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Limits of unification principle under CISG: The direct referral to the national law

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Abstract
Vienna convention was keen, as one of these international conventions, to stipulate frankly its international nature, the need to achieve unification when applying this convention. This convention aims at avoid resorting to the national laws to explain the provisions of the convention, and to achieve the unification of rules regulating the contracts for the international sale of goods.
In fact, it could be said that no absolute exclusion of national law, because some provisions of Vienna convention frankly refers to the national law. This is the concern of the current research. There are some matters the drafters of Vienna convention saw that should be resorted directly to the national laws and there are some matters could not be unified. So these matters were excluded absolutely from the scope of application of provisions of Vienna convention, and the national legislations were the applicable laws.
Therefore, This study treats the direct referral to the national law according to (articles (28), *(*7/2*))* of the convention.
There is no doubt that referral to the national law has risks on the uniform applicable law in the case of international sale of goods, in particular in the case where the applicable national law does not allow to judge the specific performance, that harm interests of the creditor in the contract of international sale, who seek to achieve the purpose of contracting, obtaining the object the contract on international sale. Furthermore, the attempt of the convention to satisfy all parties is a difficult matter, and could not be completely achieved, in particular with variety of these legal systems.
Therefore, In our opinion, it could be said that establishing juridical principles is becoming an urgent need which is absolutely necessary for completing the juridical uniform structure of international commerce, particularly international sales.

Keywords: Unification principle**-** CISG**-**International trade

1. Introduction

It has long been recognized that the application of national laws to the disputes arising from international commercial transactions is not appropriate practice in view of the special characteristics and attributes of international transactions which means that for all such transactions, domestic national laws must be done away with in favor of the international commercial law which should reign for all commercial international transactions as pointed out by Schmitth of [1]. Also at stake here are the international contracts which represent a very important and sensitive issue since they relate to the interests of more than one country thus creating a situation which calls for settlements that are suitable for these contracts and for the nature of disputes that may arise among the parties to those contracts (2). The international commerce couldnot realize its full potential with respect to the international growth and flourishment of the world economy unless it is emancipated from the limits and differences between the national legislations and laws (3).

Indeed, the main advantage of the unified nature of the Vienna convention is that it guarantees the inevitability of its application. This is the case since in principle, there would be no room for applying the national laws to international disputes. Consequently, the provisions of the Vienna Convention could safely be described in its essence as a closed system that limits the intervention of national laws. Nevertheless, it could still be said that the national laws are not completely excluded from the Vienna Convention, since some of the provisions of the Vienna Convention refer explicitly to the national laws, an issue at which we take an in-depth look in the current research.

The problem of this research turn on the direct referrals endorsed by the Vienna Convention to national laws, which could adversely affect the uniform application of the Convention. the twin issue of the indirect referrals which follow from the fact that the Convention does not offer solutions to all subjects related to international contract sales in terms of elements, conditions and effects. In effect the application of the Convention is limited to the formation of contracts of international sales, and the rights and obligations consequent from a contract for both the buyer and the seller. This means, on the one hand, that some of the relevant issues are excluded completely from the scope of the application of the Vienna Convention (absolute exclusion of the Convention). On the other, it also means that national laws still play a role in applying some agreed upon rules that are dubbed (unanimous exclusion of the convention). This issue is also a major concern which deserves a separate research on its own.

At this point, some important question for this research are

(1)Sarwat Habeeb: International commercial law, its expand development from the fifties till now, procedures of the silver book, Faculty of Law, El Mansoura University, 1999, p. 279.
(2)Hazyem Bauiomy El Masry, The modern mechanisms in the international commerce, UNICTRAL contracts, an analytical study, Dar El Nahda Al Arabia, 2010, p.69.
(3)Ahmad El Sayed Labib: The premature violating contract of international sale of goods, A study in the Vienna convention 1980, J. Legal and Economic Researches, Vol. 55, April 2014, p.766.

in order. Could the referral, authorized by the Convention itself, be detrimental to the unified application of the Convention? Is there any danger from this direct referral, to the chances of the unified application of this Convention? And what is the role of the judiciary towards this referral? These questions will be thoroughly addressed in the following.

The rest of the study will be organized into two sections, the first one treats the referral to the national law according to article 28 of the convention, and the second section treats the referral to the national law to fill in the shortage in the provisions of Vienna Convention.

The first section

Referral to the national law according to article (28) of the Vienna Convention

The Vienna Convention stipulated in articles 46 and 62[(4)] that both the buyer and seller in the contracts for the international sale of goods should ask the other party to perform their obligations. This is in conformity with most Latin systems in this regard. But in order to accommodate countries following Anglo-Saxon systems, article 28 inserted a proviso which gave the court in the Anglo-Saxon systems the option to either sentence the specific performance as a sanction or not do so if the rules of its objective law do not allow[(5)].

The Vienna Convention adopted the same approach previously adopted by the Hague convention which provided a reconciliation between different legal systems with regard to the specific performance episode [(6)]. In this regard, the articles 46 and 62 considered the specific performance as an original sanction for the debtor defaulting on the performance of his obligations included in the contract of the international sale. At the same time, the provisions of the Vienna Convention allowed the courts in the contracting countries according to article 28 to refrain from imposing the specific performance as a sanction if the national law of a court does not allow it in a similar sale contract[(7)]. This conclusion could be contrived from the text of article 28 which stipulates that: " If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgment for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention ".

According to the previous article if one party, either the seller or the buyer, has the right to ask the court to order the specific performance, the court could order the specific performance only if its legal system allows it to do so with regard to a sale contract which is subject to the national law of the court[(8)]. But if the law of the court does not authorize it to sentence the specific performance, the latter must be excluded in favor of the application of the national law. There is no alternative in this case except for applying the other sanctions designated in the Convention such as damages[(9)].

This account reveals that the referral to the national laws undoubtedly has serious effects on the unification of the applicable law in the case of the international sale of goods. In particular in cases where the applicable national law does not authorize specific performance[(10)], this could be harming to the interests of creditors who are parties to the contracts of international sale and whose aim is to achieve the goal of contracting, which is to obtain the object of the contract of international sale.

From our point of view, the aforementioned restriction imposed in article 28 of the Convention is rather limited since specific performance is not absolute in the Latin law. The same goes for the performance in exchange sanction which is also not absolute in the Anglo-Saxon law.

The comment on the restriction included in article 28 of the Convention

The present status of article 28 casts some doubts regarding international sale[(11)] procedures, and therefore obligates a creditor to try to find out whether the national law of the debtor's country allows sentencing specific performance before getting involved in any contracting case. This way, he would be sure he could demand specific performance in case of a dispute regarding the implementation of a contract. In the face of the multiplicity and variability of national laws, which are little known to the creditor, the latter may be unable to demand specific performance which could adversely affect the motives of the parties to a contract to

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([4])Article 46 (1). The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

Article 62.The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

([5])Ahmed Ali El Amawi: The specific performance in the United Nations conventions for contracts for the international sale of goods (Vienna Convention 1980), M Sc Thesis, Faculty of El Yarmouk University, 2016, p. H.

(6)Pierre Garello, The breach of contract in French law: between safety of expectations and efficiency, International Review of Law and Economics 22 (2003), p. 417; Fritz Enderline & Dietrich Maskow "International sales law, U. N. convention on contracts for the international sale of goods, Oceana publications, 1992, P. 120, Jianming shen, S.J.D., The remedy of requiring performance under the CISG and the relevance of domestic rules, Arizona Journal of International and Comparative Law, Fall, 10/1996, Volume13, P. 253, V. Heuzé, Traite des contrats, la vente internationale de marchandises, L.G.D.J., Delta, 2001., No. 410, P. 359.

([7])Huet, J., Vente internationale de marchandises, Jur. Class. Commercial, Fas. 474, 1995., No. 41, P. 17, Amy H. Kastely, "the Right to Require Performance in International sales: Towards International Interpretation of the Vienna convention", (1988),63 Washington Law Review, at web site http://cisgw3.law.pace.edu /cisg /biblio/kastely1.html., Ayela, P. 612, Christophe, L'harmonisation du droit de la vente internationale: Necessite et realite, Mémoire de maîtrise, Universite d' Ottawa, Canada, 1993, P. 146.

([8])Avery W. Katz, Remedies for Breach of contract under CISG, International Review of Law and Economics 25, 2005, P. 384, Christiana Fountoulakis, Remedies for breach of contract under the United Nations Convention on the International Sale of Goods, ERA Forum, April 2011, Volume 12 (1), P. 13, Peter Huber, CISG -- The Structure of Remedies, Presentation at seminar: "The Convention on the International Sale of Goods. The 25th Anniversary: Its Impact in the Past; Its Role in The Future", German Society of Comparative Law, Private Law Division, Conference 2005, 22-24 September 2005, Wurzburg, P. 15, Jaber, H., The remedies regime under the United Nations convention on contracts for the international sale of goods, Ph. D Thesis, University of Ottawa, 1990, P. 215, H. Van Goutte, et P. Wautele, Obligations des parties et sanctions des obligations dans La CVIM, RDAI, n°3/4, 2001, No. 36, P. 324, 325, J. Huet, ibid., No. 27,P.11, Amy H. Kastely, ibid., P. 612.

([9]) Peter Schlechtriem, "Uniform Sales Law – The UN-Convention on Contracts for the International Sale of Goods", Manz, Vienna, 1986.Available at: http://www.cisg.law.pace.edu /cisg/biblio/schlechtriem.html, P. 62., Harry M. Flechtner, Buyers' remedies in general and Buyers' performance – oriented remedies, Proceedings of the UNCITRAL – VIAC Joint conference, 15-16 March 2005, Vienna: Celebrating Success: 25 years United Nation Convention on contracts for the International Sale of goods(CISG), the Journal of Law and Commerce, Volume 25, Issue 1, Fall 2005, P. 342.

([10])J. Huet, ibid., No. 27, P. 11, Amy H. Kastely, ibid., P. 612.

([11])Amy H. Kastely, ibid., p. 612.

reach an agreement. The ability of the Convention to apply uniform settlements to international sale disputes is also compromised.

Owing to this situation, some scholars are of the opinion that article 28 of the Convention actually enlarges the role of the national judiciary by the open referral to the national law, while imposing clear restrictions on sentencing specific performance such that it doesn't constitute a primary sanction in the Convention despite the reservations of some countries against such restrictions. This referral to the national law in the provisions of the Convention is in effect the price paid by the Convention to satisfy the so-called common-law countries which have reservations against sentencing specific performance for non-monetary obligation[(12)].

There is no doubt that the referral to the national law alluded to above has certain risks for the unification of the applicable law in the case of the international sale of goods particularly in cases where the national law in question does not allow specific performance[(13)], which could jeopardize the creditor's interests in achieving the purpose of the international sale contract, namely securing the object the contract. Furthermore, the attempt by the Convention to satisfy all parties is a difficult matter that might not be achievable particularly in light of the variety of the country legal systems. Moreover, mixing theories of civil law and common law appears to create a heterogeneous base regarding specific performance. This may be attributed to the contradicting methods of civil law and common law systems regarding the execution of contract obligations[(14)]

If,for the sake of argument, we suppose the validity of this solution, namely the mixing of legal systems with written law and legal systems with common law, it would still only obligate countries that are signatories to the Convention but would not be binding for disputes that are looked into by courts located in countries that are not members of the Vienna convention[(15)]. Even more surprising are those cases where a country is a signatory to the Vienna Convention but its national law nevertheless does not allow the application of specific performance as an original sanction which disables the provisions of the Convention

In addition, the application the specific performance in general, without enforcing the restriction included in article 28 of convention does not bar the judicial authority looking into the dispute from comparing between the situation of a worn-out debtor and the serious damage that would be inflicted on the creditor should specific performance not be sentenced. In this case the judicial authority may tend to protect the creditor who has the priority to be protected [(16)], since he will incur serious damages if the court goes for monetary compensation,or the court may opt for the compensation remedy if it judges that the specific performance constitutes an unreasonable burden for the debtor.

It has been argued that the position of the Convention regarding this solution can be defended on the ground that it is not reasonable to expect countries to amend the basic principles of their judicial systems solely to accommodate the provisions of the Convention. However, in response to this argument, it may be pointed out that there is no way for successful international commerce and its dissemination across country borders except through the application of the provisions of the Convention, and not through the varied country legal systems. The application of the provisions of the Vienna Convention is limited to contracts of international sale and does not include contracts of national sale. This puts the Convention in a superior position to the national laws since it covers all cases of international sale of goods which is much wider in scope than national sales. The Convention would thus achieve the purpose behind drafting this international agreement which is to gather all countries around a unified law in which all legal systems are concerted.

Finally, we reiterate that the seriousness of the restriction contained in article 28 is limited, because specific performance is not an absolute remedy in Latin law. Likewise, the restrictions on performance in exchange is not serious since it is also not an absolute remedy in the Anglo-Saxon systems.

The second section

Referral to national law under Article 7 / 2 of the Convention to fill gaps in the texts

The second paragraph of article 7 of the Vienna convention, like the first paragraph of the same article, aims at warding off the application of the national laws in favor of achieving the unification principle, which is the supreme goal the Vienna convention would want to achieve. To reach this goal, article 7/2 of the Vienna Convention obligates courts to refrain from applying the national laws and apply instead the general principles on which the Convention is based so as to fill in lacunae in the texts of the Convention[(17)]. But if these principles are not sufficient to fill in lacunae in the texts, then it might be necessary to fill in these lacunae by referral to the applicable national law and in accordance with the rules of private international law.

In confirmation of this matter, article 7/2 of the Vienna convention stipulated that: " 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".

So, some questions are addressed by the Convention, but the Convention does not offer solutions for those questions that are considered by the convention as lacunae that could be filled in wherever possible by resorting, not to the national laws, but to the general principles of the Convention so as to guarantee the unified application of the convention. Article 7/2 prohibits resorting to the applicable national law in order to settle these questions except where it is impossible to identify these general principles. So, we can say that turning to the national law is the last resort solution. This means that it is important to search for solutions first within the general principles of the Convention and thereafter resorting to the national laws as a last step. As for questions that are not addressed by the texts of Vienna conventions, and which are dubbed by the courts as external lacunae, these could be

(12)Van Goutte, H., et Wautele, P., op. cit., No. 36, pp. 324-325.
(13)Huet, J., ibid., No. 27, p. 11, Amy H. Kastely, ibid., p. 612.
(14)Jaber, H., ibid., p. 242.
(15)Heuzé, V., op. cit., No. 410, p. 359.
(16)Ezz Al Dynasory-Abdel Hameid Al Shawarby, civil liability in the light of jurisprudence and jurisdiction, p.1038.

(17) Shafiek, M., The United Nations convention on contracts for the international sale of goods (A Study in the International commercial law), Dar El Nahda, 1998, para.40.

dealt with through the applicable national law in compliance to the rules of private international law of the court[(18)].

The most important lacunae issue that needs to be addressed is article 78 regarding the question of interest. This question of interest created great difficulties even at the Conference for drafting the Convention. As regulated by article 78, the concept of interest was opposed on several grounds including religious reasons[(19)].

Some applications of issues not settled by the Convention

Among the issues not settled by the provisions of the convention are the following:-

First: The Penal clause[(20)]:

The penal clause is regulated according to the general principles set by the Convention. In the absence of these principles, the penal clause is regulated by the provisions of the applicable law according to the rules of private international law. So if the parties to a contract of international sale agreed on damages, such as the penal clause, this agreement must be referred to the contract and the applicable law. For this reason the arbitration judgment pronounced by the International Commercial Chamber (ICC) referred the contract concluded between an Austrian vendor and a Bulgarian buyer directly to the Austrian applicable law in order to determine the value of the penal clause included in the contract[(21)].

Second: Determination of damages

Among the issues not settled by the Vienna Convention are the estimation of damages and lost profits as stated in article 74 of the Convention[(22)], which may be due to the fact that these matters are too many to be listed[(23)].

The determination of damages should be done on a case by case basis as a reality question. Therefore it is preferable to give the judge or arbitrator the discretion to estimate the value of damages according to the presented case, because the judge or arbitrator is in a position to estimate these damages appropriately according to the national applicable law and in line with the second paragraph of article 7 of the Vienna Convention[(24)].

This approach has its juridical applications, such as in the case where the commercial court in Zurich (Switzerland) pronounced the right of the buyer to proclaim to the vendor all damages of profits lost by the buyer due to violation of the contract according to the text of articles 45 (1)(b) and 74 of the Vienna Convention. On the other hand, the court found that the buyer has no right to proclaim damages due to losses resulting from fluctuations of the interest rate on the currency in which the price should be paid. The court, however, proclaimed that losses related to the currency could be considered damages according to the text of articles 45 (1)(b) and 74 of Vienna convention. The court based its decision on a general principle in the Swiss compensation act which stipulated that compensation for adjourned damages should not be pronounced, unless the value of these damages could be estimated. This would be the case if the vendor did not deliver the goods[(25)].

Third: The determination of exchange rate

A further issue that was not settled by the text of the Convention is the determination of exchange rate. In this regard, it should be pointed out here that there are different and contradicting views about filling the lacunae in the article 78 of the Convention[(26)].Although this article confirmed interest in principle, it does not show how interest rate is to be determined or how it could be estimated if the concerned parties did not agree on this sensitive question [(27)].The reason for the lack of mechanisms for the determination of the interest rate may be ascribed to the disagreement between delegations during the drafting of the Convention. The differences in points of view were not only due to economic and political factors, but also due to religious considerations[(28)] . By and large, these legislations in most Arab and Islamic countries, were derived from the Islamic Sharia which forbids interest because it is considered as usury. These texts are of primary importance in that they relate to the public order in these countries[(29)].

Despite the lack of a specific formula for estimating the interest rate in article 78 of the Vienna convention, some courts still considered this question as settled by the Convention, but only indirectly. On the other hand, some courts considered the estimation of the interest rate as an issue which is not really subject to the provisions of the Vienna Convention. These differing views on the status of interest rate estimation with respect to the Vienna Convention led in turn to differences in solutions regarding the interest rate to be applied. In our point of view, issues that are subject to, but not clearly settled by,the provisions

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([18])About juridical precedents, http://www.uncitral.org/pdf/arabic/clout/CISG-digest-2012-a.pdf.

([19]) John Honnold, "Uniform law for International Sales under the 1980 United Nations Convention", 3rd edition (1999), Kluwer Law International, The Hague,.Available at: http://www.cisg.law.pace.edu/cisg/biblio/arabic72.html, No. 96, p.103.

([20])The question of penal clause was advocated for research a new in the diplomatic conference through discussion of amendment provided by Democratic Germany, whereas the delegate of this state expressed his desire to illustrate in the text of article 79 of convention that the exoneration clause mentioned in this text exonerate the debtor from the penal clause, but this amendment was not accepted. Some scholars deduced that penal clause is regulated by national laws. But other scholars deduced that articles 8, 74 of the convention lead to a conclusion that penal clauses are among the general principles mentioned in the convention.

Witz, Cl., Les premières applications jurisprudentielles du droit uniforme de la vente internationale, L.G.D.J.,1999, No. 79, p. 102, Bruno Zeller, Penalty clauses: Are they governed by the CISG?, Pace University school of law, international law review on line companion, Vol. XXIII, Number 1, winter 2011, p. 7.

([21])Witz, Cl., op. cit., no. 79, p. 102.

([22]) Article 74 of Vienna convention provided that " Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

([23]) John Honnold, uniform law for international sales under the 1980 united Nations convention, ibid., No. 403,p. 445.

([24]) Mohsen Shafeik, The United Nations convention on contracts for the international sale of goods (A Study in the code of international commerce), Dar El Nahada, 1988, note 389; Assyel Baker Gassem, The essential violation of the contract and its effects (a study of contract on international sale of goods), J. Mohakk for Political and Juridical Sciences, Babylon University, 2ed year, no.1, 2010, p.249.

([25])A judgment on the site of Middle East Center for International Commercial Law, Case no.214, 5 Feb.1997, HG950347.

([26])Article 78 of Vienna convention provides that " If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74".

([27])Witz, Cl., op. cit., No. 81, p. 105.

([28]) Christiana Fountoulakis, ibid., p. 19.

([29])Abdel Raziek El Sanhory, El Waset in explaining the new civil law, 2003, para.501, p.882.

of the Convention should be differentiated from issues that were not at all subject to the provisions of the Convention and therefore lie decisively outside the scope of article 7/2 of the the Vienna convention. The former set of issues are settled according to the general principles on which the Convention is based, without resorting to the applicable law in accordance with the rules of the international private law unless these principles are nonexistent. As for the latter issues, which are outside the scope of the Vienna Convention, they should be settled by applying the national law according to the provisions of the private international law without resorting to the general principles of the Convention. The decisions by some courts sought to find solutions to the interest rate question on the basis of the general principles of the Convention, but most courts considered the interest rate issue as lying outside the scope of Convention, and must therefore be subject to national laws according to the provisions of article 7/2 of the Convention[(30)].

Some court decisions and arbitral tribunals sought to fill in these lacunae by resorting to the Unidroit Principles and the principles of the European contract law. These decisions concluded that the method of interest rate determination followed by the Unidroit Principles and the principles of the European contract law are a part of the general principles on which the Vienna convention of (1980) is based, although the provisions of the Convention itself do not include any formula for the determination of the interest rate[(31)].

In this regard, it is noteworthy that the ICC decisions numbered 8128/1995 and 8769/1996 regulated the determination of the interest rate in accordance with the principles of UNIDROIT, ICC allegedly because the provisions of the Convention did not include a direct text in this regard[(32)] . In particular the preamble of the Convention reportedly stipulated that: "These principles could be used to explain or to complete the Uniform law". On another hand, another court confirmed this solution and justified its decision on the grounds that applying these principles would at least make it unnecessary to resort to any national law that may yield outcomes that are inconsistent with the principles provided in article 18 of the Vienna Convention particularly if that law prohibit interest and considers it as usury, as is the case in most Islamic countries[(33)].

On the other hand, and in contrast to this progressive approach which adopts a broad interpretation of the text of the "general principles" of the Convention, other courts and arbitral tribunals did not find in these "general principles" an alternative that could fill in the lacunae alluded to above. These courts opted for applying the national law according to the rules of the international private law as provided in article 7/2 of the convention. This trend garnered the support of the jurisprudence and jurisdiction as the method of the interest rate determination[(34)] .

In agreement with the latter juridical trend, a Swiss court endorsed the Austrian law as the applicable law according to the Swiss law, for determining the interest rate in an international sale contract concluded between two contracting parties [(35)].

In this context, An Argentinean court looking into a dispute over a contract of international sale of goods in May 1991 between a vender from Ohio, U.S.A, and a buyer from Argentina, ruled that the contract is subject to the provisions of the Vienna contract because both the U.S.A and Argentina are signatories to the convention. However, the issues not settled by the text of the Convention would be subject to the law of the USA, the vender's country.This is so by virtue of the law of residence which holds the vender responsible for delivering goods in accordance with the rules of private international law (article 7/2 of Vienna convention)[(36)].

In conclusion, the referral to the national law provided in article 7/2 could be considered as a second grade or complementary referral. This referral is well known in some national laws, such as the first article of the Egyptian civil law which stipulates that this referral can be resorted to only after ensuring that the provisions of the Vienna Convention lack the general principles which regulate the disputes presented before the judge. Consequently the referral is considered as the last resort solution.

Finally, we could conclude that the main difference between the original referral to the national law provided in article 28 of the Convention and the secondary referral provided in article 7/2 of the convention is that the jurisdiction of international commerce in the former referral is not obligated to verify the applicability of the general principles on which the convention is based before applying the national law, but in the latter referral the jurisdiction of international commerce is obligated to do so.

Conclusions

1. The first limit of the unification principle is the direct referral to the national law. That could affect the unified application of the Convention.
2. Article 28 of the Vienna Convention enlarges the role of the national judiciary by open referral to the national law. This represents the price paid by this Convention to satisfy the countries of common law, thus heeding the reservations of these countries against accepting the specific performance for non-monetary obligations.
3. The article 7/2 of the Vienna convention established rules for filling in lacunae which is actually the objective that the Convention is trying to achieve. This article provides that lacunae could be filled in by resorting to national laws that are derived from the rules of international private law.The latter mandates that if the judge or arbitrator does not find in the general principles a suitable solution to fill in lacunae in the provisions of the Convention, the secondary referral should not be adhered to except as a last resort solution.
4. Articles 46 and 62 of the convention did not contain any indication that article 28 is an exception from their provisions. This is a defect in the formulation of these articles that should be rectified in constructing an international convention on international sales.
5. Although the Vienna convention achieved a remarkable

(30)About juridical precedents, http://www.uncitral.org/pdf/arabic/clout/CISG-digest-2012-a.pdf

(31) Hossam El Dein El Sagheir, Interpretation of the United Nations convention on contracts for the international sale of goods, 2001, para 193, pp.174-175.

(32) Amyen Doas, Scope of application of UNIDROIT for 2004 on contracts of international commerce, Journal of Law, Kuwait University, 32 (2), 2008, p.436.

(33)Amyen Doas, Scope of application of UNIDROIT, ibid., p.436.

(34)Christiana Fountoulakis, ibid., p. 19, Cl. Witz, op. cit., No. 81, p. 105.

(35)Case no.935 Swiss, Commercial court of Zürich HG050340, 25 June 2007; C/ABSTRACTS/93, *A*/ CN. 9/SER.

(36) Juzgado Nacional deprimera Instancia en 10 commercial No. 7 secretaria NO. 14.

balance between contradicting interests, namely those of the vender and the buyer as well as those of developed and developing countries, and among varied legal systems all over the world, which might flourish international commerce, this success in fact turns on the desire to apply the provisions of the convention in unified form and extending the scope of their application among the countries that have ratified them. To this end, the courts in countries that are signatories to the convention must practice some measure of discretion in settling disputes related to contracts of international sale, given the special nature of these contracts which differ from contracts that are subject to national laws.

6. It could be said that the provisions of the convention should be applied only in of the international sale of goods. Another point that needs emphasis here is that the Vienna convention was borne out of the national laws and hence it cannot be denied that the Vienna convention was affected by the concepts of different national laws. Consequently, the texts of the Vienna convention should be an off-shoot of the original ideas of these laws and not a mere repetition of the provisions of these laws.
7. Finally, it should be noted here that the Vienna convention is potentially rich in terms of the general principles which could be derived from its own texts. The experts who formulated this convention have worked out some of these general principles, but it was left to both the jurisdiction and jurisprudence institutions to continue to work out the other general principles. These general principles could be derived from the juridical precedents of courts and arbitral tribunals all over the world in countries which have ratified the terms of the convention. Indeed, given the abundance of these precedents in well-established supreme courts such as the court of cassation in France, Egypt and Kuwait, this considerably facilitates the unified application of the convention.

References

1. Abdel Raziek El Sanhory, El Waset in explaining the new civil law, 2003.
2. Ahmad El Sayed Labib. The premature violating contract of international sale of goods, A study in the Vienna convention 1980, J. Legal and Economic Researches, 2014, 55.
3. Ahmed Ali El Amawi. The specific performance in the United Nations conventions for contracts for the international sale of goods (Vienna Convention M Sc Thesis, Faculty of El Yarmouk University, 1980-2016, p. H.
4. Amy Kastely H. The Right to Require Performance in International sales: Towards International Interpretation of the Vienna convention", (1988), 63 Washington Law Review, at web site http://cisgw3.law.pace.edu /cisg /biblio/kastely1.html**.**, Ayela.
5. Amyen Doas. Scope of application of UNIDROIT for 2004 on contracts of international commerce, Journal of Law, Kuwait University. 2008; 32:2.
6. Assyel Baker Gassem, The essential violation of the contract and its effects (a study of contract on international sale of goods), J. Mohakk for Political and Juridical Sciences, Babylon University, 2ed year, no.1, 2010.
7. Avery Katz W. Remedies for Breach of contract under CISG, International Review of Law and Economics, 25, 2005.
8. Bruno Zeller. Penalty clauses: Are they governed by the CISG?, Pace University school of law, international law review on line companion, Vol. XXIII, Number 1, winter, 2011.
9. Christiana Fountoulakis. Remedies for breach of contract under the United Nations Convention on the International Sale of Goods, ERA Forum. 2011; 12:1.
10. Christophe. L'harmonisation du droit de la vente internationale: Necessite et realite, Mémoire de maîtrise, Universite d' Ottawa, Canada, 1993.
11. Ezz Al Dynasory-Abdel Hameid Al Shawarby, civil liability in the light of jurisprudence and jurisdiction.
12. Fritz Enderline & Dietrich Maskow "International sales law, U. N. convention on contracts for the international sale of goods, Oceana publications, 1992.
13. H. Van Goutte, et P. Wautele, Obligations des parties et sanctions des obligations dans La CVIM, RDAI, n°3/4, 2001.
14. Harry M. Flechtner, Buyers' remedies in general and Buyers' performance – oriented remedies, Proceedings of the UNCITRAL – VIAC Joint conference, 15-16 March 2005, Vienna: Celebrating Success: 25 years United Nation Convention on contracts for the International Sale of goods (CISG), the Journal of Law and Commerce, Volume 25, Issue 1, Fall 2005.
15. Hazyem Bauiomy El Masry, The modern mechanisms in the international commerce, UNICTRAL contracts, an analytical study, Dar El Nahda Al Arabia, 2010.
16. Hossam El Dein El Sagheir, Interpretation of the United Nations convention on contracts for the international sale of goods, 2001.
17. Huet, J., Vente internationale de marchandises, Jur. Class. Commercial, Fas. 474, 1995.
18. Jaber, H., The remedies regime under the United Nations convention on contracts for the international sale of goods, Ph. D Thesis, University of Ottawa, 1990.
19. Jianming Shen SJD. The remedy of requiring performance under the CISG and the relevance of domestic rules, Arizona Journal of International and Comparative Law, Fall, 10/1996, Volume1.
20. John Honnold. Uniform law for International Sales under the 1980 United Nations Convention", 3rd edition (1999), Kluwer Law International, The Hague,.Available at: http://www.cisg.law.pace.edu/ cisg/biblio/arabic74.html.
21. Mohsen Shafeik. The United Nations convention on contracts for the international sale of goods (A Study in the code of international commerce), Dar El Nahada, 1988.
22. Peter Huber, CISG -- The Structure of Remedies, Presentation at seminar: "The Convention on the International Sale of Goods. The 25th Anniversary: Its Impact in the Past; Its Role in The Future", German Society of Comparative Law, Private Law Division, Conference 2005, 22-24 September 2005, Wurzburg.
23. Peter Schlechtriem, "Uniform Sales Law – The UN-Convention on Contracts for the International Sale of Goods", Manz, Vienna, 1986.Available at: http://www.cisg.law.pace.edu

/cisg/biblio/schlechtriem.html.
24. Pierre Garello, The breach of contract in French law: between safety of expectations and efficiency, International Review of Law and Economics 22 (2003).
25. Sarwat Habeeb: International commercial law, its expand development from the fifties till now, procedures of the silver book, Faculty of Law, El Mansoura University, 1999.
26. Shafiek, M., The United Nations convention on contracts for the international sale of goods (A Study in the International commercial law), Dar El Nahda, 1998.
27. V. Heuzé, Traite des contrats, la vente internationale de marchandises, L.G.D.J., Delta, 2001.
28. Witz, Cl., Les premières applications jurisprudentielles du droit uniforme de la vente internationale, L.G.D.J., 1999.
29. About juridical precedents, http://www.uncitral.org/pdf/arabic/clout/CISG-digest-2012-a.pdf
30. -Case no.935 Swiss, Commercial court of Zürich HG050340, 25 June 2007; C/ABSTRACTS/93, *A*/ CN. 9/SER.
31. A judgment on the site of Middle East Center for International Commercial Law, Case no.214, 5 Feb.1997, HG950347. Available at website: https://www.cisg.law.pace.edu/cisgarabic/middleast/index.html.