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# ***Unification of Law and Uniform law – an Introduction***

Lecture at Irkutsk State University  
18 September 2018

What is „uniform law“?  
What means „unification of law“?

# Notion, purpose and object of unification of law and uniform law

- Starting point: Divergence of national legal orders
- Possible conclusion: wish for national/**international** unification of law (not only reception of foreign law):  
**process and result of unification of law(s)**
- *Process*: Unification of law  
(harmonization/approximation of law/s)
- *Result*: Uniform law
- Object: all legal areas. *Particularly important in international business law*



United Nations – 193 member states



# Practical example on uniform law

- You are the head of the legal department of a Russian enterprise, which intends to buy computers from a Chinese enterprise. The CEOs of both enterprises have in principle agreed on the purchase. You are asked to negotiate the detailed contract with your Chinese counterpart.
- Does this case raise issues of uniform law?

# Approach to answers

- *Substantive sales law*
  - CISG
  - UNIDROIT Principles of International Commercial Contracts
  - INCOTERMS
- *Conflict of laws: Minsk Judicial Assistance Convention of 1993?*
- *Dispute settlement*
  - Russia China Judicial Assistance Treaty of 1992
  - UNCITRAL Model Law on International Commercial Arbitration 1985/2006

# Structure of the subject „Uniform Law“

- **General part:** functions, institutions, history, information, methods
- **Special part:** uniform law in different subject areas
- cross-border and/or domestic matters only: „transnational law“. For example international business transactions
- universal or regional approaches

# Functions of uniform law

- **Legislative** function: practical realisation of „best practices“ or „minimum standards“? Searching for common denominator – „new“ solutions?
- **Forensic-practical** function: correct application of uniform law
- **Scientific** function: search for „best solution“ or acceptable compromise. General part – specific part





**CONSEIL SUR LES AFFAIRES GÉNÉRALES ET LA POLITIQUE DE LA CONFÉRENCE  
DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ**

**COUNCIL ON GENERAL AFFAIRS AND POLICY OF THE HAGUE CONFERENCE  
ON PRIVATE INTERNATIONAL LAW**

**8-10 avril / 8-10 April 2014**

# Neighbouring disciplines

- Legal history
- Comparative law
- Sociology of law
- Economic analysis of law
- Private international law (PIL, conflict of laws)

# Historical sketch

- Ancient Greece: Aristotle, Platon
- Roman law
- Middle Ages: canon law (kanonisches Recht)
- Formation of states in modern times
- Unification of law as a scientific discipline and by specialized international organizations since the end of the 19th century
- General upswing since mid 20th century (UN-suborganizations, EEC/EU)

# Literature and jurisprudence

- Monographs, e.g. Andenas/Andersen, Theory and Practice of Harmonization (2012), Bachin, Subpravo (2002), Kropholler, Internationales EinheitsR (1975), Marquis, International Uniform Commercial Law: Towards A Progressive Consciousness (2005)
- Series of publications + Casebooks
- Law journals, eg Uniform Law Review (available at Unidroit website)
- Specialised international case law databases such as CLOUT, Unilex, national databases
- Electronic databases and Internet, eg LexisNexis, Westlaw, HeinOnline





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## UNIFORM LAW REVIEW

Last Updated: 14 June 2016 | [Print](#) | [Email](#)

A publication of the [International Institute for the Unification of Private Law \(UNIDROIT\)](#) - Published by [Oxford University Press](#)

- [Board of Editors](#)
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### Consolidated index of the UNIFORM LAW REVIEW 1974 to present

#### OVERVIEW

***An indispensable working tool for top-flight legal researchers and practitioners involved in transnational law***

Uniform Law Review / *Revue de droit uniforme* has been appearing as a new series since 1996. It constitutes a comprehensive source of information on uniform law for all those involved in international private commercial law.

This bilingual (English/French) quarterly publication – some 1000 pages a year – closely follows the legal doctrine, monitors the work of international organisations, assesses the soft law option in the legal harmonisation process and reports on the application of uniform law instruments.

Uniform Law Review / *Revue de droit uniforme* is published by the International Institute for the Unification of Private Law – UNIDROIT – whose achievements and ongoing work receive extensive coverage in the journal. In particular: the 1995 Rome Convention on Stolen or Illegally Exported Cultural Objects, the UNIDROIT Principles of International Commercial Contracts, Principles of transnational civil procedure, and work on instruments to facilitate financing in international trade: the acquisition of high value equipment (the 2001 Cape Town Convention and its Aircraft Protocol).



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**A collection of international caselaw and bibliography on two of the most important international instruments for the regulation of international commercial transactions**

### **UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS**

### **UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG)**

**Click on the above instruments to see the various search functions.**

# Institutions of unification of law

- **International organizations**

- **Universal:** UN and suborganisations (e.g. UNCITRAL, UNCTAD, IMO, UNECE), UNIDROIT, OECD, Hague Conference on Private International Law ...
- **Regional:** Council of Europe, EU, Nordic Council, Council of Baltic Sea States, CIS/Eurasian Economic Union, ASEAN, OAS, OIC, African Union ...

- **Private institutions („NGOs“)**

- Business: International Chamber of Commerce (ICC)
- Science: International Law Association, Institut de droit international





# UNCITRAL

United Nations Commission on International Trade Law

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## About UNCITRAL

The core legal body of the United Nations system in the field of international trade law, UNCITRAL has been active for over 40 years. UNCITRAL's business is the modernization and harmonization of rules on international trade law.

Trade means faster growth, higher living standards, and new opportunities through commerce. It promotes economic growth, fair, and harmonized rules on commercial transactions. These include:

- Conventions, model laws and rules which are acceptable worldwide
- Legal and legislative guides and recommendations of great practical value
- Updated information on case law and enactments of uniform commercial law
- Technical assistance in law reform projects
- Regional and national seminars on uniform commercial law

[A Guide to UNCITRAL: Basic facts about the United Nations Commission on International Trade Law](#)

[Facts about UNCITRAL leaflet](#)

The Secretariat of the United Nations Commission on International Trade Law (UNCITRAL) is located in Vienna. For more information, visit the UNCITRAL website:

[UNCITRAL: Information for Member States](#)

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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

## News and events

### About UNIDROIT

#### Overview

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## HISTORY AND OVERVIEW

*Last Updated: Tuesday, 29 July 2014 15:11* |  | 

### PURPOSE

The International Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental Organisation with its seat in the Villa Aldobrandini in Rome. Its purpose is to study needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives.

### ORIGINS

Set up in 1926 as an auxiliary organ of the League of Nations, the Institute was, following the demise of the League, re-established in 1940 on the basis of a multilateral agreement, the [UNIDROIT Statute](#).

### MEMBERSHIP

Membership of UNIDROIT is restricted to States acceding to the UNIDROIT Statute. UNIDROIT's [63 member States](#) are drawn from the five continents and represent a variety of different legal, economic and political systems as well as different cultural backgrounds.

### FUNDING

The Institute is financed by annual contributions from its member States which are fixed by the General Assembly in addition to a basic annual contribution from the Italian Government. Extra-budgetary contributions may be made to fund specific projects or activities.

### STRUCTURE

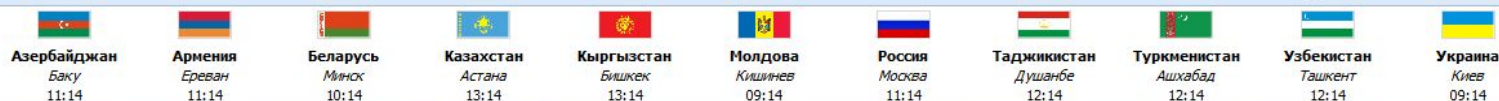
UNIDROIT has an essentially three-tiered structure, made up of a Secretariat, a Governing Council and a General Assembly. The Secretariat is the executive organ of UNIDROIT responsible carrying out its [Work Programme](#) from day to day. It is headed by a Secretary-General appointed by the Governing Council on the nomination of the President of the Institute. The Secretary-General is assisted by a team of international civil servants and supporting staff.

[Annual Reports](#) on the activity of UNIDROIT

The [Governing Council](#) supervises all policy aspects of the means by which the Institute's statutory objectives are to be attained and in particular the way in which the Secretariat carries out the [Work Programme](#) drawn up by the Council. It is made up of one ex officio member, the President of the Institute, and 25 elected members, mostly eminent judges,







2014 ГОД В СНГ  
ГОД ТУРИЗМА

# ИНТЕРНЕТ-ПОРТАЛ СНГ

ОСНОВНЫЕ ДОКУМЕНТЫ  
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ЗОНА СВОБОДНОЙ ТОРГОВЛИ СНГ

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**Ильхам Алиев:**  
...в Содружестве Азербайджан  
всегда занимал принципиальную  
позицию, позицию,  
направленную на укрепление  
сотрудничества и на развитие  
многосторонних и двусторонних  
отношений.  
25 октября 2013 года

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Независимых  
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## НОВОСТИ СНГ



Проблемы увековечения памяти  
погибших воинов времен Великой  
отечественной войны обсудили в  
Кишиневе представители  
одиннадцати стран

- В Минске президенты России, Казахстана и Беларуси  
обсудят договор о создании Евразийского экономического  
союза
- В Баку состоялась 45-ое заседание  
Электроэнергетического Совета СНГ
- Консультативный комитет по АПК одобрил годовой отчет о  
выполнении государствами Таможенного союза  
Соглашения о единых правилах господдержки сельского  
хозяйства
- В Таможенном союзе создадут единое навигационное  
пространство
- Развитие и расширение долгосрочных и устойчивых  
отношений сотрудничества со странами - участниками СНГ и  
нашим главным стратегическим партнером - Российской  
Федерацией - также является одной из наших главных  
целей - З.Рахмон
- На Урале вузы стран - участников ОДКБ договорились  
изучать вопросы безопасности

## Архив новостей

## АНАЛИТИКА И КОММЕНТАРИИ



Президент Казахстана  
обозначил главные миссии  
Евразийского экономического  
союза

- По итогам 2013 года товарооборот Казахстана с  
Россией и Беларусью превысил \$24 млрд.

## АНОНСЫ СОБЫТИЙ СНГ



29 апреля в Австрии состоится  
7-й Венский финансово-  
экономический форум стран  
СНГ и Восточной Европы

- 5 - 7 мая в Исполкоме СНГ эксперты рассмотрят  
вопросы сотрудничества в гуманитарной сфере
- 6 мая в Минске эксперты СНГ обсудят проект  
Соглашения о повышении квалификации  
педработников общеобразовательных учреждений
- 22 мая в Казахстане пройдет международная  
конференция "ТрансЕвразия-2014"
- В Баку 22-23 мая соберется рабочая группа по медико-  
социальной экспертизе и реабилитации инвалидов  
Консультативного совета по труду, миграции и  
социальной защите населения государств СНГ
- 27-29 мая в Москве пройдет конференция "Масла и  
топлива СНГ"
- В июне 2014 года в Чите пройдет международный  
фестиваль «Студенческая весна стран Шанхайской  
организации сотрудничества»
- 2-3 июня в Ханты-Мансийске будет организована  
первая сессия Урбанистического форума СНГ
- 8-20 июня 2014 года в Москве пройдет III  
Межгосударственный форум СНГ «Здоровье  
населения – основа процветания стран Содружества»

## Все анонсы

## В СТРАНАХ СОДРУЖЕСТВА



Российский завод "Уральские  
локомотивы" приступил к  
финальной сборке "Ласточки"

- В столице Туркменистана введена в эксплуатацию  
автодорога длиной 9 километров

## ЗАСЕДАНИЯ

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### СОВЕТ ГЛАВ ГОСУДАРСТВ СНГ

2013 год, 25 октября: **итоги**  
2014 год, октябрь: **анонс**

### СОВЕТ ГЛАВ ПРАВИТЕЛЬСТВ СНГ

2013 год, 20 ноября: **итоги**  
2014 год, 30 мая: **анонс**

### СОВЕТ МИНИСТРОВ ИНОСТРАННЫХ ДЕЛ СНГ

2013 год, 24 октября: **итоги**  
2014 год, 04 апреля: **анонс**

### ЭКОНОМИЧЕСКИЙ СОВЕТ СНГ

2014 год, 14 марта: **итоги**  
2014 год, 20 июня: **анонс**

### СОВЕТ ПОСТОЯННЫХ ПОЛНОМОЧНЫХ ПРЕДСТАВИТЕЛЕЙ СНГ

2014 год, 20 марта: **итоги**  
2014 год, 20 мая: **анонс**

### КОМИССИЯ ПО ЭКОНОМИЧЕСКИМ ВОПРОСАМ ПРИ ЭКОНОМИЧЕСКОМ СОВЕТЕ СНГ

2014 год, 16 апреля: **итоги**  
2014 год, 21 мая: **анонс**

### МЕЖГОСУДАРСТВЕННАЯ ТЕЛЕРАДИОКОМПАНИЯ "МИР"

МИР 24 - МИР ТВ - РАДИО МИР

## Столицы СНГ





# Organisation of Islamic Cooperation

*The Collective Voice of The Muslim World*

established 1969

Khams, 24 Ramadan 1439

🔔 The Council of Foreign Minnisters Meeting Preparatory to The OIC Extraordinary Islamic Summit Conference ...

## Conventions

- Statute of The Labour Centre of The Organization of Islamic Cooperation
- Rules for Granting OIC Consultative Status to Humanitarian Non-Governmental Organizations
- Statute Of The Islamic Organisation For Food Security
- List of Member States Who Signed/ Ratified the Different Agreements and Statutes on Economic, Commercial and Technical Cooperation among OIC Member States
- About OIC Agreements in Economic Field
- General Agreement for Economic, Technical and Commercial Cooperation among Member States of the Organization of the Islamic Conference  
The General Agreement for Economic, Technical and Commercial Cooperation among the



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Unwanted in their Homeland: T... 🕒



# Sources of uniform law

- Distinguish: Binding legal norms – non-binding rules (soft law)
- International treaties – supranational law – model laws – quasynormative rules (eg Unidroit Principles of International Commercial Contracts) – general principles of law
- Legislative guides – autonomous unification of law
- Trade customs – general contract terms: Incoterms etc.)
- *Case law*





**CISG**

Übereinkommen der Vereinten Nationen über Verträge über den internationalen Warenkauf Vom 11. April 1980 (BGBl. 1989 II S. 588)

*Hinweis: Die deutsche Fassung des Übereinkommens ist gemäß der Unterzeichnungsklausel für die Anwendung des CISG nicht verbindlich. Die deutschsprachigen Staaten (Bundesrepublik, ehem. DDR, Österreich, Schweiz) haben auf einer Konferenz im Jahr 1982 eine gemeinsame Übersetzung erarbeitet, so dass in diesen Ländern ein bis auf geringfügige Abweichungen übereinstimmender Text gilt. Nachfolgend ist der amtliche Text für die Bundesrepublik Deutschland abgedruckt.*

#### **Präambel**

Die Vertragsstaaten dieses Übereinkommens  
im Hinblick auf die allgemeinen Ziele der Entschlüsse, die von der Sechsten Außerordentlichen Tagung der Generalversammlung der Vereinten Nationen über die Errichtung einer neuen Weltwirtschaftsordnung angenommen worden sind, in der Erwägung, dass die Entwicklung des internationalen Handels auf der Grundlage der Gleichberechtigung und des gegenseitigen Nutzens ein wichtiges Element zur Förderung freundschaftlicher Beziehungen zwischen den Staaten ist, in der Meinung, dass die Annahme einheitlicher Bestimmungen, die auf Verträge über den internationalen Warenkauf Anwendung finden und die verschiedenen Gesellschafts-, Wirtschafts- und Rechtsordnungen berücksichtigen, dazu beitragen würde, die rechtlichen Hindernisse im internationalen Handel zu beseitigen und seine Entwicklung zu fördern - haben folgendes vereinbart:

#### **TEIL I**

#### **Anwendungsbereich und allgemeine Bestimmungen**

#### **Kapitel I. Anwendungsbereich**

#### **Artikel 1 [Anwendungsbereich]**

(1) Dieses Übereinkommen ist auf Kaufverträge über Waren zwischen Parteien anzuwenden, die ihre Niederlassung in verschiedenen Staaten haben,  
a) wenn diese Staaten Vertragsstaaten sind oder



**CISG**

United Nations Convention on Contracts for the International Sale of Goods (1980)

#### **Preamble**

The States Parties to this Convention

*Bearing in Mind* the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order, *Considering* that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States, *Being of the Opinion* that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade, have decreed as follows:

#### **PART I**

#### **Sphere of Application and General Provisions**

#### **Chapter I Sphere of Application**

#### **Article 1**

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:  
(a) when the States are Contracting States; or  
(b) when the rules of private international law lead to the application

Presently 89 ratifications

## Status

# UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006

This page is updated whenever the UNCITRAL Secretariat is informed of changes in enactment of the Model Law.

The UNCITRAL Secretariat also prepares yearly a document containing the Status of Conventions and Enactments of UNCITRAL Model Laws, which is available on the corresponding [UNCITRAL Commission session](#).

Legislation based on the Model Law has been adopted in 75 States in a total of 106 jurisdictions:

State		Notes
Armenia	2006	
Australia	2010	(a), (c)
Australian Capital Territory	2017	(a)
New South Wales	2010	(a)
Northern Territory	2011	(a)
Queensland	2013	(a)
South Australia	2011	(a)
Tasmania	2011	(a)
Victoria	2011	(a)
Western Australia	2012	(a)
Austria	2006	
Azerbaijan	1999	
Bahrain	2015	(a), (c)
Bangladesh	2001	
Belarus	1999	
Belgium	2013	(a)
Bhutan	2013	(a)
Brunei Darussalam	2009	(a)



# UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2010<sup>(\*)</sup>

## PREAMBLE

*(Purpose of the Principles)*

These Principles set forth general rules for international commercial contracts.

They shall be applied when the parties have agreed that their contract be governed by them.<sup>(\*\*)</sup>

They may be applied when the parties have agreed that their contract be governed by general principles of law, the *lex mercatoria* or the like.

They may be applied when the parties have not chosen any law to govern their contract.

They may be used to interpret or supplement international uniform law instruments.

They may be used to interpret or supplement domestic law.

They may serve as a model for national and international legislators.

## CHAPTER 1 — GENERAL PROVISIONS

### ARTICLE 1.1

*(Freedom of contract)*

The parties are free to enter into a contract and to determine its content.

### ARTICLE 1.2

*(No form required)*

Nothing in these Principles requires a contract, statement or any other act to be made in or evidenced by a particular form. It may be proved by any means, including witnesses.

### ARTICLE 1.3

*(Binding character of contract)*

A contract validly entered into is binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or as otherwise provided in these Principles.

### ARTICLE 1.4

*(Mandatory rules)*

Nothing in these Principles shall restrict the application of mandatory rules, whether of national, international or supranational origin, which are applicable in accordance with the relevant rules of private international law.



# Methods in the field of unification of law/uniform law

- **Legislator:** Issues of legislative technique
- **Practitioner:** Interpretation
- **Scholar:** Structuring an analysis

# **Legislative technique: Practical task**

You work in the UNCITRAL secretariat. At a working session the representatives of three States suggest that UNCITRAL should update the CISG. You are asked to develop a concept.

How would you proceed?

# Practical realization of the legislative function

- Recognise the problem
- Collect proposals for solutions to the problem
- Do your own scientific analysis of the problem using comparative law
- Questionnaire(s)
- Select and use experts
- Transparency of the legislative process
- Languages?
- Use of neighbouring disciplines
- Selection of members of working group and chairperson
- Choice of legal instrument (treaty, model law, official commentary, legislative guides etc.)
- Circulation of results
- Implementation

# Interpretation of uniform law

- **Principles of interpretation.** Language issues.  
*Relationship between different instruments?*
- „Model character“ of a specific legal order?
- Uniform interpretation? Informal approach - institutional approaches: specialized courts or court cooperation.
- Autonomous interpretation?
- Approaches to gap-filling
- Support tools for interpretation: international level – national level

## **II. Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods**

*This note has been prepared by the Secretariat of the United Nations Commission on International Trade Law for informational purposes; it is not an official commentary on the Convention.*

### **Introduction**

1. The United Nations Convention on Contracts for the International Sale of Goods provides a uniform text of law for international sales of goods. The Convention was prepared by the United Nations Commission on International Trade Law (UNCITRAL) and adopted by a diplomatic conference on 11 April 1980.
2. Preparation of a uniform law for the international sale of goods began in 1930 at the International Institute for the Unification of Private Law (UNIDROIT) in Rome. After a long interruption in the work as a result of the Second World War, the draft was submitted to a diplomatic conference in The Hague in 1964, which adopted two conventions, one on the international sale of goods and the other on the formation of contracts for the international sale of goods.
3. Almost immediately upon the adoption of the two conventions there

# Structuring an abstract study on uniform law

- Research question must be defined or read carefully!
- Define relevant sources
- Build synopses (esp. if comparative element is present)
- Define relevant issues and prioritise them
- Find and use relevant literature
- Find and use relevant case-law, possibly arbitral practice. Prioritise and select case-law, e.g. on comparative basis
- Correct quotations
- Find good structure (balanced! focused!)
- **Structure:** Introduction into problem – overview of sources and contents – issues (logical order, comparative elements may be separate or integrated) – outcome/summary and perspectives

# Compare structure of PECP with German Civil Code

## Principles of European Civil Procedure

Art.1. Conciliation

Art.2 Commencement of the Proceeding

Art.3 Subject Matter of Litigation

Art.4 Discovery

Art.5 Evidence

Art.6 Technology and Proof

Art.7 Discontinuance

Art.8 Default

Art.9 Costs

Art.10 Provisional Remedies

Art.11 Order for Payment  
(Mahnverfahren)

Art.12 Enforcement of decisions for payment

Art.13 Astreinte

Art.14 General provisions:  
time-limits etc.

## German Code of Civil Procedure

### Book 1 General regulations

#### Chapter 1 Courts

Title 1 Substantive jurisdiction of the courts; regulations as to value, §§ 1 – 11

Title 2 Venue, §§ 12 – 37

Title 3 Agreement as to the jurisdiction of the courts, § 38 - 40

Title 4 Disqualification and recusal of court personnel, § 41 –

Chapter 2 Parties, §§ 50 –

Title 1 – 2 ...

Title 3 Involvement of third parties in the legal dispute

Title 4 Attorneys of record and counsel

Title 5 Costs of the proceedings

Title 6 Provision of security

#### Chapter 3 Proceedings

Title 1 Hearing for oral argument, §§ 128 –

Title 2 Procedure for the Service of Records or Documents, §§ 166 –

Title 3 Summonses, hearings, and periods

Title 4 Consequences of failure to take action; instruction on available legal remedies; restoration of the status quo ante

Title 5 Interruption and suspension of the proceedings

Book 2: Procedural rules for proceedings before the courts of first instance (regional courts/Landgerichte – local courts/Amtsgerichte)

Title 1 Proceedings until a judgment is entered, §§ 253 –

Title 2 Judgment, §§ 300 –

Title 3 Default judgment, §§ 330 -

Title 5 General regulations on taking evidence, §§ 355 –

### Book 3 Appellate remedies, §§ 511 –

Book 7 Summary proceedings for a payment order

### Book 8 Compulsory enforcement

### Book 10 Arbitration proceedings, §§ 1025 –

### Book 11 Judicial collaboration within the European Union, §§ 1067 - 1109

# Solving a case under uniform law

- Find relevant legal instrument(s)
- Instrument in force?
- Instrument applicable?
- **Logical structure.** Basis for claim as typical starter. Then solving case as usual.
- **Specifics:**
  - *Comparative elements may have to be included*
  - *Often conflict of laws issues arise*
  - *Other legal instrument or national law may have to be applied additionally*
- Determine summary or outlook



# Practical case (example)

Seller A from Germany sells to buyer B in Vietnam some goods. Buyer does not pay, says goods are defective. What can A do?



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## United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)

### Text - Explanatory note

[Status](#) / [map](#)

**Date of adoption:** 11 April 1980

**Entry into force:** 1 January 1988

### Purpose

The purpose of the CISG is to provide a modern, uniform and fair regime for contracts for the international sale of goods. Thus, the CISG contributes significantly to introducing certainty in commercial exchanges and decreasing transaction costs.

### Why is it relevant?

The contract of sale is the backbone of international trade in all countries, irrespective of their legal tradition or level of economic development. The CISG is therefore considered one of the core international trade law conventions whose universal adoption is desirable.

The CISG is the result of a legislative effort that started at the beginning of the twentieth century. The resulting text provides a careful balance between the interests of the buyer and of the seller. It has also inspired contract law reform at the national level.

The adoption of the CISG provides modern, uniform legislation for the international sale of goods that would apply whenever contracts for the sale of goods are concluded between parties with a place of business in Contracting States. In these cases, the CISG would apply directly, avoiding recourse to rules of private international law to determine the law applicable to the contract, adding significantly to the certainty and predictability of international sales contracts.

Moreover, the CISG may apply to a contract for international sale of goods when the rules of private international law point at the law of a Contracting State as the applicable one, or by virtue of the choice of the contractual parties, regardless of whether their places of business are located in a Contracting State. In this latter case, the CISG provides a neutral body of rules that can be easily accepted in light of its transnational nature and of the wide availability of interpretative materials.

Finally, small and medium-sized enterprises as well as traders located in developing countries typically have reduced access to legal advice when negotiating a contract. Thus, they are more vulnerable to problems caused by inadequate treatment in the contract of issues relating to applicable law. The same enterprises and traders may also be the weaker contractual parties and could have difficulties in ensuring that the contractual balance is kept. Those merchants would therefore derive particular benefit from the default application of the fair and uniform regime of the CISG to contracts falling under its scope.

### Key provisions

The CISG governs contracts for the international sales of goods between private businesses, excluding sales to consumers and sales of services, as well as sales of certain specified types of goods. It applies to contracts for sale of goods between parties whose places of business are in different Contracting States, or when the rules of private international law lead to the application of the law of a Contracting State. It may also apply by virtue of the parties' choice. Certain matters relating to the international sales of goods, for instance the validity of the contract and the effect of the contract on the property in the goods sold, fall outside the Convention's scope. The second part of the CISG deals with the formation of the contract, which is concluded by the exchange of offer and acceptance. The third part of the CISG deals with the obligations of the parties to the contract. Obligations of the sellers include delivering goods in conformity with the quantity and quality

# Structure of the CISG

- Part I: Sphere of Application and General Provisions (Art. 1–13)
- Part II: Formation of the Contract (Art. 14–24)
- Part III: Sale of Goods (Art. 25–88): General provisions – obligations of seller (+ rights of buyer) – obligations of buyer (+ rights of seller) – passing of risk – provisions common to seller and buyer (eg damages)
- Part IV: Final Provisions (Art. 89–101)

# Typical issues

- Applicability of the CISG: in particular Art.1 - 3
- Relation between the CISG and national law; the problem of external and internal gaps: Art.7 II
- The form of the contract: Art.11
- Offer and acceptance: Art.14 et seq.
- The interpretation of the contract: Art.8?
- **Specific performance: Art.28**
- The concept of (fundamental) breach of contract: Art.25
- Damages: Art.74 et seq.

# Start: Legal basis for claim(s)

## CHAPTER III. OBLIGATIONS OF THE BUYER

### Article 53

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

# Analysis of court/arbitration decisions on uniform law

- **International or European case law**

*Please give an analysis of the judgment of the European Court of Justice of ...*

- **National case law on uniform law (eg CISG) problem**

*Please give an analysis of the judgment of the German Supreme Court of 28 May 2014, VIII ZR 410/12  
(<http://cisgw3.law.pace.edu/cases/140528g1.html>)*

- **Case law on uniform law (or different uniform laws) in comparison**

*Please compare the judgment of the German Supreme Court of ... with the judgment of the US Supreme Court of ..., A. v. B. (554 U.S. 222 (2008)).*

**United States District Court, Southern District of New York**  
***Cedar Petrochemicals, Inc., Plaintiff, v. Dongbu Hannong Chemical Co., Ltd., Defendant***

No. 06 Civ. 03972(AJN), October 21, 2013

**OPINION**

Plaintiff Cedar Petrochemicals, Inc. ("Cedar"), brought this breach of contract action against Defendant Dongbu Hannong Chemical Co., Ltd. ("Dongbu"), alleging that Dongbu had delivered non-conforming liquid phenol, in violation of the parties' written and oral contracts and in contravention of its obligations under the Convention on Contracts for the International Sale of Goods, Apr. 11, 1980 .... A nonjury trial was held in this action on September 30, October 1, and October 2, 2013.

In short, the parties' dispute relates to a 2005 maritime shipment of the liquid petrochemical phenol. The phenol at issue ("the Phenol") was transported from its on-shore storage tank in Yuso, Korea, to Defendant's ship, the Green Pioneer, which carried it to Ulsan Anchorage, Korea. Once there, the Phenol was transferred from the Green Pioneer to Plaintiff's ship, the Bow Flora, which carried it to port at Rotterdam, The Netherlands. On arrival at Rotterdam, it was determined that the Phenol was damaged. .. in order to demonstrate liability, Plaintiff must prove by a preponderance of the evidence that the Phenol was injured before it passed the rail of the Bow Flora. ... On this factual point, the Court was unpersuaded. ...

**I. FINDINGS OF FACT**

**A. The Parties and Jurisdiction ...**

**III. CONCLUSION:** Based on the above-mentioned findings of facts and conclusions of law, the Court concludes that Plaintiff has not shown by a preponderance of the evidence that the Phenol at issue was injured prior to crossing the rail of the Bow Flora. Having failed to make this showing, Plaintiff cannot establish that Defendant breached the parties' agreement. Accordingly, judgment is granted in favor of Defendant.



# Case law analysis, e.g. international courts, national courts, several courts in comparison

**Introduction** - The problem

The **facts** (*short + relevant, in your own words*)

The **decision**: contents, structure, procedure (e.g. *preceding decisions*), argumentation. **In case of the Court of Justice of the EU: see also opinions of Advocates General**

The **issues in context** of the relevant legal norms and other jurisprudence. *Make good structure + prioritise! Is already commentary available? Correct quotations! Has relevant legal instrument changed or is change planned?*

**Critique?**

Possibly comparison

**Conclusions**, e.g. evaluation of the decisions, legislative proposals. *Think beyond the decision!*



***Thank you for your attention!***

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