



## HARMONIZING INTERNATIONAL AND DOMESTIC SALES LAW: RECOMMENDATIONS FOR IMPROVING THE CISG AND INDIAN SALES LAW

Omolsalameh  
Pakuhinezhad

Kerala University, India

### ABSTRACT

The international sale of goods is an increasingly significant aspect of global trade. To facilitate cross-border transactions, the United Nations Convention on Contracts for the International Sale of Goods (CISG) was developed to provide a uniform framework for governing international sales contracts. However, there are still several challenges that need to be addressed in harmonizing international and domestic sales law, particularly in countries such as India where the domestic law has not yet fully aligned with the provisions of the CISG. This paper provides recommendations for improving the CISG and Indian sales law to promote a more cohesive and effective global sales law regime. We identify key areas where the CISG and Indian sales law diverge, and propose potential solutions for harmonizing the two frameworks.

### KEYWORDS :

#### Introduction

The international sale of goods is a vital component of global trade. In today's interconnected world, businesses frequently engage in cross-border transactions, creating a need for a standardized legal framework to govern international sales contracts (Honold, 1979; Lando, 2005). To this end, the United Nations Convention on Contracts for the International Sale of Goods (CISG) was developed in 1980 to provide a uniform set of rules for the formation, performance, and breach of international sales contracts. India is a significant player in the global market, and its economy is expected to continue to grow in the coming years. However, despite being a signatory to the CISG, India's domestic sales law has not yet fully aligned with the provisions of the Convention. This creates challenges for businesses operating in India, as well as for foreign businesses seeking to enter the Indian market (Murray, 1988; Murray, 1997; Khanderia, 2018; Vafaei-Zadeh et al., 2022; Farnsworth, 1979; Afshar Jahanshahi et al., 2018; Pakuhinezhad, 2023). This paper provides recommendations for improving the CISG and Indian sales law to achieve greater uniformity and coherence in the regulation of international sales contracts.

#### Offering recommendations to improve of CISG provisions

##### • The Creation of a Global Code

In the increasingly global and technologically advanced society in which we live, commercial dealings can cross international borders instantaneously (Gheitarani et al., 2022b; Gheitarani et al., 2023; Gheitarani et al., 2022c; Taherinia et al., 2021; Gharleghi et al., 2018; Etemadi et al., 2022) Dehghanan et al., 2021; Taherinia et al., 2021). Khaksar et al., 2010). Regrettably, due to unfamiliarity with international sales law, most commercial parties remain unaware that the CISG is the substantive law governing their transaction. Those who are familiar often opt out of the Convention in favor of a more consistent commercial law such as the UCC or other familiar domestic law. It is necessary that a Global Code be promulgated to harmonize the international community. In creating this Global Code, the "general principles" approach must be abandoned in favor of a stricter hierarchical structure of interpretation. If courts continue to utilize domestic legal principles, the Global Code will be short lived. Many of the necessary components for the creation of a Global Code already exist. The CISG is a perfect starting point for an international commercial code. In response to increased globalization and foreign investment (Farnsworth, 1979; Fletcher, 2001; Hakkak et al., 2021; Jahanshahi et al., 2020; Vafaei-Zadeh et al., 2021; Hanifah et al., 2022; Gheitarani et al., 2022a; Hakkak et al., 2022a; Takalo et al., 2013; Abdul-Halim et al., 2022; Hakkak et al., 2022b; Jahanshahi et al., 2019), reform of the current international

sales law is necessary to protect international rights, consistently enforce foreign judgments, and reduce transaction costs in commercial operations. The Convention provides an invaluable basis for development of a Global Code. However, because the CISG contains no mechanism for revision or amendment, a new codification is necessary to advance regulatory commercial law in accordance with modern needs. For the harmonization of international law to have any effect, courts and practitioners must look beyond the scope of their own domestic traditions and approach law with an international perspective.

##### • The Establishment of an International Court

A major problem with CISG is that it is, in a sense, international law applied locally. This inevitably puts a local tint on CISG interpretation. The fact that there is no international court that administers CISG is identified as one of the most serious obstacles to achieving the uniform international sales regime at which CISG aims. The parochialism of domestic courts coupled with their suspicion of foreign judgments that may be differently decided at home is undoubtedly a major impediment to uniform application of CISG. Although the goal of an international court is rather ambitious, such a possibility should not be abandoned. Establishing a centralized judiciary to interpret CISG.

There is not any international court to resolve conflicting interpretations of important provisions therefore the most radical would be to give an international tribunal competence to make preliminary rulings on questions arising out of the interpretation of the Convention, while at the same time requiring national courts to suspend their decisions until after the judgment of this tribunal and then to decide in accordance with that judgment or with the limited task of rendering advisory opinions concerning the proper interpretation to be given to this Convention, can be reasonably expected under the present circumstances. This means that in practice it will be essentially up to national judges and arbitrators called upon to interpret the Convention in a given case, to ensure its uniform application to the widest possible extent.

##### • Reforming or updating the provisions

The CISG contains no mechanism for reforming or updating its provisions and therefore in some special cases, UNCITRAL necessarily has approved a separate convention. For instance, the CISG is not an instrument specifically designed for electronic commerce, nor does it aim at widening the use of electronic transactions, these important goals require a separate dedicated text. UNCITRAL prepared in 2005 the United Nations Convention on the Use of Electronic Communications in International Contracts. The Convention

complements the CISG, as well as other international treaties. Therefore, it is necessary for UNCITRAL to provide some conditions which gives the possibility of updating or reforming the CISG's provisions. Introducing of the CISG in law schools all over the world and making it part of the regular law school curriculum can be one of the most effective ways which lawyers become familiar with the Convention through practicing. It is suggested that greater awareness could be created through the publication of both commentaries and court decisions in specialized law reviews. The CISG is a success as a uniform legal framework and the non-signatory states should propose legislative action to ratify the CISG. This is for consequential reforms to domestic laws on the sale of goods. CISG does not cover limitation period according to convention on limitation period 1974, The CISG does not contain limitation periods as this issue was intended to be addressed by the 1974 convention on the limitation period in the international sale of goods (limitation convention). Thus, CISG should be cover limitation periods for claims for damages based on contractual non-performance or limitation periods for claims for performance of payment obligations.

### Offering recommendations for Domestic Law Reform in India

#### • The Indian Contract Act need a re-look

Section 73 of The Indian Contract Act provides for compensation for loss or damage caused by breach of contract, naturally arising in the usual course of things from such breach. However, remote and indirect loss or damage sustained by reason of the breach is not provided under the contract law. The Indian Contract Act provides for liquidated damages and other penalties to the party that suffers from breach of a contract. But contract laws of many countries restrict total compensation to the amount of liquidated damages. Any contract that restrains one from exercising lawful profession, trade or business of any kind, is termed void as per Indian contract law. Also, it does not provide for apportionment of losses in contracts which are void. That is not the case in laws of many other countries. Giving the growing number of transactions undertaken online, Indian contract law needs to be tweaked for concepts relating to offer and acceptance in digital contracts. Indian contract laws do not have a law regulating unfair terms of a contract. It is necessary to evolve general principles regulating unfairness in contracts. This will have wide ramifications in a range of contracts including lending agreements, builder-developer agreements, debt instruments, landlord tenancy agreements, government contracts, arbitration agreements.

#### • India should adopt the CISG

CISG is said to be one of the most successful treaties in private international law. The reason is its wide adoption and the corresponding recent growth of international business transactions. Growing from an original group of 11 countries in 1988, the Convention is now accepted and signed by 98 nations. Countries who are signatories to the CISG are accounted for a staggering two thirds of all goods moving in international trade and it more or less cover a majority of the world's population. Fortunately, in the interest of promoting uniform law, and the uniformity of its application; and regardless of reservations made by some signatories to the CISG, all signatories have agreed to implement the CISG in a uniform fashion. The extent of ratification by a large number of states shows that there is a sharp chance of the Convention becoming a norm for international trade in future, thus emphasizing the need for India as well to become a party to the Convention. Further, with the wave of liberalization, which started in the year 1991, India has seen a robust growth in its external trade statistics. If we review our trade relations, we will find that almost all our major trade partners are signatories to this Convention. For that reason, having a familiar sales law with the host nation will certainly help in facilitation of trade between India and its trading partners.

Firstly, Indian sales law i.e. The Sale of Goods Act, 1930 was written by English and was heavily inspired from English Sales of Goods Act, 1893, which is very old and is outdated now. Since the introduction of modern techniques and means of transport has drastically changed, the modes of entering into contract, it is not suited for the modern and contemporary commercial contracts. Here lies the importance of CISG as it is universal in nature and drafted in several languages that makes it more accessible and comprehensible to international commercial parties across the globe. Secondly, the Convention works as a gap-filling technique in case where trans-border contract is made by phone or even by fax or telex but in only a few words. Sometimes contracts are incomplete or they are not in condition to cover every type of contingencies. Resultantly it creates certain gaps in the contract. In theory, a uniform sales law confers significant benefits on parties, at least to the extent that it embodies in its default rules which are the solution to these gaps. Thirdly, CISG recognizes broad contractual freedom to the parties of international sales contracts which is mostly desired. Article 6 of CISG enables them to derogate from or vary the effect of any of its provisions and even to exclude the application of the Convention. Fourth, modern trade practices and realities are taken into account in this Convention. CISG contains provisions regarding the interpretation of contracts which are considered as wider than the Common Law rules. Fifthly, CISG contains useful provisions to practical problems which are very important in day-to-day trade practices now a days for instance asking the parties to preserve goods in their possession which otherwise belong to other party. Sixth, CISG provides a boost to the Indian economy. Law and economy are indispensable. Legal system of country is one of the important factors in facilitating its economy. Though it is not very true to claim that a strong legal system guarantees a robust economy, but it is difficult to find a robust economy without a strong legal system. The Convention will strengthen the legal caricature to assist the Government's move to boost economic expansion overseas by facilitating Indian businessmen and Indian corporations with a consistent sales law with the countries with whom they are trading.

### Conclusion

In conclusion, the harmonization of international and domestic sales law is crucial for the promotion of global trade. The CISG provides a valuable framework for governing international sales contracts, but challenges remain in aligning domestic sales law in countries such as India with the provisions of the Convention. In this paper, we have identified key areas where the CISG and Indian sales law diverge, and provided recommendations for reconciling these differences. Our proposals aim to enhance legal certainty, promote greater efficiency and transparency, and contribute to the growth and development of international trade.

### REFERENCES

1. Abichandani, R. K., Pollock, F. & Mulla, D. F. (1994). Pollock & Mulla on Indian Contract and Specific Relief Acts. NM Tripathi.
2. Bergsten, E. E., & Miller, A. J. (1979). The Remedy of Reduction of Price. *Am. J. Comp. L.*, 27, 255.
3. Bridge, M. G. (Ed.). (2012). Benjamin's sale of goods (Vol. 11). Sweet & Maxwell.
4. Cuniberti, G. (2006). Is the CISG benefiting anybody. *Vand. J. Transnat'l L.*, 39, 1511.
5. Dehghanan, H., Gheitarani, F., Rahimi, S., & Nawaser, K. (2021). A Systematic Review of Leadership Styles in Organizations: Introducing the Concept of a Task-Relationship-Change Leadership Network. *International Journal of Innovation and Technology Management*, 18(07), 2130007.
6. Farnsworth, E. A. (1979). Damages and Specific Relief. *Am. J. Comp. L.*, 27, 247.
7. Flechtner, H. M. (1988). Remedies Under the New International Sales Convention: The Perspective from Article 2 of the UCC. *JL & Com.*, 8, 53.
8. Fletcher, H. M. (2001). Recovering Attorneys' Fees as Damages Under the UN Sales Convention (CISG): The Role of Case Law in the New International Commercial Practice, with Comments on Zapata Hermanos v. Hearthside Baking. *Nw. J. Int'l L. & Bus.*, 22, 121.
9. Farnsworth, E. A. (1979). Damages and Specific Relief. *Am. J. Comp. L.*, 27, 247.
10. Gheitarani, F., Nawaser, K., Hanifah, H., & Vafaei-Zadeh, A. (2023). Human-behavioural micro-foundations of dynamic capabilities: a systematic review

- of the last two decades of research. *International Journal of Management and Decision Making*, 22(1), 1-26.
11. Gheitarani, F., Nawaser, K., Hanifah, H., Vafaei-Zadeh, A. (2022a). Dimensions of anti-citizenship behaviors incidence in organizations: A Meta-analysis, *International Journal of Information and Decision Sciences*. In Press.
  12. Gheitarani, F., Guevara, R., Nawaser, K., & Jahanshahi, A. A. (2022c). Identifying Dimensions of Dynamic Technological Capability: A Systematic Review of the Last two Decades of Research. *International Journal of Innovation and Technology Management*, 2230002.
  13. Gheitarani, F., Nawaser, K., Hanifah, H., Vafaei-Zadeh, A. (2022b). Human-behavioral micro-foundations of dynamic capabilities: A systematic review of the last two decades of research. *International Journal of Management and Decision Making*, 22(1), 1-26, DOI: 10.1504/IJMDM.2022.1004203
  14. Gosh, E. (2015). Surveying the Damage: A Study of Damages Payouts by the Delhi High Court in Trademark Infringement Cases (2005-2014). *Indian Journal of Law and Technology*, 11(1), 2.
  15. Abdul-Halim, N. A., Vafaei-Zadeh, A., Hanifah, H., Teoh, A. P. & Nawaser, K. (2022). Understanding the determinants of e-wallet continuance usage intention in Malaysia. *Quality & quantity*, 56(5), 3413-3439.
  16. Khaksar, S.M.S., Jahanshahi, A.A. Nawaser, K. (2010). Study of the Relation of Customer Service and Entrepreneurial Opportunities, *Asian Journal of Management Research*, 1(1), 200-214.
  17. Khanderia, S. (2018). Commercial impracticability under the Indian law of contract: the UNIDROIT principles as the way forward?. *UCLJLJ*, 7, 52.
  18. Hanifah, H., Abd Halim, N., Vafaei-Zadeh, A., & Nawaser, K. (2022). Effect of intellectual capital and entrepreneurial orientation on innovation performance of manufacturing SMEs: mediating role of knowledge sharing. *Journal of Intellectual Capital*, 23(6), 1175-1198.
  19. Hakkak, M., Azadi, M. H., Nawaser, K., Hanifah, H., & Vafaei-Zadeh, A. (2022a). Elucidating cause-and-effect relationships of components affecting talent absorbing organisations. *International Journal of Applied Decision Sciences*, 15(6), 704-732.
  20. Hakkak, M., Azadi, M. H., Nawaser, K., Hanifah, H., & Vafaei-Zadeh, A. (2022b). The dialectic of failure or hope in organisations: a grounded theory study in a developing country context. *International Journal of Management and Decision Making*, 21(2), 195-221.
  21. Etemadi, M., Hamzehpoor, M., Nawaser, K., Hanifah, H., & Vafaei-Zadeh, A. (2022). Identification and prioritisation of factors affecting lean leadership model. *International Journal of Management Practice*, 15(3), 364-388.
  22. Afshar Jahanshahi, A., Nawaser, K. and Brem, A. (2018). Corporate entrepreneurship strategy: an analysis of top management teams in SMEs, *Baltic Journal of Management*, Vol. 13, No. 4, pp. 528-543. <https://doi.org/10.1108/BJM-12-2017-0397>
  23. Ganglmair, B. (2017). Efficient material breach of contract. *The Journal of Law, Economics, and Organization*, 33(3), 507-540.
  24. Gharleghi, B., Jahanshahi, A.A., Nawaser, K. (2018). The Outcomes of Corporate Social Responsibility to Employees: Empirical Evidence from a Developing Country" *Sustainability* 10, no. 3: 698. <https://doi.org/10.3390/su10030698>
  25. Jahanshahi, A. A., Maghsoudi, T., & Nawaser, K. (2020). The effects of social capital and psychological resilience on employees' positive work attitudes. *International Journal of Human Resources Development and Management*, 20(3-4), 231-251.
  26. Lando, O. (2005). CISG and its followers: a proposal to adopt some international principles of contract law. *Am. J. Comp. L.*, 53, 379.
  27. Pakuhinezhad, O. (2023). Comparative Study of Indian Contract Act 1872 and CISG on the Law relating to Damages, *Global Journal for Research Analysis*, April Issue, In Press.
  28. Pakuhinezhad, O. (2023). An Analysis of Common Provisions between Sales of Goods Act 1930 and the CISG: As Comparative Study, *Global Journal for Research Analysis*, April Issue, In Press.
  29. Pollock, F., & Mulla, D. F. (1919). *Indian Contract and Specific Relief Acts: With a Commentary, Critical and Explanatory*. Sweet & Maxwell.
  30. Murray Jr, J. E. (1988). An Essay on the Formation of Contracts and Related Matters under the United Nations Convention on Contracts for the International Sales of Goods. *JL & Com.*, 8, 11.
  31. Murray Jr, J. E. (1997). The Neglect of CISG: A Workable Solution. *JL & Com.*, 17, 365.
  32. Saidov, D. (2002). Methods of limiting damages under the Vienna convention on contracts for the international sale of goods. *Pace Int'l L. Rev.*, 14, 307.
  33. Schneider, E. C. (1995). Consequential damages in the international sale of goods: Analysis of two decisions. *U. Pa. J. Int'l Bus. L.*, 16, 615.
  34. Taherinia, M., Nawaser, K., Shariatnejad, A., & Moshtaghi, M. (2021). The Evolution of the E-Business Value Cycle Through Value Co-Creation during the COVID-19 Pandemic: An Empirical Study from Iran. *The Journal of Asian Finance, Economics and Business*, 8(10), 19-28.
  35. Takalo, S. K., Abadi, A. R. N. S., Vesal, S. M., Mirzaei, A., & Nawaser, K. (2013). Fuzzy Failure Analysis: A New Approach to Service Quality Analysis in Higher Education Institutions (Case Study: Vali-e-Asr University of Rafsanjan-Iran). *International Education Studies*, 6(9), 93-106.
  36. Vafaei-Zadeh, A., Ng, S. X., Hanifah, H., Teoh, A. P., & Nawaser, K. (2021). Safety technology adoption: predicting intention to use car dashcams in an emerging country. *International Journal of Innovation and Technology Management*, 18(05), 2150022.
  37. Vafaei-Zadeh, A., Wong, T. K., Hanifah, H., Teoh, A. P., & Nawaser, K. (2022). Modelling electric vehicle purchase intention among generation Y consumers in Malaysia. *Research in Transportation Business & Management*, 100784.
  38. Winship, P. (1988). Private international law and the UN sales convention. *Cornell Int'l LJ*, 21, 487.