



## The United Nations convention on contracts for international sale of goods (CISG) 1980 and the applicable legal rule for its interpretation

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### Abstract

This article deals with two issues: (1) the CISG and (2) the applicable legal rule for the interpretation of the CISG. It introduces the CISG by answering very three primary questions i.e. what is the CISG? How it came into existence? What is the CISG about? It discusses five aspects of the Convention i.e. purpose, aim, characteristics, function and legal nature of the CISG. It provides insight on the interpretation of the CISG. Most important part of this paper is; it endorses the legal standing of Article 7 as an interpretive provision for the CISG. It shows that Article 7 was created following the legal nature of the CISG and also shows its structure.

**Keywords:** CISG, structure, existence, characteristics

### Introduction

The law of international trade draws from both international laws as well as from the domestic law of the states concerned. Treaties (bilateral or multilateral) concluded between states are sources of a substantial part of the international law. Moreover, other sources of general international law<sup>[1]</sup>, like resolution of international organization and international custom, also shape the law of international trade. The domestic laws of states concerned also affect international trade. Consequently the law of international trade is partly international law and partly national law<sup>[2]</sup>. The purpose of some treaties (for instance, those creating IMF, the OECD, etc.) is to liberalize trade between the contracting states. Other treaties aimed at economic integration by way of a customs union, a free trade zone or an economic union. Another group of treaties aims at unification of law. They introduce common substantive rules for legal relationships between private persons and companies<sup>[3]</sup>. The United Nations Convention on Contracts for International Sale of Goods (CISG) represents the most recent attempt to harmonize and unify law on international sale of goods with an aim to substitute one sales law for the many and diverse national legal systems that exist in the field of sales.

The CISG is an international legal instrument which presents a set of uniform rules on contracts for international sale of goods. It represents two traits on the unification of the law i.e. laws on the formation of contracts and laws on the international sale of goods. The CISG was produced by the United Nations Commission on International Trade Law (UNCITRAL). It was signed in Vienna through a diplomatic conference in 1980 and it came into force on 1 January

1988. As of 16 March 2018, UNCITRAL reports that 89 State Parties have adopted the CISG<sup>[4]</sup>.

This paper deals with two primary issues: (1) the CISG and (2) the applicable legal rule for the interpretation of the CISG. It introduces the CISG by answering very three primary questions i.e. what is the CISG? How it came into existence? What is the CISG about? It discusses five aspects of the Convention i.e. purpose, aim, characteristics, function and legal nature of the CISG. It provides insight on the interpretation of the CISG. Most important part of this paper is; it endorses the legal standing of Article 7 as an interpretive provision for the CISG. It shows that Article 7 was created following the legal nature of the CISG and also shows its structure.

### Contemporary contribution of making uniform sales law before the CISG

Making of the CISG was not the first attempt to unify the applicable legal rules on international sale of goods. The work of unification of legal rules on international sales was first initiated by the International Institute for the Unification of Private Law (UNIDROIT). Though it was successful in producing two conventions but it failed in its mission because very few States had adopted these instruments. Their failure created the ground for the CISG to come into existence.

The UNIDROIT produced two conventions in 1964 on uniform law on the formation of contracts and on uniform law governing international sale of goods. These two conventions are titled as the Convention relating to a Uniform Law on the International Sale of Goods (ULIS) and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF). The research study levels this success as an important contribution towards the harmonization and unification of the laws on international sale of goods because it could not

<sup>1</sup> General international law governs the relationship between states and international organizations.

<sup>2</sup> Hans Van Houtte, *The Law of International Trade*, (2nd edition Sweet & Maxwell, London 2002).

<sup>3</sup> Ibid.

<sup>4</sup> Available 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).

succeed on its mission of becoming the uniform law for the world because States had refused to accept them. On the other hand the CISG is successful in its mission of becoming the uniform law on international sales because almost half of the world's States have adopted it <sup>[5]</sup>. The success of the CISG is credited to its parent the ULIS and the ULF because the CISG was created taking the ULIS and the ULF as the basis of its creation <sup>[6]</sup>. The CISG is not an independent work produced by the UNCITRAL rather it was a progression of the previous work on international sale of goods which evolve from the dream of Ernst Rabel in 1929.

Ernst Rabel initiated the drafting of an international uniform sales law in the UNIDROIT. As a member of the Governing Council of the UNIDROIT he initiated discussions concerning unification of rules of law for international sales transactions, which culminated in a report to the League of Nations in 1934 <sup>[7]</sup>. In 1929 Professor Ernst Rabel proposed to the Governing Council of the UNIDROIT that the UNIDROIT should consider working on the unification of international sales law. The Council accepted this proposal, deciding that the necessary preparatory studies should be undertaken and that the preparation of a future uniform law should be entrusted to a Committee. This Committee was chaired by Sir Cecil J.B. Hurst with Professor Ernst Rabel, Judge Algot Bagge, Professor Henri Capitant, Professor Martin Fehr, Professor H. C. Gutteridge and Professor Joseph Hamel as members <sup>[8]</sup>.

The Committee submitted a preliminary draft of an international law on the sale of goods to the Council in 1934. After having been approved by the UNIDROIT Council, the draft international law was transmitted to the League of Nations together with an Explanatory Report with a view to soliciting comments from the member States of the League. The Committee revised the text in the light of the comments received from the member States and in 1939 the Governing Council adopted a revised version of the draft. However, the Second World War interrupted work. The UNIDROIT was established in 1926 as an auxiliary organ of the League of Nations. Following the demise of the League due to Second World War the Institute was re-established in 1940 on the basis of a multilateral agreement which is the UNIDROIT Statute. After 11 years of the re-establishment of the UNIDROIT the work was resumed in 1951 when the Government of the Netherlands convened a Conference to work on the text again <sup>[9]</sup>.

The work on the unification of international sales law was resumed after a long period of time. By that time the UNIDROIT had become an independent institution. So, it was decided by the Institution and the Conference that a revision of the text is necessary to bring the draft up to date. For this purpose, a Special Commission was appointed to further elaborate the text which continued from the previous

draft as the basis of the future work. The Special Commission produced two separate drafts, the first in 1956 and the second in 1963. In the meantime UNIDROIT produced a separate draft on uniform law dealing with the formation of international sales contracts <sup>[10]</sup>.

Draft text was widely distributed. When that text had received the comments of various Governments and of the International Chamber of Commerce, the Special Commission met for the last time in 1962. After studying these comments, opinions on the more important issues and in some cases suggestions of amendments to the 1956 text the Committee further refined its draft. It was thus the 1962 text, published in 1963 together with a report supplementing that of 1956. This report was the basis for discussions and was considered by the Diplomatic Conference that met at Hague on April 1964 <sup>[11]</sup>.

The Government of the Netherlands convened a Diplomatic Conference for the final adoption of these two draft instruments. The Diplomatic Conference was held in Hague from 2 to 25 April 1964. The instruments adopted were the Convention relating to a Uniform Law on the International Sale of Goods (ULIS) and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (ULFC). Both entered into force in 1972.

#### **Failure of the two Hague Conventions 1964**

It was commented by Mr. André Tunc that the production of these two instruments is less a work of compromise than a work of choice and creation <sup>[12]</sup>. Enough efforts and time were provided by the UNIDROIT to produce these two Hague Conventions which is widely recognized being as of great value. History stated above shows that enough care was given in making of these two conventions. All the necessary formalities were completed to make these two legal instruments successful. The two Hague Conventions 1964 was finalized through a Diplomatic Conference. Now, question comes "why this contribution by the UNIDROIT failed after maintaining all the formalities in producing the two Hague Conventions 1964?" The veil of the answer is pierced again <sup>[13]</sup> in this section.

The two Hague Conventions were the conclusion of a very long effort. It was expected that the enforcement of these instruments will in large measure alleviate the inconvenience which diversity of law causes in international commerce. They will render appreciable service in all parts of the world by eradicating the hindrance which differences between legal systems causes to international transactions. These expectations could not be fulfilled by the two Hague Conventions.

If we go deep into the history of these two Hague Conventions we will find that the drafting committee was established around the European Scholars. The chairman of the committee Sir Cecil J.B. Hurst was from United Kingdom. The most influential member of the committee Professor Ernst Rabel, whose research comparative study of

<sup>5</sup> Bureau of Intelligence and Research, Washington, DC reported in January 20, 2017 that there are 195 independent States in the world, available at <https://www.state.gov/s/inr/rls/4250.htm>. We have seen in the previous section that 89 States have adopted the CISG which makes almost half of the world states.

<sup>6</sup> This will be discussed in detail in the legislative history of the CISG.

<sup>7</sup> To know more about this initiatives visit <https://www.unidroit.org/studies/international-sales-law/188-study-iv-international-sale-of-goods>.

<sup>8</sup> See the Overview on the ULIS and the ULF, available at <https://www.unidroit.org/ulfc-overview>.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Mr. André Tunc, Commentary on the Hague Conventions of the 1st of July 1964 on International Sale of Goods and the Formation of the Contract of Sale, available at <https://www.unidroit.org/ulis-explanatoryreport>.

<sup>12</sup> Ibid.

<sup>13</sup> Many scholars commented on the failure of the Two Hague Conventions 1964. Highlights are captured in this section.

the law of sales is still accepted as a primary authority was from Germany <sup>[14]</sup>. Among other members Judge Algot Bagge and Professor Martin Fehr were from Sweden; Professor Henri Capitant and Professor Joseph Hamel were from France and Professor H. C. Gutteridge was from United Kingdom. We can clearly note the lack of Asian, African, Oceania and American participation in the drafting of these instruments.

Although the original committee was fully familiar with the Anglo-American law of sales and historical records from the beginning up to the 1951 Conference clearly indicated an intention on the part of the sponsors to unify the law of international sales internationally, and not merely regionally <sup>[15]</sup>. After the draft was discussed in 1951, a Special Commission was composed of renowned experts to revise the draft which was also Euro centric. They were from France, West Germany, Italy, Netherlands, Sweden, Switzerland, and the United Kingdom <sup>[16]</sup>. So, without the representation of the all the Continents these two Hague Conventions drafted only by the European Scholars using European design failed to fulfill the expectations of the whole world.

The ULIS contains many abstract, artificial and complex concepts which could result in ambiguity and errors and were likely to be construed differently in different parts of the world because they are not familiar to many legal jurisdictions. It is too voluminous, too detailed and not always well arranged and these feared that its complexity would have an adverse effect on its application. Many of its provisions were vague and gave rise to considerable doubt in the context of practical issues that might arise. It was a doubt whether the ULIS would be understood by individuals in the commercial field.

The history of unification work showed the impossibility of selling a draft produced without due consideration of "the political trade climate". Kurt H. Nadelmann noted in his paper that before the conference Professor Ernst Rabel and others already had drawn attention to the fact that, many failures in unification work occurred due to inadequate planning. Unification depends as much on statesmanship as on expertise in the law and the two matters must be considered simultaneously <sup>[17]</sup>. But, in making these two Hague Conventions efforts had been almost exclusively given on the technical side of the problem. It contains questionable decisions of policy, it is silent on many problems that arise in practice and it is extremely technical <sup>[18]</sup> in its use of some terms that are crucial to its whole structure. All these problems had led the initiatives of the UNIDROIT to a failure.

Most of the countries of the South America, Africa and Asia did not exist at that time when drafting began. Many countries also did not exist when the work of unification

resumed in 1951 and when the Diplomatic Conference was convened to finalized the draft <sup>[19]</sup> Only 28 Governments met at Hague to finalize these instruments. Some of the solutions adopted by the ULIS were objectionable because they helped a better situated and economically stronger party to occupy a more favorable position against a less developed party and certain principles embodied in it caused developing countries some apprehension. So, these two Hague Conventions also could not fulfill the expectations of the developing parts of the world.

All the reasons behind the failure of fulfilling the high expectations which accompanied the signing of the two Hague Conventions lifted the expectation of the UNCITRAL to come up with a new text on international sale of goods amending all these causes of failure. We will observe it soon that the Working Group, assigned by the UNCITRAL to draw a new convention, really could do it.

### **Making of the CISG**

UNCITRAL was established by the General Assembly on 17 December 1966 responding to the need for the United Nations to play a more active role in removing or reducing legal obstacles to the flow of international trade. Establishment of the UNCITRAL was a special effort by the United Nations towards the development of international trade; having regard particularly to the general interest of the community of nations in the advancement of the developing countries. UNCITRAL was established reaffirming United Nations conviction that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would significantly contribute to universal economic co-operation among all States on a basis of equality and to the elimination of discrimination in international trade and, thereby, to the wellbeing of all peoples. The objective of the Commission is "the promotion of the progressive harmonization and unification of the law of international trade". To this end, the Commission was assigned to fulfill eight functions under the pertinent General Assembly resolution for the need to take into account the different social and legal systems in harmonizing the rules of international trade law <sup>[20]</sup>. The Commission is continuing its journey to promote international trade through the development of uniform laws that reflected the need of those countries for a fair and equitable share in the benefits of such trade.

According to the General Assembly Resolution 2205(XXI) of 17 December 1966 the third function of the Commission is "to prepare or promote the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the Organizations operating in the field of international trade <sup>[21]</sup>. This third function is the basis of the making the CISG. The UNCITRAL at its first

<sup>14</sup> As director of the Institute of Comparative and Private International Law in Berlin, Professor Ernst Rabel had brought out in 1936 a comparative study of the law of sales in the world, which is the basic working tool on the subject matter. Kurt H. Nadelmann, Comment, The United States and Plans for a Uniform (World) Law on International Sales of Goods, 112 U. Pa. L. Rev. 697 (1964).

<sup>15</sup> Ibid.

<sup>16</sup> Ernst Rabel, The Hague Conference on Unification of Sales Law, 1 A. J. Com T. L. 58 (1952).

<sup>17</sup> Kurt H. Nadelmann, The United States and Plans for a Uniform (World) Law on International Sales of Goods, 112 U. Pa. L. Rev. 697 (1964).

<sup>18</sup> K. C. T. Sutton, The Hague Conventions of 1964 and the Unification of the Law of International Sale of Goods, 7 U. Queensland L.J. 145 (1970)

<sup>19</sup> To see old maps visit [http://ib.frath.net/w/world\\_map](http://ib.frath.net/w/world_map) and find more information on; Maps in Time From 1900 to 2000, The National Archive, Kew, Richmond, available at <http://www.nationalarchives.gov.uk/cabinetpapers/documents/maps-in-time.pdf>.

<sup>20</sup> United Nations Commission on International Trade Law, Yearbook, Volume I: 1968-1970, United Nations, New York 1971, page 1.

<sup>21</sup> General Assembly Resolution 2205(XXI) of 17 December 1966, available at <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/005/08/IMG/NR000508.pdf?OpenElement>.

session in 1968 decided to include in its work program the harmonization and unification of the law of the international sale of goods as a priority topic <sup>[22]</sup>. The Commission had its First Session in 1968. The two Hague Conventions came into force in 1972. Function of the Commission is to prepare or promote the adoption of new international conventions. Considering these three aspects what action had been taken by the UNCITRAL regarding the two Hague Conventions of 1964 we will see that in the following section.

### **Action taken on the Two Hague Conventions of 1964 by the UNCITRAL**

The project of unification of the law of international sales of goods is of paramount importance to international trade. To treat this project accordingly and to prevent its failure UNCITRAL worked carefully to produce an instrument that would be acceptable to all parts of the world. The Commission in its first session respecting the UNIDROIT's many years of preparatory work, considered it desirable to take stock of the attitude of States in respect of the Hague Conventions because they had not yet come into force at that time and they encompass a very wide area within the scope of the <sup>[23]</sup>. For this purpose the Commission sent to States Members of the United Nations and States members of its specialized agencies a questionnaire, together with the text of the two Conventions and Professor Tunc's commentary thereon through the Secretary-General. Each of the States concerned was invited to indicate whether or not the State intends to adhere to the 1964 Conventions and the reasons for its position within six months from the receipt of the Secretary-General's invitation to that effect.

After receiving replies the Secretary-General circulated the text to the States members of the Commission, UNIDROIT and other concerned organization for comments. By that time the Secretary-General also prepared in consultation with the secretariat of UNIDROIT an analysis of the replies and studies received from Governments. Then analysis was circulated to the States members of the Commission, UNIDROIT and other concerned organization for their comments. The Commission at its second session in 1969 considered all these replies, analysis and comments <sup>[24]</sup> and it was recommended by the members of the Commission that the unification of the law of the international sale of goods could only be effected by a new international instrument comprising both substantive and conflict rules.

The Commission also considered at the same time the views expressed by a number of Governments that the Conventions in their present text, are not suitable for worldwide acceptance. The Commission expressed its opinion that in the establishment of generally acceptable uniform rules governing the international sale of goods the work already done in the field should as far as possible be

taken into account and that duplication of efforts should be avoided through collaboration, where appropriate, with the organizations operating in this field. To this effect the Commission established a Working Group composed of the following fourteen members of the Commission: Brazil, France, Ghana, Hungary, India, Iran, Japan, Kenya, Mexico, Norway, Tunisia, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America which was a cross-section of UNCITRAL's world-wide representation <sup>[25]</sup>.

All the members of the Working Group were represented by persons especially qualified in the law of the international sale of goods. The responsibility of Working Group was to consider the comments and suggestions by States as analyzed in the documents to be prepared by the Secretary-General in order to ascertain which modifications of the existing texts might render them capable of wider acceptance by countries of different legal, social and economic systems, or whether it will be necessary to elaborate a new text for the same purpose, or what other steps might be taken to further the harmonization or unification of the law of the international sale of goods; Consider ways and means by which a more widely acceptable text might best be prepared and promoted, taking also into consideration the possibility of ascertaining whether States would be prepared to participate in a Conference; and submit a progress report to the third session of the Commission in 1970.

The Working Group on its first session in January 1970 considered all the comments and suggestions by States as analyzed in the documents prepared by the Secretary-General and submitted its report to the UNCITRAL <sup>[26]</sup>. The Working Group recommended that it will be necessary to elaborate a new text for the purpose of wider acceptance by countries of different legal, social and economic systems. The Commission in its third session in the same year decided that the Working Group should start drafting a new text for the purpose of wider acceptance by countries of different legal, social and economic systems <sup>[27]</sup>. The Working Group was directed only to submit questions of principle to the Commission for consideration before the new text of a uniform law is completed and submit a progress report on its work to each session of the Commission.

### **Drafting of the new texts**

The Working Group started drafting the new texts taking the two Hague Conventions as a basis. In doing so instead of considering selected items the Working Group considered the ULIS and the ULF systematically, chapter by chapter. It also considered the comments and suggestions by States as analyzed in the documents prepared by the Secretary-General. The Working Group completed the initial examination of all the provisions of the ULIS at its fifth session in 1974 <sup>[28]</sup>. The Working Group on the International Sale of Goods at its sixth session in 1975 the Working

<sup>22</sup> This is a topic which includes measures both to unify the applicable legal rules and promotion of wider acceptance of existing formulations for unification and harmonization of international trade law in this field to assist the parties to an international sales transaction to avoid misunderstanding and dispute through the promotion of uniform trade terms, general conditions of sale and standard contracts. Report of the United Nations Commission on International Trade Law on the work of its first session (1968), Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216).

<sup>23</sup> Ibid.

<sup>24</sup> Report of the United Nations Commission on International Trade Law on the work of its second session (1969), Official Records of the General Assembly, Twenty-fourth Session Supplement, No. 18 (A/7618).

<sup>25</sup> Ibid.

<sup>26</sup> Report of the Working Group on the international sale of goods, first session, 5-16 January 1970, A/CN.9/35.

<sup>27</sup> Report of the United Nations Commission on International Trade Law on the work of its third session (1970), Official records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017).

<sup>28</sup> Progress report of the Working Group on the International Sale of Goods on the work of its fifth session (Geneva, 21 January-1 February), 14 March 1974, (A/CN.9/87).



Group decided that the revised texts should be drafted in the form of an "integrated" convention entitled "Convention on the International Sale of Goods" rather than as a uniform law annexed to a convention<sup>[29]</sup>. United Nations Conference on Trade and Development (UNCITAD) generally approved this decision of the Working Group considering that it would minimize possible reservations<sup>[30]</sup>. At this point General Assembly of the United Nations expressed its satisfaction that work on uniform rules governing the international sale of goods is nearing completion and that in the near future a draft convention on the international sale of goods will be transmitted to Governments and interested international organizations for their comments<sup>[31]</sup>.

Upon the completion of the second reading the Working Group had approved the text of the draft Convention on the International Sale of Goods by consensus<sup>[32]</sup>. Thus it had completed the mandate given to it by the Commission in respect of the revision of ULIS at the seventh session in 1976. The Working Group had not considered provisions relating to implementation of the Convention and final clauses. The Group requested the Secretariat to prepare draft provisions for consideration by the Commission at a future session. The Commission at its ninth session in 1976 decided that a commentary accompanying the draft Convention would be desirable in that it would make the preparatory work and the policy underlying the formulations in the draft Convention, as adopted by the Working Group, more readily available<sup>[33]</sup>. The draft Convention accompanied by a commentary were sent to Governments and interested international organizations for their comments. The Commission decided to consider the draft Convention at its tenth session, in the light of comments received from Governments and interested international organizations. At tenth session, the Commission approved the text of the draft Convention on the International Sale of Goods in 1977<sup>[34]</sup>.

Stressing the central position occupied by the law of sales in international trade law, many representatives of the UNCITAD congratulated the Commission and its Working Group on the International Sale of Goods for the successful accomplishment of the work on a draft Convention on the International Sale of Goods which it observed and marked the high point of the tenth session of the UNCITRAL<sup>[35]</sup>.

The UNCITAD commented that the text produced by the Commission provided an excellent basis for a convention on the subject. The UNCITAD observed that the draft text had been made by considering and effecting such revision of the text of the ULIS as might make that text susceptible of wider acceptance by States having different legal, social and economic systems. Two particular features of the text were noticed in that regard. One of them was the fact that the text did not rely simply on juridical concepts familiar only to certain States but reflected a genuine attempt to blend concepts taken from the major legal systems of the world to the extent applicable. Similarly, it was also noted that the text also sought to balance more equitably the interests of the seller and of the buyer, of the developed and the developing countries. UNCITAD pointed that the new text was not only an improvement substantively over that of the ULIS but was more likely than the latter text to receive widespread acceptance among States. Many representatives of the UNCITAD expressed satisfaction at the fact that the Commission's text, while covering the same subject-matter, was considerably shorter and simpler than that of the ULIS, making it more readily understandable and easier to work with.

The Working Group began to work on uniform rules governing the formation of contracts from its eighth session held in January 1977 and made an attempt to formulate such rules on a broader basis than the international sale of goods<sup>[36]</sup>. In doing so the Working Group had taken the ULF together with the proposed alternative provisions contained in the report of the Secretary-General<sup>[37]</sup> as the basis of its work. In the course of its work it proved that the principles underlying contracts of sale and other types of contract could not be treated in the same text. The Group directed its work towards contracts of sale only. The Working Group on the International Sale of Goods at its ninth session in September 1977 finalized draft provisions on the formation of contracts for the international sale of goods<sup>[38]</sup>. The Commission considered this draft provisions on the formation of contracts at its eleventh session in June 1978.

### **Integration of the two draft texts into single Draft Convention**

The Commission at its eleventh session considered the question whether the rules on formation of contracts for the international sale of goods should be the subject-matter of a convention separate from the Convention on the International Sale of Goods<sup>[39]</sup>. A single consolidated text dealing with formation of contracts and containing substantive rules governing the obligations of the buyer and seller was supported on the basis that an integrated text would be more appropriate than two conventions because of the close relationship between the subject-matters of each draft convention. Furthermore, the existence of two separate conventions would inevitably lead to dis-single text would

<sup>29</sup> Report of the Working Group on the International Sale of Goods on the work of its sixth session (New York, 27 January-7 February 1975) (A/CN.9/100).

<sup>30</sup> United Nations Conference on Trade and Development (UNCTAD), Report of the Trade and Development Board (10 March- 2 October 1975) (A/10015/Rev.1), 12 December 1975. Official Records of the General Assembly Thirtieth Session, Annexes, agenda item 110.

<sup>31</sup> General Assembly resolution 3494 (XXX) of 15 December 1975.

<sup>32</sup> Draft Convention on the International Sale of Goods (A/CN.9/116, annex I), Report of the Working Group on the International Sale of Goods on the work of its seventh session (Geneva, 5-16 January 1976) (A/CN.9/116).

<sup>33</sup> Report of the United Nations Commission on International Trade Law on the work of its ninth session (New York, 12 April-7 May 1976) (A/31/17). Official Records of the General Assembly, Thirty-first Session, Supplement No. 17.

<sup>34</sup> Report of the United Nations Commission on International Trade Law on the work of its tenth session (Vienna, 23 May-17 June 1977) (A/32/17), Official Records of the General Assembly, Thirty-second Session, Supplement No. 17.

<sup>35</sup> United Nations Conference on Trade and Development (UNCTAD), The report of the Trade and Development Board, Seventeenth session, Official Records of the General Assembly, Thirty-third Session, Supplement No. 15 (A/33/15), vol. I, part three. Chapter II: Institutional, organizational, administrative and related matters.

<sup>36</sup> Report of the Working Group on the International Sale of Goods on the work of its eighth session, Document A/CN.9/128, 3 February 1977.

<sup>37</sup> Report of the Secretary-General on the formation and validity of contracts for the international sale of goods, Document A/CN.9/128, 3 February 1977.

<sup>38</sup> Report of the Working Group on the International Sale of Goods on the work of its ninth session, Document A/CN.9/142, 6 January 1978.

<sup>39</sup> Report of the United Nations Commission on International Trade Law, the work of its eleventh session, (New York, 30 May-16 June 1978), (A/33/17), Official Records of the General Assembly, Thirty-third Session, Supplement No. 17.

also tend to encourage ratification of both the rules on formation and sales which would assist the harmonization and unification of international trade law. It was noted that although the existence of two separate conventions would enable States to ratify either the rules on formation or the rules on sale or both, the same result could be achieved by permitting separate ratification of those chapters in an integrated text which contains the rules on formation and sales. The benefits of a single text were generally considered to outweigh the problems that some States might encounter in implementing into their national law partial ratification of an entire text. After discussion, the Commission decided to integrate the draft Convention on the Formation of Contracts with the draft Convention on the International Sale of Goods into a single text to be entitled "the Draft Convention on Contracts for the International Sale of Goods 1978".

The Commission, at its 201st meeting of the same session on 8 June 1978, established a Drafting Group composed of the representatives of Chile, Egypt, France, Hungary, India, Japan, Mexico, Nigeria, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland<sup>[40]</sup>. The Drafting Group integrated the draft Convention on Formation and the draft Convention on the International Sale of Goods into a single Convention. In doing so, the Drafting Group redrafted the Articles on sphere of application and general provisions as were necessary for an integrated Convention. The Drafting Group also inserted the rules on formation of contracts and the rules on sales in separate parts of the Convention so that it would be possible to prepare a final clause which would permit a State to ratify or accept the Convention either in respect of formation of contracts alone, in respect of sales alone or in respect of both. In addition, the Drafting Group redrafted Articles of the draft Conventions in accordance with the decisions taken by the Commission to examine the text from the point of view of consistency of the terminology used and to ensure consistency between different language versions. The Commission at its 209th meeting of the eleventh session unanimously approved and adopted the text of the draft Convention on Contracts for the International Sale of Goods 1978.

Representatives of the Sixth Committee of the United Nations were unanimous in their support for the Commission's decision to integrate the two draft Conventions into a single text<sup>[41]</sup>. All the representatives found the text of the draft Convention on Contracts for the International Sale of Goods generally acceptable. Representatives noted favorably that the draft Convention avoided the use of legal concepts known only in certain systems and, in that respect, was therefore acceptable to all legal systems. It was also noted that the text of the draft Convention was adapted to the current practical requirements of international trade; that it reduced the number of cases that had to be settled by the national law of one of the parties, and represented an equitable balance

between the interests of sellers and buyers. Australia, Austria, Czechoslovakia, Finland, Germany, Federal Republic of, Norway, Portugal, Sweden, United States, Yugoslavia, ICC in commenting on the draft Convention as a whole were of the view that its provisions are, in general, acceptable and that the draft Convention would be a suitable basis for the discussions at the United Nations Conference on Contracts for the International Sale of Goods to be convened by the General Assembly<sup>[42]</sup>.

### **Euphoria of getting the CISG**

Pursuant to General Assembly resolution 33/93 of 16 December 1978, the United Nations Conference on Contracts for the International Sale of Goods was held at Vienna from 10 March to 11 April 1980. Sixty-two States were represented at the Conference which finalized the CISG. One State, one Specialized Agency, six other intergovernmental organizations and one non-governmental organization sent observers to the Conference. The Conference elected Mr. G. Eorsi (Hungary) as President, Mr. R. Loewe (Austria) as Chairman of the First Committee, Mr. R. Mantilla-Molina (Mexico) as Chairman of the Second Committee, Mr. W. L. H. Khoo (Singapore) as Chairman of the Drafting Committee, and Mr. P. K. Mathanjuki (Kenya) as Chairman of the Credentials Committee<sup>[43]</sup>.

The Conference had before it the Historical Introduction to the draft Convention on Contracts for the International Sale of Goods prepared by the Secretariat, the text of the draft Convention on Contracts for the International Sale of Goods approved by the United Nations Commission on International Trade Law, The Secretary-General prepared under his own authority, a commentary on the provisions of the draft Convention, the Commentary on the draft Convention on Contracts for the International Sale of Goods prepared by the Secretariat, the Draft Convention on Contracts for the International Sale of Goods: draft articles concerning implementation, declarations, reservations and other final clauses prepared by the Secretary-General, the analysis of comments and proposals by Governments and international organizations on the draft Convention on Contracts for the International Sale of Goods, and on draft provisions concerning implementation, reservations and other final clauses, prepared by the Secretary-General<sup>[44]</sup>.

The First Committee was entrusted with the consideration of Articles 1 to 82 of the draft Convention on Contracts for the International Sale of Goods. The First Committee held 38 meetings, between 10 March 1980 and 7 April 1980<sup>[45]</sup>. The Second Committee was entrusted with the consideration of

<sup>40</sup> Drafting history at the eleventh session of UNCITRAL of the draft Convention on Contracts for the International Sale of Goods, Report of the United Nations Commission on International Trade Law, the work of its eleventh session, (New York, 30 May-16 June 1978), (A/33/17), Official Records of the General Assembly, Thirty-third Session, Supplement No. 17.

<sup>41</sup> General Assembly, Report of the Sixth Committee (A/33/349), 8 December 1978. Official Records of the General Assembly, Thirty-third Session, Annexes, agenda item 115.

<sup>42</sup> Analysis of Comments and Proposals by Governments and International Organizations on the Draft Convention on Contracts for the International Sale of Goods, and on Draft Provisions Concerning Implementation, Reservations and Other Final Clauses, Prepared by the Secretary-General, Original: English, 21 February 1980, Document A/CONF.97/9.

<sup>43</sup> Note by the Secretary-General, United Nations Conference on Contracts for the International Sale of Goods, (A/CN.9/183), 21 May 1980.

<sup>44</sup> United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March to 11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committees, United Nations, New York, 1991, Document A/CONF.97/19.

<sup>45</sup> Report of the First Committee, United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March to 11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committees, United Nations, New York, 1991, Document A/CONF.97/19.

the draft Articles concerning implementation, declarations, reservations and other final clauses and of the draft Protocol to the Convention on the Limitation Period in the International prepared by the Secretary-General. The Second Committee held 9 meetings, between 17 March and 1 April 1980.<sup>46</sup> Both the Committees proceeded mainly by way of an Article-by-Article discussion of the draft Articles before it and of the amendments to these draft Articles submitted by representatives during the Conference. After initial consideration of an Article and amendments by the Committees and subject to the decisions taken on these amendments the Article was referred to the Drafting Committee<sup>[47]</sup>.

John Honnold one of the drafters and participants of the Conference commented that “nearly all the provisions in the UNCITRAL Draft Convention of 1978 were approved in substance by the Conference. As the Conference progressed with its Article-by-Article discussion it became evident that the time for review of the draft as a whole would be limited, as compared with the repeated reviews that had occurred during the decade of work in UNCITRAL. Thus, proponents of amendments had a heavy burden: they needed to show not only that a change was needed but also that a proposed amendment was clearly drafted and would not lead to untoward consequences in relation to other provisions of the law. Through overtime work and close cooperation between language specialists of the United Nations and members of the Drafting Committee, the Convention was finalized in six official languages—Arabic, Chinese, English, French, Russian and Spanish<sup>[48]</sup>. He also commented that “the plenary sessions met only at the beginning and end of the Conference. At the end of the Conference, the texts prepared by the First and Second Committees were voted on in Plenary, Article by Article. Under the rules of the Conference, each Article required approval by a two-thirds majority. In fact, of the 88 substantive Articles (Parts I-III), were approved unanimously and 8 additional Articles received no more than 2 negative votes. All of the other Articles were approved by large majorities but in two instances the majority fell short of two-thirds; on these Articles, ad hoc working groups then brought in compromise versions that were approved without dissent. The Convention, as a whole, was then submitted to a roll-call vote and was approved without a dissenting vote. In short, the spirit of consensus that had developed in UNCITRAL was maintained to the end of the Diplomatic Conference<sup>[49]</sup>.”

The Conference adopted the Final Act entitled the United Nations Convention on Contracts for the International Sale of Goods (CISG) and was opened for signature at the

concluding meeting of the Conference on 11 April 1980. On that day the CISG was signed by 6 States: Austria, Chile, Ghana, Hungary, Singapore, and Yugoslavia. The Convention remained open for signature at United Nations Headquarters in New York until 30 September 1981. It was opened for accession as from the date it was opened for signature (11 April 1980), in accordance with its provisions<sup>[50]</sup>. The UNCITRAL at its thirteenth session in 1980 noted with appreciation that the Conference had adopted the CISG and a Protocol Amending the Convention on the Limitation Period in the International Sale of Goods. It expressed its hope that the Convention, which has already been signed by six States, would receive the widest possible acceptance. Several delegations indicated that their Governments were actively examining the Convention with a view to its being signed and ratified<sup>[51]</sup>. By December 11, 1986, instruments of adherence (e.g., ratification or accession) had been deposited with the Secretary-General by eleven States: Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syrian Arab Republic, United States of America, Yugoslavia and Zambia. Under Article 99 the Convention went into force a year after the deposit of the tenth instrument of adherence; for the above eleven States the Convention entered into force January 1, 1988. As of 16 March 2018, UNCITRAL reports that 89 States are the parties to the Convention<sup>[52]</sup>.

### **An overview of the CISG**

The CISG 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<sup>[53]</sup>. The Convention contains total 101 Articles which have been divided into four parts. Part I contains Articles 1-13 regarding the sphere of application of the Convention and general provisions. Part II governs the formation of the contract which extends from Article 14 to Article 24. Part III contains substantive provisions regarding sale of goods extending from Article 25 to Article 88. Part IV contains final provisions from Article 89 to Article 101 dealing with the obligations of the Contracting States.

### **Purpose and aim of the CISG**

The purpose of the CISG is to become the single legal instrument which will govern laws on contracts for international sale of goods in the world and promote the development of international trade. The aim of the CISG is to replace conflicting rules on sales by providing a uniform legislature to remove legal barriers in the international trade.

### **Characteristics and function of the CISG**

The CISG was the consequence of the failure and all the efforts contributed by the UNIDROIT. Though it was prepared on the basis of the two Hague Conventions it has a broader basis than these two conventions. To all intents and purposes the CISG has replaced the two Hague Conventions. It signifies the progressive development of

<sup>46</sup> Report of the Second Committee, United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March to 11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committees, United Nations, New York, 1991, Document A/CONF.97/19.

<sup>47</sup> Report of the Drafting Committee, United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March to 11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committees, United Nations, New York, 1991, Document A/CONF.97/19.

<sup>48</sup> John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention*, Kluwer Law and Taxation Publishers, Deventer/Netherlands, 3rd edition (1999).

<sup>49</sup> *Ibid.*

<sup>50</sup> Note by the Secretary-General, United Nations Conference on Contracts for the International Sale of Goods, (A/CN.9/183), 21 May 1980.

<sup>51</sup> Report of the United Nations Commission on International Trade Law on the work of its thirteenth session (New York, 14-25 July 1980) (A/35/17), Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17.

<sup>52</sup> Available 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>53</sup> Article 4 of the CISG.



private international law in the field of international trade and denotes both the measures to unify the applicable legal rules and to assist the parties to an international sales transaction to avoid misunderstanding and dispute through the use of substantive rules on a single convention for international sale of goods. It has successfully contributed to the harmonization and unification of the law on Contracts for the international sale of goods.

The CISG provides common substantive rules on contracts for international sale of goods. It was drafted taking the mission that it would be acceptable to all States which participated in international trade and by taking account of the interests of all countries. It was drafted based on the decisions of the United Nations and its organs dealing with the normalization of trade relations and designed to eliminate colonialism and manifestations of neo-colonialism from international economic relations, the principles governing international trade relations and trade policies adopted in 1964 by UNCTAD, the general conditions of sale and model contracts prepared by the United Nations Economic Commission for Europe, the general conditions of delivery of the Council for Mutual Economic Assistance (1968), the text of the Hague Conventions of 1964 and 1955, and the acceptable rules of municipal law governing relations in respect of contracts of international sales. As of now, more than half of the world States have accepted the CISG.

The UNCITRAL was established by the United Nations to play a more active role in removing or reducing legal obstacles to the flow of international trade. The UNCITRAL was established reaffirming United Nations conviction that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would significantly contribute to universal economic co-operation among all States on a basis of equality and to the elimination of discrimination in international trade and, thereby, to the wellbeing of all peoples. The CISG denotes all these qualities. The objective of the UNCITRAL is the promotion of the progressive harmonization and unification of the law of international trade. The Commission functions for the need to take into account the different social and legal systems in harmonizing the rules of international trade law. The Commission is continuing its journey to promote international trade through the development of uniform laws that reflected the need of those countries for a fair and equitable share in the benefits of such trade. The CISG also signifies all these qualities.

The Working Group which drafted the CISG was composed of members representing the various geographic regions and the principal economic and legal systems of the world. All the members of the Working Group were represented by persons especially qualified in the law of the international sale of goods. They drafted the CISG considering that it would be capable of wider acceptance by countries of different legal, social and economic systems. The Draft text of the CISG was circulated to Governments and to interested international organizations for comments and proposals. So, the CISG preserves interest of all countries because it was created by taking into account the interest of all countries which marked the high point of the tenth session of the UNCITRAL. The CISG was finalized through a diplomatic conference which was convened in Vienna

from March 10 to April 11, 1980 by the Secretary-General of the United Nations. Sixty-two States were represented at the Conference. One State, one Specialized Agency, six other intergovernmental organizations and one non-governmental organization sent observers to the Conference. Nearly all the provisions in the UNCITRAL Draft Convention of 1978 were approved in substance by the Conference in consensus.

The text of the CISG is sufficiently flexible and simple for practical use. The CISG is a short and simple text which makes it more readily understandable and easier to work with. The CISG is simply not on juridical concepts familiar only to certain States but reflected a genuine attempt to blend concepts taken from the major legal systems of the world to the extent applicable. This could be considered as high standard, novel pieces of legislation which had taken into account the solutions provided by different legal systems. The text of the CISG reflects balance more equitably; the interests of the seller and of the buyer, of the developed and the developing countries. The Convention meets the requirements which the majority of States demand from international instrument of this kind. The CISG adapted itself to the current practical requirements of international trade.

The CISG represents two traits on the unification in a single text; the laws on the formation of contracts and substantive laws governing the obligations of the buyer and seller on the international sale of goods. This encourages State to ratify or accept the Convention. It provides a coherent system of rules on the most important subjects of the law on international sales. The dominant theme of the CISG is the role of the contract construed in the light of commercial practice and usage.

The draft Convention avoided the use of legal concepts known only in certain systems and, in that respect, was therefore acceptable to all legal systems. The Convention was adapted to the current practical requirements of international trade; that it reduced the number of cases that had to be settled by the national law of one of the parties, and represented an equitable balance between the interests of sellers and buyers.

The CISG does not override domestic law that outlaws certain transactions or invalidates proscribed contracts and oppressive terms; outside this narrow area the Convention protects the contractual arrangements made by the parties. The parties may exclude the Convention, and the terms of their contract will prevail over any inconsistent provision of the uniform law. Like most domestic sales rules applicable to commercial contracts, the Convention's rules play a supporting role, supplying answers to problems that the parties have failed to solve by contract.

The UNCITRAL worked carefully to produce the CISG and treated this project accordingly to prevent its failure. The enforcement of the CISG alleviated the inconvenience which diversity of law causes in international sales transactions. The Convention is rendering appreciable service in all parts of the world by eradicating the hindrance which differences between legal systems causes to international transactions. It is a uniform law for international sales of goods is of paramount importance to international trade. Now, the CISG is an acceptable instrument to all parts of the world.

The CISG functions as an excellent means of ensuring a uniform solution to the most important legal problems



involved in the international sale of goods. It serves as a valuable bridge between divergent legal systems which would enable parties to international contracts of sale, who carried on business in countries where different legal systems applied, to conduct their business by providing a modern, uniform and fair regime for contracts for the international sale of goods.

### Legal nature of the CISG

The CISG is an international legal instrument which provides rules on the formation of the contract of sale and also provides rules regarding the rights and obligations of the seller and the buyer arising from a contract of sale. We have seen in Section 4 above that the CISG also contains rules regarding the ratification, acceptance, approval, accession and denunciation of the Convention. This means the CISG provides legal rules applicable for private parties and also provides legal rules applicable for States. This also means being one convention the CISG possesses two legal natures. These two kinds of nature of the CISG require it to function as a public international law as well as a private international law.

Professor Paul Volken has noted that the modern theory on the law of treaties recognizes different groups of international treaties and one of the most generally accepted of these classifications distinguishes between contractual and law-making treaties<sup>[54]</sup>. The CISG belongs to the category of law-making treaties. He also noted that the law-making treaties are also divided into several subdivisions and one of the most generally accepted being the distinction between self-executing and non-self-executing treaties. The CISG belongs to the first category. This means the CISG is a law-making self-executing international convention which functions both as a public international law and as a private international law.

### The necessity of interpreting the CISG

We have observed in the previous sections that the CISG was created in a way so that it would be acceptable to all States which participates in international trade irrespective of their different legal, social and economic systems. In this regard the drafters of the CISG tried to avoid abstract, disembodied concepts which may lead to confusions. Their effort was to avoid legal idioms that have divergent local meanings instead they have used terms of physical events that occur in international trade<sup>[55]</sup>. They have tried their best to use plain language that refers to things and events for which there are words of common content in the various languages<sup>[56]</sup>. Naturally local judges and arbitrators will feel a necessity of interpretation to explanation or make an opinion on the meaning of the provisions of the CISG.

We have noted in section 6 above that the text of the CISG is sufficiently flexible and simple for practical use. This characteristic of the CISG allows it to adapt current practical requirements of international trade. In most cases judges and arbitrators will find that the provisions of the CISG are in need of interpretation to apply them in a specific case. If they find that any specific provision is not generally understandable then will have to interpret the provision to

explain the relationship between such specific provision and the case at hand. The interpretation of such provision of the CISG will make it comprehensible to apply such in an appropriate case by showing the relationship between them. Situations may arise that a particular provision of the CISG may have more than one meaning. Moreover, a single word may offer more than one meaning<sup>[57]</sup>. Interpretation of such provision or word will help in making an opinion on the proper meaning of such provision or word in the CISG. This will contribute in the sound application of the provisions of the CISG.

The text of the Convention reflects “many compromises<sup>[58]</sup> which were necessary to create a law that will be acceptable to civil law and common law traditions. Due to these reasons provisions of the CISG also demands interpretation. Only interpretation of those compromising terms and concepts in the Convention could help their correct and proper application in a required case.

Commercial transactions on international sale of goods are based on commercial usages and practices which keep changing with time. It is not always possible that the CISG will be able to solve them directly. In such a case an interpretation will be needed to understand the applicability of a provision on the case at hand.

The CISG does not cover all questions which may arise out of sale transactions. John Honnold one of the drafter of the CISG commented that “the Convention must be read and applied in a manner that permits it to grow and adapt to novel circumstances and changing times<sup>[59]</sup> So, if there any gap is found in the CISG that the convention does not solve the question in issue directly then the interpretation will help in solving the question. The interpretation of the CISG will help in understanding the relationship between the applicable provision and the question at hand so that gaps could be filled.

### Applicable legal rules on the interpretation of the CISG

Generally, interpretation of a legal provision means explanation or an opinion on the meaning of such provision ascertained by applying interpretive methodology. The interpretation of the CISG means explanation or an opinion on the meaning of a provision of the Convention ascertained by applying appropriate interpretive methodology. Interpretation of the CISG works as a tool in ascertaining the meaning of its provisions so that judges and arbitrators could apply such provisions properly. In doing so, two components are essential; (1) methodology of interpretation and (2) applicable legal rules for interpretation. The CISG does not provide any methodology for its interpretation but it provides the second.

The necessity of providing rules on the interpretation by the CISG has derived from its legal nature. We have seen in the section 7 above that the Convention possesses twofold legal natures; it functions as a private international law as well as a public international law. First three parts of the Convention functions as private international law which

<sup>54</sup> Paul Volken, *The Vienna Convention: Scope, Interpretation, and Gap-filling*, Petar Sarcevic & Paul Volken eds., *International Sale of Goods: Dubrovnik Lectures*, Oceana (1986), Ch. 2, page 20-21.

<sup>55</sup> Note 48 above, page 89.

<sup>56</sup> *Ibid*, page 14.

<sup>57</sup> Gyula Eörsi, *General Provisions*, Galston & Smit ed., *International Sales: The United Nations Convention on Contracts for the International Sale of Goods*, Matthew Bender (1984), Ch. 2, page 2-3.

<sup>58</sup> Robert A. Hillman, *Applying the United Nations Convention on Contracts for the International Sale of Goods: The Elusive Goal of Uniformity*, 1 *Review of the Convention on Contracts for the International Sale of Goods* (1995) 21-49.

<sup>59</sup> Note 48 above, page 16.

provides rules on the formation of the contract of sale and also provides rules regarding the rights and obligations of the seller and the buyer arising from a contract of sale. The last part of the Convention functions as public international law which provides rules on the obligations of States.

The Vienna Convention on the Law of Treaties 1969 provides rules on the interpretation of treaties which is applicable for public international law. This means last part of the CISG specifically Articles 89-101 of the Conventions are to be interpreted by following the rules of interpretation provided by the Vienna Convention on the Law of Treaties 1969. There is no formally established international law which provides rules of interpretation applicable for private international law. This means first three parts of the CISG specifically Articles 1-88 are not subject to any international law which provides rules on interpretation. Considering this gap on the interpretation of the Convention, one Article has been designated by the CISG among 101 Articles as the applicable legal rule for its interpretation which is "Article 7".

#### The Article 7 of the CISG read as follows

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."

#### Structure of Article 7 of the CISG: Principles of interpretation and gap filling guidelines

Article 7 is divided into two paragraphs. These two paragraphs perform two unique and different functions in the interpretation of the CISG. Paragraph (1) of Article 7 presents three interpretive principles to be followed and maintained by the interpreters when interpreting the CISG. These three principles are the Principle of Internationality, the Principle of Uniformity and the Principle of Good Faith. According to Article 7(1) those three principles are as follows:

1. **The Principle of Internationality:** In the interpretation of the CISG regard is to be had to its international character.
2. **The Principle of Uniformity:** In the interpretation of the CISG regard is to be had to the need to promote uniformity in its application.
3. **The Principle of Good Faith:** In the interpretation of the CISG regard is to be had to the need to promote the observance of good faith in international trade.

Paragraph (2) of Article 7 provides two guidelines to be followed by the interpreters if any gap is found when interpreting the CISG. According to Article 7(2) those two gap-filling guidelines are as follows:

1. **Gap-filling with the general principles:** Questions concerning matters governed by the CISG which are not expressly settled in it are to be settled in conformity with the general principles on which it is based.
2. **Gap-filling with the rules of private international law:** When the general principles on which the CISG is

based are absent then questions concerning matters governed by the CISG which are not expressly settled in it are to be settled in conformity with the law applicable by virtue of the rules of private international law.

#### Conclusion

The CISG was created with a view to solve legal problems in present and future diverse sales transactions around the world. The CISG signifies the progressive development of private international law in the field of international trade. Article 7 is the applicable legal rule for its interpretation. Two paragraphs provided by Article 7 are naturally different and their inherent functions are different but they are related and dependent on each other. A healthy life of the CISG depends on the proper application of Article 7. Proper application of Article 7 of the CISG requires a thorough understanding about the three principles of interpretation and the two gap filling guidelines. Proper application of Article 7 also requires proper methods of application in the interpretation of the Convention. Future papers will bring light on these regards with a view to bring life to the issue of developing method for the application of Article 7 which would suit to all legal systems in the world.

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  39. United Nations Conference on Trade and Development (UNCTAD), The report of the Trade and Development Board, Seventeenth session, Official Records of the General Assembly, Thirty-third Session, Supplement No. 15 (A/33/15), vol. I, part three. Chapter II: Institutional, organizational, administrative and related matters.
  40. Bureau of Intelligence and Research, Washington, DC reported in January 20, 2017 that there are 195 independent States in the world, available at



- <https://www.state.gov/s/inr/rls/4250.htm>. We have seen in the previous section that 89 States have adopted the CISG which makes almost half of the world states.
41. [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).
  42. [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).
  43. <https://www.unidroit.org/studies/international-sales-law/188-study-iv-international-sale-of-goods>.
  44. Maps in Time From 1900 to 2000, The National Archive, Kew, Richmond, available at <http://www.nationalarchives.gov.uk/cabinetpapers/documents/maps-in-time.pdf>.
  45. Old maps, available at [http://ib.frahn.net/w/world\\_map](http://ib.frahn.net/w/world_map).
  46. Overview on the ULIS and the ULF, available at <https://www.unidroit.org/ulfc-overview>.