

Interpretation of the CISG: How to interpret and fill the gaps in the CISG so as to maintain requirements of uniformity, good faith and internationality as emphasized in the Article 7 of the CISG.

Martina Perzelova

Supervisor: Professor Gerard McMeel

“A dissertation submitted to the University of Bristol in accordance with the requirements of the degree of Master of Laws by advanced study in International Law in the Faculty of Social Sciences and Law”.

Word Count: 11 900

Abstract

General wording of international conventions is often a result of compromises adopted during the diplomatic conference negotiating such convention. This leads most of the time to disagreements on actual meaning of particular provisions, creating various possible theories of interpretation. One of such examples is the United Nations Convention on Contracts for International Sale of Goods (CISG) which aims to unify sales law.

This work examines the Article 7 of CISG, an interpretation provision, particularly the principles which it anchors - uniformity, internationality and good faith. In order to suggest a conclusion certain aspects of civil and common law cultures are analysed. To achieve uniform results a possibility of using '*travaux préparatoires*', international case law and scholarly writings is explored which is supported by interpretation rules agreed in the Vienna Convention on the Law of Treaties, various commentaries and judicial practice.

A major problem in the process of unification of sales law is seen a recourse to national law in cases when it is unnecessary. Again different approaches of common and civil law countries are analysed as well as international case law. From practice it is possible to observe that different legal cultures do not pose a particular obstacle as it might appear on the first sight; in many cases it is the judge benefiting way too often from the use of very narrow possibility of recourse to private international law.

To achieve a uniform application of sales law under the CISG several databases exist to make search for international cases and opinions of scholars easily accessible. One such database is CISG Database at Pace University, which is considered as the most comprehensive collection of legal materials in relation to CISG and certainly one of the most helpful tools in interpretation while at the same time unifying the sales law.

To my mother for everything she has ever done for me.

Acknowledgements

First I would like to express my sincere gratitude to my supervisor Professor Gerard McMeel for his valuable advice, guidance and support in writing this work.

My thanks belong also to the authors of Transnational Commercial Law – Professors Goode, Kronke and McKendrick, from which I have drawn the ideas for writing this work.

I am also thankful to creators of the CISG Database at the Pace Law School which has been a priceless source of materials for my research.

Author's declaration

“I declare that the work in this dissertation was carried out in accordance with the requirements of the University’s Regulations and Code of Practice for Taught Postgraduate Programmes and that it has not been submitted for any other academic award. Except where indicated by specific reference in the text, this work is my own work. Work done in collaboration with, or with the assistance of others, is indicated as such. I have identified all material in this dissertation which is not my own work through appropriate referencing and acknowledgement. Where I have quoted from the work of others, I have included the source in the references/bibliography. Any views expressed in the dissertation are those of the author.”

SIGNED:

DATE:

Table of Content

Introduction	7
Uniformity & Internationality as Foundations of the CISG	9
Good Faith – General Principle or merely a ‘Compromise’?	18
General Principles v Private International Law – What is a Better Gap-Filler?	27
Is there any help so that application of CISG will comply with international uniformity?.....	37
Conclusion.....	44
Bibliography.....	47

I. Introduction

International conventions tend to be constructed in general terms in order to create a framework within the given area. As such they neither cover all issues, nor do they reflect any particular law of state. This 'international generalism' ensures that the convention will be compatible with *any* legal system. Terms are defined universally, sometimes even vaguely, which leads to interpretative problems and questions regarding the gap-filling process.¹

This work analyses the interpretation of the United Nations Convention on the Contracts for International Sale of Goods ("CISG" or "the Convention") adopted on 11th April 1980 in Vienna. CISG is a product of the United Nations Commission on International Trade Law ("UNCITRAL") which aimed at creation of uniform international sales law that would act as a barrier or protection against the dangers posed by usage of national laws in international sales.² Since the time the Convention entered into force on 1st January 1988³, CISG has received world wide acceptance, being ratified by 78 countries.⁴

This proposal is divided into six chapters, the first and the last ones being introduction and conclusion. The second chapter analyses the fundamental principles on which interpretation of the Convention lies – uniformity and internationality. It focuses on Article 7(1) and various interpretative theories whilst comparing them with the ultimate goal of the CISG. In order to analyse fully the interpretative issues, various suggestions such as '*travaux préparatoires*',

¹ Franco Ferrari, '*Uniform Interpretation of the 1980 Uniform Sales Law*' (1994-95) 24 Ga.J.Int'l.& Comp.L. 183, 197-198

² Peter Schlechtriem, '*Uniform Sales Law – The UN-Convention on Contracts for the International Sale of Goods*' (Manz 1986) 37

³ '*Explanatory Note by UNCITRAL Secretariat*', <<http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>> p 34, accessed 1 September 2012

⁴ As of 24 February 2012, <<http://www.cisg.law.pace.edu/cisg/countries/cntries.html>> accessed 1 September 2012

foreign case law and scholarly writings, are analysed along with different legal cultures existing in signatory countries.

The principle of good faith is examined in the third chapter. This concept appears in Article 7(1) and has been subject to many discussions; therefore the main arguments will be presented about its role in the Convention. Is it simply an interpretative tool, general principle or principle demanding additional duties? Again comparison between common and civil law cultures is offered.

Article 7(2) is closely analysed in the fourth chapter dealing with general principles as a suggested gap-filler and possibility of recourse to private international law. Again several theories will be considered about the general principles and their identification. The problem posed by usage of private international law is explored as a breach of foundation principles of uniformity and internationality.

In order to justify the position outlined in the previous chapters a suggested solution will be provided in chapter five which evaluates the possibility of using UNIROIT Principles as an interpretative tool and various online databases that contain collection of international cases and scholarly writings. The advantages and disadvantages of applying both possibilities are considered, and the more appropriate one is suggested as a solution for interpretative issues.

II. Uniformity & Internationality as Foundations of Interpretation of the CISG

The Preamble of the CISG states that its aim is to eliminate *'legal barriers in international trade'*⁵ and to do so, uniform application of its provisions is necessary. This ambitious goal is complicated by the fact that every state has its own legal system, influenced historically and economically, as well as by the historical period when the CISG was negotiated.⁶ Differences arise also in relation to words, their meaning, and as Honnold put it - *'uniform words will not bring the uniform results'*.⁷ Past decades have proved he was right.

Various theories attempt to solve interpretation issues; there are two main ones – the first argues that convention is upon ratification part of national legal system, and so the rules of that legal system shall be used when interpreting the convention. The other is a theory suggesting *'autonomous'* interpretation, without connecting the convention to any particular national legal system.⁸

Of the two theories the second is preferred by this author and it is also supported by views of academics such as Honnold who states that *'the settlement of disputes would be complicated and litigants would be encouraged to engage in forum shopping if the courts of different countries persist in divergent interpretations of the Convention'*.⁹ A concurrent view is presented by Ferrari who stresses that it would bar the goal of uniformity which the CISG aims to achieve.¹⁰

⁵ United Nations Conventions on Contracts for International Sale of Goods <<http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>> accessed 03 August 2012

⁶ Camilla Baasch Andersen: *'Furthering the Uniform Application of the CISG: Sources of Law on Internet'* (1998) 10 Pace Int'l L.Rev. 403, 404

⁷ John O. Honnold, *'The Sales Convention in Action – Uniform International Words: Uniform Application'* (1988) 8 J.L.& Com. 207, 207

⁸ *Supra fn 1*, p 199

⁹ John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (2nd edn, Kluwer 1991) 142

¹⁰ *Supra fn 1*, p 200

There was also pointed out another problem of the first theory, so called '*faux amis*', referring to a possibility that the same legal terms have various definitions across signatory countries, hence no uniformity in application.¹¹ Honnold goes even further stating that such interpretative theory would be clear infringement of the Article 7.¹² The whole purpose of the convention – to create global rules for international sales – would be according to Bonell '*seriously jeopardised*' if the recourse to national law would be taken on the regular basis. Even after the ratification international convention has a life of its own, it is not to be embraced into the national law, but it is to coexist *alongside* the national law. It is designed to regulate a certain area of law to which not national, but international rules apply and so even the terms and definitions in the convention shall be interpreted independently from national ones, even though they might deal with the same subject. International conventions are drafted on the international level when often compromise is a *golden middle way* to go in order to accommodate views and legal systems of many different countries.¹³

In fact, interpretative issues of CISG are not new phenomena in a trade law. The same problem occurred in relation to the 1930 Geneva Uniform Law on Bills of Exchange and Promissory Notes, where questionable provisions were interpreted with direct reference to provisions in national law. The application of private international law by various courts was examined and

¹¹ J.W.F. Sundberg, '*A Uniform Interpretation of Uniform Law*' (1966) 10 Sc.St.L., 219, 221; see also Amy H. Kastely, '*Unification and Community: A Rhetorical Analysis of the UN Sales Convention*' (1988) 8 Nw. J. Int'l L. & Bus. 574, 593

¹² John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (3rd edn, Kluwer 1999) 89

¹³ Michael J. Bonell, '*Article 7*' in C. M. Bianca, M. J. Bonell, *Commentary on the International Sales Law* (Giuffrè 1987) 72-73

condemned because the rules were unified in order to prevent such national recourse, so that Uniform Law would exist autonomously.¹⁴

Therefore, international convention as a legal instrument created on the supranational level is a separate set of legal rules, independent from the national ones, which demands the international application. As such it needs to be interpreted in the same way in all of the contracting jurisdictions, with no direct reference to any national law; otherwise it will be nothing more than expensive extra-jurisdictional change in national law. ‘International character’ and ‘uniform application’ are the two safeguards which shall guarantee that the effort of drafters will be worthwhile.

Article 7 of the CISG was formulated with the aim of achieving uniformity. Article 7(1) reads as follows:

“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.”¹⁵

On first sight it is possible to observe the imperative style of the provision. One has to take into consideration international practice – case law and scholarly opinions – otherwise no internationality or uniformity would appear. As it is usual with each particular subject matter, similar problems may arise, and this is when CISG demands *duty*. It does not ask to follow the

¹⁴ René David, ‘The International Unification of Private Law’ in René David (ed), *International Encyclopedia of Comparative Law*, Vol II, *The Legal Systems of the World; Their Comparison and Unification*, Chapter 5 ((Tubingen: Mohr, 1971) 218

¹⁵ United Nations Conventions on Contracts for International Sale of Goods <<http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>> accessed 03 August 2012

foreign decisions blindly, but to search and accommodate the arguments to those that had already been made.¹⁶

References of Article 7(1) to internationality and uniformity clearly allude to the second of the above mentioned interpretative theory that CISG has to be interpreted autonomously, as a set of rules governing international sales, disregarding national rules which are being superseded by the CISG. Using national law as an interpretative tool of CISG would lead to exactly the opposite result to the one demanded by the CISG.¹⁷

Achieving uniformity in interpretation of the CISG is not an easy goal, but certainly not an impossible one. As Maskow suggested search for '*what others have already done*' must be conducted so that the same international approach can be secured.¹⁸ Although there still remain issues in relation to weight of foreign case law and translation of such decisions due to different legal cultures in common and civil law countries.¹⁹

As it is probably impossible to create binding foreign precedent rule, it has been proposed that such foreign decisions shall have at least influential character. CISG deals exclusively with international sales and therefore rules established via such case law can be analysed and applied, so that international uniformity of decisions is maintained.²⁰ Otherwise, upon the application of

¹⁶ *Supra fn 6*, p 405

¹⁷ *Supra fn 1*, p 203

¹⁸ Dieter Maskow, '*The Convention on the International Sale of Goods from the Perspective of the Socialist Countries*' in Franco Ferrari (ed), *La Vendita Internazionale* (Guiffré, Milan 1981) 50

¹⁹ *Supra fn 1*, p 205

²⁰ Peter Schlechtriem, '*Requirements of Application and Sphere of Applicability of the CISG*' (2005/4) V.U.W.L.R. 781, 789-790

national law, there arises a risk of ‘*forum shopping*’ where a party decides to which court to apply in order to get the desired outcome according to the most suitable law.²¹

Mandatory requirement of uniformity and internationality implies duty upon the courts of contracting states to look for other decisions. As can be inferred from the Article 7, international decisions are not only acceptable but even necessary to attain uniformity. Because of the international recognition of the CISG, there exists quite a substantial volume of case law available to the judges. Even House of Lords in the *Fothergill case*²² admitted that the reasoning of international case law shall be given certain weight.²³ It is important to note that Lord Diplock particularly distinguished courts according to their ‘*reputation*’ and ‘*status*’ as indicators of persuasiveness of their decisions in relation to English law.²⁴ Though doctrine of precedent does not operate in civil law countries, it has been established that the courts follow the reasoning of their case law, so it is possible ‘*to predict*’ what the ruling probably would be.²⁵

The fact that judges from many other countries used international case law when the decision proved to be reasonable and convincing and issue was similar to the case at hand suggests that it is more subjective than objective position of judiciary. Andersen also believes that the position of the court in the hierarchy is irrelevant; as far as the decision was not overruled it should be as good as any other decision of a higher court. She says that ‘*...the case is removed from this context if cited as an international source...*’²⁶

²¹ *Supra fn 1*, p 199

²² *Fothergill v. Monarch Airlines*, [1980] 2 All E.R. 696 (H.L.)

²³ *Supra fn 12*, p 96

²⁴ *Supra fn 22*, 96

²⁵ *Supra fn 12*, p 96

²⁶ C .B. Andersen, F. Mazzotta, B. Zeller, *A Practitioner’s Guide to the CISG* (Juris Publishing 2010) <<http://cisgw3.law.pace.edu/cisg/biblio/andersen-mazzotta-zeller.html>> accessed 3 August 2012

Influential or persuasive status of foreign precedents however well-argued may still not achieve uniformity. Therefore, it is important to explore whether there is anything else permissible which would help to achieve international interpretative uniformity. Vienna Convention on the Law of Treaties²⁷ may suggest one option. Article 32 states:

“Recourse may be had to *supplementary* means of interpretation, including the *preparatory work* of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning *ambiguous* or *obscure*; or

(b) leads to a result which is manifestly *absurd* or *unreasonable*.”²⁸

According to this article a broad scope of help may be sought in order to ascertain true meaning or intention behind the provision of the convention.²⁹ Therefore a permissive interpretative tool appears to be the analysis of ‘*travaux préparatoires*’ or legislative history which may help to settle what was intended by each particular provision. In international law especially, it is a very useful and regularly used method. However, even here one comes to obstacles. While civil law systems apply legislative history in solving the interpretative issues without any problems, most common law courts (except U.S.A.) have long doubted such application.³⁰ In the United States, the Supreme Court held that interpretation of international treaties does not have to be narrow and recognised ‘*travaux préparatoires*’ as an interpretative tool.³¹ Search for legislative history

²⁷ Vienna Convention on the Law of Treaties (1986)

²⁸ Malcolm D. Evans, *Blackstone’s International Law Documents* (9th edn, OUP 2009) 353

²⁹ *Supra* fn 12, p 93

³⁰ *Supra* fn 1, p 207

³¹ *Air France v. Saks*, 470 U.S. 392, 396 (1985)

and true intention behind the treaties is quite well-established in the United States because of the conscious attitude of American courts towards the unification process.³²

Strictness of literal interpretation in England was relieved mostly in the *Fothergill case*³³ in which usage of legislative history was, according to Lord Diplock, supported because '*...the language ... has not been chosen by an English draftsman. It is neither couched in the conventional English legislative idiom nor designed to be construed exclusively by English judges...*'³⁴ Lords Diplock and Scarman went even further suggesting that international conventions in particular should be placed outside any national rules so that internationally accepted means can be employed to achieve uniformity.³⁵

It is important to note that usage of legislative history is not a completely unknown or newly discovered concept in England. The concept of '*travaux préparatoires*' could be compared to *Hansard* and it was accepted to be used, under certain circumstances, by the House of Lords³⁶ in *Pepper v Hart*³⁷. Apart from the well-known rule of '*ordinary meaning*' of a statute, following the wording of a statute by interpreting the words by their plain and common meaning³⁸; there is also another rule. It aims to infer what Lord Reid called: '*...meaning of the words which Parliament used...*'³⁹ or what Parliament wanted to rectify⁴⁰. This rule proved useful in several

³² *Supra fn 12*, p 91

³³ *Supra fn 22*

³⁴ *Supra fn 22*, 87

³⁵ *Supra fn 12*, p 93

³⁶ Andrew Burrows (ed), *English Private Law* (2nd edn, OUP 2007) 25

³⁷ [1993] AC 593

³⁸ *Supra fn 36*, p 21

³⁹ *Black Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 613

⁴⁰ *Supra fn 36*, p 17

cases such as *Royal College of Nurses v DHSS*⁴¹ in which House of Lords acknowledged that the overall intention of legislators needs to be taken into consideration.⁴²

The same notion of acceptance can be observed also in relation to academic publications. Though originally not taking into consideration opinions of scholars, common law judges have started to appreciate their views.⁴³ European and American courts value scholarly writings and regularly engage themselves in search for those applicable to the case on the table. Major change in common law has been observed⁴⁴ in the above mentioned *Fothergill case*⁴⁵ where Lord Diplock admitted that such '*commentaries can have persuasive value*' and that their use '*will depend upon cogency of their reasoning*'.⁴⁶

Another factor that deserves consideration is will of the parties. Bonell stresses that once the parties decided that CISG will govern their sales contract, it shall be respected also by the courts. It means that the conventions shall be interpreted autonomously and independently from any national law. He also points out that though parties can exclude or derogate (Articles 6 and 12, CISG) from CISG provisions, such action would essentially put into risk the aim of the Convention – uniformity on international level.⁴⁷

Noteworthy is also a fact that the Convention and the agreement between the parties cannot be separated from each other particularly in the process of interpretation. The meaning and goals of

⁴¹ [1981] AC 800

⁴² *Supra fn* 36, p 15-16

⁴³ *Supra fn* 1, p 208-209

⁴⁴ *Supra fn* 12, p 97

⁴⁵ *Supra fn* 22

⁴⁶ *Supra fn* 22, 95

⁴⁷ *Supra fn* 13, p 93-94

the Convention and its provisions is reflected in the agreement of the parties if they have decided that the contract would be governed by the Convention.⁴⁸

Therefore it can be argued that Article 7 of the CISG is a non-derogatory provision. As every legal system has its own methods of interpretation, the same would apply for international conventions. The way in which they are to be interpreted shall not reflect any particular national interpretative method; it shall comply with what parties have agreed to.

It shall be borne in mind that the reason for creation of unified law is to make the sales less complicated and more accessible globally, to encourage merchants and to bring clarity into their business relationships. If the convention is to be transposed into national law, there is no need to participate in drafting, negotiations, and then ratification process; a state could simply redraft its national law. It will be only national, not international, not bearing any international responsibility or obligations. It is the view of the writer that such nationalistic attitude does not have a place in the current business world.

Article 7(1) imposes duty on judicial authority to respect the aim of the CISG to unify international sales law. While doing so, ambiguities that arise are to be resolved by taking into consideration '*travaux préparatoires*', foreign case law and scholarly writings. Despite different legal cultures in civil and common law countries, it can be observed that courts have found their ways to accommodate and reconcile their differences, so that regard to international case law and academic opinions can be included. Therefore it could be concluded that this positive change has already been made in the name of uniformity and internationality as overriding principles.

⁴⁸ Fritz Enderlein, Dietrich Maskow, '*International Sales Law: United Nations Convention on Contracts for the International Sale of Goods & Convention on the Limitation Period in the International Sale of Goods*' (Oceana 1992) 54

III. Good Faith – General Principle or merely a ‘Compromise’?

Article 7(1) refers also to the “*observance of good faith in international trade*”.⁴⁹ Due to extensive debate in relation to concept of good faith, it is said that Article 7(1) represents a “*compromise*” balancing the two opposite views – imposition of positive duty and no positive duty at all.⁵⁰ It is also called ‘*a strange arrangement*’⁵¹, ‘*an awkward compromise*’⁵², ‘*a rather peculiar provision*’⁵³ or ‘*a statesmanlike compromise*’⁵⁴ which suggests that the strong debate while drafting the Convention still remains.

There are many differing views whether, when and how the concept of good faith is to be applied. On the one side Farnsworth believes that insertion of good faith symbolizes simply another interpretative requirement to be ‘*considered*’ when deciding the case, so that principle of equity will be maintained and the final judgement will not generate unreasonable outcome. He maintains there is no duty of good faith imposed upon the parties to a contract for sale.⁵⁵ But if the good faith represents only ‘*seemingly harmless words*’⁵⁶ why is it then stated in the Article 7(1) together with requirements of uniformity and internationality in the imperative, duty imposing style? Farnsworth seems to disregard the goal of uniformity also by saying that good faith is not a general principle and national law according to conflict of law rules shall determine

⁴⁹ United Nations Conventions on Contracts for International Sale of Goods <<http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>> accessed 03 August 2012

⁵⁰ *Supra fn 1*, p 210

⁵¹ Gyula Eörsi, ‘*A Propos - the 1980 Vienna Convention on Contracts for the International Sale of Goods*’ (1983) 31 *Am.J.Comp.L.* 333, 354

⁵² Thomas E. Carbonneau, Marc S. Firestone, ‘*Transnational Law-Making: Assessing the Impact of the Vienna Convention and the Viability of National Adjudication*’ (1986) 1 *Emory J.Int'l Disp.Res.* 51, 74

⁵³ *Supra fn 13*, p 83

⁵⁴ E. Allan Farnsworth, ‘*Problems of Unification of Sales Law from the Standpoint of the Common Law Countries*’ in: *Problems of Unification* (Oceana 1980) 3-25; 7 *Digest of Commercial Law* (1980) 3-25

⁵⁵ E. Allan Farnsworth, ‘*Duties of Good Faith and Fair Dealing under the UNIDROIT Principles, Relevant International Conventions, and National Laws*’ (1995) 3 *Tul.J.Int'l & Comp.L.* 47, 55

⁵⁶ E. Allan Farnsworth, ‘*The Convention of the International Sale of Goods from the Perspective of the Common Law Countries*’ in Franco Ferrari (ed), *La Vendita Internazionale* (Guiffré, Milan, 1981) 18

the outcome.⁵⁷ Another indication that this reasoning lacks grounds is Article 7 of the Convention on the Limitation Period in the International Sale of Goods (LPISG) which repeats Article 7(1) almost verbatim but does not mention good faith unlike CISG⁵⁸. Therefore if the drafters included good faith it clearly must have a role, not just to be a meaningless diplomatic compromise, otherwise they would just use the wording similar to the LPISG.

According to Honnold the concept of good faith refers to the interpretation of the CISG, as Farnsworth proposed. Also he further argues that though uniform interpretation is required, because 'good faith' has a generally acknowledged, widespread meaning, it is permissible to ascertain its definition via national laws. This "exception" is justifiable on the grounds that several provisions of the CISG refer to certain conduct which is in accordance with principle of good faith (Articles 19(2), 21(2), 46, 47, 63).⁵⁹ Although, as was argued above, defining any legal terms or concepts of the CISG with reference to national law is not appropriate and could cause serious difficulties in following *international* case law, which will not be uniform anymore.

When interpreting the CISG, one necessarily comes to the principle of good faith, because its idea is behind several provisions. Eörsi claims that the process of interpreting the CISG and the process of analysing and interpreting the contract of sale are not two independent, detached actions, they coexist symbiotically. Parties to the contract are those who decide what law shall govern their contract and as such they can agree to derogate from certain provisions (Article 6).⁶⁰

⁵⁷ *Supra fn 55*, p 57

⁵⁸ *Supra fn 48*, p 410

⁵⁹ *Supra fn 9*, p 147-148

⁶⁰ Gyula Eörsi, 'General Provisions' in N.M. Galston, H. Smith (eds), *International Sales: the UN Convention on Contracts for the International Sale of Goods* (Matthew Bender, New York, 1984) [2-8,9]

Another view - to act in good faith as an *obligation* upon the parties of the contract is presented by Bonell. He argues that when interpreting the contract governed by CISG, a court is also referring directly to conduct of the parties. As examples he lists the same provisions as Honnold above, which according to Bonell when employed appropriately will back up the theory that *'...good faith is also one of the general principles underlying the Convention as a whole...'*⁶¹

The views of Eörsi and Bonell appear more appropriate, but a bit too far-reaching. Firstly, as was argued in the previous chapter Article 7 seems to be non-derogatory provision, otherwise the international uniformity, the ultimate goal of CISG, will not be achieved. Though, the principle of the freedom of contract applies, Goode also thinks that to derogate from Article 7(1), particularly from the good faith part is somewhat strange, given that parties would usually presume it as a non-derogatory one.⁶² Secondly, even Bonell admits that his theory requires parties to undertake on themselves *'additional duties'* not expressly settled in the contract in accordance with the concept of good faith.⁶³ Allowing the obligation of "extra" duties upon the parties is inadmissible, but to accept that the good faith may only to be *'considered'* (as Farnsworth suggests) is way too restrictive. It seems that Ferrari, using words of Maskow and De Nova, described it the most properly: *'...the parties' behaviour must be measured on a good faith standard, limited by the Convention's scope of application razione materiae...'*⁶⁴

Schlechtriem supports the theory that CISG shall be interpreted independently from any national law, considering the standards in international trade and following the case law.⁶⁵ Furthermore,

⁶¹ *Supra fn 13*, p 84-85

⁶² R. Goode, H. Kronke, E. McKendrick, *Transnational Commercial Law: Text, Cases, and Materials* (OUP 2007) 282

⁶³ *Supra fn 13*, p 85

⁶⁴ *Supra fn 1*, p 215

⁶⁵ *Supra fn 20*, p 790

he advocates the view that good faith is a general principle of the CISG; and as such it applies not only to interpretative issues but also to the manner in which parties act. Justification for this argument lies in the fact that though Article 7(1) does not specify the way how parties shall behave, but it is defined in other provisions dealing specifically with particular issue. As a measure for such reasoning he uses a phrase “reasonable person” which clearly implies the general principles as stated in Article 7(2).⁶⁶ This opinion is also supported by Lookofsky who points out defined concepts of for example ‘*reasonable conduct*’ and *estoppel* which include obligation of the parties in respect of their good faith performance.⁶⁷ Also Kastely agrees that good faith belongs to the general principles of the CISG. She refers to Chapter V, Section VI dealing with preservation of goods through which both parties to a contract are asked to have regard to their mutual benefit.⁶⁸ Moreover, Ziegel observed that the wording by which good faith is included in Article 7(1) is certainly not a narrow one – it allows embracement of formation of the contract under the “protection” of good faith principle what is in fact supported by the Secretariat Commentary⁶⁹ where in many model scenarios the formation of the contract comprise also of the concept of good faith.⁷⁰

The views claiming that good faith is the general principle that lies behind many provisions of the CISG have been extensively criticized. The criticism could be summarized in commentary of Sim who claims that because the concept of good faith lacks precise definition in the CISG, it

⁶⁶ *Supra fn 2*, p 39

⁶⁷ Joseph Lookofsky, ‘*The 1980 United Nations Convention on Contracts for the International Sale of Goods*’ in J. Herbots, R. Blainpain (eds), *International Encyclopaedia of Laws – Contracts*, suppl. 29 (Kluwer, 2000) 50

⁶⁸ Amy H. Kastely, ‘*Unification and Community: A Rhetorical Analysis of the UN Sales Convention*’ (1988) 8 Nw. J. Int’l L. & Bus. 574, 597

⁶⁹ Text of Draft Convention on Contracts for the International Sale of Goods approved by UNCITRAL together with a Commentary prepared by the Secretariat A/CONF./97/5, 14 March 1979, p 45

⁷⁰ Jacob S. Ziegel, Claude Samson, ‘*Report to the Uniform Law Conference of Canada on Convention on Contracts for International Sale of Goods*’ (July 1981) < <http://www.cisg.law.pace.edu/cisg/wais/db/articles/english2.html> > accessed 19 August 2012

cannot as such be considered as one of the general principles. The fact that certain provisions refer indirectly to the concept of good faith are simply expressions of how the law shall be – fair, just and reasonable; but certainly do not suggest that the good faith is a general principle. She carries on by saying that the alleged principle of good faith ‘*undermine[s]...certainty and predictability*’ that the Convention was to bring into international sales. Sim also refers to question of ‘*compromise*’ that was attained suggesting that declaring good faith as a general principle would ultimately lead to acknowledging that there was no compromise at all, because CISG would that way impose positive duty of good faith.⁷¹

However, any criticism could be rebutted. As already mentioned the Vienna Convention on the Law of Treaties (VCLT) provides some guidance. In its preamble it states: ‘*Noting that the principles of free consent and of good faith and the pacta sunt servanda are universally recognized...*’⁷² which suggests that the fact that good faith is not expressly defined in the CISG does not bar its application as it is worldwide known concept.

Moreover, Part III of VCLT dealing with Observance, Application and Interpretation of Treaties in Article 26 (Section 1 Observance of Treaties) dictates that: ‘*Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*’⁷³

Section 3, Article 31 specifies that ‘*[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*’⁷⁴

⁷¹ Disa Sim, ‘*The Scope and Application of Good Faith in the Vienna Convention on Contracts for the International Sale of Goods*’ (Sept. 2001) < <http://www.cisg.law.pace.edu/cisg/biblio/sim1.html> > accessed 16 August 2012

⁷² *Supra* fn 28, p 343

⁷³ *Supra* fn 28, p 351

⁷⁴ *Supra* fn 28, p 352

Therefore it can be said that the principle of good faith having been well-known globally, applies not only to interpretation of the Convention, but also to the performance of the parties in relation to their obligations under the CISG.

Uncertainty issue was brought by common law lawyers, mainly English ones,⁷⁵ which is probably why the compromise was inevitable. Quite ironically the UK has still not ratified the Convention. The best it is expressed in words of Goode who said:

“The reluctance of the United Kingdom to ratify the convention despite the overwhelming advantages of doing so reflects this country’s penchant for making major contributions to the work of harmonization and then walking away from the finished product without any adequate explanation.”⁷⁶

It is then quite illogical to follow the notion advocated by the country that did not ratify the convention. Looking to the legal culture of countries which did ratify the Convention, it can be observed that the principle of good faith operates without any substantial problems.

There is also an opinion that VCLT in fact shall not apply to the CISG. The argument brought forward was that VCLT deals with obligations of states under public international law whereas CISG concentrates on responsibilities of private parties. Also due to the fact that CISG specifies how it shall be interpreted, the VCLT should be inapplicable. In other words, though accepted that VCLT is relevant in relations between the ratifying states themselves, CISG does fall within the VCLT scope concerning the contracts for international sales between the private parties.⁷⁷

However, states by ratifying CISG did not only create obligations towards the other states, but

⁷⁵ *Supra fn 62*, p 278

⁷⁶ Roy Goode, *Goode on Commercial Law* (Ewan McKendrick ed, 4th edn, Penguin Books 2010) 1016

⁷⁷ *Supra fn 12*, p 111-112

also towards themselves – they are also obliged to comply with the provisions of CISG if it governs an international contract for sale. National courts are executors of such international obligations. The fact that international contract of sale is between two private parties shall not have an impact on any international obligations that a state signed up for and parties did not exclude it. Therefore even if private parties conclude a contract for international sale and agree that it is governed by the CISG, it is the obligation of a state through its national courts to enforce it and thus fulfil its public international law obligations towards the other signatory states.

As stated above the main issue was to unify the views of civil and common law representatives. It is only natural that everyone was arguing for a solution originating from his own legal system because it was the one he was well-aware of. However, as analysed in the previous chapter, such approach appears counterproductive in relation to uniformity.⁷⁸

Good faith exists in civil and common law countries. In Germany, Civil Code (§242) imposes an obligation upon the debtor whereby his conduct must comply with *'faith and credit'*.⁷⁹ Civil Code of the Netherlands (Article 6) requires usage of principle of good faith, and recognises additional duties related to it, to be taken into consideration as well as to employ the principles of *"reasonableness and equity"* when interpreting any of the contracts.⁸⁰

The idea of incorporating the principle of good faith into common law system was taken from Germany to the United States by Karl Llewellyn thanks to whom it is part of the Uniform

⁷⁸ Gyula Eörsi, *'Problems of Unifying Law on the Formation of Contracts for the International Sale of Goods'* (1979) 27 Am.J.Comp.L. 311, 315-316

⁷⁹ § 242 Bürgerliches Gesetzbuch (BGB)

⁸⁰ Arthur S. Hartkamp, *'Judicial Discretion under the New Civil Code of the Netherlands'* (1992) 40 Am.J.Comp.L. 551, 554

Commercial Code (UCC). UCC specifies that there is a duty to act in good faith, using honest conduct as a measure, as well as observance of reasonableness and fair dealing.⁸¹ The notion of good faith spread also to Australia where Court of Appeal of New South Wales concluded that the courts *regularly* employ principle of good faith and fair dealing when deciding in relation to performance of the parties under the contracts.⁸² Also in Canada it was suggested by the Ontario Law Reform Commission that the reform of incorporation the concept of good faith and fair dealing seems appropriate given the results of analysis comparing various legal systems.⁸³ It was also observed that there is developing a *strong* case law implementing the concept of good faith.⁸⁴

Therefore it is possible to see that the concept of good faith is a part of national law of many CISG signatory countries; and so it is doubtful whether its acknowledgment as a general principle would really produce such uncertainty as argued by English lawyers and advocated by Sim. Concept taken from civil law systems appears to be accommodated well in the United States, and was also accepted by Australian and Canadian courts.

Taking into account the analysis above, the view of Schlechtriem seems to be more preferred. Good faith is one of the general principles of the CISG, and applies not only to interpretative issues of the Convention but also to conduct of the parties during performance of the contract for sale. It is clear from various provisions of the Convention that reasonableness and equity – the two very elements of good faith, play significant role in assessing the duties that CISG places upon the parties and their compliance with it. The principle of good faith is not to be defined or

⁸¹ E. Allan Farnsworth, 'Good Faith Performance and Commercial Reasonableness under the Uniform Commercial Code' (1963) 30 U.Chi.L.Rev. 666, *see also* Uniform Commercial Code (UCC) §1-201 - §3- 103

⁸² *Renard Constructions (ME) Pty Ltd v Minister for Public Works*, 26 N.S.W.L.R. 234 (Ct. App. 1989) 239,268

⁸³ *Supra* fn 12, p 100

⁸⁴ *Supra* fn 70

restricted by any national legislation.⁸⁵ It has also been maintained that the criticism of the concept of good faith imposing ‘*additional duties*’ would ultimately result in its overall acknowledgement that there is a certain common duty which shapes the way parties are required to act.⁸⁶

Another observation made is that the interpretation of the Convention and contract for sale are inseparable. National courts are to be cautious, and to refrain from applying the principle of good faith to the conduct applicable when domestic law requires so; it is proposed that courts are not to be afraid to apply this principle when required to comply with international trade standards and provisions of CISG, irrespectively of national law, so that the international case law could grow.⁸⁷

⁸⁵ *Supra fn 2*, p 38-39

⁸⁶ *Supra fn 48*, p 55

⁸⁷ Ole Lando, ‘*CISG and its Followers: A proposal to adopt some international principles of contract law*’ (2005) 53 *Am.J.Comp.L.* 379, 392-393

IV. General Principles v Private International Law – What is a better gap-filler?

Even when every effort is used in interpreting the CISG and search made for international case law and scholarly writings there can arise a situation when the matter in question clearly belong under the Convention, but its provisions do not offer an express solution for it.⁸⁸ As the authors of CISG were well-aware that such situation may arise in the future, Article 7(2) states following:

“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.”⁸⁹

It is clear from the order of the paragraphs of Article 7 that at first importance is placed to uniformity, internationality and good faith principles. However if a situation which cannot be solved on their basis arise, then search for general principles of the Convention is mandatory. It is important to note that this paragraph still needs to comply with the ultimate aim of the Convention – to create a uniform sales law – and therefore recourse to any national law is highly undesirable.⁹⁰ Put simply, any discovery of a gap is to be filled with the Convention itself.⁹¹ In order to answer satisfactorily the question whether the general principles can fill the gaps it is important to specify what are those ‘gaps’. The Convention identifies in its Articles 2, 3, 4 and 5 some of the situations which are excluded from its application, for example sales for personal

⁸⁸ *Supra fn* 13, p 75

⁸⁹ United Nations Conventions on Contracts for International Sale of Goods <<http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>> accessed 03 August 2012

⁹⁰ *Supra fn* 13, p 75

⁹¹ *Supra fn* 60, p [2-09]

use, auctions, services, claims for death or personal injury or validity of contract.⁹² Following the wording of Article 7(2) because the above mentioned examples are excluded from the application of CISG they are not capable of creating the gap.⁹³

Most commonly used example of a gap is Article 78 (interest). But is it really a gap? As Andersen rightly pointed out Article 78 is placed in a part to which any reservation cannot be made, Article 78 clearly states that there is entitlement to interest and it is also possible to say that CISG anchor a general principle of *'full compensation'*. Looking back to *'travaux préparatoires'*, Andersen concludes, though admitting disagreement, drafters nevertheless wanted to make a *'clear statement'* that there is entitlement to interest. As the interest rate remains unknown, it could be said that this is a gap *within* the Convention itself. The disagreement continues now between the scholars and judges. While scholars are open to discuss the issue in order to comply with requirements of CISG as much as possible, the judges seem to unilaterally decide that interest rate is a matter of private international law, achieving the outcome exactly opposite to the aim of the Convention as whole – uniformity.⁹⁴ The issue could probably best be described by Rabel:

“...the greatest danger for maintaining a truly uniform legal situation lies in diverging legal interpretations... courts will either consciously or subconsciously use their national law to fill

⁹² United Nations Conventions on Contracts for International Sale of Goods <<http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>> accessed 03 August 2012

⁹³ *Supra fn* 12, p 105

⁹⁴ Camilla Baasch Andersen, *'General Principles of CISG – Generally Impenetrable?'* in Camilla B. Andersen, Ulrich G. Schroeter (eds), *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his 80th Birthday* (Wildy, Simmonds & Hill Publishing 2008) 13, 21-22

gaps... cases not expressly settled in this Statute nevertheless are subject to it and thus *have to be* resolved in the spirit of the Statute in conformity with the principles permeating it...”⁹⁵

The quotation above clearly implies that in case of any gap the general principles are to be used as they appear at the top of the hierarchy so as to maintain international uniformity and refrain from application of national law.⁹⁶ Whether or not general principles can act as gap-fillers gave rise once again to vivid academic debate. As in the previous chapters, the most useful seems to compare civil and common law approaches towards the gap-filling via general principles.⁹⁷

Roman-Germanic systems laid down basics for gap-filling method as probably most applicable to CISG.⁹⁸ In the civil law countries the gap-filling process is generally connected with the general principles. Austrian judges are asked to decide ‘*doubtful*’ cases on the basis of ‘*natural law*’⁹⁹ and analogous clauses can be found in Italian, Spanish or Egyptian Civil Codes. A quite liberal approach is adopted in Switzerland where if the law does not settle the dispute satisfactorily, the judiciary can decide according to what the legislative body would have done given the same situation, bearing in mind the Swiss tradition and his legal training. In France and Germany the law is to be taken not only as an exhaustive list of rules, but as a body forming general principles that are to be observed and used whenever necessary.¹⁰⁰ It could be said that in civil law countries legislators are aware that ‘unusual’ situations could happen and so they allow

⁹⁵ Ernest Rabel, ‘*Der Entwurf eines einheitlichen Kaugesetzes*’ (1935) 9 Rabels Zeitschrift 1, 54 Lisa Haberfellner (trs) in Ulrich Magnus, ‘*General Principles of UN - Sales Law*’ Max-Planck-Institute for foreign and international Private Law Volume 59 (1995) Issue 3-4 (October) <<http://www.cisg.law.pace.edu/cisg/text/magnus.html#f12>> accessed 24 August 2012

⁹⁶ *Supra fn* 94, p 25

⁹⁷ *Supra fn* 13, p 76

⁹⁸ *Supra fn* 1, p 220

⁹⁹ Austrian Civil Code of 1811, §7

¹⁰⁰ *Supra fn* 13, p 77

their judges to interpret the law and derive the rules from ‘general principles’ which are essentially as a spirit underlying the goal of such law.

Different legal culture applies in common law countries. It could be even said that there it is the other way around – general principles are derived from the case law and if there is any gap, it is resolved according to statute. Though the input of the judge is still necessary the classic interpretative theory in the strict sense does not give the judge such discretion as in civil law countries. Only when the issue of the case is not dealt in any statute, then the case law will lead the judge in deciding.¹⁰¹ Statute essentially acts as a “glue” prescribing the rules for certain situations, where if the gap is detected the general principles from cases will come into play.¹⁰²

It appears that gap-filling process of the CISG is based on civil law systems, bearing in mind that it presents an attempt to ‘codify’ international sales law without pointing to any particular national law. Therefore it seems reasonable that an extra effort has to be made so as to find a necessary solution *in* the Convention itself.¹⁰³ Bonell also believes that Article 7(2) is based on civil law culture. He emphasizes that the need to promote uniformity in international sales law lead to the creation of CISG; and so it is only the CISG from which such general principles are to emanate. He also advocates for an ‘*analogical application*’ which is permissible under Article 7, stressing that both fillers are equally good solutions, corresponding to each other, underlying the idea behind and serving the purpose of the CISG to achieve uniformity.¹⁰⁴

There is however argument against the “search” for general principles. The problem lies probably in saying *as many lawyers as many opinions* that every national court would identify its

¹⁰¹ *Supra fn* 13, p 77-78

¹⁰² *Supra fn* 1, p 221

¹⁰³ *Supra fn* 1, p 221-222

¹⁰⁴ *Supra fn* 13, p 78

own general principles that would vary not only from country to country, but from court to court. The interpretation and justification behind them would be also divergent so international uniformity would be impossible to achieve.¹⁰⁵ Although it is true that many general principles are not concrete, they are '*non-codified expressions of the underlying ideas*' that make CISG itself. One also has to admit that the express listing of all the general principles and their subsequent interpretative issues may create even more complicated situations and so the advantageous position of CISG could be that the list of general principles is non-exhaustive.¹⁰⁶ Also Ferrari believes that it is a problem only partially. There are general principles which are clearly stated in the CISG (good faith); then there are ones which ideas are behind the provisions and though not defined precisely, they can be easily inferred from the CISG (autonomy of the parties). In his reasoning he summarizes thoughts of Kritzer, Honnold and Farnsworth and concludes that there exist certain hierarchy among the general principles – the ones expressly defined trump the ones which are only 'outlined' and those trump any other general principle (e.g. Articles 9, 11, 27, 29, 78).¹⁰⁷

The hardest part in search for general principles is deduction of general principles not clearly stated and not even outlined. Unfortunately, this is the case for many of them. However there was suggested a method even for these cases. When one is engaged in such search, a general principle is a rule which is applicable not only to a case at hand but also to others, dealing maybe with different nevertheless applicable matter.¹⁰⁸ As an example it is listed 'reasonable conduct' a standard which applies to many different situations. The problem here is how the

¹⁰⁵ *Supra fn* 60, p [2-12]

¹⁰⁶ *Supra fn* 94, p 26

¹⁰⁷ *Supra fn* 1, p 223-224

¹⁰⁸ *Supra fn* 13, p 80

‘reasonableness’ is to be defined? The answer is clear – according to Article 7(1) having in mind international uniformity of the CISG, using a definition acceptable in most countries.¹⁰⁹

It is necessary in order to maintain uniformity to follow a single process of search and use of general principles that would be characterized by consistency, continuity and comprehensiveness. This *triple C* should guarantee the uniform usage of general principles which could be accommodated to any given situation. However, there also has to be an agreement among the judges because they are to be primarily involved in shaping this process.¹¹⁰ Therefore the need for international case law containing facts of the case, reasoning and research justifying the decision shall be mandatory.

The lethal shot to uniformity is the last part of Article 7(2) suggesting the recourse to private international law. The risk of this part lies mainly on judges, because it is very convenient simply to declare that it is not possible to identify the appropriate general principles to solve the disputes and so rules of private international law need to be used – usually national law.¹¹¹ A comparison may be drawn to the 1964 Hague Conventions where the most accepted was method of search for ‘*general principles of law*’¹¹² rather than simply use the national law. This search involved studying decisions dealing with the issue, and applying the same principles as most of the other countries did.¹¹³ This appears to be quite acceptable solution as it would mean that the judge was thinking about internationality and uniformity. Also it is more appropriate due to fact that the recourse to national law is tolerated only as the ‘*last resort*’, meaning if there are any other

¹⁰⁹ *Supra fn 1*, p 224-225

¹¹⁰ *Supra fn 94*, p 32-33

¹¹¹ *Supra fn 60*, p [2-12]

¹¹² “*allgemeine Rechtsgrundsätze*” according to E. Wahl, ‘*Art 17*’, in Hans Döle (ed.), *Kommentar zum Einheitlichen Kaufrecht* (Munich 1976) 129.

¹¹³ *Supra fn 13*, p 82

options complying with overruling principles of uniformity and internationality they shall have priority.

Such approach may be observed in several recent cases. American courts in various cases¹¹⁴ considered foreign case law as well as scholarly writings and referred to them directly in the judgement. Same notion of referencing of academic opinions and cases appeared in New Zealand case¹¹⁵ in which reliance in particular was put on theory of Schlechtriem concerning general principles and non-recourse to national law. The concept of ‘uniformity search’ was very well established in Serbia, which on several occasions in arbitration cases¹¹⁶ dealt with the issue at hand by conducting a thorough search alongside well-argued explanations. An exemplary approach may be observed in Italian case of *Maraldi*¹¹⁷ where court examined meticulously many cases related - national and international judgments, in order to come to final conclusion. Though not the same can be concluded about other cases, nevertheless an attempt of search may be observed in cases from Poland¹¹⁸ or The Netherlands¹¹⁹.

The main problem seems to be the extensive use of private international law, even in cases when it is not necessary. Private international law should be used only in situations when search for

¹¹⁴ *Dingxi Longhai Dairy, Ltd. v. Becwood Technology Group L.L.C.* 718 F.Supp. 2d 1019 (D. Minn. 2010), <<http://cisgw3.law.pace.edu/cases/110214u1.html>> accessed 31 August 2012, *Forestal Guarani S.A. v. Daros International, Inc.* 08-4488 U.S. District Court [New Jersey] 7 October 2008 <<http://cisgw3.law.pace.edu/cases/100721u1.html>> accessed 31 August 2012

¹¹⁵ *RJ & AM Smallmon v. Transport Sales Limited and Grant Alan Miller* [2011] NZ C A 340 <<http://cisgw3.law.pace.edu/cases/110722n6.html#v>> accessed 31 August 2012

¹¹⁶ *Agricultural products and cereals case* T -5/09 (6 May 2010) <<http://cisgw3.law.pace.edu/cases/100506sb.html>> accessed 31 August 2012, *Mineral water case* T-6/08 (19 October 2009) <<http://cisgw3.law.pace.edu/cases/091019sb.html>> accessed 31 August 2012, *Medicaments case* T-8/08 (28 January 2009) <<http://cisgw3.law.pace.edu/cases/090128sb.html>> accessed 31 August 2012

¹¹⁷ *Officine Maraldi S.p.A. v. Intessa BCI S.p.A., National Bank of Egypt, H.U. Gas Filling Plant Aswan- Usama Abdallah and Co.* (16 February 2009) <<http://cisgw3.law.pace.edu/cases/090216i3.html>> accessed 31 August 2012

¹¹⁸ *Spoldzielnia Pracy "A" in N. v. GmbH & Co. KG in B. V* CSK 456/06 (11 May 2007) <<http://cisgw3.law.pace.edu/cases/070511p1.html>> accessed 31 August 2012

¹¹⁹ ___ v. *Omnibus Trading B.V.* LJN BJ4645 (29 July 2009) <<http://cisgw3.law.pace.edu/cases/090729n1.html>> accessed 31 August 2012, *Fresh-Life International B.V. v. Cobana Fruchtring GmbH & Co., KG* LJN BH6416 (25 February 2009) <<http://cisgw3.law.pace.edu/cases/090225n1.html>> accessed 31 August 2012

neither analogous application, nor the general principles show the answer to the dispute at hand.¹²⁰

Again examples when cases were decided without even an attempt to solve the problem may be found. The easiest way is to simply declare that the matter is not expressly resolved and so decision is comfortably made on the basis of national law. Such are the examples of Belarusian¹²¹, Ukrainian¹²², Hungarian¹²³ or Slovak¹²⁴ cases. It is remarkable how judges repeatedly used the same approach, without even considering making a search for advice from foreign cases or scholarly writings. What could be useful in such situations is to make it compulsory to provide a justification for use of national law (other than *'it is not expressly settled; so let's use what judge knows the best'*), what search was conducted, what were the results and why the application of private international law is justifiable.

This suggestion might seem stringent but is certainly not unjustified. Andersen points out the work of Mazzotta which can be summarized by saying that despite a vivid debate among the academics, the dispute *general principles v private international law* has a clear winner among the judges – the private international law. Instead of engaging themselves in endless, too

¹²⁰ Franco Ferrari, *'Uniform Interpretation of the 1980 Uniform Sales Law'* (1994-95) 24 Ga.J.Int'l.& Comp.L. 183, 228

¹²¹ *Mineral water and soft drinks case* (10 April 2008) <<http://cisgw3.law.pace.edu/cases/080410b5.html>> accessed 31 August 2012

¹²² *Crucible press case* 44/69 (11 December 2007) <<http://cisgw3.law.pace.edu/cases/071211u5.html>> accessed 31 August 2012

¹²³ *Clothing case* 6.G.40.008/2007/12 (6 June 2007) <<http://cisgw3.law.pace.edu/cases/070606h1.html>> accessed 31 August 2012

¹²⁴ *MDF Doors Case* 1Cb/265/2005 (5 February 2008) <<http://cisgw3.law.pace.edu/cases/080205k1.html>> accessed 31 August 2012, *MDF Doors Case – 2* 1Cb/266/2005 (5 February 2008) <<http://cisgw3.law.pace.edu/cases/080205k2.html>> accessed 31 August 2012, *MDF Doors Case – 3* 1Cb/270/2005 (5 February 2008) <<http://cisgw3.law.pace.edu/cases/080205k3.html>> accessed 31 August 2012, *Glass chaton case* 1 Cb/282/2007 (29 October 2007) <<http://cisgw3.law.pace.edu/cases/071029k1.html>> accessed 31 August 2012, Case number 22Cb/152/2010 (11 October 2010) <<http://cisgw3.law.pace.edu/cases/101011k1.html>> accessed 31 August 2012

complicated search for an answer, it is much easier just to declare that no such general principle or analogous use is anywhere to be found and applicable national law is so easy to follow, so why not to use it? Article 7 has become only one of the provisions, though originally designed *to guard* uniformity, but eventually reduced to nothing more than an *illusion*.¹²⁵ And so this ignorance of judges shows that the last option gets priority over the underlying principles that are to shape and hold together the uniform sales law.

The search for the same general principles adopted in most other countries was criticised too, mainly on the grounds that if drafters were not able to find common solutions, how reasonable is it to expect it from the judges?¹²⁶ On the other side the means available to current judges in form of international databases surely make the search a lot easier than any time in the past.

According to the analysis above the regime adopted in the CISG points more to the civil law culture where every attempt shall be made so that the final decision is made predominantly on the basis of a given act. This is the case of CISG. Therefore all judges and practitioners shall remember that the answer to problem is to be found in the CISG, and not by usage of domestic law. They have a legal duty do so, and only when they fulfilled such duty and prove that there is nothing else to be done, the recourse to private international law as real last option is justified.¹²⁷

The outcome of the dispute between general principles and private international law in relation to gap-filling process seems clear, unfortunately only on paper. The concept of general principles is preferred among many leading academics, who agreed the problem in this dispute is the manner in which uniform law is applied. That conclusion shed a bad light on judges who in making

¹²⁵ *Supra fn* 94, p 16-17

¹²⁶ *Supra fn* 1, p 227

¹²⁷ *Supra fn* 13, p 83

judgements adopt the most comfortable route, setting aside a duty vested in them. Although general principles lack precise definition or non-exhaustive list, it is maintained that by conscious and diligent search and inter-court cooperation there exists a real possibility of achieving a uniform result.

V. **Is there any help so that application of CISG will comply with international uniformity?**

International uniformity as an ultimate goal of CISG can be achieved only if the Convention will be interpreted uniformly. This is simplified through the network of databases collecting not only academic literature related to various issues of uniform sales law, but also case law, describing facts of the case and judgement. Also another suggestion has been made to use additional instrument to help with interpretative issues. So what possibilities are there?

There exists a proposition about how to unify the sales law – to interpret CISG via another document. A group of legal professionals from around the world in the International Institute for Unification of Private Law - intergovernmental organization, created the UNIDROIT Principles of International Commercial Contracts (Principles), a ‘*soft law*’, a set of rules not having binding legal character.¹²⁸ The intention behind the creation of Principles was to rectify the mistakes and to clarify ambiguities that appeared in CISG. The realities of CISG, such as compromises and prolonged diplomatic debates, lead to conclusion that CISG represents the greatest accomplishment possible given the diversity of opinions and legal cultures and so the only option left is to clarify the issues of CISG in another document, although not binding one, embracing more issues than the CISG.¹²⁹ This ‘*interpreting and supplementing*’ of the Convention is according to Gebauer justified because it represents the escape route from using national law. He maintains that the two – CISG and Principles – can coexist in symbiosis which eventually could

¹²⁸ Michael J. Bonell, ‘*Towards a Legislative Codification of the UNIDROIT Principles?*’ in Camilla B. Andersen, Ulrich G. Schroeter (eds), *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his 80th Birthday* (Wildy, Simmonds & Hill Publishing 2008) 62, 62

¹²⁹ *Ibid* 128, p 63

develop into one set of rules.¹³⁰ Principles as satisfactory tool are also seen by Bridge, who believes that generality with which CISG is drafted could be solved via Principles.¹³¹

As has been observed by Bonell, Principles received quite good acceptance. Not only were they used as a source of national laws change but they were also applied by courts and arbitral tribunals and received very good recommendations from some academics.¹³² Farnsworth considers them as well-drafted, giving judiciary discretion wide enough to produce fair result, but mostly he values the possibility of revising the Principles so as to include the solutions or clarify the issues not apparent at the time of drafting them.¹³³ This possibility to rectify or clarify issues that come up was treated as a major advantage against any internationally binding document, especially in the area of commerce.¹³⁴ Even Goode believes that Principles may have a potential of recognition bigger than for example CISG, because Principles reflect a unique agreement among the legal professionals from around the world, whereas Convention applies only to ratifying states, and even then it is possible to exclude its application.¹³⁵ The 'soft law' reality of Principles appears to be another great advantage as pointed out by Berger.¹³⁶ The explanation offered was that the legal professionals and academics are better equipped to draft general rules of commercial law than the states participating because they place restraints on negotiations and also allow reservations.¹³⁷

¹³⁰ Martin Gebauer, *'Uniform Law, General Principles and Autonomous Interpretation'* (2000) V. Unif. L. Rev. 683, 695

¹³¹ Michael Bridge, *The International Sale of Goods Law and Practice* (OUP 1999) [2:39]

¹³² *Supra fn* 128, p 64

¹³³ E. Allan Farnsworth, *'Closing Remarks'* (1992) 40 Am.J.Comp.L. 699, 699-700

¹³⁴ C.N. Brower, J.K. Sharpe, *'The Creeping Codification of Transnational Commercial Law: An Arbitrator's Perspective'* (2004) 45 Va.J.Int'l L. 199, 220-221

¹³⁵ Roy Goode, *Commercial Law in the Next Millenium* (Sweet & Maxwell 1998) 234

¹³⁶ K.P. Berger, *The Creeping Codification of Lex Mercatoria* (Kluwer 1999) 154

¹³⁷ Roy Goode, *'Rule, Practise and Pragmatism in Transnational Commercial Law'* (2005) 54 Int'l & Comp. L.Q. 539, 553 & 556

But should the process of unifying the international sales law be left the *good will* of judges and arbitrators? How could the sales law be unified if the judiciary would be free to decide what instrument it shall apply? The point of unification should be that right when seeing the issue at hand relates to international sales the judge should apply unified international law, subject to exclusions in the contract itself, and not to discuss whether it is better to use hard or soft law, national or international law - it shall be clear and that is the point of unification.

Even Bonell admits that the usage of Principles is inevitably connected with willingness of the parties to include them into the contract and willingness of the judges or arbitrators to use them.¹³⁸ Also if applied and there is some contradicting provision between Principles and CISG, which one should have precedence then? Obviously CISG shall prevail,¹³⁹ but then why to use Principles at all?

Another very important point to note is whether such use would in fact be lawful. Goode points out that it is hard to see how Principles, non-binding document, can be used as an interpretative tool if they were created *after* the CISG.¹⁴⁰ It seems almost the same as relying on '*travaux préparatoires*' that were done after the ratification of the convention.

The inapplicability of Principles is obvious from the fact that nowhere in the CISG is mentioned a possibility of using them, because they did not exist at the time. This is admitted even by Bridge who seems to advocate for Principles use in the name of uniformity and non-recourse to private international law.¹⁴¹ Another reasoning why not to use Principles can be observed maybe from a different point of view. CISG, as a result of a *multinational* compromise, represents

¹³⁸ *Supra* fn 128, p 67

¹³⁹ Martin Gebauer, '*Uniform Law, General Principles and Autonomous Interpretation*' (2000) V. Unif. L. Rev. 683, 695

¹⁴⁰ *Supra* fn 62, p 289

¹⁴¹ Michael Bridge, *The International Sale of Goods Law and Practice* (OUP 1999) [2:39]

equilibrium of opinions of legal professionals from many different countries. Several complicated matters were scrutinized and adopted in order to come to a solution that majority would accept. Some provisions suffered more, others less; nevertheless the Convention represents an immense effort that states were willing to put in for creation of uniform sales law.¹⁴²

It seems not only unfair to diminish such effort by introducing a new instrument to interpret CISG, but also a clear disrespect for law itself. Principles is not what states sign up for, it is CISG and so every effort has to be made to find a solution otherwise, because the use of Principles is not an answer.

Despite negative criticism, legal professionals show desire to search, analyse and improve the Principles so as to create fully comprehensive framework for uniform sales law that would have binding character.¹⁴³ Perhaps a better option in this respect would be a proposal of Farnsworth who suggests that Principles may be better suited to contract for services, as the CISG does not deal with them, so there will not be any clashes in relation to later drafting of Principles and their overall applicability.¹⁴⁴

The proposition to create '*global jurisconsultorium*' as an advisory or consultancy centre for legal professionals from states that ratified CISG seems as much better and wiser option. This 'centre' groups together opinions of experts, academic writings and international case law, which will be available online; so that judges all over the world can make a search for cases similar to

¹⁴² *Supra fn 78*, p 323

¹⁴³ A. S. Hartkamp, '*Principles of Contract Law*' in A.S. Hartkamp et al (eds), *Towards a European Civil Code* (3rd edn, Kluwer 1994) 50

¹⁴⁴ E. Allan Farnsworth, '*Duties of Good Faith and Fair Dealing under the UNIDROIT Principles, Relevant International Conventions, and National Laws*' (1995) 3 *Tul.J.Int'l & Comp.L.* 47, 48

the one in hand and decide in line with decisions already made.¹⁴⁵ This way the uniformity and internationality is observed. From the beginning, as Andersen points out, the intention behind the Article 7 was to establish such centre or a database which would store the decisions related to CISG, and these would have the force similar to legal precedents. Though originally academics put forward reasons that would bar such establishment, however in the era of internet and its availability, it is believed that there is very little to obstruct full usage of such online centre. One cannot forget the problem already mentioned above – the will of the judges to make a real search for international case law and scholarly opinions. Andersen concludes that despite some exceptions it appears that ‘...a truly uniform approach...seems to be winning a slow battle...’¹⁴⁶

Several databases were created to make this fight easier. There is one quite extensive collection of data at the Institute of International Commercial Law (School of Law, Pace University) which offers access to priceless sources of scholarly materials, case law from CISG states and opinions as well as extracts from the books, secretariat commentaries and is connected for example to its German and French mirrors for case law in respective languages.¹⁴⁷ All is neatly organised according to Articles of the CISG and a type of document. This database has been used by scholars such as Goode, and acknowledged as a reliable source for search for foreign case law by US Circuit Court of Appeals¹⁴⁸ in the *MCC Marble case*.¹⁴⁹ Andersen calls this decision a

¹⁴⁵ *Supra fn 26*

¹⁴⁶ *Supra fn 26*

¹⁴⁷ Camilla B. Andersen, ‘*Furthering the Uniform Application of the CISG: Sources of Law on the Internet*’ (1998) 10 Pace Int’l L.Rev. 403, 407

¹⁴⁸ *Ibid* 147, p 406

¹⁴⁹ *MCC Marble Ceramic v Ceramica Nuova D’Agostino, S.p.A.*, 144 F.3d 1384 (11th Cir. 1998)

‘milestone’ because it not only refers to online collection but also because the court itself made an effort to its research in order to satisfy the requirements set out in Article 7.¹⁵⁰

Another similar database was created in Italy and is called UNILEX containing case law organised by relevant article and country of decision, arbitrations as well as comprehensive collection of scholarly writings. The disadvantage of this collection is that it is not available for free.¹⁵¹ Last but not least there is also UNCITRAL; the commission which stands behind the CISG is also a creator of one such database – CLOUT which provides CISG case law.¹⁵² However, this database is not as extensive as the two mentioned above.

This extension for search for international case law in sales brings its advantages and disadvantages. The ‘*global jurisconsultorium*’ presents a huge source to reinforce the arguments brought forward; it also may show new ideas about how to approach the case or what may be the tactics of the opposite side. On the other side Andersen believes that online centre poses new obligation upon the legal practitioners, and so by not engaging themselves in such international case law search it may open the possibility of professional negligence claims. The databases are easily available online therefore there is a little space for explanation. Why not to use them?¹⁵³

There also remains a question of how exactly to accommodate foreign CISG case law? A judge may be persuaded by reasoning that the case law offers, but also may not accept it because it

¹⁵⁰ Camilla B. Andersen, ‘*Furthering the Uniform Application of the CISG: Sources of Law on the Internet*’ (1998) 10 Pace Int’l L.Rev. 403, 407

¹⁵¹ <http://www.unilex.info/dynasite.cfm?dssid=2376&dsmid=14315> accessed 29 August 2012, Camilla B. Andersen, ‘*Furthering the Uniform Application of the CISG: Sources of Law on the Internet*’ (1998) 10 Pace Int’l L.Rev. 403, 408

¹⁵² Camilla B. Andersen, ‘*Furthering the Uniform Application of the CISG: Sources of Law on the Internet*’ (1998) 10 Pace Int’l L.Rev. 403, 408, http://www.uncitral.org/uncitral/en/case_law.html accessed 29 August 2012

¹⁵³ *Supra* fn 26

originates in different jurisdiction and national law does not permit such recourse.¹⁵⁴ But it may be argued that states ratifying CISG and its Article 7 are in fact agreeing with uniformity and internationality, thus international case law shall have force. States are bound to enforce their international obligations entered in by ratification of CISG via their national courts, and as was mentioned earlier the idea of *'global jurisconsultorium'* is not a new concept it has been there since the drafting.

This type of online sources presents a radical positive change from previous practice and there is hope that websites such as the one at Pace Law School will continue to expand its work in order to accomplish the goal of uniform sales law.¹⁵⁵ For the purposes of this work it is believed that the best way of how to interpret CISG maintaining the uniformity and internationality is by way of using databases such as the one at Pace University. This view is supported also by words of Harris who stated that *'...[t]he value of this resource to attorneys, judges, arbitrators, traders and scholars around the world and its potential for contributing to the development of a truly uniform international law of contracts is self-evident...'*¹⁵⁶

¹⁵⁴ *Supra* fn 26

¹⁵⁵ Camilla B. Andersen, *'Furthering the Uniform Application of the CISG: Sources of Law on the Internet'* (1998) 10 Pace Int'l L.Rev. 403, 409-410

¹⁵⁶ Joel B. Harris, Chair of the International Law & Practice Section of the New York State Bar Association, 2 State Bar News, Annual Meeting Edition, 28 January 1998; *See* Camilla B. Andersen, *'Furthering the Uniform Application of the CISG: Sources of Law on the Internet'* (1998) 10 Pace Int'l L.Rev. 403

VI. Conclusion

The interpretation of the Vienna Convention on Contracts for International Sale of Goods has been subject to vivid discussions not only among academics but also among legal professionals. As the Article 7 of the CISG dealing with interpretation is vague and general, it is understandable that it raises many important questions.

In order to propose a solution one has to bear in mind the overriding principles anchored in Article 7(1) – the internationality, uniformity and good faith. Those shall be obeyed as the wording of the provision is in imperative style what imposes legal duty upon judges to comply with it. Despite various different theories presented it may be concluded that usage of *travaux préparatoires*, international case law and opinions of scholars is not only permitted, but is even necessary to accomplish the aim of the Convention to create uniform sales law. Only by analysing decisions of other courts in different countries and academic opinions, the uniformity may be truly achieved. It has been also argued that uniformity cannot be achieved because the different legal cultures – civil and common law – prescribe different practices in decision making processes. However, the analysis above show that the courts, if willing, are flexible enough to accommodate the requirements needed in order to exercise the search for foreign cases and opinions and their application in judgement.

The same result has been observed in relation to good faith which is seen as a great problem due to fact that it is undefined concept. Analysis has shown that the preferred theory is the one which considers good faith as general principle and is relevant to interpretation as well as to conduct of parties throughout the contract performance, as the two are inseparable. The principle of good faith is defined in many national laws and is applied in both civil and common law jurisdictions, however courts are to refrain from employing those national definitions and rather use the

principles of reasonableness and equity and obey the standards adopted in international trade. To make this process easier again search for international cases and opinions is highly advisable.

Bearing in mind what has been mentioned above the second part of the Article 7, paragraph 2 need to be seen in context of the overriding principles of the Convention. The use of general principles is more appropriate than the recourse to private international law. In cases when the principle is not explicitly settled in the provisions of the Convention, the suggestion is to find the solution in the Convention itself with help of the most appropriate international cases and opinions, so that reasoning in this matter can develop and assist in achieving uniformity. Private international law usage is to be avoided in the most possible way. It undermines the whole aim of the Convention and breaches international obligations entered into, as the Convention demands compliance in Article 7.

The cooperation described and emphasized above is made easier via usage of various online databases; as examples of such databases were used CISG Database at the Pace University, CLOUT by UNCITRAL and UNILEX. Other suggestion – to use UNIDROIT Principles is not seen as a satisfactory one, because it did not receive an acceptance as public international law treaty and it was adopted after the CISG.

It can be concluded that the availability of Internet has made the decision to use online database collections somewhat easier, but it is important to note that by using this method, no other binding or non-binding international instrument is needed. This way the effort of drafters and participants to make compromises for the price of unifying the sales law will be paid off. CISG is seen as a major example of compromise to unify international sales law, and it would be a pity not to benefit from it. As it is possible to see a positive change has already started to emerge and

if everybody involved in this process will have in mind uniformity as an aim, the dream of drafters will come true.

Bibliography:

Case Law:

1. Australia
Renard Constructions (ME) Pty Ltd v Minister for Public Works, 26 N.S.W.L.R. 234 (Ct. App. 1989) 239
2. Belarus
Mineral water and soft drinks case (10 April 2008)
3. Hungary
Clothing case 6.G.40.008/2007/12 (6 June 2007)
4. Italy
Officine Maraldi S.p.A. v. Intessa BCI S.p.A.. National Bank of Egypt, H.U. Gas Filling Plant Aswan- Usama Abdallah and Co. (16 February 2009) Tribunale di Forli
5. The Netherlands
Fresh-Life International B.V. v. Cobana Fruchtring GmbH & Co., KG Ljn BH6416 (25 February 2009)
___ v. *Omnibus Trading B.V.* Ljn BJ4645 (29 July 2009)
6. New Zealand
RJ & AM Smallmon v. Transport Sales Limited and Grant Alan Miller [2011] NZ C A 340
7. Poland
Spoldzielnia Pracy "A" in N. v. GmbH & Co. KG in B. V CSK 456/06 (11 May 2007)
8. Serbia
Medicaments case T-8/08 (28 January 2009)
Mineral water case T-6/08 (19 October 2009)
Agricultural products and cereals case T -5/09 (6 May 2010)
9. Slovakia
MDF Doors Case 1Cb/265/2005 (5 February 2008)
MDF Doors Case – 2 1Cb/266/2005 (5 February 2008)
MDF Doors Case – 3 1Cb/270/2005 (5 February 2008)
Glass chaton case 1 Cb/282/2007 (29 October 2007)
Case number 22Cb/152/2010 (11 October 2010)
10. Ukraine
Crucible press case 44/69 (11 December 2007)

11. United Kingdom

Black Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591
Fothergill v. Monarch Airlines [1980] 2 All E.R. 696 (H.L.)
Pepper v Hart [1993] AC 593
Royal College of Nurses v DHSS[1981] AC 800

12. USA

Air France v. Saks, 470 U.S. 392, 396 (1985)
Dingxi Longhai Dairy, Ltd. v. Becwood Technology Group L.L.C. 718 F.Supp. 2d 1019 (D. Minn. 2010)
Forestal Guarani S.A. v. Daros International, Inc. 08-4488 U.S. District Court [New Jersey] 7 October 2008
MCC Marble Ceramic v Ceramica Nuova D'Agostino, S.p.A., 144 F.3d 1384 (11th Cir. 1998)

Books:

1. Andersen CB, Schroeter UG (eds), *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his 80th Birthday* (Wildy, Simmonds & Hill Publishing 2008)
2. Andersen CB, Mazzotta F, Zeller B, *A Practitioner's Guide to the CISG* (Juris Publishing 2010)
3. Berger KP, *The Creeping Codification of Lex Mercatoria* (Kluwer 1999)
4. Bianca CM, Bonell MJ, *Commentary on the International Sales Law* (Giuffr  1987)
5. Bridge M, *The International Sale of Goods Law and Practice* (OUP 1999)
6. Burrows A, *Oxford Principles of English Law: English Private Law* (2nd edn, OUP 2007)
7. David R (ed), *International Encyclopedia of Comparative Law, The Legal Systems of the World; Their Comparison and Unification, Vol II* (Tubingen: Mohr, 1971)
8. Enderlein F, Maskow D, *International Sales Law: United Nations Convention on Contracts for the International Sale of Goods & Convention on the Limitation Period in the International Sale of Goods* (Oceana 1992)
9. Evans MD, *Blackstone's International Law Documents* (9th edn, OUP 2009)
10. Farnsworth EA, *Problems of Unification* (Oceana 1980)
11. Fawcett JJ, Harris JM, Bridge M, *International Sale of Goods in the Conflict of Laws* (OUP 2005)

12. Ferrari F (ed), *La Vendita Internazionale* (Guiffré, Milan 1981)
13. Galston NM, Smith H (eds), *International Sales: the UN Convention on Contracts for the International Sale of Goods* (Matthew Bender, 1984)
14. Goode R, *Commercial Law in the Next Millenium* (Sweet & Maxwell 1998)
15. Goode R, Kronke H, McKendrick E, *Transnational Commercial Law: Text, Cases, and Materials* (OUP 2007)
16. Goode R, *Goode on Commercial Law* (Ewan McKendrick ed, 4th edn, Penguin Books 2010)
17. Hartkamp AS et al (eds), *Towards a European Civil Code* (3rd edn, Kluwer 1994)
18. Herbots J, Blanpain R (eds), *International Encyclopaedia of Laws - Contracts* (Kluwer, 2000)
19. Honnold JO, *Uniform Law for International Sales under the 1980 United Nations Convention* (2nd edn, Kluwer 1991)
20. Honnold JO, *Uniform Law for International Sales under the 1980 United Nations Convention* (3rd edn, Kluwer 1999)
21. Horn N, Schmitthoff C (eds), *The Transnational Law of International Commercial Transactions: Studies in Transnational Economic Law*, Vol.2 (Deventer: Kluwer, 1982)
22. Magnus U, *General Principles of UN - Sales Law*, Max-Planck-Institute for foreign and international Private Law Volume 59 (1995) Issue 3-4 (October)
<<http://www.cisg.law.pace.edu/cisg/text/magnus.html#f12>> accessed 24 August 2012
23. Schlechtriem P, *Uniform Sales Law – The UN-Convention on Contracts for the International Sale of Goods* (Manz 1986)
24. Schlechtriem P, Schwenger I. (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (2nd edn, OUP 2005)

Articles:

1. Andersen CB, 'Furthering the Uniform Application of the CISG: Sources of Law on Internet' (1998) 10 Pace Int'l L.Rev. 403
2. Andersen CB, 'General Principles of the CISG – Generally Impenetrable?' in Andersen CB, Schroeter UG (eds), *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his 80th Birthday* (Wildy, Simmonds & Hill Publishing 2008) 13
3. Andersen CB, 'The Nature of CISG Case Law: The Key to Uniformity and Many Persuasive Examples for Counsel to Draw from' in Andersen CB, Mazzotta F, Zeller B, *A Practitioner's Guide to the CISG* (Juris Publishing 2010) <<http://cisgw3.law.pace.edu/cisg/biblio/andersen-mazzotta-zeller.html>> accessed 3 August 2012
4. Bonell MJ, 'Towards a Legislative Codification of the UNIDROIT Principles?' in Andersen CB, Schroeter UG (eds), *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his 80th Birthday* (Wildy, Simmonds & Hill Publishing 2008) 62
5. Butler P, 'The Use of CISG in Domestic Law' (2011) 3 Belgrade Law Review 7
6. Bridge MJ, 'Uniform and Harmonized Sales Law: Choices of Law Issues' in Fawcett JJ, Harris JM, Bridge M, *International Sale of Goods in the Conflict of Laws* (OUP 2005) 908
7. Brower CN, Sharpe JK, 'The Creeping Codification of Transnational Commercial Law: An Arbitrator's Perspective' (2004) 45 Va.J.Int'l L. 199
8. Carbonneau TE, Firestone MS, 'Transnational Law-Making: Assessing the Impact of the Vienna Convention and the Viability of National Adjudication' (1986) 1 Emory J.Int'l Disp.Res. 51
9. Eörsi G, 'Problems of Unifying Law on the Formation of Contracts for the International Sale of Goods' (1979) 27 Am.J.Comp.L. 311
10. Eörsi G, 'A Propos - the 1980 Vienna Convention on Contracts for the International Sale of Goods' (1983) 31 Am.J.Comp.L. 333
11. Eörsi G, 'General Provisions' in Galston NM, Smith H (eds), *International Sales: the UN Convention on Contracts for the International Sale of Goods* (Matthew Bender, 1984) Ch 2, 2-1
12. Farnsworth EA, 'Good Faith Performance and Commercial Reasonableness under the Uniform Commercial Code' (1963) 30 U.Chi.L.Rev. 666

13. Farnsworth EA, *'Problems of Unification of Sales Law from the Standpoint of the Common Law Countries'* 7 Digest of Commercial Law (1980)
14. Farnsworth EA, *'Closing Remarks'* (1992) 40 Am.J.Comp.L. 699
15. Farnsworth EA, *'Duties of Good Faith and Fair Dealing under the UNIDROIT Principles, Relevant International Conventions, and National Laws'* (1995) 3 Tul.J.Int'l & Comp.L. 47
16. Felemegas J, *'The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation'* in Pace Review of the Convention on Contracts for International Sale of Goods (CISG) (Kluwer Int'l, 2000-2001) 115
17. Ferrari F, *'Uniform Interpretation of the 1980 Uniform Sales Law'* (1994-95) 24 Ga.J.Int'l.& Comp.L. 183
18. Ferrari F, *'Have the Dragons of Uniform Sales Law been Tamed? Ruminations on the CISG's Autonomous Interpretations by Courts'* in Andersen CB, Schroeter UG (eds), *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his 80th Birthday* (Wildy, Simmonds & Hill Publishing 2008) 134
19. Gebauer M, *'Uniform Law, General Principles and Autonomous Interpretation'* (2000) V. Unif. L. Rev. 683
20. Goode R, *'Rule, Practise and Pragmatism in Transnational Commercial Law'* (2005) 54 Int'l & Comp. L.Q. 539
21. Hartkamp AS, *'Judicial Discretion under the New Civil Code of the Netherlands'* (1992) 40 Am.J.Comp.L. 551
22. Honnold JO, *'The Sales Convention in Action – Uniform International Words: Uniform Application'* (1988) 8 J.L.& Com. 207
23. Jones P, *'Reasonableness, Honesty and Good Faith'* (March 1995) International Sales Quarterly 8
24. Kastely AH, *'Unification and Community: A Rhetorical Analysis of the UN Sales Convention'* (1988) 8 Nw. J. Int'l L. & Bus. 574
25. Lando O, *'CISG and its Followers: A proposal to adopt some international principles of contract law'* (2005) 53 Am.J.Comp.L. 379
26. Lookofsky J, *'The 1980 United Nations Convention on Contracts for the International Sale of Goods: Article 7 Convention Interpretation'* (2000) in Herbots J, Blanpain R (eds), *International Encyclopaedia of Laws - Contracts* (Kluwer, 2000) 49

27. Rosenberg MN, *'The Vienna Convention: Uniformity in Interpretation for Gap-Filling – An Analysis and Application'* (1992) 20 ABLR 442
28. Schlechtriem P, *'From The Hague to Vienna: Progress in Unification of the Law of International Sales Contracts?'* in Horn N, Schmitthoff C (eds), *The Transnational Law of International Commercial Transactions: Studies in Transnational Economic Law*, Vol.2 (Deventer: Kluwer, 1982) 125
29. Schlechtriem P, *'Requirements of Application and Sphere of Applicability of the CISG'* (2005/4) V.U.W.L.R. 781
30. Sim D, *'The Scope and Application of Good Faith in the Vienna Convention on Contracts for the International Sale of Goods'* (Sept. 2001) <
<http://www.cisg.law.pace.edu/cisg/biblio/sim1.html>> accessed 16 August 2012
31. Sundberg JWF, *'A Uniform Interpretation of Uniform Law'* (1966) 10 Sc.St.L. 219
32. Wahl E, *'Art 17'*, in *Kommentar zum Einheitlichen Kaufrecht* (Munich 1976) 126
33. Ziegel JS, Samson C, *'Report to the Uniform Law Conference of Canada on Convention on Contracts for International Sale of Goods'* (July 1981) <
<http://www.cisg.law.pace.edu/cisg/wais/db/articles/english2.html>> accessed 19 August 2012

Websites:

1. <http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>, accessed 1 September 2012
2. <http://www.cisg.law.pace.edu/cisg/countries/cntries.html>, accessed 1 September 2012
3. <http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>, accessed 03 August 2012
4. <http://www.unilex.info/dynasite.cfm?dssid=2376&dsmid=14315>, accessed 29 August 2012
5. http://www.uncitral.org/uncitral/en/case_law.html, accessed 29 August 2012
6. <http://www.cisg.law.pace.edu/cisg/text/digest-cases-07.html>, accessed 3 August 2012
7. <http://www.cisg.law.pace.edu/cisg/text/e-text-07.html>, accessed 18 April 2012

Other Texts:

1. Austrian Civil Code of 1811

2. Bürgerliches Gesetzbuch (BGB)
3. Harris JB, Chair of the International Law & Practice Section of the New York State Bar Association, 2 State Bar News, Annual Meeting Edition, 28 January 1998
4. Text of Draft Convention on Contracts for the International Sale of Goods approved by UNCITRAL together with a Commentary prepared by the Secretariat A/CONF./97/5, 14 March 1979
5. Uniform Commercial Code (UCC)
6. Vienna Convention on the Law of Treaties (1969)