

U N I D R O I T

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
=====

ORGANISATION OF A UNIDROIT INFORMATION SYSTEM OR DATA BASE ON
UNIFORM LAW

Meeting of Experts on the 1956 Geneva Convention
on the Contract for the International Carriage of Goods by Road (CMR)
Brussels, 26 to 27 September 2000
(Secretariat memorandum)

Rome, August 2000

At the present meeting the Group of Experts on the *1956 Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR)* is called upon to discuss the manner in which the UNILAW data base should be able to respond to the needs of prospective users as regards the CMR, and also to examine the proposals put forward by the Secretariat in this respect. It should be borne in mind that the intention of the UNIDROIT Governing Council is that UNILAW should become the point of reference for the subject-matters dealt with as regards information available. UNILAW should therefore be a supple instrument that facilitates research to the greatest extent possible and that caters for the needs of a variety of different users: practising lawyers, judges and arbitrators, legislators, operators of the different business sectors involved, and of course academics.

Two aspects need to be examined, which, although closely linked, are easiest considered separately. The first is the type of information that a user of the data base would want to be able to obtain by consulting it, the second the structure of the data base from the technical point of view (the links between the different sections, search options, etc.). So as to facilitate consideration by the Group, the technical structure will be considered first, after which its application to the CMR will be considered. Prior to that, however, a brief reminder of how the UNILAW data base was originally envisaged is in order.

1. UNILAW AS ORIGINALLY ENVISAGED

The prospectus on the UNILAW data base first prepared by the Secretariat in 1995/1996 illustrated a number of conclusions reached following the surveys conducted towards the end of 1994 to ascertain the interest of different target groups in a uniform law data base.¹

The surveys conducted among potential users confirmed that the following information should be made available by the data base:

- the text of international conventions and related instruments (protocols)
- official explanatory report(s)
- the status of implementation with reservations
- national implementing legislation and legislation deriving from the convention
- national case law
- case law of international or supranational courts of justice (if any)
- case law of arbitral tribunals (where possible) and
- bibliographical references.

UNILAW is intended to be an "intelligent" data base. It is intended to obviate the inconveniences of indiscriminate key-word systems by making the information retrievable by

¹ In 1994 the UNIDROIT Secretariat conducted surveys among four categories of potential users of the data base (members of the International Bar Association, international organisations, arbitral institutes and tribunals and chambers of commerce and industry) to determine the interest for a data base such as the one envisaged. The results of the survey are analysed in Study LXIX – Doc. 2, UNIDROIT 1995.

legal concept. The materials should therefore be analysed by experts in the field who will be responsible for the extrapolation of these concepts from the instruments. It is intended that the information contained in the data base on a specific subject will be accessible through these key-words in addition to being accessible through more simple and obvious classifications such as the date of the decision rendered or the name of the court it was rendered by.

The texts of the international instruments will be made available in full, in English and French. Where available, also the official Explanatory Reports will be made available in English and French. Links will be provided to the relevant articles of the Conventions.

The decisions of courts will be made available in summary form in English and French, with the original text accessible where possible in full.

The bibliographical references will be in the original language, classified by subject-matter and searchable also by author, date of publication, etc.

The possibility to access one set of information directly while consulting another, for example accessing the full text of a decision while consulting the text of the convention or the bibliographical references, will be provided for.

2. TECHNICAL STRUCTURE OF THE DATA BASE

For any user the most important feature of a data base is the way in which the material it contains may be retrieved, in other words the search possibilities that have been provided for. No matter how important the collection of materials contained in the data base, if the search possibilities do not permit a user to arrive at the material it will be of little use. There are a number of possible methods, and these are often available in combination. The methods originally envisaged for UNILAW were the following:

- ◆ search by article of the convention
- ◆ search by date and number of the legislative instrument
- ◆ search by the date of a judgment
- ◆ search by the name of the court
- ◆ search by the names of the parties to a case
- ◆ search by key-words
- ◆ search by issues and
- ◆ full text search

A data base that already exists and that is similar in conception to the UNILAW data base is the UNILEX data base created by the *Centre for Comparative and Foreign Law Studies* directed by M.J. Bonell and set up as a joint initiative by UNIDROIT, the University of Rome I, and the Italian National Research Council (CNR). At present the UNILEX data base

only deals with the *1980 United Nations Convention on Contracts for the International Sale of Goods (CISG)* and the *UNIDROIT Principles of International Commercial Contracts*. The Secretary-General of UNIDROIT and Mr Bonell have agreed that, in view of the similarity between the projects and the close ties between the institutions that promote them, UNIDROIT and the Centre should advance together, and that therefore the UNILEX data base, which already exists (albeit not in Internet-compatible form), should serve as the basis for future developments of both UNILEX and UNILAW. The UNILEX data base was however created for CISG and is therefore eminently suited to the needs of that particular instrument. As each and every subject-matter has its particular needs, modifications will per force have to be made to cover the needs and requirements of the subject at hand, currently Road Transport in general and the CMR in particular. It is therefore necessary to examine the UNILEX as it presently exists from the point of view of the needs of the CMR and to determine whether its present characteristics are suited to those needs. In this process it should however be borne in mind that a number of the modifications proposed may be covered by the functions of the browser through which a user would access the data base.

This section of the document therefore illustrates the different search possibilities and links that exist in the present UNILEX data base, and makes a few suggestions for modification.

I. THE OPENING OF THE DATA BASE

The UNILEX data base opens with the "Select Instrument" option:

Select Instrument

United Nations Convention on Contracts for the International sale of Goods – CISG

UNIDROIT Principles of International Commercial Contracts

One feature which needs to be added is an "Exit" option already at this stage. Furthermore, Road Transport is but one of the many sections that the UNILAW data base will comprise once it becomes operational. The first option will therefore need to be the selection of the subject-matter (Transport, Intellectual Property, Cultural Property, etc.), followed by a selection of the instrument desired.

II. TYPE OF INFORMATION

Once the Instrument has been selected, UNILEX passes to a first selection of the type of information desired:

Instrument	Cases
Info on Database	Select by <u>D</u> ate
Text of Instrument	Select by <u>C</u> ountry
<u>S</u> tatus of Instrument	Select by <u>A</u> rticles
Subjects	Bibliography
Select by specific term	Select by <u>A</u> uthor
Select by subject <u>h</u> eading	Select by <u>A</u> rticle
	Select by <u>A</u> rea
	<input type="button" value="Select Instrument"/>
<hr/>	
Current Instrument: CISG	Issue September 1999

III. INFORMATION ON THE DATA BASE

The "Info on Database" option opens the following small window:

Unilex up to September 1999 <input type="button" value="X"/>	
Cases	367
Bibliographic References	1,354

IV. TEXT OF INSTRUMENT

The "Text of Instrument" option opens the following window:

Text of Instrument <input type="button" value="X"/>	
Article: <input type="text"/>	<input type="button" value="PRIOR"/> <input type="button" value="NEXT"/> <input type="button" value="PRINT"/>
<hr/>	
(Text of the Article)	
<hr/>	
CISG	

At present, no possibility exists to view the text of the Convention in its entirety, and this possibility should be provided for, as should the possibility to scroll the text. Furthermore, it should be possible to print the text of the Convention in its entirety. The “Print” option goes first to a preview of the page with the text as it will print, after which a second command to print must be given.

V. STATUS OF INSTRUMENT

The option “Status of Instrument” opens the following window:

States Parties to the Instrument		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	
Search <input type="text"/>		Signature <input type="text"/>	
		Ratification, Approval, Acceptance, Accession <input type="text"/>	
		Entry into force <input type="text"/>	
Country		Reservations	
CISG	Total number:		

The “Country” box lists the countries that are parties to the convention. As they are selected, the reservation they have made (if any) appears in the “Reservations” box.

At present, it is only possible to search by country. The possibility to search by article number should also be provided for, as a user might want to find out which countries have made reservations to a particular article. Furthermore, a distinction should be made between the categories “Ratification”, “Approval”, “Acceptance” and “Accession”. A full list of the parties to the convention, with an indication that they have made one or more reservations, should be made available and should be printable. In general, it should be possible to print the information that appears on screen, which it at present is not possible to do. A link should be provided to the ratification tables relating to successive instruments, such as protocols that modify the convention, as the parties often are different and a user might need to find out quickly and easily what countries are parties to what instrument. Furthermore, annotations should be possible, for example to indicate successor States.

VI. SUBJECT SELECTED BY SPECIFIC TERM

The option "Select by Specific Term" opens the following window:

Analytical Index □ □ ×	
Search for <input type="text"/>	<input type="button" value="Search!"/>
insert AND between each term to find any of the terms, or insert brackets to find the exact pt	
	Articles
CISG	

A "Search" leads to the main list of issues with the word searched for highlighted. As the cursor progresses down the list of issues, the number of the articles of the convention that are linked to that particular issue appears on the right hand side of the screen. Clicking on the number of the article leads to the article screen with the text of the article and the connected issues.

At present a search for a term will lead to the list of issues that have been extrapolated in an analysis of the text of the convention. The cursor stops at the first hit, with the consequence that the list of issues must be scrolled down to find the others. Furthermore, also partial hits are highlighted, such as the "for" in the word "conformity" when a search is made for "liability for". The possibility of only the hits being listed one after the other should be examined, with a view to eliciting whether or not listing them out of context would be practicable.

VII. SUBJECT SELECTED BY SUBJECT HEADING

The "Select by Subject Heading" option opens the following window:

Analytical Index □ □ ×	
Subjects	<input type="button" value="PRINT"/>
	Articles
CISG	

The subjects that are listed are the main headings of the Issues list, each of which is expandable at will. When they are expanded and a specific issue thus expanded is highlighted, the relevant article appears in the "Articles" box on the right. The "Print" option leads to a preview of the entire list of issues, with all the headings and sub-headings (see Annex 1). The "Preview" window is the following:

Print Preview ×	
⏪ ⏩ First Prior Next Last Zoom Print	
Page 1 of 17	Completed

When, however, the number of the relevant article that appears in the "Article" box is clicked, this leads to the window with the text of the article and the related issues. The "Print" option that appears at this point leads to the following window:

Print Article ✖	
Article options	PRINT
<input type="checkbox"/> Text of article	
<input type="checkbox"/> Issues	
<input type="checkbox"/> With links to cases	
<input type="checkbox"/> Cases	
<input type="checkbox"/> Keywords	
<input type="checkbox"/> Abstract	
<input type="checkbox"/> Full text	
<input type="checkbox"/> Sources	
<input type="checkbox"/> Related Articles	
<input type="checkbox"/> Bibliography	
<input type="checkbox"/> Publisher	
<input type="checkbox"/> Bibliographic Areas	
<input type="checkbox"/> Related Articles	

Depending on what options are selected, the information will be printed. Prior to printing, a preview will be presented (see Annexes 2 – 6).

It should be noted that at present it is not possible to print the full text of the convention, and that this option should be provided for. Nor is it possible to print the issues identified for all the articles, they must be printed one at a time, and again this is an option that should be provided for. As regards the cases, the print preview shows only the case selected, but all the cases are printed, not just the one selected. This is however no doubt a bug that can easily be amended, also because the bibliography option works correctly: if one is selected, just that one is printed and not all. Furthermore, the pages printed should always indicate to what they refer.

VIII. CASES SELECTED BY DATE

The option “Cases – Select by Date” opens the following window:

Cases of article X by date ☐☐✖		
Search	<input type="text"/>	Print
Insert the date in the following format: yyyyymmdd; e.g., 19980318 means 18 March 1998		
Date	Country	Court
CISG	Total cases:	

IX. CASES SELECTED BY COUNTRY

The option “Cases - Select by Country” opens the following window:

Cases of article X by country □□✕		
Search <input type="text"/>		<input type="button" value="Print"/>
Date	Country	Court
CISG	Total cases:	

X. CASES SELECTED BY ARTICLE

The option “Cases - Select by Articles” opens the following window:

Article <input type="text"/> □□✕		
Article: <input type="text"/>	<input type="button" value="PRIOR"/>	<input type="button" value="NEXT"/>
<input type="button" value="ALL CASES"/> <input type="button" value="BIBLIOGRAPHY"/> <input type="button" value="PRINT"/>		
(Text of the Article)		
<input type="button" value="Cases by Issue"/>		<input type="button" value="Cross Refs"/>
(List of Issues identified for the Article)		
CISG	Issue Cases:	Issue Cross References

The options “Prior” and “Next” lead to the prior or the following article.

The option “All Cases” leads to the choice “All cases by country” or “All cases by Date”. When the first of these is selected the following window, which to all intents and purposes is identical with the window for “Cases – Select by Country”, opens:

Cases of Article X by country		
Search <input type="text"/>		<input type="button" value="Print"/>
Date	Country	Court
CISG	Total cases:	

If “All cases by Date” is selected the following window, which again to all intents and purposes is identical with the window “Cases – Select by Date”, opens:

Cases of Article X by date		
Search <input type="text"/>		<input type="button" value="Print"/>
Insert the date in the following format: yyymmdd; e.g., 19980318 means 18 March 1998		
Date	Country	Court
CISG	Total cases:	

The window that opens for the “Bibliographical References of article X” is also to all intents and purposes the same as the window “Bibliography – Select by Author”. To be noted is that the search possibility is limited to the author:

Bibliographical References of Article X	
Search <input type="text" value="(Name Author)"/>	<input type="button" value="Print"/>
Author	Title
CISG	Total References:

The option “Cases by Issue” at the bottom of “Cases - Selected by Article” opens the following window:

Selected country <input type="checkbox"/>	
Country	Cases
Arbitral Award	3
Austria	
France	
CISG	

Clicking on the number of the cases of the country desired opens the window with the list of the cases of that country as follows:

France <input type="checkbox"/>		
Search	<input type="text"/>	<input type="button" value="Print"/>
Date	Country	Court
CISG	Total cases:	

and clicking on the case desired in that list opens the case in the following manner:

Case			
		<input type="button" value="Prior"/>	<input type="button" value="Next"/>
		<input type="button" value="Print"/>	
Country/ Arbitral Award	<input type="text"/>	Date	<input type="text"/>
Number	<input type="text"/>		
Court	<input type="text"/>		
Parties	<input type="text"/>		
Keywords	Abstract	Full Text	Sources
CISG			

The option “Cross refs” in the window with the text of the article opens a small window as follows:

Cross references	
Article	Issue
14	1
CISG	

Clicking on the number of the article opens the window with the text of the article.

XI. BIBLIOGRAPHY – SELECT BY AUTHOR

The option “Bibliography – Select by Author” opens the following window, which is almost identical with the window that opened for bibliographic references by author for a specific article:

Bibliographical References	
Search	(Name Author) <input type="button" value="Print"/>
Author	Title
CISG	Total References:

XII. BIBLIOGRAPHY – SELECT BY ARTICLE

The option “Bibliography – Select by Article” opens the following window:

Bibliographical References	
Article <input type="text"/>	Search <input type="text"/> <input type="button" value="Print"/>
Author	Title
CISG	Total References:

It should be noted that the “Search” option permits only to a search by author, it is not possible to search by title or by subject-matter.

XIII. BIBLIOGRAPHY – SELECT BY AREA

The “Bibliography – Select by Area” option opens the following window:

Bibliographical References	
Area	(Select from list)
Search	(By Author only)
<input type="button" value="Print"/>	
Author	Title
CISG	Total References:

As indicated in the window, the “Search” possibility exists exclusively for a search by author, and the “Area” option gives a list of predetermined areas from which a selection can be made – no free search is possible. In this window a list of references appears on screen. When the desired reference is selected, a window with the following details appears:

Bibliographical References	
<input type="button" value="Prior"/> <input type="button" value="Next"/> <input type="button" value="Print"/>	
<u>A</u> uthor	
<input type="text"/>	
<u>T</u> itle	
<input type="text"/>	
<u>J</u> ournal/ <u>P</u> ublisher	
<input type="text"/>	
<u>A</u> rticles	<u>A</u> rea
<input type="text"/>	<input type="text"/>
CISG	Total References:

The “Print” option opens a small window as follows:

Print Bibliography <input checked="" type="checkbox"/>	
Bibliography options	
<input type="checkbox"/>	Publisher
<input type="checkbox"/>	Bibliographic Areas
<input type="checkbox"/>	Related Articles
<input type="button" value="Print"/>	

The “Print” button leads to a preview of the page to be printed. Depending on what options have been ticked, the information on the page to be printed will be more or less detailed. In other words, if all three options have been selected, the entries printed will contain information on the publisher as well as on the relevant bibliographic areas and on the related articles. If only the bibliographic areas have been selected, the entries will contain that but not information on the publisher or on the related articles. The options do not refer to the possibility to, for example, print all the entries relating to a specific bibliographic area.

3. EXAMPLES OF SEARCH INTERFACES:

In addition to the search options illustrated above, a number of other could be added to the data base. These include what could be termed a “search by parameters”, where to narrow the search a certain number of parameters. Examples of such a search could be the following:

I. SEARCH FOR CASES USING PARAMETERS

<input type="checkbox"/>	Database Info	314 cases; Last update: 09/15/98 10:58:06	
<input type="checkbox"/>	New Cases	latest decision: 1998.08.20	<input type="button" value="Search"/>
<input type="checkbox"/>	Jurisdiction	<input type="text" value="any jurisdiction"/>	
<input type="checkbox"/>	Tribunal	<input type="text"/>	
<input type="checkbox"/>	Case Name	<input type="text"/>	
<input type="checkbox"/>	Case No./ Docket No.	<input type="text"/>	
<input type="checkbox"/>	Date/ Year	Date <input type="text"/> dd.mm.yyyy (03.04.1996) or dd/mm/yyyy (03/04/1996) or Year <input type="text" value="no selection"/> or date range from <input type="text" value="1988"/> to <input type="text" value="1998"/>	
<input type="checkbox"/>	Sender's Country	<input type="text" value="no selection"/>	
<input type="checkbox"/>	Carrier's Country	<input type="text" value="no selection"/>	
<input type="checkbox"/>	Consignee's Country	<input type="text" value="no selection"/>	
<input type="checkbox"/>	Goods Involved	<input type="text" value="no selection"/>	
<input type="checkbox"/>	Application of CMR	<input type="text" value="no selection"/>	
<input type="checkbox"/>	CMR Provisions	<input type="text"/> <input type="text" value="Key Provisions only"/>	
<small>You can use article numbers, paragraphs and subparagraphs (examples: 29 or 29 (1))</small>			
<input type="button" value="Search"/>			

II. SEARCH FOR BIBLIOGRAPHY USING PARAMETERS

Database Info 326 References; Last update: 10/01/98 13:42:32
 New references latest reference: 1998.08.18
 Country
 Author
 Title
 Source / Publisher
 Language
 Date/ Year Date dd.mm.yyyy (03.04.1996) or dd/mm/yyyy (03/04/1996)
 or Year or date range from to
 CMR Provisions
 You can use article numbers, paragraphs and subparagraphs (examples: 29 or 29 (1))

III. FULL TEXT SEARCH

Another option is the full text search, where a word freely selected by the user leads to the information desired. In such cases all the material in that particular section is searched. An evaluation should be made as to whether such an option should be offered also by UNILAW.

Additional Features

CMR case No.
 CMR file No.

 Full Text Finder Enter your search terms:

This search machine searches the original full texts of all decisions available with summary in French and English. You can use the boolean operators AND, NOT and OR.

IV. FRAMES

A normally quick and easy way of passing from one section of a data base to another is by using fixed frames with links to the relevant sections. In such cases it is sufficient to click on the desired section to pass there immediately. An example of such a frame could be the following:



1956 CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS (CMR)								
ARTICLE 29								
Case Law Summary	Full Text	Bibliography						
<p>CONVENTION: 1956 Convention on the Contract for the International Carriage of Goods by Road (CMR) (Geneva)</p> <p>OTHER CONVENTIONS REFERRED TO:</p> <table border="1"> <tr> <td>COUNTRY: Sweden</td> <td>COURT: Högsta Domstolen (Supreme Court)</td> <td>DATE: 5 February 1986</td> </tr> <tr> <td>PARTIES AND/OR REFERENCE NUMBER: DT 4 NJA 1986:11</td> <td>ARTICLE(S) OF THE CONVENTION: 29, 23, 25</td> <td>OTHER RELEVANT INFORMATION: Court of First Instance: Södra Roslags Tingsrätt 15 July 1982 Appealed to: Svea Hovrätt, 19 January 1983</td> </tr> </table> <p>KEY WORDS: Carrier - gross negligence (concept of) – liability – limitation of</p> <p>Summary: On 10 June, 1979, Loffes Trailertransport AB (Lidingö) transported an excavator from Sollentuna to Täby at the request of the owner of the excavator, Hans P. In the course of the transportation the excavator was loaded on a trailer driven by the driver Stefan S. In the course of the transportation the excessive height reached by the excavator resulted in a collision with a viaduct over the road Attundavägen in Täby, as the excavator could not pass under the viaduct. The excavator was damaged in the collision.</p> <p>Source: Nytt Juridiskt Arkiv (NJA) I, 1986, 61</p>			COUNTRY: Sweden	COURT: Högsta Domstolen (Supreme Court)	DATE: 5 February 1986	PARTIES AND/OR REFERENCE NUMBER: DT 4 NJA 1986:11	ARTICLE(S) OF THE CONVENTION: 29, 23, 25	OTHER RELEVANT INFORMATION: Court of First Instance: Södra Roslags Tingsrätt 15 July 1982 Appealed to: Svea Hovrätt, 19 January 1983
COUNTRY: Sweden	COURT: Högsta Domstolen (Supreme Court)	DATE: 5 February 1986						
PARTIES AND/OR REFERENCE NUMBER: DT 4 NJA 1986:11	ARTICLE(S) OF THE CONVENTION: 29, 23, 25	OTHER RELEVANT INFORMATION: Court of First Instance: Södra Roslags Tingsrätt 15 July 1982 Appealed to: Svea Hovrätt, 19 January 1983						
New Search Same	Back	Home						
Main Menu	Français	Unidroit Site						
IRU Site								

TEXT OF CONVENTION:

- Full text
- Text of relevant article

STATE OF RATIFICATIONS

RESERVATIONS:

- Full list
- Selected article

EXPLANATORY REPORT:

- Full text
- Selected article
- Keyword search

NATIONAL IMPLEMENTING LEGISLATION

ISSUES:

- Full list
- Selected article
- Keyword

CASE LAW:

- Full list
- Summary selected case
- Full text selected case
- Bibliography selected case

BIBLIOGRAPHY:

- Full list
- Relevant article

4. THE CMR – QUESTIONS FOR THE CONSIDERATION OF THE GROUP

A first look at the CMR brought to mind a number of questions that the Group might like to consider in addition to the more general points already mentioned in Section 2 of this document:

1. Is it sufficient to have a search by keyword passing through the “Issues”, or should a direct search also be provided for? (For example, should it be possible to arrive at a list of relevant cases on the “liability of the carrier” without first arriving at the list of issues identified? Similar reasoning applies to the bibliographic references and also to the text of the Convention.)
2. How should the keywords be structured? Freely, as in a full text search, or in a tree-structure, bearing in mind that the levels of a tree structure might well be interchangeable?

For example: *Right of sender disposal of goods* could also on other occasions be *Right of disposal of goods sender's right*. Should links be provided both up and down the tree structure?

3. If a tree structure is opted for, what would the relationship be with the Issues?
4. If a full text search is provided for, should there be the possibility to conduct a Boolean search?
5. As regards the relationship between the main issue and the search word: should it be possible to arrive at the article by searching for a word which does not concern the main issue dealt with in the article?
6. The idea has always been that it should be possible to arrive at the text of an article (or also at cases and bibliographic references) by using words that are not specifically mentioned in the text of the article, as in many instances the texts avoid the use of terminology which may be too national in character and instead prefer to describe what is intended. To what extent should this be possible?
7. It has also always been the idea that the words that should form the core of the keywords should be those extrapolated from the text of the Convention to which others should be added as cases and other materials are added. How open-ended should the list be?
8. When a word in an article is searched for, it is suggested that the word itself should be highlighted on screen, even if the full text of the article is visualised.
9. How should the summaries be prepared? What degree of detail should be included in the facts of the case?
10. Is it necessary to standardise the language used in the summaries and if so to what extent?
11. What instructions should the national correspondents be issued with?

SPECIFIC TERMS / SPECIFIC HEADINGS (only main headings) (first three pages)**CISG****Unilex Database****ACCEPTANCE**

- acknowledgement of receipt of offer, does not constitute acceptance
- acceptance with modifications, modified acceptance
 - battle of forms
 - counter offer
 - letter of confirmation, writings in confirmation, Bestätigungsschreiben
 - material modifications, non material modifications
 - delay in transmission
 - is nevertheless effective
- by conduct
- late acceptance
- of an oral offer
- requirements
- silence or inactivity
- time of effectiveness
- time limits
- withdrawal of acceptance
- see COMMUNICATIONS, FORMATION OF CONTRACT, GAPS IN CONVENTION, GENERAL
- PRINCIPLES OF CONVENTION, OFFER

ADDITIONAL PERIOD OF TIME

- damages for delay in performance
- fixed by the buyer
- fixed by the seller
- see AVOIDANCE, BREACH OF CONTRACT, DAMAGES

AGREEMENT TO ARBITRATE

- application of Convention to determine existence

ALIUD PRO ALIO

- see also CONFORMITY OF THE GOODS

ANTICIPATORY BREACH

- see AVOIDANCE, SUSPENSION OF PERFORMANCE

APPLICATION OF THE CONVENTION

- autonomy of the parties
- conclusion of contract before entry into force
- material scope of Convention
 - agreements to agree, Vorvertrag, contratto preliminare
 - contract of sale of goods
 - quota of a company
 - software, hardware
 - barter, counter-trade transactions
 - contracts for supply of goods to be assembled
 - contracts for supply of goods to be manufactured or produced
 - distribution contracts, distributorship agreements
 - franchising
 - mixed contracts for supply of goods and services

- turnkey and product-in-hand contracts, works contracts
- contracts similar to contract of sale
- culpa in contrahendo
- formation of contract international character of contract of sale
- matters not expressly settled
- rights and obligations of the seller and of the buyer
- by virtue of rules of private international law
- Convention applicable as 'lex mercatoria'
- parties' choice of Convention as governing law of contract
- parties' choice of law of Contracting State
- parties' place of business in different Contracting States
- parties' nationality, irrelevance
- territorial scope of Convention
- undisclosed foreign principal –
- see AUTONOMY OF PARTIES, EXCLUSIONS FROM CONVENTION, GAPS, PLACE OF BUSINESS

AUTONOMY OF THE PARTIES

- parties' choice of law of Contracting State
- parties' choice of law of non-Contracting State
- general principle of the Convention
- limits
 - limits on formal requirements
- total or partial exclusion of the Convention

AVOIDANCE OF THE CONTRACT

- anticipatory breach
- by buyer
 - loss of right in respect of delivery
 - loss of right in respect of restitution
 - retention of other remedies
 - no period of grace
 - requirements
 - seller's offer to cure
 - loss of right in respect of payment
 - period of grace not to be granted by court or arbitral tribunal
 - requirements
 - form of notice of declaration of avoidance
 - implied declaration of avoidance
 - effects on contractual provisions
- by seller
- effective by notice of declaration of avoidance
- effects of avoidance
- partial avoidance
- restitution
- time of avoidance

- see ADDITIONAL PERIOD OF TIME, BREACH OF CONTRACT, COMMUNICATIONS
- EXEMPTIONS, RESTITUTION, SUSPENSION OF PERFORMANCE

BREACH OF CONTRACT

- by seller
 - failure of delivery
 - fundamental breach
 - late delivery
 - partial breach
 - fundamental breach
 - late performance
 - non performance
 - partial breach
 - breach of secondary obligation
- by buyer
- caused by other party
- effects
- fundamental breach in general
- fundamental breach and passing of risk
- see REMEDIES FOR BUYER'S AND SELLER'S BREACH

BURDEN OF PROOF

- in case of non conformity of the goods
 - proof of defects
 - proof of examination
 - proof of notice of non conformity
- in case of third party rights on goods
- in case of damages
- in case of rejection of the goods

BUYER'S OBLIGATIONS

- examination of goods
- payment of price
- preservation of the goods
- specification of the goods
- taking delivery
- see AUTONOMY OF THE PARTIES, DUTY TO COOPERATE, EXAMINATION OF GOODS,
- PAYMENT OF PRICE, PRICE, PRACTICES, SPECIFICATION OF GOODS,
- TAKING DELIVERY, USAGES

CANCELLATION

- see AVOIDANCE OF THE CONTRACT

CARRIAGE

- examination of goods
- insurance
- passing of risk
- seller's obligations
- time of payment

UNILEX DATA BASE ON CISG - ARTICLE 1 – LIST OF ISSUES

1 Material scope of application

1. 1 Contract of sale of goods

1. 1. 1 Civil or commercial character of the contract not relevant

1. 1. 2 Contracts for the sale of hardware / software

1. 1. 3 Contracts similar to contract of sale

1. 1. 3.1 Distributorship agreements

1. 1. 3.2 Other cases (barter, counter-trade, works contracts, etc.)

1.2 Parties with places of business in different States

1.2.1 Concept of place of business

1.2.2 Concept of different States

1.2.2.1 Undisclosed foreign principal

2 Territorial scope of application

2.1 Parties situated in Contracting States

2.2 Application of law of Contracting State based on rules of private international law

2.2.1 Application of Convention based on choice of parties

2.2.2 Choice of the law of Contracting State as governing law of contract

3 Convention as 'lex mercatoria'

UNILEX Data Base on CISG – Article 1 – Issues with Links to Cases (first three pages)

1 Material scope of application

1.1 Contract of sale of goods

16-07-1992	Netherlands	Gerechtshof's Amsterdam
17-09-1993	Germany	Oberlandesgericht Koblenz
20-12-1993	Arbitral Award	Hungarian Chamber of Commerce and Industry Court of Arbitration
26-08-1994	Germany	Oberlandesgericht Köln
15-05-1996	France	Cour d'Appel de Grenoble
08-05-1997	Arbitral Award	Hungarian Chamber of Commerce and Industry Court of Arbitration
05-01-1999	France	Cour de Cassation

1.1.1 Civil or commercial character of the contract not relevant

1.1.2 Contracts for the sale of hardware 1 software

17-09-1993	Germany	Oberlandesgericht Koblenz
08-02-1995	Germany	Landgericht München
22-09-1995	Germany	Oberlandesgericht München

1.1.3 Contracts similar to contract of sale

1.1.3.1 Distributorship agreements

16-07-1992	Netherlands	Gerechtshof's Amsterdam
17-09-1993	Germany	Oberlandesgericht Koblenz
19-03-1996	Hungary	Metropolitan Court of Budapest
11-07-1996	Germany	Oberlandesgericht Düsseldorf
08-01-1997	Switzerland	Obergericht Kanton Luzern
23-01-1997	Arbitral Award	ICC Court of Arbitration
09-07-1997	Germany	Oberlandesgericht München
09-07-1997	Germany	Oberlandesgericht München
23-07-1997	Germany	Bundesgerichtshof
23-07-1997	USA	U.S. District Court, S.D., New York

1.1.3.2 Other cases (barter, counter-trade, works contracts, etc.)

26-08-1994	Germany	Oberlandesgericht Köln
26-04-1995	France	Cour d'Appel de Grenoble, Chambre Commerciale
08-01-1997	Switzerland	Obergericht Kanton Luzern
23-07-1997	Germany	Bundesgerichtshof
15-12-1998	Switzerland	Tribunale di Appello di Lugano, seconda camera civile

1.2 Parties with places of business in different States

27-11-1991	Germany	Oberlandesgericht Köln
------------	---------	------------------------

1 Requirements for offer

1.1 Specification of addressees

18-06-1997	Austria	Oberster Gerichtshof
------------	---------	----------------------

1.2 Definiteness of terms

24-03-1992	Hungary	Metropolitan Court of Budapest
08-02-1995	Germany	Landgericht München

1.2.1 Indication of nature of goods

20-03-1997	Austria	Oberster Gerichtshof
------------	---------	----------------------

1.2.2 Determination of quantity

10-11-1994	Austria	Oberster Gerichtshof
06-02-1996	Austria	Oberster Gerichtshof
03-07-1997	Switzerland	Bezirksgericht St. Gallen

1.2.3 Determination of price

10-01-1992	Hungary	Metropolitan Court of Budapest
22-04-1992	France	Cour d'Appel de Paris, 15ème chambre, section A
25-09-1992	Hungary	Supreme Court of the Republic of Hungary
04-03-1994	Germany	Oberlandesgericht Frankfurt am Main
10-11-1994	Austria	Oberster Gerichtshof
1995	Arbitral Award	ICC Court of Arbitration - Paris
04-01-1995	France	Cour de Cassation
03-03-1995	Russian Federation	Tribunal of Int.l Commercial Arbitration of the Russian Federation Chamber of Commerce

1.3 Indication of offeror's intention to be bound

05-12-1995	Switzerland	Handelsgericht St. Gallen
03-07-1997	Switzerland	Bezirksgericht St. Gallen

2 Public offers

2.1 Considered simple invitation to make offer

2. 1. 1 Contrary intention expressed by offer

3 Offeror's death or incapacity

3. 1 Termination of offer

Issues of article n. 1

Unilex Database

22-04-1992	France	Cour d'Appel de Paris, 15ème chambre, section A
04-01-1995	France	Cour de Cassation
15-01-1998	Switzerland	Tribunale di Appello di Lugano, seconda camera civile
15-10-1998	Austria	Oberster Gerichtshof
11-12-1998	Italy	Corte di Appello di Milano
15-12-1998	Switzerland	Tribunale di Appello di Lugano, seconda camera civile

1.2.1 Concept of place of business

1994	Arbitral Award	ICC Court of Arbitration - Paris
------	----------------	----------------------------------

1.2.2 Concept of different States

22-04-1992	France	Cour d'Appel de Paris, 15ème chambre, section A
04-01-1995	France	Cour de Cassation

1.2.2.1 Undisclosed foreign principal

2 Territorial scope of application

2.1 Parties situated in Contracting States

20-05-1991	Argentina	Juzgado Nacional de Primera Instancia en lo Comercial No. 7
1992	Arbitral Award	ICC Court of Arbitration - Paris
24-03-1992	Hungary	Metropolitan Court of Budapest
03-07-1992	Germany	Landgericht Heidelberg
16-09-1992	Germany	Landgericht Berlin
30-09-1992	Germany	Landgericht Berlin
14-10-1992	Germany	Amtsgericht Zweibrücken
28-04-1993	Germany	Landgericht Krefeld
04-05-1993	Mexico	COMPROMEX, Comisión para la Protección del Comercio Exterior de Mexico
14-05-1993	Germany	Landgericht Aachen
09-09-1993	Switzerland	Handelsgericht Zürich
06-12-1993	Switzerland	Tribunal Cantonal de Vaud
1994	Arbitral Award	ICC Court of Arbitration - Paris
1994	Arbitral Award	ICC Court of Arbitration - Paris
18-01-1994	Germany	Oberlandesgericht Frankfurt am Main
04-03-1994	Germany	Oberlandesgericht Frankfurt am Main
06-05-1994		Arrondissementsrechtbank

UNILEX Data Base on CISG – Article 7 with all options selected (first three pages)

- (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.

1 Interpretation of Convention

06-12-1995	USA	U.S. Court of Appeals, 2 nd Circuit
06-04-1998	USA	U.S. District Court, S.D., New York

1.1 Consideration of international character of Convention

07-05-1993	Switzerland	Gerichtspräsident von Laufen
29-06-1994	Switzerland	Tribunal Cantonal Valais
03-04-1996	Germany	Bundesgerichtshof
08-01-1997	Switzerland	Obergericht Kanton Luzern
29-06-1998	U.S.A.	U.S. Court of Appeals, 11th Circuit
24-03-1999	Germany	Bundesgerichtshof
17-05-1999	U.S.A.	U S. District Court, E.D., Louisiana

1.1.1 Recourse to Convention's legislative history

20-04-1994	Germany	Oberlandesgericht Frankfurt am Main
20-07-1995	Germany	Landgericht Aachen

1.2 Need for uniform application of Convention

07-05-1993	Switzerland	Gerichtspräsident von Laufen
20-04-1994	Germany	Oberlandesgericht Frankfurt am Main
08-01-1997	Switzerland	Obergericht Kanton Luzern
29-06-1998	USA	U.S. Court of Appeals, 11th Circuit
17-05-1999	USA	U.S. District Court, E.D., Louisiana

1.2.1 Recourse to foreign case law and scholarly writing

31-01-1996	Italy	Tribunale Civile di Cuneo, Sez. I
17-05-1999	USA	U.S. District Court, E.D., Louisiana

2 Gaps in Convention

2.1 Matters governed but not expressly settled by Convention

20-05-1991	Argentina	Juzgado Nacional de Primera Instancia en lo Comercial No. 7
1993	Arbitral Award	ICC Court of Arbitration – Paris

12-03-1993	Germany	Oberlandesgericht Düsseldorf
02-07-1993	Germany	Oberlandesgericht Düsseldorf
09-09-1993	Switzerland	Handelsgericht Zürich
15-06-1994	Arbitral Award	Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft - Wien (Vienna), Austria
15-06-1994	Arbitral Award	Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft - Wien (Vienna), Austria
15-06-1994	Netherlands	Arrondissementsrechtbank Amsterdam
23-08-1994	Arbitral Award	ICC Court of Arbitration - Paris
05-04-1995	Germany	Landgericht Landshut
20-07-1995	Germany	Landgericht Aachen
13-09-1995	France	Cour d'Appel de Grenoble, Chambre Commerciale
29-05-1997	Netherlands	Arrondissementsrechtbank Zutphen
14-01-1998	France	Cour d'Appel de Paris, 1 ^{ère} chambre, section D
11-12-1998	Italy	Corte di Appello di Milano

2.2 Matters excluded from scope of Convention (see art. 4)

2.3 Methods for filling in gaps

2.3.1 Application by analogy of other provisions of Convention

21-05-1996	Germany	Oberlandesgericht Köln
------------	---------	------------------------

2.3.2 Recourse to general principles of Convention

02-07-1993	Germany	Oberlandesgericht Düsseldorf
09-09-1993	Switzerland	Handelsgericht Zürich
15-06-1994	Arbitral Award	Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft - Wien (Vienna), Austria
15-06-1994	Arbitral Award	Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft - Wien (Vienna), Austria
1995	Arbitral Award	ICC Court of Arbitration - Paris
23-10-1996	France	Cour d'Appel de Grenoble
14-01-1998	France	Cour d'Appel de Paris, 1 ^{ère} chambre, section D

2.3.2.1 Examples of general principles

02-07-1993	Germany	Oberlandesgericht Düsseldorf
09-09-1993	Switzerland	Handelsgericht Zürich

Issues of article n. 7

Unilex Database

15-06-1994	Arbitral Award	Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft - Wien (Vienna), Austria
15-06-1994	Arbitral Award	Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft - Wien (Vienna), Austria
1995	Arbitral Award	ICC Court of Arbitration - Paris
29-04-1996	Mexico	COMPROMEX, Comisión para la Protección del Comercio Exterior de Mexico
23-10-1996	France	Cour d'Appel de Grenoble
15-01-1998	Switzerland	Tribunale di Appello di Lugano, seconda camera civile

2.3.2.2 Recourse to UNIDROIT Principles

15-06-1994	Arbitral Award	Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft - Wien (Vienna), Austria
15-06-1994	Arbitral Award	Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft - Wien (Vienna), Austria
1995	Arbitral Award	ICC Court of Arbitration -Paris
23-10-1996	France	Cour d'Appel de Grenoble
05-03-1997	Netherlands	Arrondissementsrechtbank Zwolle

2.3.3 Recourse to domestic law

28-04-1995	Australia	Federal Court, South Australia District Adelaide
21-03-1996	Arbitral Award	Schiedsgericht der Handelskammer – Hamburg, Germany
29-05-1997	Netherlands	Arrondissementsrechtbank Zutphen
14-01-1998	France	Cour d'Appel de Paris, 1 ^{ère} chambre, section D

2.3.3.1 Applicable law determined by choice of law rules of forum

20-05-1991	Argentina	Juzgado Nacional de Primera Instancia en lo Comercial No. 7
1994	Arbitral Award	ICC Court of Arbitration - Paris
15-06-1994	Arbitral Award	Arrondissementsrechtbank

UNILEX Data Base on CISG – Example of Two Cases printed with all Options selected

CISG

Unilex Database

Date: 24-10-1988

Country: Italy

Number: 5739

Adjudicating Court: Corte Suprema di Cassazione, Sez. Un.

Parties: Kretschmer GmbH & Co. KG v. Muratori Enzo

----- Keywords -----

CONCLUSION OF CONTRACT BEFORE ENTRY INTO FORCE OF CISG - RATIFICATION BEFORE DEPOSIT OF TENTH INSTRUMENT OF RATIFICATION - OBLIGATION TO

----- Abstract -----

An Italian seller and a German buyer entered into a contract for the sale of a cargo of fruit. A dispute arose between the parties.

The court held that CISG did not apply as the contract had been concluded before January 1, 1988 being the date that Italy's ratification of CISG according to Art. 99(6) CISG took effect. That is, after Italy's denunciation of the 1964 Hague Convention relating to a Uniform Law on the International Sale of Goods (Art. 100 CISG).

----- Full Text -----

[...]

MOTIVI DELLA DECISIONE

Queste sezioni unite sono chiamate a stabilire se sussiste la giurisdizione del giudice italiano rispetto alla pretesa di una ditta italiana che ha venduto una partita di frutta ad una ditta tedesca e chiede il pagamento del residuo prezzo.

L'approccio al problema da risolvere riguarda l'individuazione dei parametri normativi di riferimento alla stregua dei quali riconoscere o meno la sussistenza della giurisdizione italiana rispetto alla richiesta di pagamento del prezzo nella vendita internazionale di cose mobili intervenuta fra paesi membri della Cee e aderenti sia alla convenzione di Bruxelles che a quella dell'Aja, anteriormente all'entrata in vigore di quella di Vienna. [...]

L'Italia e la Germania sono vincolate sia dalla convenzione di Bruxelles del 27 settembre 1968, sia da quella de L'Aia del 1° luglio 1964 che, quali norme di diritto pattizio, prevalgono su quelle generali dettate nelle preleggi e nel codice di procedura civile.

La convenzione firmata a Bruxelles il 27 settembre 1968 è stata recepita dal nostro paese, che vi ha dato ratifica ed esecuzione con l. 21 maggio 1971 n. 804; mentre con altra legge in pari data, recante il n. 816, ratifica è stata data anche alle convenzioni attinenti alla legge uniforme sulla formazione dei contratti di vendita, firmate a L'Aia il 1 luglio 1964.

Attesa l'epoca di stipulazione del contratto da cui scaturiscono le obbligazioni azionate in giudizio, resta estranea alla presente controversia la convenzione delle nazioni unite sui contratti di compravendita internazionale di merci, adottata a Vienna il giorno 11 aprile 1980 ed alla quale è stata data ratifica ed esecuzione con l. 11 dicembre 1985 n. 765 (essendo stata data notizia in Gazzetta Ufficiale n. 45 del 24 febbraio 1987 del deposito dello strumento di ratifica della convenzione stessa e della sua entrata in vigore dal 1° gennaio 1988, essendo state contestualmente denunciate le ricordate convenzione de L'Aia e di Bruxelles, le quali hanno cessato i loro effetti con il 31 dicembre 1987).

Giova ricordare al riguardo che, ai sensi dell'art. 100, la convenzione si applica alla formazione dei contratti conclusi in seguito ad una proposta intervenuta dopo l'entrata in vigore della convenzione la quale, come si è appena rilevato, esplica i suoi effetti a partire dal 1 gennaio 1988, ai sensi del precedente art. 99 il quale ha cura di specificare che per gli Stati legati dalle convenzioni de L'Aia le ratifiche entreranno in vigore solo alla data in cui le denunce, eventualmente richieste da parte dei suddetti Stati riguardo alle convenzioni medesime saranno entrate in vigore. Questa norma di coordinamento si rendeva necessaria dal momento che la convenzione, secondo quanto previsto nell'art. 90, non prevale su un accordo internazionale già concluso, o da concludere, che contenga disposizioni attinenti alla materia regolata dalla convenzione.

Appare evidente, alla stregua dei precedenti richiami, che rispetto ad una proposta anteriore al 1° gennaio 1988 non può farsi capo alla nuova convenzione, ma deve porsi mente alle menzionate convenzioni de L'Aia e di Bruxelles alla cui stregua va ricercata la soluzione del problema di giurisdizione di cui queste sezioni unite sono investite.

Full Text

Published in Italian:

- Il Foro Italiano, 1989, I, 2878
- Giustizia Civile, 1989, I, 1888
- Uniform Law Review, 1989, II, 857
- Rivista di diritto internazionale privato e processuale, 1994, I, 138

Excerpts of judgement in:

- Rivista di diritto internazionale privato e processuale, 1990, 155

Commented on by:

Related articles

90, 99, 100

Date: **1989**
Country: **Arbitral Award**
Number: **5713/ 1989**
Adjudicating Court: **ICC Court of Arbitration - Paris**
Parties: **Unknown**

Keywords

APPLICATION OF CISG - CISG APPLICABLE AS LEX MERCATORIA (Art. 1 CISG)

ARBITRATION - CISG REFLECTION OF TRADE USAGE

CONFORMITY OF GOODS - BUYER'S OBLIGATION WHERE LACK OF CONFORMITY - TIMELY EXAMINATION (Art. 38 CISG)

NOTICE OF LACK OF CONFORMITY WITHIN REASONABLE TIME AFTER DISCOVERY (Art. 39 CISG)

SELLER'S KNOWLEDGE OF LACK OF CONFORMITY (Art. 40 CISG)

DAMAGES - SET OFF FOR LACK OF CONFORMITY

 Abstract

A seller and a buyer concluded in 1979 three contracts for the sale of goods. As agreed, the buyer paid, upon presentation of the shipping documents, 90% of the price with the balance to be paid later. The goods of the second contract did not conform with the contract specifications. After treating the goods in order to make them more saleable, at considerable expense, the buyer sold the goods to third parties. The seller commenced arbitration proceedings claiming the balance of the purchase price (10%) remaining due under each of the contracts. The buyer counterclaimed alleging that the seller's claim should be set off against its direct losses, financial costs and lost profit and interest.

As the contract contained no choice of law clause, the court determined the applicable law in accordance with Art. 13(3) ICC Rules, and found that the law of the country of the seller was the proper law governing the contract. According to Art. 13(5) ICC Rules the court was required to take account of the relevant trade usages. The court found: '[that] there is no better source to determine the prevailing trade usages than the terms of the United Nations Convention on the International Sale of Goods of 11 April 1980, usually called the 'Vienna Convention'. This is so even though neither the [country of the Buyer] nor the [country of the Seller] are parties to that Convention.' The court held that CISG reflected the generally recognised trade usages regarding the matter of non conformity of the goods in international sales.

Referring to Art. 38(1) CISG, the court found that the buyer had examined the goods within as short a time as practicable, in this case before shipment, and had given notice of the lack of conformity to the seller within a reasonable time (8 days after publication of the expert's report of the examination) (Art. 39(1) CISG). Further the court held that the seller was not entitled to rely on the provisions of Arts. 38 and 39 CISG as it knew or it could not have been unaware of the lack of conformity and did not disclose the lack of conformity to the buyer (Art. 40 CISG).

The court awarded the seller the full amount claimed and set it off against part of the counterclaim of the buyer.

 Full Text

[...]

The contract contains no provisions regarding the substantive law. Accordingly that law has to be determined by the Arbitrators in accordance with Article 13(3) of the ICC rules. Under that article, the Arbitrators will 'apply the law designated as the proper law by the rule of conflicts which they deem appropriate'.

The contract is between a Seller and a Buyer [nationalities] for delivery [third country]. The sale was F.O.B. so that the transfer of risks to the Buyer took place in [Seller's country]. [Seller's country] accordingly appears as being the jurisdiction to which the sale is most closely related.

The Hague Convention on the law applicable to international sales of goods dated June 15, 1955 (Article 3) regarding sales contracts, refers as governing law to the law of the Seller's current residence. [Buyer's country] has adhered to the Hague Convention, not [Seller's country]. However, the general trend in conflicts of law is to apply the domestic law of the current residence of the debtor of the essential undertaking arising under the contract. That debtor in a sales contract is the Seller. Based on those combined findings, [the law of the Seller's country] appears to be the proper law governing the Contract between the Seller and the Buyer.

As regards the applicable rules of [law of the Seller's country], the Arbitrators have relied on the Parties' respective statements on the subject and on the information obtained by the Arbitrators from an independent consultant [consultant's name]. The Arbitrators, in accordance with the last paragraph of Art. 13 of the ICC rules, will also take into account the 'relevant trade usages'.

[...]

The Tribunal finds that there is no better source to determine the prevailing trade usages than the terms of the United Nations Convention on the International Sale of Goods of 11 April 1980, usually called 'the Vienna Convention'. This is so even though neither [Buyer's country] nor [Seller's country] are parties to that Convention. If they were, the Convention might be applicable to this case as a matter of law and not only as reflecting the trade usages.

The Vienna Convention, which has been given effect to in 17 countries, may be fairly taken to reflect the generally recognized usages regarding the matter of the non-conformity of goods in international sales. Article 38(1) of the Convention puts the onus on the Buyer to 'examine the goods or cause them to be examined promptly'. The Buyer should then notify the Seller of the non-conformity of the goods within a reasonable period as of the moment he noticed or should have noticed the defect; otherwise he forfeits his right to raise a claim based on the said non-conformity. Article 39(1) specifies in this respect that: 'In any event the buyer shall lose the right to rely on a lack of conformity of the goods if he has not given notice thereof to the seller within a period of two years from the date on which the goods were handed over, unless the lack of conformity constituted a breach of a guarantee covering a longer period' .

In the circumstances, the Buyer had the shipment examined within a reasonable time-span since [expert's name] was requested to inspect the shipment even before the goods had arrived. The Buyer should also be deemed to have given notice of the defects within a reasonable period, that is eight days after the expert's report had been published.

The Tribunal finds that, In the circumstances of the case, the Buyer has complied with the above-mentioned requirements of the Vienna Convention. These requirements are considerably more flexible than those provided under [the law of the Seller's country]. This law, by imposing extremely short and specific time requirements in respect of the giving of the notices of defects by the Buyer to the Seller appears to be an exception on this point to the generally accepted trade usages.

In any case, the Seller should be regarded as having forfeited its right to invoke any non-compliance with the requirements of Articles 38 and 39 of the Vienna Convention since Article 40 states that the Seller cannot rely on Articles 38 and 39, 'if the lack of conformity relates to facts of which he knew, or of which he could not have been unaware, and which he did not disclose'. Indeed, this appears to be the case, since it clearly transpires from the file and the evidence that the Seller knew and could not be unaware [of the non-conformity of the consignment to] contract specifications.

[...] This provision (Article 70 of the New French Code of Civil Procedure), even assuming that it may apply in the circumstances, does not in any way require the tribunal to reject the counterclaim if its examination might delay that of the main claim. It simply states that the counterclaim for setting off is always admissible except only that the tribunal may find it appropriate to sever the counterclaim from the main claim lest a concurrent examination of the counterclaim should excessively delay the judgement on the merits. In the present case, the main Claim and the Counterclaim, in accordance with the Terms of Reference, have been examined together so as to be the subject of a single award, and there is no reason to separate them.

[...]

CISG**Unilex Database**

Sources

Published in English:

- Yearbook of Commercial Arbitration, XV (1990), 70

Commented on by:

- R. Hyland, in A.H. Kritzer, Guide to Practical Applications of the United Nations Convention on Contracts for the International Sale of Goods (Deventer, Kluwer), vol. 2,

Related articles

1, 38, 39, 40, 45

UNILEX Data Base on CISG – Example of a Bibliographic Reference printed with all options selected

Author: ACKERMAN, G.R.,

Title: Scholarly Commentary on Articles of the United Nations Convention on Contracts for the International Sale of Goods (Cornell Symposium)

Journal/Publisher: 21 CORNELL INTERNATIONAL LAW JOURNAL 535-573 (1988)

Bibliographic Area: Convention In General

Related articles: