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Review article

APPLICABLE LAW PROVISIONS IN INTERNATIONAL UNIFORM COMMERCIAL LAW CONVENTIONS AS

The United Nations Convention on Contracts for the International Sale of Goods - CISG

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Abstract

The development of international trade requires predictability and uniformity of the applicable legal framework. Such requirements can be satisfied by international uniform commercial law conventions, which try to set forth coherent and uniform bodies of substantial rules. Private international law also plays a key role, an instrument that operates at a different level but is often included in the uniform conventions themselves. This paper analyzes the relationship between the conventions of uniform international commercial law and private international law, investigates how it has developed over the last seventy years and suggests a new approach to international trade transactions in terms of coordination rather than alternatives of the two various instruments.

Keywords: Private International Law, Applicable Law, Conflict of Laws, Uniform Law, Commercial Law, International Carriage of Goods.

1. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG), 1980

1.1. Historical Remarks (FERRARI, F, VENDITA INTERNAZIONALE DI BENI MOBILI, 1994, p.2)

The United Nations Convention on Contracts for the International Sale of Goods (https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg) last accessed 25 March 2021)(CISG): [1,] has been drafted by the UNCITRAL and signed in Vienna in 1980:[pp,8-22]. The previous uniform regime for international sales was contained in the two Hague Conventions of 1964, the Uniform Law on International Sales of Goods (ULIS) and the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF); however, the previous regime did not enjoy the anticipated success: [pp,195-157] The purpose of the CISG is to set a uniform discipline for international contracts for the sale of goods by providing rules on the formation of the contract and on the obligations of the parties. Unlike carriage of goods conventions, this discipline is not intended to be exclusive and mandatory, but only a common basis on which the parties can build their own statute by using their private autonomy. Therefore, the CISG has no force of law with respect to the parties, but only supports the parties in crafting contracts to meet their specific needs.

1.2. Scope of Application

According to Article 1, the CISG applies to contracts of sale of goods between parties whose place of business are in different states (international sales) when the States are Contracting States (Article 1(1)(a)) or when the rules of private international law of the *forum* lead to the application of the law of a Contracting State: [Article 1(1)(b)]. This is the main provision dealing with the CISG sphere of application (applicability *rationae loci*). Other provisions deal with the applicability *rationaemateriae*. Article 2 states that the CISG does not apply to certain kinds of sales (goods bought for personal use, consumer purchases, and sales by auction *etc*.); Article 3 sets forth when a contract for the supply of goods to be manufactured or produced is to be considered a sale or a contract for services, which is outside the CISG's scope.

Article 4 and Article 5, which will be further analyzed later, expressly state to which matters the CISG does not apply, leaving open the question on what law governs.(https://www.jus.uio.no/lm/un.contracts.international.sale.of.goods.convention.1980/portrait.pdf) last accessed 25 March 2021).

Some brief comments are necessary on Article 1's two criteria of the application. Article 1(1)(a) does not present too many problems. When the parties to an international contract of sale have their place of business in two different contracting States, then the CISG does apply, unless there is an agreement to exclude it under Article 6. The mere fact that, for example, the contract has been signed in a non-contracting State and must be performed in that State, does not undermine the applicability of the CISG under Article 1(1)(a) in any *forum* located in a contracting State: even if the rules of private international law would lead to the law of the no contracting State, the Convention will apply anyway: [pp, 12].

More problematic is the applicability under Article 1(1)(b). A complete analysis of this topic is beyond the scope of this paper and is unnecessary for our analysis; nevertheless, a few comments on this issue are appropriate at this juncture. The reference to the rule of private international law of the *forum* may have the effect to render the Convention applicable even if both parties have their place of business in non-contracting States when the conflict rules lead to the law of a third contracting state: [pp,35].

The CISG itself limits its scope of application *rationaemateriae*. According to Article 4 (A typical example in this sense is offered by the United Nations Convention on Contracts for the International Sale of Goods, which under Article 4 expressly states that "[…] it is not concerned with […] the effect which the contract [of sale] may have on the property in the goods sold.". The reason for this exclusion is that it was not possible to find a common solution on the issue of the transfer of property, which is governed by completely different rules in the main national legal systems), the Convention is not concerned with (a) the validity of the contract or any of its provisions or any usage and (b) the effect which the contract may have on the property in the goods sold: [pp, 48]. Thus, questions such as lack of legal capacity, misrepresentation, and lack of due care: [pp, 48] duress, mistake, unconscionability, public policy, the validity of standard terms, the validity of the choice of forum clauses are left to the otherwise applicable local law, namely the domestic law as determined according to general rules of conflict of laws.

Article 5 states that the CISG does not apply to the liability of the seller for death or personal injury caused by the goods to any person: [pp, 49]. These matters are governed by the applicable domestic law, as determined by the conflict rules of the *forum*; since normally the claim for

personal injury falls within tort law, "the applicable law is essentially the law of the place where the damage occurred": [pp, 50] If, however, the claim is based on contract law, the applicable law will be the proper law of the contract, meaning the law which would apply to the contract in the absence of the CISG:[pp, 50] On the other hand, damages caused by defective goods to other goods or property are within the scope of the Convention: [16]

1.3. Party Autonomy (Article 6)

A central provision of the CISG is Article 6, pursuant to which "the parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions": [pp, 147]

Unlike the carriage of goods conventions previously analyzed in this paper, the CISG has no force of law, and its provisions are not mandatory to the parties: [pp, 147]. The uniform law recognizes party autonomy as a general principle: [pp, 109] and therefore it necessarily plays the role of supplementary material, applicable only if and to the extent that the parties do not choose a different statute for the contract of sale: [pp, 51] The only exception to the parties' right to derogate from the CISG is Article 12, which states that the freedom of form principle outlined in Article 11 "does not apply where any party has his place of business in a Contracting State(To deal with the differences of national conflict of laws rules, international conventions of uniform private international law have been drafted. Famous examples are the 1955 Hague Convention on the Law Applicable to Contracts for the International Sale of Goods or the 1980 Rome Convention on the Law Applicable to Contractual Obligations), which has made a declaration under Article 96", which in effect gives a correspondent reservation power to the contracting states.

Parties' right under Article 6 to exclude the convention in its entirety, even if all the requirements for its applicability do occur, "is an application of a generally recognized principle of private international law, according to which the parties to an international contract of sale of goods are permitted to choose the applicable law". (BIANCA & BONELL, *supra* note 162, p. 54). For example, the 1986 Hague Convention on the Law Applicable to Contracts for the International Sale of Goods states in Article 7 that "a contract of sale is governed by the law chosen by the parties"; the 1980 Rome Convention on the Law Applicable to Contractual Obligations similarly says in Article 3 that "the contract shall be governed by the law chosen by the parties".

1.3.1. Express exclusion with or without a choice of the applicable law

The CISG does not determine how the parties to an international sale can or must exclude, or derogate from, the applicable uniform law. (FRANCO F, 1994, *supra* note 1, p. 120)

Of course, there is no problem when parties expressly agree on the total or partial exclusion of the CISG. However, the problem is which law will govern the contract instead of the CISG. Two situations are here possible. If the parties do not choose any different law to replace the excluded CISG, the applicable domestic law must be determined with accordance to the conflict of laws rules of the *forum*;(FRANCO F, 1994, *supra* note 5, p. 167) but if these rules lead to the law of a Contracting State, the "non-uniform, domestic sales law of that State governs the contract".(BIANCA & BONELL, *supra* note 162, p. 59).

On the other hand, if the parties while excluding the CISG have made a choice of the applicable non-uniform law, this law will govern the contract, provided that such a choice is valid under the law of the *forum*.

1.3.2 Implicit exclusion

Besides express exclusion, it is possible that the parties' intention not to apply the CISG remains implied but still recognizable. Even if there is no provision in the CISG allowing such a form of exclusion, there is no doubt about its validity. (FRANCO F, 1994, *supra* note 5, p. 151-152). But it is necessary that the parties indicate clearly, even though not expressly, their intention.

To recognize such an intention is not always easy, but both doctrine and case law has recognized some typical situations. For example, the choice of the law of a contracting State is not considered to amount to an exclusion of the uniform law, because the CISG has become part of the national domestic law for international sales in the contracting States. (FRANCO F, 1994, *supra* note 5, p. 159-160). Thus, to exclude the Convention, the parties must "clearly indicate that they intend to choose the law governing domestic sales as a proper law of the contract". (BIANCA & BONELL, *supra* note 162, p. 56). On the other hand, an agreement on the application of the law of a non-contracting State will usually amount to an implied exclusion of the convention. Other ways to exclude implicitly the Convention have been identified in the use of general conditions or standard form contracts "whose content is influenced by principles and rules typical of the domestic law of a particular state",(BIANCA & BONELL, *supra* note 162, p. 57)even if in this last case other circumstances have to be evaluated in order to ascertain the parties' intent (*e.g*., the parties' actual knowledge of the existence of the Convention, the use of the same general conditions or standard forms in previous transactions, and the choice of a *forum* located in a non-contracting State).

Another issue is to be addressed: under which law is to be judged the validity of the exclusion or the derogation? The question must be solved by reference to a particular domestic law: either the law that would govern the contract in the absence of the convention or the law chosen by the parties as the proper law of the contract. Of course, the possibility to choose a particular law depends on the rules of private international law of the *forum*.

1.4. Applicable Law Provisions

Pursuant to Article 28, "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". Article 28 is clearly a conflict of laws rule, one of the very few of the CISG.

For a better understanding of this provision, it is necessary to recall briefly the CISG scheme in case of a breach of contract by the parties. The main obligations of the parties are forthe seller, the delivery of the goods, the handing over of documents and the transfer of the property in the goods (Article 30); for the buyer, the taking delivery of the goods and the payment of the contract price. Article 45 (for seller's breach) and Article 61 (for buyer's breach) determine the remedies available to the parties. The buyer has the right to require performance, to declare the contract avoided, to reduce the price, and to claim damages. The seller may require performance, declare the contract avoided or claim damages. In essence, the promise either require the promisor to perform the underlying obligation or he may claim damages on account of the failure to perform". (SCHLECHTRIEM, *supra* note 164, p. 198).

The promise has the right to require performance as soon as the obligation becomes due by the promisor;(*See* Article 46(1) for the buyer and Article 62 for the seller), even when the promise could declare the contract avoided,he may still insist on performance. In both situations, the promise has the right to claim damages under Article 74.

The CISG follows the civil law approach, which favors specific performance as the general remedial rule and considers the right to claim damages only as a secondary remedy. (BIANCA & BONELL, *supra* note 162, p. 232 ("Specific performance is granted only exceptionally at the court's discretion as an equitable relief").

The common law approach, which considers specific performance only as an exceptional remedy in case of a special interest of the promise (commercial uniqueness), is disregarded.

Article 28 is understandable in this context: it is a compromise between the civil law and common law views on remedies for failure to perform, even if commentators from both sides stress the fact that the practice is quite close.(BIANCA & BONELL, *supra* note 162, at 233).On the one hand the promise has a right to require performance under the CISG, on the other hand the enforceability of this right does not depend on the Convention but a particular local law: the *lexfori*. Thus, "Courts of Contracting States which grant specific performance only as an exceptional remedy are not required to alter fundamental principles of their judicial procedure". There is a broad agreement on the point that the purpose of Article 28 is to give common law courts the possibility to refuse specific performance when it would be against "basic common law principles". The Convention on this point seems to accept the common law view that distinguishes between obligation and remedy for its nonperformance, between ascertainment of a right (under the uniform provisions) and its enforceability (left to the national law of the *forum*).

Thus, under Article 28, a court seized of a case where the promise brings an action for specific performance must dispose of in the same manner as it "would do so under its own law in respect of similar contracts of sale".

The reference to the court's "own law" deserves some analysis. As a prominent commentator correctly pointed out, "usually questions outside the scope of the CISG are governed by the domestic rules of the jurisdiction that is selected by principles of private international law". In applying this provision, the problem arises whether Article 28 refers immediately to the domestic law of the *forum* or to the law applicable under rules of private international law of the *forum*. A practical example may be useful at this juncture. Suppose State X is the *forum* for an international sale between two parties having their place of business in States X and Y; assuming that the Convention is applicable, the issue is then whether Article 28 refers to the whole law of State X, including its rules of private international law that might invoke the rules on specific performance of State Y? Writers agree on the point that the expression "own law" means the "domestic law of the *forum* state, excluding its private international law". (SCHLECHTRIEM, *supra* note 164, p. 205). Therefore, a court must only look at the law of the *forum*, just as it had to deal with a national contract; the court must not apply its own conflict of laws rules and verify whether the law of the *forum* "would have been applicable if the contract had not been subject to the Convention". (SCHLECHTRIEM, *supra*note 164, p. 205). A different law constituting the statute of the contract is irrelevant.

So, where the substantive law of the *forum* allows in the particular situation the specific performance of the promisor's obligation, then the court will enforce the promise's action; "the court is not to decide the matter as it would if there were no Uniform Sales Law, but as it would under its own law".(BIANCA & BONELL, *supra* note 162, at 239). A consequence of this mechanism is that an agreement between the parties in favor of specific performance, in theory, valid under Article 6, will not bound a court whose law does not provide such a remedy for similar national contracts. (SCHLECHTRIEM, *supra* note 164, at 207).

In practice and, a civil law court is highly likely to permit an action claiming specific performance, whereas a common law court is as much as likely to dismiss such an action (since damages are considered an adequate remedy in most instances). In the U.K., under the Sales of

Goods Act 1893, a court may enter a judgment or decree for the specific performance of a contract "to deliver specific or ascertained goods", whereas generic goods seem to be out of this provision. The action to compel delivery under the Uniform Commercial Code is less strict and allows specific performance "where the goods are unique or in other proper circumstances". As far as the seller's action to recover the price is concerned, UCC 2-709(1)(b) provides that the seller may recover the price "of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing".

According to a leading commentary, a court does not have any discretion in entering a judgment for specific performance: when the *lexfori*does do not give the judge the power to enter a judgment for specific performance, there is no room for him to grant such a remedy on other grounds, for example, the internationality of the contract. Since Article 28 is a conflict rule, once a particular national law becomes applicable, it must be applied; the only discretion allowed is that granted under national law, Article 28 does not add anything more.

This strict position is not shared by another leading commentary, according to which the wording "the court is not bound to do so" would mean that "nothing prevents it from entering a judgment for specific performance in cases in which formerly it refused to do so".(BIANCA & BONELL, *supra* note 162, at 237). Thus, common law courts might go further in international contract cases than they do in domestic cases.

Article 28 does not face the problem of enforcement of a judgment for specific performance. The question is left "to the procedural law of the country where enforcement is sought".

An interesting situation can arise in relation to the 1968 Bruxelles Convention, (https://www.jus.uio.no/lm/brussels.jurisdiction.and.enforcement.of.judgments.in.civil.and.commercial.matters.convention.1968/portrait.pdf) (last accessed on March 25, 2021)now constituting a law common to the European Union countries: a judgment for specific performance of a member state will be enforceable in the U.K. even when in cases in which an English court would not have granted such a remedy.

Even if Article 28 does not mention it, the provision is applicable to the arbitral tribunal as well. The "own law" is here the law that governs the arbitral procedure, in most cases meaning the law of the place of arbitration.(SCHLECHTRIEM, *supra* note 164, p. 208).

Another applicable law provision is to be found in Article 42, a provision dealing with the seller's obligation to "deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property". This duty is an expression of the seller's general obligation to deliver conforming goods pursuant to Article 35. This specific duty is limited in two ways. First, the goods must be free only from those rights and claims "of which at the time of the conclusion of the contract the seller knew or could not have been unaware" (Article 42(1)). Second, and more important to this analysis, the seller is only responsible for rights and claims based on the law of particular places: pursuant to Article 41(1)(a), if the parties contemplated that the good would be resold or otherwise used in a particular State, the seller is responsible only for rights or claims based on industrial or intellectual property under the law of that State; if the parties did not contemplate any particular place where resale transactions would occur or where the goods would be used, Article 42(1)(b) limits the buyer's protection to rights and claims "under the law of the State where the buyer has his place of business".

This provision is clearly intended to protect the buyer's commercial interests. The provision does not simply protect the buyer generically where his place of business is located but extends to safeguard his contractual expectations to resell or use the goods in a third country. Article 42 makes

applicable the domestic law of industrial/intellectual property or of the State of the buyer or of a different third State whose purchaser at the time of the contract intended to use the goods.

1.5. Gap Filling under the CISG

The CISG is the first of the conventions examined in this paper that faces the gap-filling issue with an *ad hoc* provision (FRANCO F, 1994, *supra* note 1, p. 127). Article 7(2) is an innovative provision for at least two reasons. First, it implicitly distinguishes between two different kinds of gaps: internal gaps and external gaps, by an explicit definition of the former ones. Second, it gives a two-step solution to fill internal gaps (as defined in Article 7(2)), thus also indicating a means to fill external gaps. A separate analysis is therefore necessary.

1.5.1. Internal Gaps

Article 7(2) defines internal gaps as "questions concerning matters governed by this Convention which are not expressly settled in it". The Convention disposes that these kinds of questions, presenting a close connection with the uniform law, "are to be settled in conformity with the general principles on which it is based or, in absence of such principles, in conformity with the law applicable by virtue of the rules of private international law". Thus, in the CISG is not possible to resort immediately to the national law referred to by the applicable conflict of laws rules when an internal gap is found.

These questions, touched by the uniform law but without any solution, are to be dealt with first in accordance with the Convention itself, through the resort to general principles, ("general principles rule"). Only after this first inquiry has not brought to any result, the CISG allows (and imposes) the recourse to the domestic law applicable by virtue of the rules of private international law.

This mechanism presents two problems: first, it is necessary to determine when a gap is internal in the sense of Article 7(2) or external, namely when a matter is governed by the Convention or not and; second, and even more problematic, it is necessary to identify the "general principles" according to which such questions must be settled. The CISG provides us with no guidance, so both questions are left to interpretation by the courts and generally accepted principles underlying contract law. (General principles already identified are: the principle of good faith; the principle of party autonomy; the principle of informality (the freedom of form); the right to interest on sums of money not paid; the principle of full compensation in damages; the principle of reasonableness; the principle of mitigation in limiting the loss resulting from a breach; the prohibition of *venire contra factum proprium*, namely to contradict one's previous conduct or representation on which the other party has reasonably relied; the principle of the seller's place of business as a general place of payment. On this topic see especially Franco Ferrari, *General Principles and International Uniform Commercial Law Conventions: A Study of the 1980 Vienna Sales Convention and the 1988 UNIDROIT Conventions on International Factoring and Leasing*, 10 PACE INT'L L. REV. 157, 170-176. *See* also SCHLECHTRIEM, *supra* note 164, at 67, 208).

Only after this research has failed, (*See* HONNOLD, *supra* note 160, at 150, who comments that the second option, the private international law rule, was added because of the doubt that

"general principles of the convention could always be found")even for internal gaps the Convention allows parties to resort to the applicable national law, determined pursuant to the conflict of laws rules of the *forum*. (SCHLECHTRIEM, *supra* note 164, at 66, 208). It must be born in mind, however, that under the Convention the recourse to the applicable national law in these circumstances "is not only admissible but even obligatory".

Two examples of internal gaps can be useful to see how Article 7(2)'s mechanism actually works. A very representative case is the question of the rate of interest on sums in arrears.

Under Article 78, "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". The CISG, however, does not say anything about any preferred methodology for calculating the rate of interest. The qualification of such a gap as internal or external has been debated by scholars; in our opinion, however, it should be considered an internal gap. The problem is that there is no specified approach in the CISG to determining applicable interest rates. Thus, as Article 7(2) mandates, the applicable law is the non-unified law, meaning the law which would be applicable to the sale were the contract not governed by the Convention. (FRANCO F, 1994, *supra* note 5, p. 213). Another internal gap, on the contrary, has been dealt with by adopting an internal solution, namely by recourse to general principles - the burden of proof. In the CISG, there is no general provision expressly dealing with the burden of proof issue. But some specific provisions contain wordings that are expressions of general principles on the burden of proof and these basic principles can be used to fill the gap. (FRANCO F, 1994, *supra* note 5, p. 213). From Article 79(1), which deals primarily with exemption from contractual liability, and Articles 39-39 (dealing with examination and rejection of defective goods by the buyer), it is possible to synthesize the general rule that a party who wants to exercise a right must prove the facts on which this right is based.

The preference accorded to the general principles rule discussed in the foregoing paragraph is easily understood when one contemplates the difficulties that references to private international law creates in international transactions: "the uncertainties of the rules of private international law, the difficulty of ascertaining foreign law and the possible incongruity between pieces of domestic law and the overall plan of the Convention". Moreover, an effort to fill in the gaps through the general principles on which the CISG is based is consistent with the mandate of Article 7(1) to interpret the Convention about its international character and the need to promote uniformity in its application.

1.5.2(BIANCA& BONELL, *supra* note 162, at 75) External gaps

The mechanism above described, on the contrary, does not apply to the other kind of gaps, namely to questions concerning matters which the Convention does not governor which it expressly excludes from its scope of application. Such gaps, beyond the area of the gap-filling rule under Article 7(2), are to be settled directly by applying the national non-unified law designated by the private international law of the *forum*.

As already discussed in this analysis, Article 4 excludes from the CISG's scope of application *rationaemateriae*the validity of the contract or of any usage, and Article 5 makes the Convention not applicable to the liability of the seller for death or personal injury caused by the goods.

In addition to these questions, there are many others not expressly excluded but implicitly not covered by the Convention, which has been identified over the years by the courts: the existence of an agency relationship, right of set-off, assignment of receivables, statute of limitations, and

validity of a penalty clause, validity of a settlement agreement, assumption of debt, novation, and estoppel.

Conclusion

The CISG is the first of the conventions under our analysis that does not deal with transportation and that, being not mandatory, expressly, and recognizes party autonomy, by allowing parties both to exclude the applicability of it and to limit or derogate from one or more of its provisions (and recognizing, therefore, the *substitutive function* of private international law). The CISG is also the first law expressly adopting private international law as a general instrument to integrate and to complete the overall discipline of international sale of goods, by means of the gap-filling rule provided for by article 7 (2) (*subsidiary function*). The importance of such a new approach and utilization of private international law is confirmed by the strong impact on subsequent uniform law conventions: the Ottawa conventions on international factoring and international leasing, as well as the recent New York assignment convention (which goes even further), are all based on the CISG approach, which seems to have established a point of no return in the field of the relationship between uniform substantive law and private international law. The CISG, thus, represents the watershed in our paper between two completing different approaches to uniformity in international commerce.

References

[1]. For an updated list of CISG contracting states, refer to http://www.uncitral.org.

[2]. For a history of the CISG *see* FRANCO FERRARI, *supra* note 1, 8-22.

[3]. Franco Ferrari, *Uniform Interpretation of the 1980 Uniform Sales Law*, 24 Ga. J. Int'l & Comp. L. 183, especially at 195-197.

[4]. The USA, by exercise of the Article 95 reservation, is not bound by Article 1(1)(b).

[5]. JOHN HONNOLD, UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION 127 (2nd ed. 1991).

[6]. C.M. BIANCA & M. J. BONELL, COMMENTARY ON THE INTERNATIONAL SALES LAW – THE 1980 VIENNA SALES CONVENTION 46 (1987): "this article is a remainder of the existence of the difficult problem of the interplay between the convention and domestic law and delineating their respective spheres of application".

[7]. According to FRITZ ENDERLEIN & DIETRICH MASKOW, INTERNATIONAL SALES LAW 43 (1992), on questions related to the contractual validity, the statute of the contract will apply, *i.e*. the law which under the decisive conflict of law rules governs the contract. *See* also PETER SCHLECHTRIEM, COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) 43 (1998).

[8]. BIANCA & BONELL, *supra* note 162, at 49: "this article amplifies the general rule in Article 4 that the convention governs only the formation of contracts of sale and the rights and obligations of the seller and the buyer arising from such contracts". Therefore, all claims under Article 5 are to be settled "by rules of the applicable domestic law".

[9]. Handelsgericht Zürich, 26.4.1995, UNILEX.

[10]. Stanton Heidi, *How to Be or not to Be: the United Nations Convention on Contracts for the International Sale of Goods, Article 6*, 4 Cardozo J. Int'l & Comp. L. 423, 434, who also says that the Convention plays "a supporting role, supplying answers to problems that the parties have failed to solve by contract". *See* BIANCA & BONELL, *supra* note 162, at 51, according to whom one of the basic principle of the convention is that it applies "Only to the extent that no contrary intention of the parties can be established". *See* also SCHLECHTRIEM, *supra* note 164, at 53.

[11]. General principles already identified are: the principle of good faith; the principle of party autonomy; the principle of informality (the freedom of form); the right to interest on sums of money not paid; the principle of full compensation in damages; the principle of reasonableness; the principle of mitigation in limiting the loss resulting from a breach; the prohibition of *venire contra factum proprium*, namely to contradict one's previous conduct or representation on which the other party has reasonably relied; the principle of the seller's place of business as a general place of payment. On this topic see especially Franco Ferrari, *General Principles and International Uniform Commercial Law Conventions: a Study of the 1980 Vienna Sales Convention and the 1988 UNIDROIT Conventions on International Factoring and Leasing*, 10 PACE INT'L L. REV. 157, 170-176.

[12]. According to BIANCA & BONELL, *supra* note 162, at 83, the common principle rule should be born in mind especially by common law courts, which are used to turning easily to domestic law when a case is not specifically regulated by the Convention. [210] BIANCA & BONELL, *supra* note 162, at 83.

[13]. Accordingly, *see* FRANCO FERRARI, *supra* note 5, at 213.

[14]. OberlandesgerichtMünchen, 3.4.1994, UNILEX. For a complete analysis of the various positions on the issue see in particular Franco Ferrari, *Uniform Application and Interest Rates under the 1980 Vienna Sales Convention*, 24 GA. J. INT'L & COMP. L. 467.

[15]. Oberlandesgericht Koblenz, 17.9.1993, UNILEX.

[16]. Oberlandesgericht Hamm, 8.2.1995, UNILEX.

[17]. ICC Court of Arbitration, 23.8.1994, UNILEX.

[18]. ICC Court of Arbitration, n. 7197/1992, UNILEX.

[19]. Olandgericht Aachen, 14.5.1993, UNILEX.

[20]. Oberstergerichtshof, 4.4.1997, UNILEX.

[21]. ICC Court of Arbitration, n. 7331/1994, UNILEX.

[22]. Rechtsbank Amsterdam, 5.10.1994, UNILEX