



## The CISG and global trade: Regulating commercial transactions under private international law

Kalyani Jayasekera

Senior lecturer, Department of Public Law, Faculty of Law, General Sir John Kotelawala Defence University, Ratmalana, Sri Lanka

### Abstract

The United Nations Convention on Contracts for the International Sale of Goods (CISG) plays a pivotal role in shaping the legal landscape of international commercial transactions within the broader framework of private international law. As a cornerstone instrument, the CISG seeks to harmonize and unify the substantive rules governing cross-border sales contracts, thereby reducing legal uncertainty and fostering greater efficiency and predictability in global trade. Importantly, the CISG functions as a codified set of international legal norms that reflect customary commercial practices, helping to bridge the differences between civil law and common law traditions. This article critically examines the significance of the CISG in facilitating international commerce by providing a consistent and adaptable legal framework applicable across diverse legal systems. It addresses how the Convention has been instrumental in minimizing legal controversies and disputes traditionally associated with private international law, such as jurisdictional conflicts and choice of law complexities. Despite its wide adoption and recognized value to legal practitioners, scholars, and business entities, the CISG continues to face challenges that limit its broader effectiveness. These include its complex and sometimes ambiguous legal language, the limited scope of its application-particularly in relation to consumer contracts and services-and the uneven implementation and interpretation among contracting states. Furthermore, the rapid development of digital technologies and the evolving nature of international trade create additional pressures on the Convention to remain current and responsive. The study employs a doctrinal research methodology, drawing on primary legal sources such as the text of the CISG, case law, and international legal instruments, as well as secondary sources including academic commentary and comparative legal analysis. Through this approach, the article identifies both theoretical and practical shortcomings of the CISG and proposes potential pathways for reform. It emphasizes the need for enhanced international cooperation and the modernization of legal instruments to align with the dynamic nature of global commerce. Ultimately, the article contributes to the broader discourse on private international law by arguing that while the CISG has made significant strides in harmonizing international sales law, continued efforts are necessary to address its limitations and to ensure its sustained relevance in regulating complex transnational commercial relationships in the 21st century.

**Keywords:** commercial transactions, trade, contracts, sale of goods

### Introduction

The United Nations Convention on Contracts for the International Sale of Goods (CISG) supports as a cornerstone in the regulation of international trade, offering a unified legal framework designed to facilitate cross-border transactions. As an instrument of global commerce, the CISG tries to harmonize sales laws, thereby reducing legal uncertainties and fostering smoother trade relationships between businesses across different jurisdictions. Despite its significant role, the CISG faces several issues that hinder its full potential. Some of the challenges are its intricate legal language, limited scope of application, and uneven implementation across various legal systems.

### The CISG'S Impact on the Harmonization of International Sales Law

The CISG explains a standardized legal framework that simplifies international trade by harmonizing sales laws across more than 90 countries. By offering uniform rules for cross-border transactions, the CISG tries to reduce the complexity and unpredictability associated with differing national laws, making it easier for businesses and legal practitioners to navigate international sales contracts. This widespread adoption by major trading societies has significantly contributed to the global harmonization of

sales law. The CISG offers parties the flexibility to tailor their contracts by excluding specific provisions or utilizing different laws if needed, addressing the varied requirements of global trade while upholding legal consistency. Even in countries that haven't signed the CISG, its principles have shaped local legal changes, contributing to harmonization. Additionally, the CISG establishes a reliable structure for resolving disputes, thereby diminishing legal expenses and promoting friendly resolutions. Its widespread legal analysis and frequent mention in court rulings bolster its function in advocating for uniform understanding and implementation of international sales law.

### Codification of Private International Law into The CISG

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is widely recognized as one of the most significant achievements in the codification of private international law. Its primary objective is to provide a uniform legal framework for international sales transactions, thereby reducing the uncertainties that arise due to the diversity of national contract laws. Traditionally, when parties from different jurisdictions entered into a commercial contract, they had to determine the applicable national law using conflict-of-laws (or choice of law) rules. These rules varied widely and often led to complex legal

disputes and unpredictability. The CISG responds to this problem by offering a set of substantive legal rules that automatically apply to cross-border contracts for the sale of goods under specified conditions, effectively harmonizing the core aspects of contract law at the international level.

Under Article 1 of the CISG, the Convention applies to contracts for the sale of goods between parties whose places of business are located in different States, provided that either both States are Contracting Parties (Article 1(1)(a)) or the rules of private international law point to the application of the law of a Contracting State (Article 1(1)(b)). This dual application clause ensures that the CISG has broad international applicability, especially in scenarios where parties have not expressly chosen the applicable law. For example, imagine a Sri Lankan clothing manufacturer entering into a sales agreement with a German retailer. If both Sri Lanka and Germany are parties to the CISG, the Convention will automatically govern the contract unless expressly excluded. Even if one of the countries is not a party, the CISG may still apply if the choice-of-law rules of the relevant jurisdiction lead to the application of a CISG Contracting State's law.

A key feature of the CISG is the recognition of party autonomy, enshrined in Article 6. This provision allows parties to exclude the CISG in whole or in part, or to vary its provisions by mutual agreement. This means that while the CISG serves as a default framework, it does not override the freedom of contract. For instance, if the parties in the earlier example prefer to apply English law instead of the CISG, they can explicitly state this in their agreement. This flexibility is a cornerstone of private international law, as it respects the sovereignty of the parties to govern their contractual relationships according to their preferences.

The CISG also harmonizes the rules governing the formation of contracts. Part II of the Convention, encompassing Articles 14 to 24, sets out detailed provisions on offer and acceptance. These rules reduce the reliance on national legal doctrines that often differ significantly. For example, under Article 14, an offer is valid if it is sufficiently definite and indicates the intention of the offeror to be bound. This contrasts with jurisdictions such as Sri Lanka or India, where additional formalities or interpretations may be required under local contract law. Consider a situation where an exporter in Italy sends a price list and a product catalog to a buyer in China. If the communication clearly shows an intention to be bound upon acceptance, and specifies the quantity and price of the goods, it could be treated as a valid offer under the CISG. The buyer's acceptance, once communicated, forms a binding contract without needing to analyze the transaction under differing national laws.

In Part III (Articles 25 to 88), the CISG comprehensively codifies the obligations of sellers and buyers and provides a range of remedies in the event of breach. Articles 30 to 52 outline the seller's obligations, which include delivering goods that conform to the contract in terms of quantity, quality, and description, and providing necessary documentation. Articles 53 to 65 define the buyer's obligations, including payment of the purchase price and taking delivery of the goods. For instance, a French seller shipping precision equipment to a buyer in Japan must ensure the goods meet the specifications agreed upon, and the Japanese buyer must make timely payment and accept delivery as required under the contract. If the equipment

delivered is defective or non-conforming, the buyer has various remedies under the CISG, such as requiring delivery of substitute goods, price reduction, or even contract avoidance under Articles 45–52.

The CISG also offers a structured approach to remedies and allocation of risks. Articles 61–65 address the seller's remedies in case the buyer fails to perform their obligations, while Articles 66–70 codify the rules on the passing of risk. For example, if goods are damaged in transit, the point at which the risk passed to the buyer (often determined by the terms of delivery such as FOB or CIF) will dictate who bears the loss. In addition, Articles 71–73 cover anticipatory breach, allowing a party to suspend performance if it becomes apparent that the other party will not perform a substantial part of their obligations. Article 79 provides an exemption from liability for non-performance due to an impediment beyond a party's control, similar to a force majeure clause. Consider a scenario in which a pandemic outbreak disrupts the supply chain of a raw material supplier in Brazil. If the disruption meets the criteria under Article 79—being unforeseeable, unavoidable, and beyond control—the seller may be exempted from liability for non-delivery.

Importantly, the CISG promotes a neutral and predictable legal environment for international trade. The Convention is not based on the legal traditions of any single jurisdiction but instead reflects a compromise between civil law and common law systems. This neutrality fosters legal certainty and is especially beneficial to small and medium-sized enterprises (SMEs) engaging in global trade who may not have the resources to navigate complex foreign legal systems.

Articles 7 and 8 of the CISG are crucial for interpretation and gap-filling. Article 7(1) emphasizes that the Convention must be interpreted with regard to its international character and the need for uniformity in its application. Article 7(2) provides that any issues not expressly settled by the CISG should be resolved by applying the general principles on which the Convention is based, or, in the absence of such principles, by applying the applicable law as determined under the relevant rules of private international law. For example, if a dispute arises concerning a contractual obligation not explicitly covered by the CISG—such as electronic signature validity—the tribunal may first seek general CISG principles (e.g., good faith in international trade) or turn to national law via private international law rules to resolve the matter.

In conclusion, the CISG is not merely a treaty but a codified embodiment of private international law principles tailored for global commerce. By offering a uniform, flexible, and balanced legal regime, it significantly enhances legal predictability and efficiency in cross-border sales contracts. The CISG's structure and content reflect a deliberate effort to accommodate diverse legal systems while promoting harmonization and fairness in international trade.

### **The CISG's Role in Facilitating Global Trade and Reducing Legal Barriers**

By providing a standardized legal framework for international sales contracts the CISG plays a crucial role in global commerce, reducing legal barriers and uncertainties. This uniformity allows businesses to engage in cross-border transactions with greater confidence, aware they operate under consistent rules. Countries that adopt the CISG

demonstrate their obligation to fair and efficient trade, which helps businesses access foreign markets more easily. The CISG also decreases transaction costs by eliminating the need to negotiate complex legal terms, offering a reliable framework that saves time and legal fees. By ensuring legal certainty and predictability, the CISG encourages trade growth, making it safer for businesses to enter new markets. Additionally, the CISG provides a dependable mechanism for dispute resolution, ensuring contracts are enforceable across multiple jurisdictions, which builds trust between trading partners. For example, a Brazilian company selling to a Chinese buyer can rely on the CISG rather than navigating Brazilian or Chinese laws, reducing misunderstandings and fostering smoother transactions.

### **Addressing the Challenges of CISG in Modern International Trade**

The CISG, while advantage for harmonizing international sales law, faces challenges such as complexity, limited scope, and inconsistent application. Its legal provisions can be difficult to interpret, especially for smaller businesses or those without specialized legal resources. The diversity of legal systems—civil law, common law, and mixed systems—across CISG member countries can also lead to varied interpretations, complicating its uniform application. Additionally, the CISG does not discuss all aspects of sales contracts. It has not given attention to discuss issues like contract validity, property rights, and liability for personal injury, requiring parties to rely on domestic laws or other conventions. The CISG's aims on business-to-business transactions, excluding consumer sales and intangible goods like intellectual property, further limits its scope and relevance in modern commerce.

Inconsistent application by courts in different countries is another significant issue. Judges may interpret the same provisions differently according to them, leading to unpredictable legal outcomes. The CISG's flexibility of application of legal provisions, allowing parties to opt out or selectively apply its provisions, can result in fragmented legal outcomes, particularly in multi-jurisdictional disputes. Moreover, a lack of awareness and understanding of the CISG in some countries contributes to its different application and the unpredictability it aims to reduce.

### **Maximize the CISG's Potential to Reduce Legal Uncertainties**

Maximizing the CISG's potential to reduce legal uncertainties in international trade illustrates several key strategies. Providing training for judges, arbitrators, and legal practitioners ensures consistent interpretation across jurisdictions, while comprehensive databases like CISG-online and UNCITRAL's CLOUT can help align global practices by providing accessible case law references. Developing harmonized commentaries and guidelines further decreases interpretive discrepancies.

Introducing the CISG into educational curricula and professional training programs familiarizes future lawyers, business leaders, and negotiators with its provisions, encouraging broader and correct application. Outreach initiatives targeting small and medium-sized enterprises (SMEs), along with simple guidelines, can make the CISG more accessible, reducing its complexity. Encouraging non-signatory countries, such as the UK and India, to adopt the

CISG would increase global uniformity in sales law. To preserve the CISG's harmonizing effect, legal professionals should be advised to retain it as the default framework unless there are compelling reasons to remove. Industry-specific adaptations and complementary international instruments, standards can fill gaps where the CISG does not apply, ensuring broader legal coverage. Periodic updates to the CISG, addressing emerging issues like digital goods and e-commerce, would keep the convention relevant. Promoting arbitration and mediation with specific references to the CISG, along with model contract clauses, can further reduce legal uncertainties in international trade.

### **Optimizing the CISG's Impact on International Trade**

Maximizing the CISG's potential to promote smoother international transactions needs a comprehensive approach that increase the convention's accessibility, consistency, and relevance. This includes specialized training for key players in international trade, ensuring they understand and apply the CISG consistently, which minimise disputes and misunderstandings. Integrating the CISG into educational curricula further ensures that future professionals are well-prepared to refer the convention effectively, promoting smoother transactions. Access to comprehensive databases such as CISG-online and UNCITRAL's CLOUT is essential for aligning interpretations with global practices, reducing the risk of divergent outcomes. Clear, authoritative commentaries and guidelines on the CISG can also assist to ensure consistent application across jurisdictions, supporting smoother cross-border transactions by providing a predictable legal framework. Small and medium-sized enterprises (SMEs) can benefit from targeted outreach and simplified resources like checklists and guides, which construct the CISG more accessible and easier to navigate. This encourages broader use of the convention and reduces legal complexities in international trade.

By offering a uniform legal foundation for international sales contracts and lowering legal obstacles and ambiguities, the CISG is essential to world trade. Because of this uniformity, businesses may operate under consistent standards and conduct cross-border transactions with greater trust. Adherence to the CISG by nations signifies their dedication to equitable and productive trade, facilitating easier access to overseas markets for enterprises. By providing a dependable framework that saves time and money on legal bills, the CISG also lowers transaction costs by doing away with the need to negotiate complicated legal issues.

### **Conclusion**

The United Nations Convention on Contracts for the International Sale of Goods (CISG) plays a pivotal role in the facilitation of international trade by offering a standardized legal framework that reduces complexities and uncertainties. However, to fully realize its potential, it is essential to address the challenges that hinder its effectiveness, such as its complexity, limited scope, and inconsistent application across different legal systems. By enhancing training for legal professionals, expanding the CISG's integration into educational programs, and promoting the adoption of the convention by non-signatory countries, the CISG can be made more accessible and consistently applied. Additionally, targeted outreach to small and medium-sized enterprises, the development of

industry-specific adaptations, and the use of arbitration and mediation referencing the CISG can further smooth international transactions. By implementing these strategies, the CISG can significantly enhance the predictability and efficiency of global commerce, contributing to a more unified and accessible international trading environment.

## Reference

1. Alejandro Garro. The CISG in Latin America: Successes and Challenges. *CISG Database*,2021:1:1–1.
2. Andersen CB, Schroeter UG (eds). *Sharing International Commercial Law Across National Boundaries: Festschrift for Albert H Kritzer on the Occasion of his Eightieth Birthday*. Wildy, Simmonds & Hill Publishing, 2008.
3. Andersen CB. Furthering the Uniform Application of the CISG: Sources of Law on the Internet. *Pace International Law Review*,1998:10(1):403–403.
4. Bridge MA. Law for International Sales. *Hong Kong Law Journal*,2007:37(2):17–17.
5. Bridge M. *The International Sale of Goods*. 4th edn, Oxford University Press, 2017.
6. Brunner C, Gottlieb B. *Commentary on the UN Sales Law (CISG)*. Kluwer Law International, 2019.
7. Camilla Baasch Andersen. The CISG in International Arbitration. *CISG Advisory Council*,2020:1:1–1.
8. DiMatteo LA. *International Sales Law: A Critical Analysis of CISG Jurisprudence*. Cambridge University Press, 2005.
9. DiMatteo LA. The CISG and the Presumption of Enforceability: Unintended Contractual Liability in International Business Dealings. *Yale Journal of International Law*,2014:22(1):111–111.
10. Felemegas J. The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation. *Pace International Law Review*,2000:9(1):171–171.
11. Ferrari F. CISG Case Law: A New Challenge for Interpreters? *Journal of Law and Commerce*,2003:17(2):245–245.
12. Ferrari F. *Contracts for the International Sale of Goods: Applicability and Applications of the 1980 United Nations Sales Convention*. Martinus Nijhoff,2012.
13. Flechtner HM. The CISG's Impact on International Unification Efforts: The UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law. *Journal of Law and Commerce*,2001:25(1):111–111.
14. Frank Diedrich. Maintaining Uniformity in International Sales Law: The Role of the CISG. *Journal of Business Law*,2020:1:1–1.
15. Garro A. The U.N. Sales Convention in the Americas: Recent Developments. *Journal of Law and Commerce*,1996:17:219–219.
16. Gillette CP, Walt SD. *The UN Convention on Contracts for the International Sale of Goods: Theory and Practice*. 2nd edn, Cambridge University Press, 2016.
17. Honnold JO. *Uniform Law for International Sales under the 1980 United Nations Convention*. 4th edn, Kluwer Law International, 2009.
18. Ingeborg Schwenzer. *Global Sales Law – The CISG Revisited*. *CISG-online*,2021:1:1–1.
19. John Felemegas. The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and the Uniform Interpretation of the CISG. *Pace Law School Institute of International Commercial Law*,2019:1:1–1.
20. Larry A DiMatteo. CISG as a Catalyst for the Harmonization of International Sales Law. *The University of Florida Levin College of Law*,2017:1:1–1.
21. Lisa Spagnolo. Green Eggs and Ham: The CISG, Path Dependence, and the Behavioural Economics of Lawyers' Choices of Law in International Sales Contracts. *Slaw*,2019:1:1–1.
22. Lookofsky J. Loose Ends and Contorts in International Sales: Problems in the Harmonization of Private Law Rules. *American Journal of Comparative Law*,1991:39:403–403.
23. Michael Bridge. A Lawyer's Perspective on the CISG. *Lex Mercatoria*,2021:1:1–1.
24. Petra Butler. The CISG and Small and Medium-Sized Enterprises: A Worthwhile Trade-Off? *Victoria University of Wellington Legal Research Papers*,2018:1:1–1.
25. Schlechtriem P, Butler P. *UN Law on International Sales: The UN Convention on the International Sale of Goods*. Springer, 2009.
26. Schlechtriem P. Requirements of Application and Sphere of Applicability of the CISG. *Victoria University of Wellington Law Review*,2005:36(4):781–781.
27. Schwenzer I (ed). *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)*. 4th edn, Oxford University Press, 2016.
28. Zeller B. *CISG and the Unification of International Trade Law*. Routledge, 2007.