UN Convention on Contracts for the International Sale of Goods (CISG) and international arbitration both aim at the promotion, unification, and facilitation international trade. The CISG does so by minimizing the risk of commercial disputes and arbitration by settling commercial disputes.....the CISG and arbitration also share the salient feature of being based on the principle of party autonomy.'¹² Thus, CISG may be applied in the course of arbitration subject to the parties' discretion or the competent forum's jurisdictional capability.

From the above discussion, it may be observed that competent forums (court, arbitral tribunal, etc.) may apply CISG subject to its necessity and applicability of jurisdiction. However, competent forums require interpreting the international sale contracts according to CISG for ensuring equal footing among the parties and uphold the global standard of interpretation. In the next session, I will explain how a competent forum will interpret the provisions of CISG for maximizing the international standard of interpretation.

4. Interpretation Procedure and Good Faith in CISG

CISG may play a vital role in resolving international contractual disputes (i.e., through interpretation mechanism based on good faith) among contractual parties while dealing with international sale contracts.

Article 7(1) of CISG character provides '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.'¹³

Article 7(1) is an autonomous body of law and avoids 'homeward trend' while dealing with interpretation procedures. CISG constitutes its own legal cosmos and requires to interpret based on an international character. Article 7(1) of CISG also ensures the promotion of uniformity by application of CISG.¹⁴

Scholars suggested, the words 'international character' is a unique character of CISG for adopting global trend's interpretation mechanism. The word uniformity may be termed as 'an autonomous and self-contained jurisprudence of the CISG.' Lord Griffiths suggested considering the source of law while adopting a purposive approach for the rule of interpretation. Thus, CISG may be

¹⁰Alam, Md. Habib (2021), 'Application of CISG in Arbitration: A Combined Procedure or Parallel Procedure?', *International Journal of Community Service & Engagement*, 2(1): 50-53.

¹¹Alam, Md. Habib (2019), 'CISG and Arbitration: Procedure For Minimizing Conflict of Laws', *American Journal of Research*, No 9(10): 15-17.

¹²Butler, P. (2014), 'CISG and International Arbitration-A Fruitful Marriage', *International Trade and Business Law Review*, 17(1): 322-357.

¹³<https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>, Date accessed 25/02/2021.

¹⁴Wethmar-Lemmer, M. (2014). 'Regional Harmonisation of International Sales Law via Accession to the CISG and the importance of Uniform Interpretation of the CISG, *De Jur*, 47(2): 298-309.

treated as the source of law for interpreting international sale contracts in international character.¹⁵

Article 7(1) of CISG provides a competent forum that should interpret the CISG related to sale contracts subject to good faith. Good faith under CISG may depend on reasonableness, fairness, equitableness, and justification of interpretation mechanism. The competent forum may proceed for interpretation beyond the literal rule of interpretation subject to necessity under Article 7 of CISG.¹⁶

From the above illustration, readers already have known that the application of CISG provides an international standard interpretation mechanism for resolving international sale contractual disputes. In the next session, I will concisely give an idea to readers of the advantages of CISG's application in international sale contracts.

5. Advantages of CISG from Application Perspective

In this session, I will briefly investigate the advantages of CISG while applying international sale contracts, which may also lead to harmonization of international sale contracts around the world.

Applying CISG in the international sale contracts may enhance the harmonization of sale laws among the contracting states of CISG. Harmonization will be achieved because contracting states of CISG are obliged under international law to concentrate more on provisions of CISG rather than their domestic sale laws. So, the application of CISG promotes the harmonization of sale law globally.¹⁷

CISG is one of the successful international sale conventions and promotes harmonization within the trade community. Vienna Convention 1980 has been termed as a modern and neutral sale law, gap-filler, and promoter of unification of sale law by the legal scholars.¹⁸

Different states adopted the provisions of CISG into their sale contracts, i.e., International Commercial Contracts (PICC), Organisation for the Harmonisation of Business Law in Africa, OHADA (France) drafted their provisions which are close to the provisions of CISG. Legal scholars commented, 'The abundant number of legal materials available makes it reasonable to expect the judges and arbitrators to have access to the requisite information and will be able to apply CISG predictable fashion.'¹⁹

CISG has achieved its goal of uniform application and acceptance for international sale contracts among traders, because CISG originated from Lex Mercatoria (i.e. business laws introduced by

¹⁵Ehlers, A. (2013), 'Establishing Uniform Interpretation of the CISG: Case Study of Article 74', *Nordic Journal of Commercial Law*, [v]-35.

¹⁶Wethmar-Lemmer, M. (2014). 'Regional Harmonisation of International Sales Law via Accession to the CISG and the importance of Uniform Interpretation of the CISG', *De Jur*, 47(2): 298-309.

¹⁷Wethmar-Lemmer, M. (2014). 'Regional Harmonisation of International Sales Law via Accession to the CISG and the importance of Uniform Interpretation of the CISG', *De Jur*, 47(2): 298-309.

¹⁸Checkley, J. C. (2019), 'The Role of the CISG and International Legal Education: Model for Future Promotion of the CISG.' *Journal of Law and Commerce*, 38(1): 407-432.

¹⁹Schwenzer, I. (2009), 'The CISG Successes and Pitfalls.' *American Journal of Comparative Law*, 57(2): 457-478.

special merchant courts). Scholars suggested that CISG may work better than UCC because CISG is well-drafted and provides equal footing between traders within the world trade community.²⁰ The readers may get an idea from the above argument that CISG should be used for drafting and application of international sale contracts to promote uniformity and harmonization of sale laws within the global trade society.

6. Conclusion

Professor Peter Schlechtriem stated, 'The United Nations Convention on Contracts for the International Sale of Goods (CISG).....has now gained worldwide acceptance.'²¹ From the above discussion, it may be concluded that the application of CISG is an indispensable part of resolving international commercial sale contractual disputes, which will make certainty in the 'international standard dispute settlement mechanism' subject to the competent forum's jurisdictional capability.

REFERENCES

- [1] Ansari, A. & Agarwal, R. K. (2019), 'Sojourn of Commercial Dispute Redressal Mechanism: Exploratory Description of Commercial Arbitration.' *International Journal of Trade and Commerce-IIARTC*, 8(2): 289-297
- [2] Butler, P. (2014), 'CISG and International Arbitration-A Fruitful Marriage,' *International Trade and Business Law Review*, 17(1): 322-357.
- [3] Checkley, J. C. (2019), 'The Role of the CISG and International Legal Education: Model for Future Promotion of the CISG.' *Journal of Law and Commerce*, 38(1): 407-432.
- [4] Cook, V. (1998), 'CISG: From the Perspective of the Practitioner.' *Journal of Law and Commerce*, 17(2): 343-354.
- [5] Alam, Md. Habib (2021), 'Application of CISG in Arbitration: A Combined Procedure or Parallel Procedure?' *International Journal of Community Service & Engagement*, 2(1): 50-53.
- [6] Alam, Md. Habib (2019), 'CISG and Arbitration: Procedure For Minimizing Conflict of Laws,' *American Journal of Research*, No 9(10): 15-17.
- [7] Ehlers, A. (2013), 'Establishing Uniform Interpretation of the CISG: Case Study of Article 74', *Nordic Journal of Commercial Law*, [v]-35.
- [8] Kevin, Bell (1996), 'The Sphere of Application of the Vienna Convention on Contracts for the International Sale of Goods,' *Pace International Law Review*, 8(1): 244-249.
- [9] Matharoo, R. & Singh, G. (2017), 'India and UK Trade.' *International Journal of Trade and Commerce-IIARTC*, 6(2): 444-449
- [10] Schwenzer, I. (2009), 'The CISG Successes and Pitfalls.' *American Journal of Comparative Law*, 57(2): 457-478.

²⁰Cook, V. (1998), 'CISG: From the Perspective of the Practitioner.' *Journal of Law and Commerce*, 17(2): 343-354.

²¹Schwenzer, I. (2009), 'The CISG Successes and Pitfalls.' *American Journal of Comparative Law*, 57(2): 457-478.

- [11] Wethmar-Lemmer, M. (2014). 'Regional Harmonisation of International Sales Law via Accession to the CISG and the importance of Uniform Interpretation of the CISG, *De Jur*, 47(2): 298-309.

WEBLIOGRAPHY

- [1] Clayton P. Gillette, Steven D. Walt, *The CISG: history, methodology, and construction*, <https://www.cambridge.org/core/books/un-convention-on-contracts-for-the-international-sale-of-goods/cisg-history-methodology-and-construction/9F8D1CA654AE6172883A71500FF4F657>, Date accessed 25/02/2021.
- [2] *Thirty-five Years of Uniform Sales Law: Trends and Perspectives*, https://www.uncitral.org/pdf/english/texts/sales/cisg/35_Years_of_Uniform_Sales_Law-E.pdf, Date accessed 25/02/2021.
- [3] Summary of UNCITRAL Legislative history of the CISG, Farnsworth, E. (1984), 'The Vienna Convention: History and Scope,' *International Lawyer (ABA)*, Vol. 18, No. 1, pp.17-20.
- [4] <https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>, Date accessed 25/02/2021.
- [5] <https://cisgw3.law.pace.edu/cisg/linkd.html#:~:text=%E2%80%9CThe%20%5BCISG%5D%20resulted%20from,it%20by%20the%20UNCITRAL%20Secretariat.%5> Date accessed 25/02/2021.
- [6] https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg, Date accessed 25/02/2021.
- [7] https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status, Date accessed 25/02/2021.