



## Method of identifying the general principles on which the CISG is based

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### Abstract

The CISG does not provide the list of general principles on which it is based. Then, how to identify these general principles on which the CISG based? This paper presents the method of identifying the general principles on which the CISG is based. It presents three primary sources to identify general principles and specific ways to use such. It also presents another two direct, easy and useful sources to identify general principles.

**Keywords:** principles, CISG, identify, specific

### Introduction

Article 7<sup>[1]</sup> of the United Nations Convention on Contracts for the International Sale of Goods (CISG) 1980 has been dedicated for the interpretation of the Convention. Paragraph (2) of this Article provides guidelines for filling gaps in the provisions of the CISG<sup>[2]</sup>. It provides that two gap filling guidelines has to be followed when gaps are found in the Convention i.e. gap filling in conformity with the general principles on which the CISG is based and gap filling in conformity with the law applicable by virtue of the rules of private international law. According to paragraph (2), the gap filling guideline in conformity with general principles is as follows.

### 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.”*

This gap filling guideline in conformity with general principles is very helpful in dealing with problems for which no answer is explicitly provided by the Convention but which could be solved by reference to the CISG's underlying principles. The CISG was created to provide solutions to legal problems on contracts for international sale of goods. The purpose of the Convention emphasizes that solution must be found under the umbrella of the CISG. The gap filling guideline in conformity with general principles on which the Convention is based serves this purpose. It reminds interpreters that the provisions of the CISG reflect common elements arrived at as a result of negotiation among numerous delegations so gaps should be filled by applying general principles of the Convention.

The CISG does not provide the list of general principles on which it is based. Then, how to identify these general principles on which the CISG based?

### Method of identifying the general principles<sup>[3]</sup>

The gap filling guideline in conformity with general principles has to be applied by an interpretive court or arbitral tribunal in a situation when questions arise concerning matters governed by the CISG which are not expressly settled in it<sup>[4]</sup>. To apply this guideline such court

or tribunal has to identify appropriate general principles for those questions. They can use following three primary sources to identify appropriate general principles to fill gaps in the provisions of the CISG.

1. General principles which worked as the basis of a specific provision of the CISG;
2. Legislative generalizations of a specific provision of the CISG; and
3. General ideas which inspired each provision of the CISG;

The first source is the direct way to find general principles of the CISG. General principles which worked as the basis of a specific provision of the Convention can be identified by following two methods.

1. By directly looking into a provision; and
2. By observing the legislative history of the provision.

Many of the Articles in the CISG directly speak of the general principle on which the provision is based. For example, Article 6 of the Convention directly based on the principle of freedom of contract<sup>[5]</sup> and Article 8 is directly based on the principle of reasonableness<sup>[6]</sup>. The underlying general principle can also be extracted of a specific provision by observing the legislative history of such provision.

Second and third source to identify general principles on which the CISG is based points to the evolution of the Convention. By examining the legislative history of a specific provision one can trace the generalizations regarding such provision and general ideas regarding such provision to identify general principles on which that specific provision is based.

Beside these three primary sources they may also look into following two very direct, easy and useful sources to identify general principles on which the CISG is based.

1. General principles identified by international cases; and
2. General principles identified in the scholarly writings.

The most direct way to identify general principles of a specific provision is the application of the Principle of Uniformity<sup>[7]</sup>. This principle allows jurists to apply decisions of international cases irrespective of legal

background. There are cases which have identified and applied general principles on specific provisions. These identified general principles can directly be used by jurists in appropriate cases. Cases open the way of observing the decisions of other tribunals how a particular principle has been interpreted and applied <sup>[8]</sup>. The UNCITRAL Digest 2016 has listed the general principles of the CISG which have been identified and applied in the international cases. Interpreters are free to consult those general principles when needed.

Scholars have also identified general principles on which the CISG is based in their studies. These identified principles can also be used as a source by applying the Principle of Internationality <sup>[9]</sup>. For example, Robert A. Hillman beautifully showed in his paper that the Convention's rules generally stand for one or more of the four basic principles i.e. freedom of contract, cooperation and reasonableness, successful completion of exchanges, and compensating injured parties for breach <sup>[10]</sup>. There are other general principles which can be extracted from the provisions dealing with specific matters <sup>[11]</sup>.

### Conclusion

Robert A. Hillman says that "it is not difficult to ascertain the general principles on which the CISG based because most of the Articles in the Convention "manifest a purpose and policy" <sup>[12]</sup>. The CISG is a blend of commercial rules of major legal systems. After identifying general principles of a specific provision by applying above mentioned sources interpreters may take support of international principles to explain them. It is necessary because general principles may be identified easily but it is hard to find explanation of such principles around the sources except scholarly studies. In this regard UNIDROIT Principles of Commercial Contract and the Principles of European Contract Law (PECL) can specially be used as supporting factor.

### References

1. Article 7 of the CISG:  
 "(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.*"
2. Article 7 paragraph (2) contains two gap filling guidelines i.e. gap filling in conformity with the general principles on which the CISG is based and gap filling in conformity with the rules of private international law. Mausumi Akter, "The United Nations convention on contracts for international sale of goods (CISG) 1980 and the applicable legal rule for its interpretation", International Journal of Law, Volume 5, Issue 3, May 2019, p15.
3. Introduced method of identifying the general principles on which the CISG is based has been extracted from the authors PhD thesis titled "Methods for the Application of Article 7 in the interpretation of the United Nations Convention on Contracts for International Sale of Goods (CISG). The author closely examined the

legislative history of Article 7 of the CISG and developed the method presented here, 1980.

4. Method of identifying "questions concerning matters governed by the CISG which are not expressly settled in it" will be presented in another paper.
5. Article 6
6. The parties may exclude the application of this Convention or, subject to Article 12, derogate from or vary the effect of any of its provisions."
7. Article 8  
 (1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.  
 (2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances."
8. 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. Note 2 above, p15. The method of applying the Principle of Uniformity in the interpretation of the CISG has been presented in another paper.
9. Bruno Zeller, Four-Corners - The Methodology for Interpretation and Application of the UN Convention on Contracts for the International Sale of Goods, May, 2003.
10. The method of applying the Principle of Internationality in the interpretation of the CISG has been presented in another paper.
11. Robert A. Hillman, Applying the United Nations Convention on Contracts for International Sale of Goods: The Elusive Goal of Uniformity, Cornell Review of the Convention on Contracts for international sale of goods, 1995, 21-49.
12. Franco Ferrari, Uniform Interpretation of the 1980 Uniform Sales Law, 24 Ga. J. Int'l & Comp. L. 183, 228, 1994.
13. Note 8 above.