

INDIA AND THE CISG: ADVOCATING FOR SIGNATORY STATUS AND ITS IMPLICATIONS

**Dissertation submitted to the National University of Advanced Legal
Studies, Kochi in partial fulfilment of the requirements for the award
of LL.M. Degree in International Trade Law**



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CERTIFICATE

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DECLARATION

I, Mahima Merine Reji, do hereby declare that this LL.M. Dissertation titled “INDIA AND THE CISG: ADVOCATING FOR SIGNATORY STATUS AND ITS IMPLICATIONS” which has been researched and submitted by me to the National University of Advanced Legal Studies, Kochi in partial fulfillment of the requirement for the award of Degree “Master of Laws in International Trade Law” under the guidance and supervision of Dr. Anil R. Nair, is an original, bona fide, and legitimate work. It has been pursued for academic interest. This work has not formed the basis for the award of any degree, diploma, or fellowship either in this University or other similar institutions of higher learning.

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LIST OF ABBREVIATIONS

Abbreviations Used	Full Form
AIR	All India Reporter
Am. Bus. L.J.	American Business Law Journal
Am. J. Compar. L.	American Journal of Comparative Law
Art.	Article
Austl. Corp. Law	The Australian Corporate Lawyer
Cardozo Int'l & Compar. L. Rev.	Cardozo International And Comparative Law Review
CIETAC	China International Economic and Trade Arbitration Commission
CII	Confederation of Indian Industry
CILSA	Comparative and International Law Journal of South Africa
CISG	United Nations Convention on Contracts for International Sale of Goods
CLOUT	Case Law on UNCITRAL Texts
Colum. J. Transnat'l. L.	Columbia Journal of Transnational Law
Denv. J. Int'l L. & Pol'y	Denver Journal of International Law and Policy
ECON TIMES	Economic Times
EU	European Union
FECL	Foreign Economic Contract Law
FICCI	The Federation of Indian Chambers of Commerce and Industry
FTA	Free Trade Agreement
GDP	Gross Domestic Product

GPCL	General Provisions of Civil Law of The People's Republic of China
HKSAR	The Hong Kong Special Administrative Region
IJLMH	International Journal of Law Management and Humanities
IMF	International Monetary Fund
INCOTERMS	International Commercial Terms
Int. T.L.R.	International Trade Law and Regulation
Int'l Rev. L. & Econ	The International Review of Law and Economics
J. Bus. & Sec. L.	Journal of Business and Securities Law
J. Civ. L. Stud.	Journal of Civil Law Studies
J.L. & Com.	Journal of Law and Commerce
J.L. & Pol'y	Journal of Law and Policy
Melb. J. Int'l L	Melbourne Journal of International Law
MLJ	Madras Law Journal
NBL	Journal of The National Book League
NJCL	Nordic Journal of Commercial Law
Ohio St. L J.	Ohio State Law Journal
Pace Int. Law Rev	Pace International Law Review
PIB	Press Information Bureau
PRC	The People's Republic of China
Rich. J. Global L. & Bus	Richmond Journal of Global Law and Business
SCC	Supreme Court Cases
SIAC	Singapore International Arbitration Centre
SINGJLS	Singapore Journal of Legal Studies

SME	Small and Medium-Sized Enterprise
SSRN	Social Science Research Network
TDM	Transnational Dispute Management Journal
U.N.T.S.	United Nations Treaty Series
UCP	Uniform Customs and Practice for Documentary Credits
UK	United Kingdom
ULFC	Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods
ULIS	Convention Relating to a Uniform Law on the International Sale of Goods
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	The International Institute for the Unification of Private Law
Unif. L. Rev.	Uniform Law Review
UOI	Union of India
US	United States of America
Vill. L. Rev	Villanova Law Review
Yale J. Int'l. L.	Yale Journal of International Law

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4. Continental Construction Co. Ltd. v. State of M.P., AIR 1988 SC 1166
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6. Murlidhar Chiranjilal v. Harish Chandra Dwarkadas, (1962) 1 SCR 653
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8. Ginza Private Limited v. Vista Corporation Proprietary Limited, (2003) WASC 11 (Australia).
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10. Marble Construction Materials Case, CISG Case No. 2000/12 (China).
11. Orbisphere Corporation v. United States, 726 F. Supp. 1344 (Ct. Int'l Trade 1989) (United States).
12. Perry Engineering Limited v. Bernold AG (2001) SASC 15 (Australia).
13. Refrigerating Machine Case, CISG Case No. 1999/19 (China).
14. Roder Zelt-Und Hallenkonstruktionen Gmbh v. Rosedown Park Proprietary Limited and Reginald R. Eustace, (1995) FCA 1221 (Australia).
15. Royal Supreme Seafoods v. Rizhao Jixiang Ocean Food Company, CISG Case No. 1702 (2013) (China).
16. Bri Production Bonaventure v. Societe Pan Africa Export, CISG Case No. 154 (1995) (France).
17. Taylor v. Caldwell, 122 Eng. Rep. 309 (1863) (United Kingdom).
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CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

The rise of globalisation has led to the liberalisation of commerce and trade by reducing trade barriers and shifting global trade patterns. International trade has contributed to India's economic growth, with cross-border commercial transactions playing a significant role in the country's development. As Indian businesses are expanding their global operations, one of the main problems that they face is legal fragmentation. Thus, a predictable legal framework is the main requisite for conducting international sales of goods. The existence of such a framework would make the negotiation process easier, reduce transaction costs and help to minimise the number of disputes.

India actively participates in global economic trade and is a crucial contributor to transnational supply systems. The contracts for the international sale of goods in India are governed under the Sale of Goods Act, 1930 and the Indian Contract Act, 1872. Even though global standards have been evolving rapidly, these long-standing statutes govern domestic and international commercial relationships.

Indian traders involved in international trade frequently interact with foreign traders who are well-versed in international conventions like the CISG. Indian courts are still adjudicating disputes under contracts with statutes that were formed in the pre-globalisation era. This discordance may negatively affect the negotiation of the terms of contracts, arbitration and even the resolution of disputes in courtrooms. The parties to the contract have to spend a significant part of their time negotiating the terms of the contract and resolving choice of law ambiguities. The small-scale Indian businesses that contribute to the major trade volume of international sales of goods may often find themselves at a disadvantage due to the lack of a standard set of rules.

The United Nations Convention on Contracts For International Sale of Goods (CISG) represent a uniform and harmonised legal regime that ensures consistency and predictability in international trade. It was adopted in Vienna in 1980 and came into force

in 1988.¹ Over the 45 years following its enactment, the Convention was ratified by 97 countries² worldwide, including major trading nations. But India remains notably absent from the list of signatories.

With regard to the ratification of the treaty, India is adopting a cautious stance. But India, with its competent trade practices and capable judicial system, can adapt it easily, challenge it where appropriate, and contribute significantly to its legal perspective. Non-ratification of the CISG could keep India isolated from the constantly changing trading practices in the world.

One of the notable features of CISG is its enduring relevance and influence. The Convention has been integrated into the domestic legal systems of Contracting States, and its principles and provisions have also influenced the drafting of other international instruments, like the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law.³ The CISG's influence extends beyond its contracting states, as parties from non-contracting states often choose to apply the CISG to their transactions. The arbitral tribunals and courts worldwide refer to CISG's provisions and case laws. The CISG also provides one of the most important factors of international sales, which is predictability.

The practical application of the Convention in member states reveals both its strengths and weaknesses. The CISG has been notably successful in providing a balanced and neutral set of rules for international sales among contracting states.

Recently, CISG's flexibility has been tested by international developments like the COVID-19 pandemic, which have severely affected supply chains and caused a tide of

¹ United Nations Commission on International Trade Law, United Nations Convention on Contracts for the International Sale of Goods, Official Records: Documents of the Conference and Summary Records of the Plenary Meetings (Apr. 21, 2025, 07:30 PM), <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/a-conf-97-19-ocred-eng.pdf>.

² United Nations Convention on Contracts for the International Sale of Goods Vienna, 11 April 1980, United Nations Treaty Collection (Apr. 06, 2025, 10:07 PM), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&clang=_en,

³ Lars Meyer, Soft Law for Solid Contracts-A Comparative Analysis of the Value of the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law to the Process of Contract Law Harmonisation, 34 DENV. J. INT'L L. & POL'Y. 119, 125 (2006).

disputes relating to *force majeure*, hardship, and contract performance.⁴ The Convention's principles, like good faith and reasonableness, have served as a useful tool to combat these unforeseen challenges. The CISG also plays a significant role in creating transnational legal standards and acts as a valuable instrument for business parties involved in cross-border trade.

Certain concerns regarding the CISG's language, scope and apparent flaws, mainly its failure to address issues like fraud, illegality, and misrepresentation, have made India reluctant to adopt the treaty. The Convention's wording is sometimes ambiguous, according to critics, which raises concerns about interpretative ambiguity or less robust contractual protections.⁵

But these challenges are not unique to India. Similar problems have been resolved by a number of signatory states through various measures like reservations, interpretative provisions and complementary national legislation. A balance between uniformity and contract freedom is also provided by the CISG's flexibility, which gives parties significant freedom in negotiating the terms of the agreement and even in choosing to omit particular clauses.

India's CISG accession has wide-ranging effects. The main practical advantage of ratification is that it would reduce legal hurdles for Indian businesses. It would allow them to compete on an equal basis with foreign businesses and enter into new markets with increased confidence. Standardised rules would make contract negotiation a smooth process and minimise expensive foreign law guidance advice. Indian exporters and importers would also have a speedy resolution mechanism for disputes.

One of the strategic advantages of joining the Convention is that it would signal India's commitment to upholding the highest international best practices, and it will enhance the country's standing as a sophisticated trading partner. It would also promote increased economic integration with the major economies of the world and attract foreign direct investment.

⁴ Bronwyn Lincoln, *The UN CISG and Its Implications for Australian Businesses During the COVID-19 Pandemic*, 30 AUSTL. CORP. LAW. 36, 37 (2020).

⁵ Stefan Kroll, *Selected Problems Concerning the CISG's Scope of Application*, 25 J.L. COM. 39, 41 (2006).

The ratification of the CISG not only benefits the parties to the trade, but it will also contribute significantly to the advancement of international commercial law. The Indian courts can play an important role in interpreting the provisions in the contract and reconciling divergent interpretations to suit the Indian trade environment. Ultimately, accession to the CISG will demonstrate the nation's commitment to multilateralism and the harmonisation of global legal and trade norms.

1.2 RESEARCH STATEMENT

India's non-ratification of the CISG negatively impacts its international trade efficiency and legal harmonisation efforts, and ratification would better align India's legal framework with global commercial standards and facilitate greater participation in international trade.

1.3 RESEARCH OBJECTIVES

- To explore the historical and legal reasons behind India's non-ratification of the CISG.
- To analyse the implications of India's non-participation in the CISG for its international trade relations.
- To compare the provisions of the CISG with India's existing legal framework, including the Indian Contract Act, 1872 and the Sale of Goods Act, 1930, to identify areas of compatibility and divergence.
- To evaluate the potential benefits and challenges for Indian businesses and foreign trade partners if India ratifies the CISG.
- To propose recommendations for India's future approach toward the CISG.

1.4 RESEARCH QUESTIONS

1. What are the historical and legal reasons behind India's non-ratification of the CISG, despite CISG's prominence in global trade?
2. How does India's non-ratification impact its international trade relations and competitiveness?
3. What are the key similarities and differences between the CISG and India's domestic legal framework governing the sale of goods and contracts?

4. What are the potential benefits and challenges of India ratifying the CISG for Indian businesses and international trade?
5. What policy recommendations can be made for India concerning the CISG?
6. What would be the implications of India becoming a signatory in terms of legal and international trade relations?

1.5 SIGNIFICANCE OF THE STUDY

The study focuses on the relationship between India and the CISG. Even though there is plenty of literature focusing on CISG globally, India's stance regarding possible ratification is a less explored area. The study aims to close this gap. The study also explores the potential changes that must be introduced to the legal structure of India and how divergent approaches in the statute can be reconciled to make the accession to CISG less complicated. As India is aspiring to become a global manufacturing and trading hub, the main aim is to reduce the complexities and uncertainties of global trade. The ratification of the Convention would help to secure the interest of various stakeholders of the society, like the government, businessmen and ultimately the parties to the contract.

1.6 RESEARCH METHODOLOGY

The research employs a purely doctrinal research methodology based on the CISG and its key provisions. It also examines the Indian legislations, that is Indian Contract Act, 1872 and the Sale of Goods Act, 1930.

A comparative analysis is undertaken to identify overlaps and gaps between the CISG and Indian laws governing the international sale of goods.

A detailed analysis of *travaux preparatoires* of CISG, commentaries, journals, government publications, articles, newspapers, books and statistical reports from government organisations is also undertaken.

All citations and references in this dissertation follow the Bluebook: Uniform System of Citation, 21st edition.

1.7 CHAPTERISATION

Chapter 1-Introduction

The first chapter provides an introduction to the research, outlining the research objectives, research question, research methodology and significance of the research to global trade. It also gives an overview of the CISG and discusses India's stance regarding its ratification.

Chapter 2- The CISG: History, Provisions, and Global Influence -With a Distinct Assessment of India's Trade Profile

This chapter provides an examination of the CISG framework, encompassing its historical development, scope, and principal provisions. An analysis of the benefits and limitations of the CISG on international trade is also conducted. The article also focuses on some of the countries that have ratified the CISG and the impact of the ratification.

The chapter also provides a separate overview of India's trade profile, focusing on key commodities that are exported from and imported to India, India's major trading partners and the future developments in trade.

Chapter 3- Comparison of CISG and Indian Law, Focusing on the Key Differences and its Implications

This chapter provides an analysis of the Indian Contract Act 1872 and the Sale of Goods Act 1930 and a comparison with the CISG to identify points of convergence and gaps.

Chapter 4- Perceived Barriers to India's Ratification of the CISG

This chapter examines the perceived barriers to India's ratification of the Convention and proposes potential solutions to address them.

Chapter 5- Findings, Suggestions, Recommendations and Conclusion

In this chapter, the study explores the impact of CISG on global trade, emphasising its role in simplifying international transactions and mitigating legal uncertainties. Suggestions and recommendations are also provided to guide India in the event of its potential ratification of the CISG

1.8 SCOPE AND RELEVANCE OF THE STUDY

The CISG is one of the most successful treaties in the arena of international sales law due to its widespread adoption and its effectiveness in harmonising international sales law. This research delves into the detailed analysis of the CISG framework. Analysis of the *travaux préparatoires*, commentaries, and journals provides an insight into the legal framework, the efforts undertaken to converge the common law and civil law principles in international sales law and its potential advantages and drawbacks.

Evaluating the historical, legal, and policy-based reasons for India's non-adoption of the CISG framework and the effectiveness of domestic laws governing international transactions reveals the similarities and differences between the Convention and the domestic laws.

Assessing whether the concerns regarding provisions such as 'good faith' and interpretational ambiguities justify India's ongoing non-ratification of the CISG.

Exploring reforms and recommendations that could harmonise India's legal framework with international standards.

1.9 LIMITATIONS OF THE STUDY

The study is focused on India's stance regarding the potential ratification of the CISG. It was outside the purview of this study to conduct a thorough investigation of any other non-ratifying nation.

The analysis might have been impacted by restricted access to some official documents.

Personal views may have influenced the study, especially in the area of assessment of India's justifications for non-ratification of CISG.

Finally, rather than delving thoroughly into each complex clause or interpretation, the comparative study between the CISG and Indian legislations concentrates on the main areas of convergence and difference.

1.10 LITERATURE REVIEW

The principal objective of CISG is to create a neutral and uniform legal framework that would mitigate the complexities involved in the international sale of goods. Scholars generally portray CISG in a positive light by highlighting its advantages in simplifying negotiations and reducing transaction costs involved in international sales.

Scholars like Schwenzer and Hachem have described CISG as “a modern and neutral regime”, stressing its success in fostering uniformity across diverse systems, even while acknowledging interpretive inconsistencies.⁶

Scholars Walters and Zeller argue that the ratification of CISG would be particularly advantageous for the Indian commercial sector. They claim that it would facilitate India’s integration with “global trade practices” by providing an objective framework that is free from parochial bias, making it beneficial for exporters and importers alike.⁷ The CISG is particularly beneficial for small and medium-sized enterprises, which often struggle to navigate the complexities of international sales.⁸

The recurrent conceptual challenge that is occurring in the implementation of CISG is ambiguity as to its terminology and misalignment with domestic legal traditions. Walters and Zeller contend that India’s existing legal framework would require amendment in areas such as ‘good faith,’ ‘fundamental breach,’ and ‘contract validity.’⁹ Scholars like Kroll highlight ambiguities of CISG provisions and the difficulty courts face in autonomously interpreting provisions like the formation of contract, obligations of parties and the validity of contracts.¹⁰ A similar approach is taken by other scholarly articles, highlighting that the unifying purpose of CISG would be undermined by inconsistent judicial interpretations of its provisions. Honnold’s commentary underscores this point by enumerating that uniformity depends not only on the adoption

⁶ Ingeborg Schwenzer & Pascal Hachem, *The CISG -Successes and Pitfalls*, 57 *AM. J. COMPAR. L.* (2009).

⁷ Robert Walters & Bruno Zeller, *Is It Time for India to Adopt the Convention on the Sale of Goods?*, 26 *INT. T.L.R.* (2020).

⁸ Robert Walters & Bruno Zeller, *Is It Time for India to Adopt the Convention on the Sale of Goods?*, 26 *INT. T.L.R.* (2020).

⁹ Robert Walters & Bruno Zeller, *Is It Time for India to Adopt the Convention on the Sale of Goods?*, 26 *INT. T.L.R.* (2020).

¹⁰ Stefan Kroll, *Selected Problems Concerning the CISG’s Scope of Application*, 25 *J.L. & COM.* (2005).

of the text but on a consistent interpretation of provisions, keeping in mind the tenets of uniformity and certainty.¹¹

Negi and Mishra offer a comparison of CISG rules on delivery, time, and risk allocation with India's Sale of Goods Act, 1930. Their interpretive analysis reveals that while the CISG has precise default rules that encompass all important aspects of cross-border trade pertaining to time, delivery and risk, Indian law relies on general principles, leaving some of the important aspects of international transactions unaddressed.¹²

Analysis of the policy decisions of certain countries reveals that legislative prioritisation emerges as a significant conceptual hurdle to the implementation of CISG, more than any other factor. Moss's study of the United Kingdom reveals that non-ratification often stems from a lack of legislative will and competing priorities. Walters and Zeller contend that judicial unfamiliarity can deter policymakers from implementing CISG. Thus, the conceptual challenge just forms a small part of the reluctance to ratification, while legislative processes and the capacity of courts and practitioners are emerging as significant barriers to the implementation of CISG.

Scholars like Sono attribute Japan's initial reluctance to implement the convention to legislative overload and opposition from major businesses. The ratification was attributed to regional commercial integration, which creates compelling economic incentives.¹³ For India, potential trade opportunities with ASEAN, the Middle East, and Africa may similarly shift in favour of CISG adoption.

Spagnolo's examination of Australia highlights the role of legal culture as a significant reason behind the ratification of the CISG. Automatic opt-outs and judicial misapplications are attributed to the lack of training of the professional community. The author contends that efforts to reform legal education and practice are necessary for the effective implementation of CISG.¹⁴

¹¹ John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* 9 (4th ed. Wolters Kluwer Law & Business 2009).

¹² Abhishek Negi & Utkarsh K. Mishra, *Dissecting the CISG Framework and the Indian Sale of Goods Regime in the Context of 'delivery', 'time' and 'risk': A Comparative Account*, 3 *IJLSI* (2021).

¹³ Hiroo Sono, *Japan's Accession to the CISG: The Asia Factor*, 20 *PACE INT'L L. REV.* (2008).

¹⁴ Sally Moss, *Why the United Kingdom Has Not Ratified the CISG*, 25 *J. L. & Com.* (2006).

Finally, Yang's study of China underscores how major trading nations leverage CISG accession to assert leadership in global commercial law. China's eventual alignment of its domestic law with CISG norms and its withdrawal of reservations reflect strategic measures to influence international arbitration and legislation.¹⁵ Yang proposes a global *jurisconsultorium*, a collaborative effort among scholars, practitioners, and judges to ensure uniform interpretation and address the inconsistencies of the CISG.

The various facets of CISG ratification debate in India are shaped by a number of conceptual considerations. The ratification of CISG provides the appeal of a neutral, harmonised sales regime. It highlights the necessity of doctrinal alignment in areas such as good faith and risk, and shows institutional, linguistic, and cultural barriers that impede ratification.

Scholars like Schwenger and Hachem, even while acknowledging the deficiencies, affirm that it is a robust instrument for international sales, suggesting that its successes outweigh its limitations.¹⁶ With the increasing importance of global trade, there are continuous efforts from the legal community to refine its application and expand its reach.

¹⁵ Fan Yang, *The Application of the CISG in the Current PRC Law & CIETAC Arbitration Practice*, 2 NJCL. L. (2006).

¹⁶ Ingeborg Schwenger & Pascal Hachem, *The CISG -Successes and Pitfalls*, 57 AM. J. COMPAR. L. (2009).

CHAPTER 2

THE CISG: HISTORY, PROVISIONS, AND GLOBAL INFLUENCE -WITH A DISTINCT ASSESSMENT OF INDIA'S TRADE PROFILE

2.1. Introduction: Relevance of the CISG

CISG is considered “one of history’s most successful efforts at the unification of the law governing international transactions”¹⁷ and one of the greatest achievements of UNCITRAL.¹⁸ From the date of its drafting, the Convention has seen an average adoption rate of approximately 2.16 states per year, making it the second most widely ratified treaty in the arena of international commercial law, surpassed only by the New York Convention of 1958¹⁹ which has an adoption rate of 2.57 states per year as of 2025.²⁰ The CISG is an effective instrument in promoting uniformity in international trade. It facilitates international trade and provides clear rules on most aspects of transnational trade of goods, including contract formation, the obligations of parties and remedies for breach of contract.

The CISG is regarded as an efficacious document, as its parties represent “every geographical region, every stage of economic development and every major legal, social and economic system”²¹. In addition to governing trade transactions, CISG Art. 66 is considered a supplement to the inadequate Incoterms rule^{22,23} CISG also works

¹⁷ Karen Halverson Cross, Parol Evidence under the CISG, the Homeward Trend Reconsidered, 68 OHIO ST. L.J. 133, 134 (2007).

¹⁸ Joseph M. Lookofsky, Loose Ends and Contorts in International Sales: Problems in the Harmonization of Private Law Rules, 39 AM. J. COMPAR. L. 403, 403 (1991).

¹⁹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3.

²⁰ The adoption rate is not an official treaty metric but a derived statistic that is calculated to show the influence and wide acceptance of a treaty over time. It is calculated by dividing the total number of states that have adopted the treaty by the number of years elapsed since the treaty’s adoption.

²¹ John Felemegas, The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation 1, 24(PhD thesis, University of Nottingham 2000).

²² INCOTERMS 2010 deal only with ‘accidental’ loss or damage to the goods, and they do not regulate situations that involve loss or damage due to acts or omissions of the seller. In that case, Art.66 CISG applies. Furthermore, INCOTERMS 2010 do not contain any similar provisions to those of Art. 70 CISG and the Convention regulate cases of simultaneous ‘accidental’ loss or damage and fundamental breach on the part of the seller.

²³ Karibi-Botoye, N. Ejims Enwukwe & Tamuno Bassey Amiesimaka, The Interplay Between the Incoterms & CISG on the International Sale of Goods, 2 J.L. & Pol’y. 95, 101 (2022).

alongside the Rome I Regulation²⁴ and UCP 600²⁵ to standardise rules about letters of credit, standardise transactions, and benefit the parties.²⁶

2.1.2 History and Development of the Convention

The initial efforts for the unification of commercial transactions were systemised in the *lex mercatoria* of medieval Europe.²⁷ In the early 20th century, the League of Nations established an auxiliary organ in 1928, known as UNIDROIT, with the objective of unifying private international law.²⁸ The first step towards the unification of domestic laws for international sales began with the creation of UNIDROIT in Rome. In the same year, Ernst Rabel, a member of the Governing Council of the UNIDROIT, put forward a suggestion to unify international sales law, and in 1929 submitted a preliminary report on the possibilities of unification of the law governing international sale of goods.²⁹ The first draft of a uniform sales law was published in 1935 by a committee comprising representatives from different legal systems.³⁰ Rabel's own work, the first volume of 'Das Recht des Warenkaufs,'³¹ which contained the current status of the sales law on a comparative basis, heavily influenced it. In 1939, the second draft was tabled, and it was accepted by the Council of UNIDROIT, but further developments were hindered by the Second World War.³² The next stage of development was during the Diplomatic Conference on the Unification of Sales Law in The Hague in 1951.³³ A special commission was established during this conference, and a draft was presented in

²⁴ The Rome I Regulation is an EU private international law instrument concerning the law applicable to contractual obligations.

²⁵ The UCP 600 is a set of rules issued by the International Chamber of Commerce that governs the use of Letters of Credit.

²⁶ CISG-AC Opinion No. 11, Issues Raised by Documents under the CISG Focusing on the Buyer's Payment Duty, Rapporteur: Professor Martin Davies, CISG Advisory Council (Mar. 01.2025, 10:00 AM). <https://CISGac.com/opinions/CISGac-opinion-no-11/>.

²⁷ Michael B. Lopez, Resurrecting the Public Good: Amending the Validity Exception in the United Nations Convention on Contracts for the International Sale of Goods for the 21st Century, 10 J. BUS. & SEC. L. 134, 135 (2010).

²⁸ UNIDROIT: An Overview, UNIDROIT (Feb. 22, 2025, 09:30 AM) <https://www.unidroit.org/about-unidroit/overview/>.

²⁹ Peter Schlechtriem, Uniform Sales Law: The UN-Convention on Contracts for the International Sale of Goods 1 (1st ed. Manzsche Verlags- und Universitätsbuchhandlung 1986).

³⁰ John O. Honnold, Uniform Law for International Sales under the 1980 United Nations Convention 9 (4th ed. Wolters Kluwer Law & Business 2009).

³¹ Ernst Rabel's monograph *Das Recht des Warenkaufs*, the first volume was published in 1936.

³² Michael Joachim Bonell, The UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law: Similar Rules for the Same Purposes?, 26 UNIF. L. REV. 229, 229 (1996).

³³ Ingeborg Schwenzer & Pascal Hachem, The CISG -Successes and Pitfalls, 57 AM. J. COMPAR. L. 457, 458 (2009).

1956.³⁴ After circulating it among governments and incorporating their suggestions, a revised edition was adopted in 1963. This draft of the text was discussed at the Hague Diplomatic Conference of 1964, and in the same year, the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULFC)³⁵ and the Uniform Law on the International Sale of Goods (ULIS)³⁶ were adopted.³⁷ These conventions came into force in 1972 and were considered the central pillars of a new international commercial system of law.³⁸ But these documents were not widely accepted in the legal community.³⁹ There were only nine member states, and due to the lack of acceptance, the United Nations conducted a survey to determine the reasons for non-ratification.⁴⁰ A number of feedbacks were received by the UNCITRAL.⁴¹ The non-ratification was attributed mainly to two reasons: the lack of participation by non-European countries in the process of creating ULIS and ULFC, and a number of serious deficiencies in the material stipulations of the Conventions.⁴² The main criticism of both these conventions was that they significantly favoured developed nations and failed to take into consideration the position of developing countries.⁴³

The Conventions reflected the trade practices of continental Western Europe, as it was the area that had significantly contributed to the preparation of the Convention, and the signatory states were also mainly European countries.⁴⁴ These Conventions could also

³⁴ Ingeborg Schwenzer & Pascal Hachem, *The CISG - Successes and Pitfalls*, 57 *AM. J. COMPAR. L.* 457, 458 (2009).

³⁵ Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, July. 1, 1964, 834 *U.N.T.S.* 169.

³⁶ Convention Relating to a Uniform Law on the International Sale of Goods, July. 1, 1964, 834 *U.N.T.S.* 107.

³⁷ M.G. Bridge, *The International Sale of Goods* 472 (3d ed. 2013).

³⁸ Andre Tunc, *Commentary on the Hague Conventions of the 1st of July 1964 on International Sale of Goods and the Formation of the Contract of Sale*, Institute of International Commercial Law (Feb. 07, 2025, 07:30 AM), https://iicl.law.pace.edu/sites/default/files/CISG_files/tunc.html.

³⁹ Andre Tunc, *Commentary on the Hague Conventions of the 1st of July 1964 on International Sale of Goods and the Formation of the Contract of Sale*, Institute of International Commercial Law (Feb. 07, 2025, 07:30 AM), https://iicl.law.pace.edu/sites/default/files/CISG_files/tunc.html.

⁴⁰ John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* 9 (4th ed. Wolters Kluwer Law & Business 2009).

⁴¹ Ernst von Caemmerer & Peter Schlechtriem, *Kommentar zum Einheitlichen UN-Kaufrecht* 258 (2d ed. 1995).

⁴² Ernst von Caemmerer & Peter Schlechtriem, *Kommentar zum Einheitlichen UN-Kaufrecht* 258 (2d ed. 1995).

⁴³ Sonia Viejobuono, *Progress through Compromise: the 1980 United Nations Convention on Contracts for the International Sale of Goods*, 28 *CILSA* 200 (1995).

⁴⁴ Ernst Von Caemmerer & Peter Schlechtriem, *Kommentar Zum Einheitlichen Un-Kaufrecht* 258 (2nd ed. 1995).

be ratified on an opt-out basis, which robbed them of their practical use.⁴⁵

Nevertheless, it cannot be claimed that these Conventions were total failures because they were the focal point from which one of the most successful international conventions in international sales law was developed. The main contribution of these conventions was that they laid the groundwork for further negotiations for the development of the CISG.⁴⁶ In order to address the active criticisms against this Convention, UNCITRAL conducted another enquiry regarding the positions of the state, and based on the responses received, these two conventions were studied in detail so that they can be modified to suit the legal, social and economic conditions of the rest of the world.⁴⁷ UNCITRAL did not completely abandon the earlier Conventions; rather, they used these conventions as a point of departure and carefully considered all the criticism, which aided in the drafting of CISG.⁴⁸ UNCITRAL identified that varying legal provisions of different countries are the main cause of disputes in international trade.

Thus, a working group had been formed in 1968 for the purpose of drafting a new convention for the international sale of goods, and it identified a certain number of areas in which uniform law was needed. The working group consisted of representatives from common law countries such as the United States and the United Kingdom. Their work resulted in a diplomatic conference held in Vienna from 10 March to 11 April 1980, attended by 62 member states, all from major trading nations or developed countries. On 11 April, CISG was formally adopted with 42 countries voting in favour.⁴⁹ The Convention eventually entered into force on 1 January 1988. Some countries chose to delay the accession until the United States ratified the Convention. In 1986, the United States, China, and Italy acceded to the Convention and boosted its global influence.

⁴⁵ Ernst Von Caemmerer & Peter Schlechtriem, *Kommentar Zum Einheitlichen Un-Kaufrecht* 258 (2nd ed. 1995).

⁴⁶ Ajendra Srivastava, *Modern Law of International Trade, Comparative Export Trade and International Harmonisation* 182 (1st ed. Springer 2020).

⁴⁷ Report of the United Nations Commission on International Trade Law on the Work of its Second Session U.N. GAOR, 24th Sess, Supp. No. 18, U.N. Doc. A/7618 (1969).

⁴⁸ John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* 9 (4th ed. Wolters Kluwer Law & Business 2009).

⁴⁹ Peter Schlechtriem, *Uniform Sales Law: The UN-Convention on Contracts for the International Sale of Goods* 19 (1st ed. Manzsche Verlags- und Universitätsbuchhandlung 1986).

2.1.3 Significance of CISG

The Convention is considered one of the most successful international treaties to date, as evidenced by its ratification by 97 countries. This number gains significance when viewed alongside certain additional facts. Nine out of ten major trading nations of the world are member states of CISG, with the exception of the UK.⁵⁰ It is estimated that 80% of the world's sales of goods are governed by the CISG.⁵¹ One of the significant features of CISG is that it incorporates elements from both civil law and the common law system, and it also addresses the needs of developing nations.⁵² The official languages of the Convention were English, French, Chinese, Arabic, Russian and Spanish, ensuring its accessibility and facilitating applicability across nations. The main advantage of CISG as compared to earlier unification conventions is that it addresses many critical gaps or criticisms raised against the former uniform laws. Even though CISG contains some elements of ULIS and ULFC, there are also substantial differences. CISG is a self-executing treaty, while the other two were annexes to an international treaty and had to be brought into force. The ULIS has a vertical structure that has obligations corresponding with remedies, while CISG has a horizontal structure. Compared to the other two Conventions, CISG has adopted a more open-ended approach to legal concepts, allowing greater flexibility for the participating countries.⁵³

2.1.4 Signatory States

The CISG has been ratified by 97 countries, each with differing legal systems and trading practices, demonstrating the Convention's adaptability and broad acceptance across diverse legal and economic environments. This global reach was foreshadowed by its initial ratification by 11 states from diverse backgrounds, whose early commitment provided crucial impetus and confidence in the Convention's potential to

⁵⁰ Global Trade Outlook and Statistics, World Trade Organisation (Mar. 24 2025, 10:05 AM), https://www.wto.org/english/res_e/publications_e/trade_outlook24_e.htm

⁵¹ Ingeborg Schwenzer and Christopher Kee, *International Sales Law -The Actual Practice*, 29 *Penn St. Int'l L. Rev.* 425, 428 (2011).

⁵² Ajendra Srivastava, *Modern Law of International Trade, Comparative Export Trade and International Harmonisation* 182 (1st ed. Springer 2020).

⁵³ Larry A. DiMatteo, *International Sales Law: A Global Challenge* 14 (Cambridge Univ. Press 2014).

harmonise international trade law.⁵⁴

The major economies of the world, like the USA, Japan, Canada, Germany, China and Russia, are signatories of the Convention. Out of the 27 European Union member states, 25 are parties to the Convention.⁵⁵ The members of USMCA are also part of the Convention. 15 out of the twenty G20 member countries have ratified the Convention, and six out of the seven G7 members are also parties to it.

2.1.5 Structure of the CISG

The CISG is a comprehensive document that contains 101 Articles that deal with various aspects of the international sale of goods.

2.1.5.1 Preamble

The preamble to the Convention establishes that States Parties must consider the objectives adopted in the resolutions of the Sixth Special Session of the United Nations General Assembly, which focused on establishing a new international economic order. They must also take into account that equality and mutual benefit are essential elements for promoting friendly relations between states.

It further acknowledges that the adoption of uniform rules and the inclusion of differing social, economic and legal systems would contribute to the removal of legal barriers in international trade.

2.1.5.2 Sphere of Application

According to Art. 1(1),⁵⁶ the Convention applies if there is a contract for the sale of goods between the parties whose places of business are in different states, in two circumstances.

⁵⁴ The original states were Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, the United States, Yugoslavia and Zambia.

⁵⁵ Ireland and Malta have not ratified the CISG.

⁵⁶ CISG Art. 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 of the law of a Contracting State.

According to Art 1 (1)(a), when the States are Contracting States.

Contracting State

It is clear from Art. 1(1) that CISG may be applied if the parties have their place of business in different contracting states provided that this fact appears either on the contract itself, or in any dealings between the parties or from information disclosed by the parties at any time before or at the conclusion of the contract.⁵⁷ It means that CISG applies as domestic law if the parties have ratified the Convention.⁵⁸

Conflict of Law Rules

The second condition under which CISG is applicable is Art. 1(1)(b),⁵⁹ which applies when the rules in private international law lead to applying the law of a contracting state. It is not a direct application, as under Art.1(1)(a), this constitutes an indirect application through conflict-of-laws rules.

2.1.5.3 Matters Excluded From or Included in the Convention

The Convention is only applicable to the international sale of goods.

Art. 2 provides that the Convention does not govern sales of goods bought for personal, family or household use, by auction, on execution or otherwise by authority of law, of stocks, shares, investment securities, negotiable instruments or money, of ships, vessels, hovercraft or aircraft, or of electricity.⁶⁰

Art. 4 provides that the Convention governs “only the formation of the contract of sale

⁵⁷ CISG Art. 1(2)

The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

⁵⁸ M.G. Bridge, *The International Sale of Goods* 472 (3d ed. 2013).

⁵⁹ CISG Art. 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 of the law of a Contracting State.

⁶⁰ CISG Art. 2 This Convention does not apply to sales: (a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use; (b) by auction; (c) on execution or otherwise by authority of law, (d) of stocks, shares, investment securities, negotiable instruments or money; (e) of ships, vessels, hovercraft or aircraft; (f) of electricity.

and the rights and obligations of the seller and the buyer arising from such a contract”. According to Art. 3(1) It governs contracts for the supply of goods to be manufactured or produced.⁶¹ Supply of labour or other services is excluded from the scope of the Convention.⁶²

2.1.5.4 Other Provisions

Part I, Chapter I, that is Articles 1-6 of the CISG, deals with the sphere of application and Chapter II, Articles 7-13, deals with general provisions of the Convention.

Part II of the Convention, that is Articles 14-24, deals with the formation of the contract.

Part III deals with provisions for the sale of goods, with general provisions being dealt with under Chapter I, that is, Articles 25-29.

In Chapter II, the obligations of the seller are given under Art. 30. Delivery of goods and handing over of documents are dealt with by Articles 31 -34. The conformity of the goods and third-party claims is dealt with under Articles 35-44. Then the remedies for breach by the seller are provided under Articles 45-52 of the Convention.

Chapter III deals with obligations of the buyer under Art.53. Articles 54- 59 deal with payment of price. Art. 60 deals with taking delivery. Articles 61- 65 deal with remedies for breach by the buyer. Chapter IV deals with the passing of risk.

Chapter V deals with provisions common to the obligations of the seller and of the buyer. Articles 71 -73 deal with anticipatory breach and instalment contracts. Articles 74-77 deal with damages. Art. 78 deals with interest. Articles 79 and 80 deal with exemptions. Articles 81-84 deal with the effects of avoidance. Articles 85-88 deal with the preservation of goods.

Part IV deals with final provisions from Articles 89- 101.

⁶¹ CISG Art. 3(1)

Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

⁶² CISG Art. 3 (1)

2.1.6. Advantages of CISG

Advantages in Trade

It was the advent of globalisation that made the adoption of CISG imperative. With the introduction of digital modes of trade, almost all countries have established trade with one another. The developed countries have been involved in trade with various developing countries, and they are not familiar with the domestic laws of sale. All the parties involved in the trade are suffering hardships because of the unfamiliar legal systems. The easiest solution to this problem is if both the trading countries design their legal system based on a uniform model instrument. The Convention accommodates modern trade practices and helps in the interpretation of contracts for the greater facilitation of trade.

The Singapore Academy of Law's Law Reform Committee had identified the advantages of ratifying the CISG.

Legal Advantages in Ratification

The Convention serves a gap-filling function when a cross-border contract is made by phone or even by fax or telex, but in only a few words.

Having the Convention apply is better than having to choose an unknown foreign law as the applicable law of the contract.

It serves as a neutral law acceptable to both parties.

The Convention recognises that the parties to international sales contracts may wish to exercise broad contractual freedom. Article 6 enables them to exclude the application of the Convention and to derogate from or vary the effect of any of its provisions.

A prodigious amount of time, work, and scholarship has gone into the making of the Convention.

The Convention helps to avoid difficult conflict of laws issues.

Trade Advantages in Ratification

The Convention takes into account modern trade practices and realities. It contains provisions on the interpretation of contracts which are wider than the Common Law rules.

The Convention is drafted in simple and plain language for businessmen to understand.

The Convention contains useful provisions to address practical problems, such as requiring parties to preserve goods in their possession belonging to the other party.

Convention countries accounted for 61% of the world's trade in 1992. The Convention will facilitate cross-border trade and save time, expense and avoid uncertainty.

The Convention is available in all 6 official UN languages, including Arabic, English, Chinese, French, Spanish and Russian. It would also have been translated into the languages of the other Convention countries, such as German, Italian or Dutch.

The economic powerhouse of China has its Foreign Economic Contracts Law of 1985 modelled after the Convention.

The Convention offers a viable solution to harmonising ASEAN international trade law.

If there is a law reform, then amendment of the national laws will bring it in line with current international trade practices. It would result in better laws.

The adoption of CISG will achieve simplification and unification of international sale of goods

Two-thirds of the countries in the world have ratified the CISG
There are several scholarly writings that would help unify the interpretation and application of the CISG.

The decisions rendered on different provisions of the CISG are collected and available in the Case Law on UNCITRAL Texts (CLOUT) and elsewhere, encouraging the belief that, in due course, there will be greater uniformity in the interpretation and application of the CISG.⁶³

Other Advantages

The advantages of adopting CISG have been extensively recognised. It is much more advantageous than adopting a completely unfamiliar foreign law. Certain foreign laws are only available in a foreign language. It is even more difficult to translate and understand it. Thus, the question is not whether it is better than domestic law or not, but whether the neutral law of CISG is better than foreign law.⁶⁴

The adoption of CISG would be more beneficial to developing countries than to developed countries. As Judge Richard Posner noted, “a poor country may not be able to afford a good legal system, but without a good legal system, it may never become rich enough to afford such a system.”⁶⁵ The CISG provides the developing nations with a comprehensive legal framework that eliminates the immediate need to reform complex commercial laws. It would enable businesses situated in developing countries to engage in mutually beneficial and profitable transactions. It will also have a reciprocal effect as it would facilitate these developed nations to engage in more transactions with developing countries.

India ranks 63rd in the world in terms of ease of doing business.⁶⁶ India has entered into 13 FTAs, and among these agreements, Singapore stands out as the only major trading

⁶³ The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980): Should Singapore Ratify? , Law Reform Committee, Singapore Academy of Law (1994).

⁶⁴ Shishir Dholakia, Ratifying the CISG - India's Options, in Celebrating Success: 25 Years United Nations Convention on Contracts for the International Sale of Goods 186-194 (UNCITRAL & SIAC., 2005)

⁶⁵ Richard A. Posner, Law and Economics in Common-Law, Civil-Law, and Developing Nations, 17 *RATIO JURIS* 37,44 (2004).

⁶⁶ Ankur Modi, Ease of Doing Business, Now an Impetus to India's Growth, *Fortune India*, (Oct. 7, 2024, 11:18 AM), <https://www.fortuneindia.com/opinion/ease-of-doing-business-now-an-impetus-to-indias-growth/118664>.

partner.⁶⁷ CISG will ease the cost of doing international business and will remove roadblocks affecting the ease of doing business in India.⁶⁸ A law that is familiar to foreign traders would also encourage foreign investment.

The small-scale industries in the developing nations would particularly benefit from the CISG.⁶⁹ MSMEs in India accounted for 45.73% of total exports in 2023-24, and contributed 30.1% to India's GDP in 2022-23. Despite their economic significance, these enterprises face disproportionate risks and costs in cross-border trade.⁷⁰ One of the reasons is limited access to legal advice, especially when negotiating contracts, which leaves MSMEs and traders in developing countries vulnerable to unfair contract terms.⁷¹

The default application of the CISG's fair, uniform, and internationally accepted legal framework can significantly alleviate these challenges by providing predictability, neutrality, and fairness in international sales contracts.⁷² It would promote greater participation of MSMEs in global trade by reducing legal uncertainties and transaction costs, which will support their growth and contribution to the national economy. The provisions of the CISG are geared for cross-border exchanges, developing facilities to assist in more competent contract management, which will ultimately result in equitable litigation results.⁷³

Another advantage is that it provides a uniform law when India deals with unfamiliar laws of other countries' legal systems. It is an unavoidable situation as India's major

⁶⁷ India has signed 13 Regional Trade Agreements (RTAs)/Free Trade Agreements (FTAs) with various countries/regions, Press Information Bureau, Ministry of Commerce & Industry (20 Jul. 2022 4:52 PM),

<https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1843902>

⁶⁸ Bruno Zeller, Does the CISG reduce cross border risks? The Australian experience (unpublished manuscript, 2024) (on file with author).

⁶⁹ Robert Walters & Bruno Zeller, Is It Time for India to Adopt the Convention on the Sale of Goods?, 26 INT. T.L.R. 158, 162 (2020).

⁷⁰ CISG@40, United Nations Commission on International Trade Law (May 21, 2025, 10:00 PM), <https://uncitral.un.org/en/cisg40>.

⁷¹ United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG), United Nations Commission on International Trade Law (May 11, 2025, 09:00 PM), https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg.

⁷² United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG), United Nations Commission on International Trade Law (May 11, 2025, 09:00 PM), https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg.

⁷³ John Y. Gotanda, Assessing Damages in International Commercial Arbitration: A Comparison with Investment Treaty Disputes, 6 TDM. 1,5 (2007).

trading partners are civil law countries like China, Russia, Switzerland and South Korea.

CISG also brings about a reduction in transaction costs, which will result in low-priced exports and imports.

Thus, the CISG presents numerous advantages to facilitate cross-border sales.

2.1.7. Main Criticisms against CISG

The main criticism against CISG is that it is not a comprehensive code⁷⁴ as it does not contain provisions for the validity of contract,⁷⁵ passing of property⁷⁶ or liability of the seller for personal injury or death caused by the goods.⁷⁷

Matters of contractual validity, relating to the contract as a whole or individual terms or usages, are excluded from the CISG.⁷⁸

The common law doctrine of consideration is also excluded from its scope.⁷⁹

Common law countries have primarily criticised the CISG for its lack of uniform interpretation of terms such as 'reasonable' and 'fundamental breach'.⁸⁰ Due to its wording, the provision of fundamental breach under Art. 25 is open to interpretation, particularly regarding what qualifies as a fundamental breach in a transaction. It does not clearly provide what breaches are considered to be fundamental. There is also a subjective standard of foreseeability to be considered as a breach. It adds another layer of complexity in determining whether a breach is fundamental.

⁷⁴ Stefan Kroll, Selected Problems Concerning the CISG's Scope of Application, 25 J.L. & COM. 39, 39 (2005).

⁷⁵ CISG Art. 4(a).

⁷⁶ CISG Art. 4(b).

⁷⁷ CISG Art. 5.

⁷⁸ H. Hartnell, Rousing the Sleeping Dog: The Validity Exception to the Convention on Contracts for the International Sale of Goods, 18 YALE J. INT'L. L. 1, 3 (1993).

⁷⁹ Petra Butler, The Doctrines of Parol Evidence Rule and Consideration: A Deterrence to the Common Law Lawyer?, in Celebrating Success: 25 Years U.N. Convention on Contracts for the International Sale of Goods 54, 62 (SIAC ed. 2005).

⁸⁰ Clayton P Gillette & Robert E Scott, The Political Economy of International Sales Law, 25 INT'L REV. L. & ECON. 446, 473 (2005).

Art. 7 of the Convention was considered an impediment to uniformity due to “the provision’s ambiguity and the absence of a clear hierarchical methodology of interpretation.”⁸¹ Two issues were attributed to Art 7(1). The first criticism was the lack of a definition of good faith, and second, the difficulty of determining where and upon whom a good faith duty is imposed. Another point of contention was regarding the reservations and declarations given under the Convention. Critics alleged that it caused a multitude of ‘mini-codes’ emerging from the CISG.⁸²

There is also ambiguity regarding the treatment of interest, whereby the obligation to pay interest on damages is provided within Art. 78, but the rate of interest is not specified in the Convention.⁸³

Taking into account the practical aspects, some of the arguments against the CISG include the fact that, despite its widespread recognition, very few people are familiar with how it is used and operates in real-world situations. Lawyers still seemingly favour their own domestic law.⁸⁴ The first reason leads to the second: a party likes to use its own domestic law in a contract whenever its position in the market permits it.⁸⁵ Third, the parties are yet to be persuaded of the benefits of the CISG over domestic sales regulations.⁸⁶ Lastly, there has been criticism of the witness provision that accords equal authority to all six official languages.⁸⁷

⁸¹ Christopher Scheaffer, *The Failure of the United Nations Convention on Contracts for the International Sale of Goods and a Proposal for a New Uniform Code in International Sales Law*, 15 *CARDOZO INT’L & COMPAR. L. REV.* 461, 470 (2007).

⁸² Christopher Scheaffer, *The Failure of the United Nations Convention on Contracts for the International Sale of Goods and a Proposal for a New Uniform Code in International Sales Law* 15 *CARDOZO INT’L & COMPAR. L. REV.* 461, 464 (2007).

⁸³ Franco Ferrari, *Uniform Application and Interest Rates under the 1980 Vienna Sales Convention* 24 *Georgia Journal of International and Comparative Law* 475, 467 (1995).

⁸⁴ Christopher Scheaffer, *The Failure of the United Nations Convention on Contracts for the International Sale of Goods and a Proposal for a New Uniform Code in International Sales Law* 15 *CARDOZO INT’L & COMPAR. L. REV.* 461, 470 (2007).

⁸⁵ Christopher Scheaffer, *The Failure of the United Nations Convention on Contracts for the International Sale of Goods and a Proposal for a New Uniform Code in International Sales Law* 15 *CARDOZO INT’L & COMPAR. L. REV.* 461, 470 (2007).

⁸⁶ Christopher Scheaffer, *The Failure of the United Nations Convention on Contracts for the International Sale of Goods and a Proposal for a New Uniform Code in International Sales Law* 15 *CARDOZO INT’L & COMPAR. L. REV.* 461, 470 (2007).

⁸⁷ Christopher Scheaffer, *The Failure of the United Nations Convention on Contracts for the International Sale of Goods and a Proposal for a New Uniform Code in International Sales Law* 15 *CARDOZO INT’L & COMPAR. L. REV.* 461, 470 (2007).

2.1.8. Comparison with CISG Member Countries

2.1.8.1 Australia

In February 2025, Australia exported \$37.8 billion and imported \$34.1 billion, resulting in a positive trade balance of \$3.68 billion.⁸⁸ This trade surplus reflects Australia's strong integration into global markets. The strong export sector indicates the country's competitive advantage in global trade.

Australia is a common law country that ratified the CISG on 17 March 1988, and it came into force on 1 April 1989⁸⁹. Australia has 33 CISG cases adjudicated by domestic courts and 71 CISG cases worldwide involving parties from Australia.⁹⁰ The CISG is in force in each Australian State and Territory⁹¹ according to equivalent uniform legislation, the Sale of Goods (Vienna Convention) Act 1987.

Australia's first ever case applying the CISG was *Roder Zelt-Und Hallenkonstruktionen GmbH v. Rosedown Park Pty Ltd and Reginald R Eustace*. In this case, it was held that CISG is part of Australian law and is not to be treated as a foreign law requiring proof as a fact.⁹²

Despite the early adoption of the CISG, only a limited number of cases have been reported applying the CISG. The reason for the substantially lower number of cases has been attributed to the fact that CISG is not considered an important treaty in Australia. The lawyers and the parties choose to ignore the CISG and resort to their domestic legislation. According to legal scholar Lisa Spagnolo, "Australian lawyers and courts have tried long and hard to ignore the CISG. If Australia is not to be left behind as one of the last outposts of misunderstanding of the CISG, much less aspire to become a hub of regional dispute resolution, then our track record needs improvement in the eyes of

⁸⁸Australia, Latest Trends up to February 2025, Observatory of Economic Complexity (Apr.28, 2025, 04:30 PM), <https://oec.world/en/profile/country/aus>

⁸⁹Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG), United Nations Commission on International Trade Law (Apr.21, 2025, 04:00 PM), https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status

⁹⁰Australia, CISG by Jurisdiction (Apr.01, 2025, 08:30 PM), <https://CISG-online.org/CISG-by-jurisdiction?command=detail&detail=11>.

⁹¹ Under CISG Art. 93, Australia had declared that the Convention shall not apply to the territories of Christmas Island, the Cocos (Keeling) Islands and the Ashmore and Cartier Islands.

⁹² *Roder Zelt-Und Hallenkonstruktionen GmbH v Rosedown Park Pty Ltd and Reginald R Eustace* (1995) FCA 1707.

the international legal community.”⁹³

This dilemma existed in several cases. In the case *Perry Engineering v. Bernold*, an Australian plaintiff attempted to bring legal action against a Swiss company. The applicable law was the CISG, as it was a component of Australian law, but the plaintiff failed to argue based on CISG on four occasions. In the fifth hearing, Justice Burley realised that CISG was the applicable law, but no CISG arguments had been made by the Plaintiff. The judge invited further submissions on the case, but the plaintiff declined and argued that it was unnecessary to address CISG specifically. The court denied damages, and Justice Burley stated that the failure to address the CISG in pleadings or argument was ‘fatal’ to the plaintiff’s claim.⁹⁴ The case was considered a warning to those who would ignore the CISG at any cost, including that of ‘unnecessary expenses for clients.’⁹⁵

The unwillingness to incorporate CISG provisions in contracts by the parties can be due to various issues. There have been ambiguities regarding the interpretative mandate of Art. 7⁹⁶ and Art. 8 of the CISG. Instead of interpreting the provisions under the CISG, a homeward trend is adopted in most cases in which recourse is made to domestic legal principles. “The term homeward trend has been coined to describe the introduction of domestic principles in the application of the Vienna Convention on Contracts for the International Sale of Goods, a behavioural bias in favour of domestic law.”⁹⁷ One of the famous cases in which this trend was present was *Ginza Pte Ltd v. Vista Corp Pty Ltd*.⁹⁸ The contract was between a Singaporean company, Ginza and an Australian defendant, Vista and a consolidated proceeding between Ginza and an Australian claimant, Kontack. It was for the supply of contact lens solutions. After it was supplied, both Kontack and Vista argued that contact lens solutions were supplied in breach of express contractual terms that they would be sterile and meet Australian Therapeutic

⁹³ Lisa Spagnolo, The Last Outpost: Automatic CISG Opt-Outs, Misapplications and the Costs of Ignoring the Vienna Sales Convention for Australian Lawyers, 10 MELB. J. INT’L L. 141, 141(2009).

⁹⁴ Bruno Zeller, Does the CISG reduce cross border risks? The Australian experience (unpublished manuscript, 2024) (on file with author).

⁹⁵ Bruno Zeller, Does the CISG reduce cross border risks? The Australian experience (unpublished manuscript, 2024) (on file with author).

⁹⁶ Lisa Spagnolo, Law Wars: Australian Contract Law Reform vs. CISG vs. CESL, 58 VILL. L. REV. 623, 644 (2013).

⁹⁷ Bruno Zeller, Analysis of the Cultural Homeward Trend in International Sales Law 10 VULJ.131, 131 (2021).

⁹⁸ *Ginza Pte Ltd v. Vista Corp Pty Ltd*, (2003) WASC 11.

Goods Administration (TGA) requirements, and in breach of implied terms of merchantable quality and fitness for purpose. The Court held that CISG was applicable to the contract under Art. 1(1)(a). During the argument, the Court considered Article 35(1) CISG and noted that it was similar to Section 14 of the Australian Sale of Goods Act. The Court set forth the test for damages within Art. 74 and the remedy of proportional price reduction in Art. 50, and held that buyers could claim both price reduction and damages under Art. 45(2).⁹⁹ The court held that CISG applied to the case and interpreted it by comparing it with domestic legislation. The comparison with the Sale of Goods Act, when CISG is clearly applicable, was against the principle of uniformity, and CISG authorities were not used to guide the interpretation.¹⁰⁰ While equating the CISG with familiar law affords comfort for lawyers, this tendency must be curbed to achieve uniformity.¹⁰¹ The CISG mandates that its interpretation should be guided by authoritative resources, but this requirement was overlooked in the present case.

Another reason is the CISG's opt-out provision, which leads to its routine exclusion. The federal defence department of Australia regularly opts out of CISG in its supply contracts.¹⁰²

The case laws have demonstrated that the biggest roadblock to the lack of CISG cases in Australia is the inability of courts to abandon the common law approach to the interpretation of statutes and contracts.

In essence, the Australian experience indicates that the legal profession is slow to engage in a rethink and remains within a past knowledge base. It is clear that interpretation by the judiciary is a successful tool to implement the CISG. Thus, India can adopt the judicial interpretive method of Australia to seamlessly implement CISG to domestic contracts for international sale of goods.

⁹⁹ *Ginza Pte Ltd v. Vista Corp Pty Ltd*, (2003) WASC 11.

¹⁰⁰ Lisa Spagnolo, *The Last Outpost: Automatic CISG Opt-Outs, Misapplications and the Costs of Ignoring the Vienna Sales Convention for Australian Lawyers*, 10 MELB. J. INT'L L. 141, 186 (2009).

¹⁰¹ Leonardo Graffi, *Case Law on the Concept of Fundamental Breach in the Vienna Sales Convention*, 3 INT'L BUS. L.J. 338 (2003).

¹⁰² Bruno Zeller, *Does the CISG reduce cross border risks? The Australian experience* (unpublished manuscript, 2024) (on file with author).

2.1.8.2 Germany

In February 2025, Germany exported €129 billion and imported €112 billion, resulting in a positive trade balance of €16.3 billion.¹⁰³ The trade surplus reflects Germany's strong performance in the export sector.

Germany is a civil law country. Germany ratified CISG on 1 January 1991,¹⁰⁴ and it has had immense influence on shaping the interpretation of the CISG's provisions.¹⁰⁵

The CISG forms part of Germany's national law, and it applies automatically to contracts for the international sale of goods if the parties have not expressly excluded it. In export contracts, where no choice of law has been made, the CISG will typically govern the contract as Germany is a Contracting State. But in case of import contracts, where there is no contractual choice of law, the applicable law is usually determined by the forum's conflict of laws rules, which is often the law of the country where the seller has their place of business.¹⁰⁶

For Germany, incorporating the CISG was relatively straightforward due to its similarities with German domestic law, but certain differences between the two still exist. The CISG is considered more well-structured and accessible than the German sales law.

Germany declared that it would not apply Art. 1(1)(b) to any State that had made a declaration opting out of that provision. But this is an interpretative approach rather than a formal declaration.¹⁰⁷

The importance of CISG is experiencing a revival in Germany as the German Civil Code has become increasingly complex due to the implementation of EU directives and

¹⁰³ Germany, Latest Trends Up to February 2025, Observatory of Economic Complexity (Mar. 20, 2025, 11:35 AM), <https://oec.world/en/profile/country/deu>

¹⁰⁴ Albert. H. Kritzer, CISG database, Institute of International Commercial Law (Mar. 22, 2025, 10:30 AM), <https://iicl.law.pace.edu/CISG/CISG>.

¹⁰⁵ Ulrich Magnus, The Vienna Sales Convention (CISG) Between Civil and Common Law --Best of All Worlds? 3 J. CIV. L. STUD. 84, 85 (2010)

¹⁰⁶ 40 years of CISG, Lexology (Mar.01, 2025, 07:30 AM)

<https://www.lexology.com/library/detail.aspx?g=59063332-37df-47ac-bdcf-985ebfb86d44>.

¹⁰⁷ CISG Database - Table of Contracting States, Institute of International Commercial Law (Mar.03, 2025, 09:30 AM) <https://iicl.law.pace.edu/CISG/page/CISG-table-contracting-states>.

domestic legislative amendments.¹⁰⁸ To implement the Digital Content Directive¹⁰⁹ and the European Sales of Goods Directive¹¹⁰, the German Civil Code has incorporated special provisions concerning the sale of digital products and the sale of goods with digital elements. These provisions include detailed regulations on warranty rights and supplier recourse, and have also abolished the previously fixed limitation period for recourse claims. As a result, the period for the reversal of the burden of proof regarding defects in consumer goods has been extended to one year.

As compared to these provisions, CISG is much less complex as it does not differentiate between different types of goods, nor does it introduce separate regimes for consumer and commercial sales. It only has general warranty rights and imposes a two-year limitation period for claims arising from non-conformity of goods.¹¹¹ CISG also contains default rules, and it can be modified by the lessee for the contracting parties. Thus, CISG is considered more suitable for cross-border sales in Germany.¹¹²

CISG Governing Arbitration Agreements

One of the most successful instances in which Germany used CISG was when it used CISG to govern an arbitration agreement. There was constant debate going on whether CISG can govern an arbitration agreement. Art. 19(3) of the CISG states that additional or different terms relating to the settlement of disputes are considered as a material alteration to the offer. Art. 81(1) provides for the effects of avoidance. It provides that avoidance does not affect any part of the contract for dispute settlement. But the counterargument is that Art. 4 limits the governance of CISG only to the formation of the contract.¹¹³

¹⁰⁸Christoph von Burgsdorff & Robert Burkert, Revival of the CISG? Evading an ever more complex German Civil Code, UNYER Global Advisors (Feb.01,2025, 12:09 AM)

<https://www.unyer.com/revival-of-the-CISG-evading-an-ever-more-complex-german-civil-code/>

¹⁰⁹ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

¹¹⁰ Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods.

¹¹¹ Christoph von Burgsdorff & Robert Burkert, Revival of the CISG? Evading an ever more complex German Civil Code, UNYER Global Advisors (Feb.01,2025, 12:09 AM)

<https://www.unyer.com/revival-of-the-CISG-evading-an-ever-more-complex-german-civil-code/>

¹¹² Christoph von Burgsdorff & Robert Burkert, Revival of the CISG? Evading an ever more complex German Civil Code, UNYER Global Advisors (Mar. 01, 2025, 01:30 PM),

<https://www.unyer.com/revival-of-the-CISG-evading-an-ever-more-complex-german-civil-code/>

¹¹³ Markus Altenkirch & Johannes Hagmann, German Federal Court of Justice Applies CISG to Validity of the Arbitration Agreement, Global Arb. News Feb. 4, 2021, (Mar. 07, 2025, 07:30 PM),

In the *Ground Mace Case*¹¹⁴, both parties entered into a contract to supply 1500 kg of mace flowers. In a letter confirming the same, the Dutch seller made a reference to the general terms of the Dutch Spice Association, and it was known as NVS terms. It contained a dispute resolution clause that provided for arbitration in Amsterdam. It was provided that the law of the Netherlands would govern the contract, and CISG was excluded. But the seller did not include the NVS terms in the confirmation letter. When the German buyer sued the Dutch seller in the German court, the seller argued that the German court had no jurisdiction based on the NVS terms. The contention of the seller was dismissed. The German court held that the formal validity of the arbitration agreement is governed by Art. II of the NYC and Sec 1031 of the German Code of Civil Procedure, and the law applicable to the arbitration agreement. As the parties had not made the agreement in writing, Art. II of NYC does not apply. The court applied CISG to understand whether there is a contract between the seller and the purchaser by referring to a document containing an arbitration clause. By applying the CISG, it was held that a mere reference to ‘Dutch law’ in the contract confirmation is to be interpreted as a reference to Dutch law in its capacity as the law applicable to cross-border sales agreements, including the CISG, rather than to the domestic sales law of the Netherlands.¹¹⁵ Thus, CISG was successfully applied to arbitration agreements.

2.1.8.3 China

In March 2025, China recorded exports worth \$314 billion and imports totalling \$256 billion, resulting in a positive trade balance of \$58.3 billion.¹¹⁶ As one of the world’s leading exporting nations, China plays a significant role in global commerce. It is also a founding member of the CISG, having become a Contracting State on 1 January 1988.¹¹⁷ China is also one of India’s major trading partners that has effectively

<https://www.globalarbitrationnews.com/2021/02/04/german-federal-court-of-justice-applies-CISG-to-validity-of-the-arbitration-agreement/>

¹¹⁴ Ground Mace Case I ZR 245/19 CISG number 5488.

¹¹⁵ Markus Altenkirch & Johannes Hagemann, German Federal Court of Justice Applies CISG to Validity of the Arbitration Agreement, *Global Arb. News* Feb. 4, 2021, (Mar. 07, 2025, 07:30 PM), <https://www.globalarbitrationnews.com/2021/02/04/german-federal-court-of-justice-applies-CISG-to-validity-of-the-arbitration-agreement/>

¹¹⁶ China, Latest Trends up to March 2025, Observatory of Economic Complexity (Mar. 08, 2025, 07:00 PM), <https://oec.world/en/profile/country/chn>.

¹¹⁷ China, CISG by Jurisdiction (Mar. 21, 2025, 05:30 PM), <https://CISG-online.org/CISG-by-jurisdiction?command=detail&detail=10>

implemented the CISG.¹¹⁸ “In China, the CISG has essentially become part of domestic law”, reflecting its deep integration into the legal framework governing international sales.¹¹⁹

The CISG has greatly influenced the development of Chinese Contract Law. Prior to the Vienna Convention, there was no domestic regulation for contract law, as China was a strictly planned economy. The Vienna Convention triggered the enactment of Chinese domestic contract law and a special regulation for international trade. China undertook efforts to unify its domestic contract law by enacting the Contract Law of the People’s Republic of China, the Foreign Economic Contract Law, and the Technology Contract Law, with the CISG serving as a primary source of reference in the drafting process.¹²⁰ China adopted provisions for the conclusion of contracts, the vendor’s responsibility for non-conformity of goods, the transfer of risk and the delivery of the goods sold based on the CISG.¹²¹

China had resolved a number of disputes by applying CISG effectively, and it had “far-reaching impact on the development of China’s market economy and contract law.”¹²² China’s extensive application and research have also contributed to the further development of CISG.

Arbitration

China has applied CISG in numerous international commercial arbitration cases, with hundreds of such cases administered by CIETAC. The country has also adopted specific measures to address the commonly encountered problems of CISG.

The CIETAC applies CISG pursuant to Art 1(1)(a). It is also applicable if the parties chose it as the applicable law or in accordance with Art. 47(2) of the CIETAC

¹¹⁸ Refer Appendix A1

¹¹⁹ Angelo Chianale, *The CISG as a Model Law: A Comparative Law Approach*, SING. J.L.S. 29,34 (2016).

¹²⁰ Fan Yang, *The Application of the CISG in the Current PRC Law & CIETAC Arbitration Practice*, 2 NJCL. L. 1, 2 (2006).

¹²¹ Fan Yang, *The Application of the CISG in the Current PRC Law & CIETAC Arbitration Practice*, 2 NJCL. L. 1, 2 (2006).

¹²² Wang Chengjie, *The Application of the CISG in Chinese Arbitration*, Special Report on CISG@40 Celebration Conference (Apr.02, 2021,01:30 PM), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/the_application_of_the_CISG_in_chinese_arbitrationspecial_report_by_wang_c_hengjie_english_version.pdf.

Arbitration Rules¹²³. All the points of contention regarding the application of the CISG have been effectively addressed by the arbitration tribunals. Regarding the validity of contracts that are not covered by CISG, CIETAC usually determines the applicable law based on the Doctrine of the Most Significant Relationship in private international law and takes it as the basis for determining the validity thereof.¹²⁴ Regarding the fundamental breach provision, the CIETAC arbitral tribunals have an accurate understanding of the concept of ‘fundamental breach of contract’ and have effectively addressed the issues arising from the termination of the contract and its consequences.

Defects in the application of CISG

One of the defects in the application of CISG in China is that there is a homeward trend of interpreting the CISG through the lens of domestic law, sometimes applying both the CISG and Chinese law to the same issues or using the CISG merely to fill gaps in domestic legislation.¹²⁵ This trend is partly attributed to limited familiarity with the CISG among judges and arbitrators, who are more versed in domestic law. Contentions have also arisen regarding the applicability of the CISG to certain types of contracts, such as those involving processing with supplied materials, which are common in China’s export sector.

These defects were addressed through case laws like *ThyssenKrupp Metallurgical Products GmbH v. Sinochem International (Overseas) Pte Ltd*. For a dispute over an international sales contract of goods, the SPC determined three more specific rules for the application of the CISG by Chinese courts:

First, where the parties have their places of business in the different Contracting States, the CISG should be applied preferentially.

Second, where the parties exclude the application of the CISG, they shall propose so expressly in the trial procedure.

¹²³ CIETAC Arbitration Rules Art.47(2) With the consent of both parties, the arbitral tribunal may conciliate the case in a manner it considers appropriate.

¹²⁴ Application of CISG in Arbitration in China: A Case Study with CIETAC, China Justice Observer (Apr.03, 2021,06:30 PM), <https://www.chinajusticeobserver.com/a/application-of-CISG-in-arbitration-in-china-a-case-study-with-cietac>

¹²⁵ Application of the CISG by Chinese Courts, China Justice Observer (Apr.03, 2021, 06:30 PM), <https://www.chinajusticeobserver.com/a/application-of-the-CISG-by-chinese-courts>.

Third, where the CISG is applied, the governing law agreed by the parties shall only be applicable to the issues not covered by the CISG.¹²⁶

The Chinese court deals with matters not explicitly dealt with under the contract, like Art. 2 (d) and Art. 4(a)(b), under applicable law according to the private international rules. This same practice is adopted for deciding the effective time for the declaration of avoidance under Art. 26 and for the calculation of interest under Art. 78 of the CISG.

An improper approach has also been adopted by China for applying CISG, particularly in relation to Art. 142(2) of General Principles of the Civil Law of the People's Republic of China. GPCL stipulates that the provisions contained in international treaties concluded or acceded to by China shall prevail over those in the civil laws of China. In some cases, Chinese courts have applied this provision to apply CISG. In *Carl Hill v. Cixi Old Furniture Trade Co Ltd*, involving a U.S. buyer and a Chinese seller, the CISG was applied due to a conflict between domestic law and the applied closest connection rule.¹²⁷ Thus, CISG was extended to cases outside its territorial scope. Similarly, in the *Refrigerating machine case*, involving parties from mainland China and Hong Kong, the seller's acceptance of the CISG over the FECL underscored its priority in international disputes.¹²⁸

China made a reservation essentially equivalent to the Article 96 reservation at the time it ratified the CISG.¹²⁹ Under the reservation, the reserving State will not be bound by the free form of contract formation under Art. 11 and will require enforceable contracts to be concluded in or evidenced by writing. In 2013, China withdrew its Article 96 reservation, recognising that contracts under the CISG may be concluded in or evidenced by any means, and this has led to further alignment of domestic rules to the CISG.¹³⁰

¹²⁶ ThyssenKrupp Metallurgical Prods. GmbH v. Sinochem Overseas Comp, (2013) Min Si Zhong Zi No. 35.

¹²⁷ *Carl Hill v. Cixi Old Furniture Trade Co Ltd*, (2001) Cijingchuzi No 560.

¹²⁸ *Refrigerating Machine Case*, CISG/1999/19.

¹²⁹ CISG Database - Table of Contracting States, Institute of International Commercial Law (Mar. 09, 2025, 01:00 PM), <https://iicl.law.pace.edu/CISG/page/CISG-table-contracting-states>

¹³⁰ Angelo Chianale, *The CISG as a Model Law: A Comparative Law Approach*, SING JLS 29, 35 (2016).

Recent Developments

On 6th May 2022, China deposited a declaration of extension of the territorial application of CISG to the Hong Kong Special Administrative Region of China. The territorial application will take effect on 1 December 2022, according to Art. 97(3) of the CISG. The declaration that China is not bound by Art. 1(1)(b) CISG shall not apply to the HKSAR.¹³¹

2.1.8.4 Japan

In February 2025, Japan exported ¥9.19 trillion¹³² and imported ¥8.6 trillion¹³³, resulting in a positive trade balance of ¥590 billion¹³⁴.¹³⁵ These figures indicate Japan's significant role in global trade.

Japan ratified CISG on July 1, 2008.¹³⁶ But despite its late ratification, there was no real opposition to the ratification of CISG in Japan in the initial years during which CISG came into force.¹³⁷

There were discussions from the late 1980s in Japan regarding accession to the CISG. In 1989, the Director of the Civil Affairs Bureau of the Ministry of Justice conveyed to the Secretary General of the United Nations that he was placing “top priority on the ratification of CISG”.¹³⁸ In 1989, under the Ministry of Justice, a study group, *Shoji Homu Kenkyu-Kai*¹³⁹, was formed to examine the potential benefits of CISG. But it was

¹³¹ China deposits declaration of territorial application of the United Nations Convention on Contracts for the International Sale of Goods to Hong Kong SAR, CISG applicable to Hong Kong SAR as of 1 Dec. 2022 (Mar. 08, 2025, 12:00 PM), <https://unis.unvienna.org/unis/en/pressrels/2022/unis1327.html>

¹³² \$59.29 billion

¹³³ \$55.48 billion

¹³⁴ \$3.81 billion

¹³⁵ Japan, Latest Trends up to February 2025, Observatory of Economic Complexity (May 10, 2025, 11:00 PM) <https://oec.world/en/profile/country/jpn>

¹³⁶ Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG), United Nations Commission On International Trade Law (Mar. 12, 2025, 01:30 PM) https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status

¹³⁷ Hiroo Sono, Japan's Accession to the CISG: The Asia Factor, 20 PACE INT'L L. REV.105, 107 (2008).

¹³⁸ Suguru Hara, Study of Vienna Convention, 440 NBL 14, 15 (1990).

¹³⁹ The group consisted of professors, practising lawyers, staff of the Ministry of Justice and legal staff members of large corporations. The group also had Professor Kazuaki Sono, former Secretary General of UNCITRAL.

suspended in 1993 due to a lack of human resources.¹⁴⁰ There was a burst of the bubble economy, and Japan was in an economic crisis. The legislative agenda concentrated on economic recovery rather than ratification of CISG.

In addition to this main reason, there were also certain subsequent concerns regarding the ratification of CISG. During the initial discussions in the 1990s, CISG was not very popular as it only had 30 signatories. There was uncertainty about whether CISG would be prevalent.¹⁴¹

Another reason was that a major Japanese trading companies were not convinced about the need for CISG. They were reluctant because of the potential cost incurred to learn CISG.¹⁴²

But Japan changed its stance and adopted the CISG, albeit a little later. A new study group was formed to examine the CISG.¹⁴³ The reason for the change of stance was that the legislative agenda had time to concentrate on CISG. But the scholars argue that an even bigger reason was the immense success of CISG.¹⁴⁴ The legal community gradually became familiar with the CISG, and its influence extended to the Japanese Civil Code, *Minpo*¹⁴⁵. An important change was regarding the fundamental breach provision. The Japanese rule was that the injured party may avoid the contract after giving the breaching party a *Nachfrist* period, no matter how trivial and what type the breach may be. But an exception is that avoidance of contracts is allowed only when the purpose of the contract can no longer be achieved. But the Japanese Civil Code

¹⁴⁰ Yoshihisa Nomi, The CISG from the Asian Perspective, Celebrating Success: 25 Years United Nations Convention On Contracts For The International Sale Of Goods, (May 20, 2025, 11:00 PM), https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/viac_joint_conference

¹⁴¹ Noboru Kashiwagi, Accession by Japan to the Vienna Sales Convention (CISG), 4 UTOKYO J. L. & POL. 92, 93 (2007).

¹⁴² Luke Nottage, Who's Afraid of the Vienna Sales Convention (CISG)? A New Zealander's View from Australia and Japan, 36 VICT.U.OF WELLINGTON L.REV. 815, 829 (2005).

¹⁴³ Shoji Homu was headed by Professor Yoshihisa Nomi of the University of Tokyo, and joined by professors of Kyoto University, the University of Tokyo, Sophia University, Keio University, Hitotsubashi University, Rikkyo University and Chuo University, a practicing attorney, and staff members of the Ministry of Justice, Ministry of Foreign Affairs and the General Secretariat of the Supreme Court.

¹⁴⁴ Hiroo Sono, Japan's Accession to the CISG: The Asia Factor, 20 PACE INT'L L. REV. 105, 107(2008).

¹⁴⁵ On 26 May 2017, the National Diet of Japan approved a radical reform of the Minpo. This reform seems to have been fostered by the success of international rules like the CISG, which Japan ratified in 2008.

underwent a transition to make it a necessary norm by following the fundamental breach principle of CISG.¹⁴⁶

With the advent of globalisation, Japanese businesses are increasingly adopting CISG. In Japan, the SME have become the biggest beneficiaries of CISG.¹⁴⁷

From the viewpoint of Japanese industries, there is an increase in predictability by applying CISG. It is supported by the wide availability of databases which has CISG case laws¹⁴⁸, along with other scholarly articles. The Japanese companies also consider that CISG would make the drafting of general terms and conditions in their sales contract forms easier.

The growing adoption of the CISG by neighbouring Asian economies, notably China, exerted a regional pressure that helped reframe the CISG as a pragmatic tool for harmonising international sales law amid diverse legal systems.¹⁴⁹

¹⁴⁶ Hiroo Sono, Japan's Accession to the CISG: The Asia Factor, 20 PACE INT'L L. REV.105, 110 (2008).

¹⁴⁷ Yoshimochi Taniguchi, Deepening Confidence In The Application Of CISG To The Sales Agreements Between The United States And Japanese Companies, 12 RICH. J. GLOBAL L. & BUS. 277, 298 (2013).

¹⁴⁸ CLOUT, UNILEX and Pace University

¹⁴⁹ Hiroo Sono, Japan's Accession to the CISG: The Asia Factor, 20 PACE INT'L L. REV.105, 110 (2008)

2.2. India's Trade Profile

India, as one of the fastest-growing economies in the world¹⁵⁰, has undergone significant changes in its international trade system from the post-colonial era to the present. After independence, the country adopted a protectionist stance with import barriers and industrial regulations. But in the 1990s, with the introduction of the 1991 Economic Reforms,¹⁵¹ India was transformed into a liberalised economy. These policies have integrated the nation with the world economy by almost doubling the ratio of total exports of goods and services to GDP in India from 7.1% in 1990 to 13% in 2000.¹⁵²

In 2024, India had a merchandise¹⁵³ export of goods valued at \$437.10 billion.¹⁵⁴ There was an increase of 67% from \$314 billion in 2013-14.¹⁵⁵ In 2023, India occupied 5th place in the world in terms of GDP with \$3.57 trillion, 12th position in total exports and 148th position in terms of GDP per capita.¹⁵⁶

2.2.1 Key Commodities in India's International Trade

The top exports of India are Electronic Goods, Drugs & Pharmaceuticals, Handloom Products, Meat, Dairy & Poultry Products and Ceramic Products & Glassware.¹⁵⁷

The top imports of India are Petroleum Crude, Petroleum Products, Coal, Coke and

¹⁵⁰ Nivedita Khandekar, India to remain fastest growing major economy with 6.5% growth in FY26: IMF, ECON TIMES, (Mar. 01, 2025, 09:00 PM)

<https://economictimes.indiatimes.com/news/economy/indicators/india-to-remain-fastest-growing-major-eco-with-6-5-growth-in-fy26-imf/articleshow/118649360.cms>

¹⁵¹ The 1991 economic reforms, initiated under Prime Minister P.V. Narasimha Rao and Finance Minister Manmohan Singh, aimed to address India's fiscal crisis and balance of payments emergency. Key measures included: Liberalisation- Abolishing the License Raj, allowing 51% foreign equity, and scrapping approval requirements for foreign technology. Privatization, Fiscal Stabilization by devaluing the rupee by 19%, cutting subsidies, reducing tariffs and deregulating trade. World Bank Aid of \$500 million for structural adjustment loan was provided.

¹⁵² World Bank Group, Exports of goods and services (% of GDP)-India (Mar. 21, 2025, 05:00 PM) <https://data.worldbank.org/indicator/NE.EXP.GNFS.ZS?locations=IN>.

¹⁵³ Merchandise export includes petroleum products.

¹⁵⁴ India's Exports Reach Historic Heights, PIB Delhi, (Feb. 01 2025 2:38PM) <https://www.pib.gov.in/PressReleaseframePage.aspx?PRID=2098447>

¹⁵⁵ India's Exports Reach Historic Heights, PIB Delhi, (Feb. 01 2025 2:38PM) <https://www.pib.gov.in/PressReleaseframePage.aspx?PRID=2098447>

¹⁵⁶ OEC, India (Feb. 22 2025 3:00PM) <https://oec.world/en/profile/country/ind>.

¹⁵⁷ Ministry of Commerce & Industry, (Feb. 30, 2025 2:00 PM) <https://pib.gov.in/PressReleaseframePage.aspx?PRID=2017942>.

See Appendix A3

Briquettes, Transport Equipment, and Organic and Inorganic Chemicals.¹⁵⁸

India is working on expanding its export portfolio beyond traditional sectors like iron ore and agricultural commodities.¹⁵⁹ The focus is on electronics, pharmaceuticals, engineering products, and food items. The Ministry of Commerce's initiative aims to strengthen export offerings by introducing goods such as alcoholic beverages, prepared meals, confectioneries, and value-added products like jackfruit and bananas.¹⁶⁰ India's position among the world's merchandise exporters has advanced from 19th to 17th place, with a marginal increase in its share from 1.70% in 2014 to 1.82% in 2023. India, despite global economic uncertainties, has expanded its exports to 115 countries out of a total of 238 destinations during the 2023-24 period.¹⁶¹

2.2.2 India's Major Trading Partners

During 2004-05, India's exports were predominantly directed to regions like North America, the European Union, North-East Asia, West Asia-Gulf Cooperation Council and ASEAN.¹⁶² By 2013-14, there was a marked increase in export values across these regions, with North America, the EU, and West Asia seeing notable growth. In 2023-24, the top merchandise export destinations for India were the USA, UAE, Netherlands, China, Singapore, UK, Saudi Arabia, Bangladesh, Germany and Italy.¹⁶³ These 10 countries made up 51% of India's total merchandise export value. 7 out of these 10 countries are members of the CISG. UAE, UK and Bangladesh are not signatories to the CISG.

¹⁵⁸Ministry of Commerce & Industry (Mar. 08 2025, 1:27 PM)
<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2017942>.

See Appendix A3

¹⁵⁹ Archana Rao, India's Trade Performance in FY 2023-24 and Strategy to Explore New Export Markets, India Briefing, (May. 15, 2025, 11:00AM), <https://www.india-briefing.com/news/indias-trade-performance-fy-2023-24-exploring-new-export-markets-32612.html>.

¹⁶⁰ Archana Rao, India's Trade Performance in FY 2023-24 and Strategy to Explore New Export Markets, India Briefing, (May. 15, 2025, 11:00AM), <https://www.india-briefing.com/news/indias-trade-performance-fy-2023-24-exploring-new-export-markets-32612.html>.

¹⁶¹ Archana Rao, India's Trade Performance in FY 2023-24 and Strategy to Explore New Export Markets, India Briefing, (May. 15, 2025, 11:00AM), <https://www.india-briefing.com/news/indias-trade-performance-fy-2023-24-exploring-new-export-markets-32612.html>.

¹⁶² Ministry of Commerce & Industry, (Feb. 01 2025 2:00 PM)
<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2017942>.

¹⁶³ 2023-24 -Export, Trade Statistics, Ministry of Commerce and Industry, (Mar. 02 2025 2:00 PM)
<https://www.commerce.gov.in/>.

See Appendix A2

The top ten importers were China, Russia, UAE, USA, Saudi Arabia, Iraq, Switzerland, Singapore and South Korea.¹⁶⁴ 9 out of these 10 countries are members of the CISG. The UAE is not a signatory to the CISG.

2.2.3 Future Developments in Trade

The government has also undertaken various initiatives, like the National Logistics Policy, Production-Linked Incentive schemes and enhanced market access, to diversify its export landscape further. The foreign trade policy 2023 also aims to elevate India's exports to \$2 trillion. The focus is on improving the ease of doing business and on emerging areas like e-commerce and high-end technologies. With these trade objectives, international trade will be at an all-time high.¹⁶⁵

Conclusion

India's trade profile affirms that India is one of the fastest-growing economies of the world. With a significant increase in imports and exports, especially in important industries like Electronic Goods, Pharmaceuticals, Handloom Products, and Meat, Dairy and Poultry Products, India has established its significance in the global trade. Despite these developments, India encounters problems like trade disparities, complicated legislation, and poor infrastructure, emphasising the need for a flexible legal system to facilitate India's growing involvement in global trade. The primary goal of the CISG, which was created in 1980 under the auspices of the UN, is to harmonise international sales law and promote cross-border trade by reducing the legal ambiguities that frequently impede international transactions. A trading nation like India can benefit greatly from the CISG's many advantages, which include a unified and impartial legal framework that lowers transaction costs, improves legal predictability, and promotes consistency in the governance of international sales contracts.

¹⁶⁴ 2023-24 - Import, Trade Statistics, Ministry of Commerce and Industry, (May 20, 2025, 12:00 PM), <https://www.commerce.gov.in/>

See Appendix A1

¹⁶⁵ Mayank Khurana, How is India's trade landscape shaping up for the future?, Economic Observatory, (Mar.03, 2025, 10:00AM), <https://www.economicsobservatory.com/how-is-indias-trade-landscape-shaping-up-for-the-future>.

CHAPTER 3

COMPARISON OF CISG AND INDIAN LAW, FOCUSING ON KEY DIFFERENCES AND IMPLICATIONS

3.1 Introduction

While Indian laws are historically grounded in colonial era principles and are primarily designed to govern domestic transactions, the CISG is tailor-made to address modern complexities of global trade with provisions that are neutral, adaptable and universally comprehensible. An analysis of the CISG, the Indian Sale of Goods Law, 1930 and the Indian Contract Act 1872 is necessary to understand the points of convergence and difference between the laws.

It will help in illustrating the potential ease and challenges in India's integration into the international legal framework governing transnational sales.

3.1.1 CISG's International Trade Specific Clauses without any Domestic Equivalent

Article 1

CISG applies only if the contracting parties have their places of business in different States, and it governs only the international contracts for the sale of goods. The nationality of the parties, the civil or commercial character of the parties or the contract are not considered.¹⁶⁶ In comparison, the Sale of Goods Act, 1930, was enacted primarily to regulate commercial transactions within India. It does not address all the nuances of transnational sales.

Article 2

The Convention "does not apply to sales of goods bought for personal, family or household use; by auction; on execution or otherwise by authority of law; of stocks, shares, investment securities, negotiable instruments or money; of ships, vessels, hovercraft or aircraft and of electricity".¹⁶⁷

¹⁶⁶ CISG, Art 1.

¹⁶⁷ CISG, Art 2.

Article 3

A contract that involves the manufacture or production of goods is treated as a contract of sale under the CISG, provided the party ordering the goods does not supply a substantial portion of the materials necessary for their production.¹⁶⁸ The Convention does not apply to contracts where the party supplying the goods undertakes obligations primarily consisting of labour or services rather than the transfer of the goods themselves.¹⁶⁹

Article 4

The Convention does not deal with “(a) the validity of the contract or any of its provisions or of any usage, (b) the effect which the contract may have on the property in the goods sold”.¹⁷⁰ The Indian Contract Act, 1872, under Sections 10- 30, addresses the elements required for the validity of the contract. Similarly, Sections 18-26 of the Sale of Goods Act, 1930, regulate the transfer of property between the buyer and the seller.

Thus, Art. 4 of CISG does not disrupt the Indian law in these areas as both matters are outside the purview of CISG.

Article 5

“The Convention does not apply to the liability of the seller for any death or injury that is caused by the goods to any person.”¹⁷¹ The Indian Contract Act also does not have explicit provisions for the same. Thus, this provision has no effect on Indian law.

Article 6

The parties are free to exclude the “application of the Convention or, subject to Article 12, derogate or vary from its provisions”.¹⁷² In comparison, Indian law does not contain a treaty-level or statutory provision that explicitly permits derogation from statutory rules governing an international sale.

¹⁶⁸ CISG, Art 3.

¹⁶⁹ CISG, Art 3.

¹⁷⁰ CISG, Art 4.

¹⁷¹ CISG, Art 5.

¹⁷² CISG, Art 6.

Article 12

The provision of Art. 11, Art. 29 or Part II of the Convention does not apply if the Contracting State has made a declaration under Art. 96 of the Convention.¹⁷³

Articles 89- 101

These Articles encompass institutional provisions for ratification, reservations, and applicability. These are procedural treaty mechanisms that are not present in domestic law systems like India.

3.1.2 Similar Provision in CISG and Indian Law

Article 11

CISG allows freedom of form, meaning that contracts need not be made in writing. However, Articles 12 and 96 allow any Contracting State to make a reservation if its domestic law requires sales contracts to be in writing. Under Art. 12, if such a declaration is made, the CISG's Articles 11, 29, and Part II do not apply whenever one of the parties has its place of business in that State.¹⁷⁴

The Indian Contract Act generally does not require that contracts be in writing¹⁷⁵, except for certain contracts like contracts for the sale of immovable property under the Transfer of Property Act, 1882.

The provisions are similar in both CISG and the Indian Contract Act. As CISG only applies to international sales of goods and not to immovable property transactions, there is no requirement of Art. 96 reservation.

Article 14

CISG makes a distinction between an offer and an invitation to treat.

Art. 14(1) provides that “a proposal is considered as an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in the case of acceptance. It is

¹⁷³ CISG, Art 12.

¹⁷⁴ CISG, Art 11.

¹⁷⁵ Nanak Builders and Investors Pvt. Ltd. v. Vinod Kumar Alag, AIR 1991 Del. 315.

considered definite if it indicates the goods and or makes provision for determining the quantity and the price.”¹⁷⁶

In comparison, Section 2(a) of the Indian Contract Act provides that “When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal”.¹⁷⁷

There is a similar distinction in Indian law regarding an offer and an invitation to make an offer. Indian law does not require that the offer be definite. It only needs to be certain.

Article 15(1)

Under the CISG, for an offer to be effective, it must reach the offeree.¹⁷⁸ In comparison, Section 5 of the Indian Contract Act states that “the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made”.¹⁷⁹ In both cases, the receipt of the proposal is considered important.

Article 15(2)

It provides that an offer may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.¹⁸⁰ It includes irrevocable offers.

In comparison, Section 5 of the Indian Contract Act allows “revocation before acceptance is complete against the proposer, but not afterwards”.¹⁸¹ The provisions are functionally similar. But CISG addresses irrevocable offers, but the Indian Contract Act does not specifically address irrevocable offers.

Article 18(1)

It provides that “a statement made by or other conduct of the offeree indicating assent to an offer is an acceptance.”¹⁸² Silence or inactivity does not in itself amount to acceptance.¹⁸³ In comparison, Section 2(b) of the Indian Contract Act states that “when

¹⁷⁶ CISG, Art 14.

¹⁷⁷ The Indian Contract Act, 1872, §2(a).

¹⁷⁸ CISG, Art. 15(1).

¹⁷⁹ The Indian Contract Act, 1872, §5.

¹⁸⁰ CISG, Art. 15(2)

¹⁸¹ The Indian Contract Act, 1872, §5.

¹⁸² CISG Art. 18(1).

¹⁸³ CISG Art. 18(1).

the person to whom a proposal is made signifies his assent to the said proposal, it is said to be accepted”.¹⁸⁴ “Acceptance must be absolute and unqualified”.¹⁸⁵

The CISG provides that silence does not amount to acceptance, which is an implied provision under the Indian Contract Act.¹⁸⁶ The provisions are similar in both CISG and Indian law, except for slight differences in the provisions of conduct provided in CISG.

Article 28

Under the CISG, if one party is entitled to require performance of any obligation by the other party, the court is not required to grant such relief unless it is so provided under their domestic laws for similar contracts.¹⁸⁷ For most parties, obtaining the subject matter of the contract is important than getting monetary compensation. In international transactions, obtaining specific performance is much more important than claiming damages, as international transactions involve a greater distance between the parties, higher risk, time and effort.

In Indian law, specific relief is considered an exceptional remedy, while damages are considered a mandatory remedy. This view clearly opposes the approach of CISG. An important initiative was undertaken by the legislature to bring this provision more in line with the CISG. The 2018 amendment to the Specific Relief Act of 1963 substituted a new section for Section 20 and made specific relief a mandatory remedy.

Article 29 (1)

“A contract may be modified or terminated by the mere agreement of the parties.”¹⁸⁸

Article 29 (2)

“A contract in writing that contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. A party may be precluded by its conduct from asserting such a provision to the extent that the other party has relied on that conduct”.¹⁸⁹

¹⁸⁴ The Indian Contract Act, 1872, §2(b).

¹⁸⁵ The Indian Contract Act, 1872, §7(1).

¹⁸⁶ The Indian Contract Act, 1872, §7(1).

¹⁸⁷ CISG, Art. 28.

¹⁸⁸ CISG, Art. 29 (1).

¹⁸⁹ CISG, Art. 29 (2).

Comparing it to Section 62 of the Indian Contract Act, a contract can be modified or terminated by mutual consent.¹⁹⁰

In both CISG and the Indian Contract Act, to modify a contract, there must be agreement of the parties. There is no strict requirement for written modifications unless contractually agreed. The Indian law also enforces no-oral-modification clauses as ordinary contractual terms, estoppel or promissory estoppel can prevent a party from insisting on strict compliance where it has waived or led the other to rely on an oral variation. Similar provisions exist in both CISG and the Indian Contract Act.

Article 33

Article 33 provides that “the seller must deliver the goods on that date, if a date is fixed by or determinable from the contract. If a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date and in any other case, within a reasonable time after the conclusion of the contract”.¹⁹¹

In comparison, Section 36 of the Sale of Goods Act provides that “regarding the buyer taking possession of the goods and the seller sending them to the buyer, is a question depending on the contract. If no time for sending them is fixed, then the seller is bound to send them within a reasonable time”.¹⁹²

According to Section 63 of the Sale of Goods Act, Reasonable time is a question of fact.

The provision regarding determinable date is similar to Indian law, even though in the Sale of Goods Act, the term reasonable time is defined. It is generally considered a question of fact, while CISG leaves it to party autonomy. The CISG empowers the buyer to name a date within a period, but this provision is absent in the Sale of Goods Act.

Article 35(1)

Goods must conform to the quantity, quality and description agreed upon, and they should be contained or packaged in the manner required by the contract.¹⁹³ In

¹⁹⁰ The Indian Contract Act, 1872, §62.

¹⁹¹ CISG, Art. 33.

¹⁹² The Sale of Goods Act, 1930, §36.

¹⁹³ CISG, Art. 35(1).

comparison, Section 15 of the Sale of Goods Act provides that in the sale by description, “there is an implied condition that the goods shall correspond with the description, and if the sale is by sample as well as by description, the goods must correspond with both the sample and the description”.¹⁹⁴

Article 35(2)

The Convention provides that the goods must “be fit for the purposes for which goods of the same description would ordinarily be used”.¹⁹⁵ In comparison, Section 16 (2) of the Sale of Goods Act states that “the goods shall be of merchantable quality”.¹⁹⁶

“It is fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely or that it was unreasonable for him to rely on the seller’s skill and judgment.” The Article provides that “it must possess the qualities of goods which the seller has held out to the buyer as a sample or model”.¹⁹⁷ Section 16 (1) of the Sale of Goods Act provides that “where the buyer, expressly or impliedly makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller’s skill or judgment, and the goods are of a description which it is in the course of the seller’s business to supply there is an implied condition that the goods shall be reasonably fit for such purpose.”¹⁹⁸ Section 17 (2) of the Sale of Goods Act provides that “In case of a contract for sale by sample, there is an implied condition (a) that the bulk shall correspond with the sample in quality.

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.”¹⁹⁹

The provisions in the Sale of Goods Act and CISG are substantially parallel in scope and purpose. The main difference lies in the terminology and statutory packaging of implied terms. But in substance, both provisions are the same.

¹⁹⁴ The Sale of Goods Act, 1930, §15.

¹⁹⁵ CISG, Art. 35(2)

¹⁹⁶ The Sale of Goods Act, 1930, §16(2).

¹⁹⁷ CISG, Art. 35(2)

¹⁹⁸ The Sale of Goods Act, 1930, §16(1).

¹⁹⁹ The Sale of Goods Act, 1930, §17(2).

Article 53

“The buyer must pay the price for the goods and take delivery of them as required by the contract and the Convention.”²⁰⁰

In comparison, Section 31 of the Sale of Goods Act provides that “it is the duty of the buyer to accept the goods and pay for them in accordance with the terms of the contract of sale”.²⁰¹ Similar provisions exist in CISG and the Sale of Goods Act.

Article 54

“The buyer’s obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.”²⁰²

In comparison to Section 31 of the Sale of Goods Act, “it is the duty of the buyer to accept the goods and pay for them in accordance with the terms of the contract of sale”.²⁰³

Similar provisions exist in CISG and the Sale of Goods Act. The CISG goes further by explicitly requiring the buyer to undertake any legal or contractual formalities needed to effect payment, but under Indian law, such steps are only required if the contract itself prescribes them.

Article 72

A party may declare the contract avoided if it is clear that the other party will commit a fundamental breach.²⁰⁴

In comparison, Section 39 of the Indian Contract Act provides that “When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract unless he has signified by words or conduct his acquiescence in its continuance”.²⁰⁵

²⁰⁰ CISG, Art.53.

²⁰¹ CISG, Art.53.

²⁰² CISG, Art. 54.

²⁰³ The Sale of Goods Act, 1930, §31.

²⁰⁴ CISG, Art. 72.

²⁰⁵ The Indian Contract Act, 1872, §39.

An equivalent concept exists in both CISG and Indian law, but Indian law does not differentiate between fundamental and non-fundamental breach.

3.1.3 Provisions Where CISG Offers More Clarity for Transnational Sales as Compared to Indian Law

Article 9

It provides that the parties are bound by any usage and practices which they have established among themselves.

But the presumption is that the parties are bound by the usages of which they did not know, only if it is widely known and regularly observed in the particular branch of international trade in which they revolved, and they ought to have known about it.

A domestic usage does not bind the parties.²⁰⁶

Under the Indian Law, usage and practices for a particular trade are found to bind parties involved in the international sale of goods. CISG has a clear and structured approach to usage, and India relies on judicial interpretation without statutory language addressing the same.

Article 16(1)

It provides that “an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance”.²⁰⁷ There is a dispatch rule for acceptance and a receipt rule for revocation.

Art.16(2) provides that “an offer cannot be revoked if it indicates by stating a fixed time for acceptance or otherwise that it is irrevocable, or it was reasonable for the offeree to rely on its being irrevocable and he has acted in reliance on it”.²⁰⁸

In comparison, Section 5 of the Indian Contract Act provides that revocation of the offer is allowed until acceptance is communicated to the proposer. India follows the receipt rule for both acceptance and revocation.

²⁰⁶ CISG, Art. 9.

²⁰⁷ CISG, Art. 16(1).

²⁰⁸ CISG, Art. 16(2).

The CISG adopts a more equitable approach to revocation. By allowing revocation only before dispatch of acceptance and by recognising express irrevocability and reliance-based protections, Art. 16 of the CISG promotes contractual certainty. While the Indian Contract Act follows a rigid approach, allowing revocation until acceptance reaches the proposer, without regard to the offeree's reliance or the explicit intent of the offer. It lacks modern safeguards that prevent opportunistic revocation in international sales of goods.

Article 18(2)

It provides that an acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror.²⁰⁹

Article 18 (3)

If by the offer itself or by established practices between the parties or relevant trade usages allow the offeree to indicate acceptance through an action such as dispatching the goods or making payment without notifying the offeror, the acceptance becomes effective once the action is carried out, as long as it is done within the specified time frame.²¹⁰

In comparison, Section 4 of the Indian Contract Act provides that “the communication of an acceptance is complete as against the proposer when it is put in a course of transmission to him”,²¹¹ and Section 8 of the Indian Contract Act provides that “performance of the conditions of a proposal or the acceptance of any consideration for a reciprocal promise that may be offered with a proposal is an acceptance of the proposal”.²¹² The Section 3 of the Indian Contract Act provides that “the communication, acceptance and revocation of a proposal or acceptance are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it”.²¹³

²⁰⁹ CISG, Art. 18(2)

²¹⁰ CISG, Art. 18(3)

²¹¹ The Indian Contract Act, 1872, §4.

²¹² The Indian Contract Act, 1872, §8.

²¹³ The Indian Contract Act, 1872, §3.

There is a deviation in the provision regarding when acceptance becomes effective. CISG requires actual receipt by the offeror, aligning with its international orientation toward certainty in international sales and thereby rejecting the postal rule. But Indian law considers acceptance complete upon dispatch, favouring the traditional common law approach.

The CISG provides a broader stance by allowing acceptance by conduct without explicit communication if it aligns with trade usages or past dealings. Though Section 8 of the Indian Contract Act allows acceptance by conduct, it lacks a similar commercial specificity and clarity.

Article 19(1)

It states that an offeree must accept an offer as it stands. If he changes anything, it will not be considered as acceptance but rather as rejecting the offer and making a counteroffer.²¹⁴

Article 19(2) provides that a reply which purports to be an acceptance but contains additional or different terms, but does not materially alter the terms of the offer, is considered as acceptance unless the offeror makes any objection against the discrepancy without undue delay.²¹⁵

Article 19(3) provides that “additional or different terms relating to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party’s liability to the other or the settlement of disputes are considered to materially alter the terms of the offer”.²¹⁶

In comparison with Section 7 (1) of the Indian Contract Act, “acceptance must be absolute and unqualified”.²¹⁷

CISG provides a more thorough approach to the mirror image rule by differentiating between material and non-material changes to an offer. This allows for the smooth formation of contracts even when acceptances include minor deviations. But Section

²¹⁴ CISG, Art. 19(1).

²¹⁵ CISG, Art. 19(2).

²¹⁶ CISG, Art. 19(3).

²¹⁷ The Indian Contract Act, 1872, §7(1).

7(1) of the Indian Contract Act retains the rigid mirror image rule, which may not adequately address the realities of international sales of goods.

Article 22

The Article states that “an acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective”.²¹⁸

Sections 4 and 5 of the ICA provide that acceptance can be revoked before it is communicated to the offeror, and it means that it can only be revoked before it leaves the acceptor’s control.²¹⁹

CISG allows withdrawal when communications actually arrive, and this aligns more closely with modern instantaneous and delayed communications of international sales.

Article 31

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists, if the contract of sale includes carriage of goods, then the delivery of goods has to be made by handing over the goods to the first carrier for transmission to the buyer. And in all other cases, if none of the above cases exist, the goods are to be placed at the buyer’s disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

In comparison, Section 36 of the Sales of Goods Act provides Rules as to delivery “Whether the buyer takes possession of the goods or the seller sends them to the buyer is a question that depends on each case under the contract. Apart from contract, goods are to be delivered at the place at which they are at the time of the sale and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell or if not then in existence, at the place at which they are manufactured or produced.”²²⁰

²¹⁸ CISG, Art. 22.

²¹⁹ The Indian Contract Act, 1872, §§4 and 5.

²²⁰ The Sale of Goods Act, 1930, §36

The rule in CISG regarding the place of delivery of goods is more elaborate and appropriate for international sales of goods. It covers carriage of goods and also other modes of delivery, which are not usually part of the general rules. It is more appropriate for modern means of transactions. In comparison, the Sale of Goods Act is less detailed.

Article 36

“The seller is liable for any lack of conformity that exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

(2) it provides that after the passing of risk, the seller is still liable for lack of conformity if this is due to a breach of any of the seller’s obligations, including a breach of any guarantee that for a period of time the goods will remain fit.”²²¹

In comparison, Section 16 (2) of the Sale of Goods Act provides that “the goods shall be of merchantable quality”.²²²

CISG Article 36 offers a clear, risk-driven framework for assessing the seller’s liability for non-conformity. Section 16(2) of the Sale of Goods Act only embeds seller liability in implied quality conditions at sale, without explicit post-risk or guarantee provision.

Article 39 (1)

According to Art. 39(1) The buyer loses the right to claim non-conformity if they fail to notify the seller within a reasonable time after discovering the defect.

Article 39(2) provides that “In any event, the buyer loses the right to rely on a lack of conformity if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.”²²³

In comparison, Section 41 of the Sale of Goods Act provides that “Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have

²²¹ CISG, Art. 36.

²²² The Sale of Goods Act, 1930, §16(2).

²²³ CISG, Art. 39(2).

accepted them unless and until he has had a reasonable opportunity of examining them to ascertain whether they are in conformity with the contract”.²²⁴

CISG is clearer in its provisions regarding the same, as there is a subjective reasonable time standard and an objective two-year deadline. Indian law does not impose a notice obligation, and it can lead to uncertainty in transnational sales.

Articles 41-42

These Articles state that “the seller must deliver goods that are free from any right or claims of a third party, including rights or claims based on industrial property or intellectual property, even arising from foreign jurisdictions”.²²⁵

In comparison, Section 14 of the Sale of Goods Act provides that “there is an implied undertaking as to title

(a) An implied condition is that the seller has a right to sell the goods when the property is to pass.

(c) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made”.²²⁶

Section 14 of the Indian Sale of Goods Act provides an implied condition as to title and freedom from undisclosed encumbrances, but CISG has broader protection for buyers, including Intellectual property claims and third-party rights in foreign jurisdictions.

Article 57

“If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller at the seller’s place of business or if the payment is to be made against the handing over of the goods or of documents at the place where the handing over takes place.”²²⁷

“The seller must bear any increase in the expense incidental to payment that is caused by a change in his place of business subsequent to the conclusion of the contract.”²²⁸

²²⁴ The Sale of Goods Act, 1930, §41.

²²⁵ CISG, Art. 41,42

²²⁶ The Sale of Goods Act, 1930, §14.

²²⁷ CISG, Art. 57(1).

²²⁸ CISG, Art. 57(2).

There is no clear rule in the Sale of Goods Act. But in Section 32 of the Sale of Goods Act, it is clear that payment and delivery are concurrent conditions.²²⁹ The CISG is clearer regarding the place where payment of price should be made as compared to the Sale of Goods Act.

Article 58

It deals with the payment of price in the absence of any kind of contractual term in the contract. This provision creates a simultaneous handing over of the goods or the documents controlling their disposition and the price payment. The buyer is under an obligation to pay the price at the time when the seller places the goods or the documents controlling the goods at his disposal. But the buyer is not bound to pay the price until he has examined the goods unless it was agreed to the contrary. There is no clear rule in the Sale of Goods Act. But in Section 32 of the Sale of Goods Act, it is clear that “payment and delivery are concurrent conditions”. CISG is more detailed in regulating the timing of payment and gives procedural clarity that is absent in Indian law.

Article 47, Article 49(1)(b)

Article 47 provides that the “buyer can give additional time to the seller to perform their obligation.” But it is provided that the additional period of time should be of reasonable length.²³⁰

This principle relates to the principle of *Nachfrist*. It refers to an additional period granted by one party to another for the performance of contractual obligations. This mechanism provides the defaulting party with extra time to fulfil their duties before the contract is terminated or further legal remedies are pursued. Under Art. 49, the buyer may declare the contract avoided in case of non-delivery, that is, if the seller does not deliver the goods within the additional period of time fixed by the buyer.²³¹

In comparison, Section 11 of the Sale of Goods Act provides Stipulations as to time. The general rule is that “stipulations as to time of payment are not deemed to be of the essence of a contract of sale”.²³² Buyers’ failure to pay in time does not entitle the seller to repudiate the contract. But if the parties have decided that the time of payment is the

²²⁹ The Sale of Goods Act, 1930, §32.

²³⁰ CISG, Art. 47.

²³¹ CISG, Art. 49.

²³² The Sale of Goods Act, 1930, §11.

essence of the contract through contractual obligations, then the seller can repudiate the contract or sue for damages if the buyer does not pay on time. “Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract”.²³³ This second part provides for party autonomy, and it does not conform to any general rule.²³⁴

The CISG has a clear principle for the time of performance and payment. It prescribes an ideal time for payment while allowing party autonomy, which is not present in the Indian Sale of Goods Act, and this creates ambiguities. CISG also provides for the availability of additional time limits for the purposes of performance as opposed to Indian law.

Article 60

The buyer has to undertake all the acts which is expected of him so that the seller can make the delivery and also take over the goods.²³⁵

In comparison, Section 41 of the Sales of Goods Act

“Buyer’s right to examine the goods.

(1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract”.²³⁶

Section 42 of the Sales of Goods Act provides that “The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them or when the goods have been delivered to him and he does any act in relation to them which is

²³³ The Sale of Goods Act, 1930, §11.

²³⁴ The Sale of Goods Act, 1930, §11.

²³⁵ CISG, Art. 60.

²³⁶ The Sale of Goods Act, 1930, §41.

inconsistent with the ownership of the seller or when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them”.²³⁷

In comparison, Section 35 of the Sales of Goods Act provides that “if there is no express contract, the seller of goods is not bound to deliver the goods until the buyer applies for their delivery”.²³⁸ The Sales of Goods Act does not focus on the buyer taking over the goods. Rather, it focuses on whether the buyer has accepted the goods.²³⁹

CISG Art. 60 provides that the buyer must perform all reasonable actions to enable the seller to deliver the goods and must actually take them over. This includes a proactive obligation to facilitate performance. Indian law under Section 35 of the Sales of Goods Act provides that the buyer must apply for delivery, but it does not create a duty to take over the goods. Sections 41 and 42 address the buyer’s right to examine and conditions for acceptance, but do not place a general positive obligation on the buyer. The CISG’s approach is more comprehensive, and it enhances legal certainty.

Passing of Risk

Article 67 (1)

“It provides that when a sales contract involves carriage of goods and the seller is not obligated to deliver them at a specific location, the risk transfers to the buyer once the goods are handed over to the first carrier for shipment, as per the contract terms. But if the seller must deliver the goods to a carrier at a designated location, the risk remains with the seller until the goods are handed over at that place. The seller’s right to retain documents controlling the goods does not influence when the risk is transferred.”²⁴⁰

Article 67(2)

“It provides that the risk does not pass to the buyer unless the goods are explicitly identified as part of the contract, whether through markings, shipping documents, notification to the buyer or other means.”²⁴¹

²³⁷ The Sale of Goods Act, 1930, §42.

²³⁸ The Sale of Goods Act, 1930, §35.

²³⁹ The Sale of Goods Act, 1930, §35.

²⁴⁰ CISG, Art. 67(1).

²⁴¹ CISG, Art. 67(2).

Article 68

When goods are sold while in transit, the risk transfers to the buyer from the moment the contract is finalised. But if the circumstances suggest otherwise, the buyer assumes the risk from the time the goods were handed over to the carrier that issued the transport documents. If the seller was aware or reasonably should have been aware that the goods were already lost or damaged at the time of contract formation and failed to inform the buyer, the loss or damage remains the seller's responsibility.²⁴²

Article 69

In situations not covered under Articles 67 and 68, the risk transfers to the buyer when they take possession of the goods. If the buyer fails to take delivery on time, the risk shifts from the moment the goods are made available to them, provided that their refusal constitutes a breach of contract. But if the buyer is required to collect the goods from a location other than the seller's place of business, the risk passes when delivery is due, and the buyer is aware that the goods have been made available at that location. If the contract involves goods that have not yet been identified, they are not considered available to the buyer until they are explicitly designated as part of the contract.²⁴³

In comparison to Section 26 of the Sale of Goods Act, it provides that the risk *prima facie* passes with the property.

“The goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.”²⁴⁴

“Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.”²⁴⁵

The CISG provides clear provisions for passing of risk compared to the Sale of Goods Act 1930. CISG provides a structured rule for carriage contracts, but SGA depends on

²⁴² CISG, Art. 68.

²⁴³ CISG, Art. 69.

²⁴⁴ The Sale of Goods Act, 1930, §26.

²⁴⁵ The Sale of Goods Act, 1930, §26.

the nature of the contract and ownership transfer. In relation to time, delivery and risk, CISG is more in consonance with the modern *Lex Mercatoria*.²⁴⁶

Article 74

“Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit suffered by the other party as a consequence of the breach.”²⁴⁷

In comparison, Section 73 of the Indian Contract Act provides that if a contract is breached the party who suffers from the breach is entitled to compensation for any loss or damage caused by it.²⁴⁸ But this compensation is only for the losses that naturally arise from the breach or those that the parties could have reasonably foreseen when entering the contract.

The Indian Contract Act does not expressly label loss of profit, and Indian Courts follow the *Hadley v. Baxendale*²⁴⁹ principle, permitting recovery of lost profits and other consequential losses once foreseeability and causation are established. The CISG allows for broader damage claims, including lost profits and consequential damages suffered as a consequence of the breach.

Article 77

Article 77 of the CISG imposes an express duty on the non-breaching party to take all reasonable measures to mitigate the loss resulting from the breach.²⁵⁰ But the Indian Contract Act does not contain a mitigation provision, but Indian courts, following English common-law precedent, require an aggrieved party to minimise damages once a breach has occurred.²⁵¹

²⁴⁶ Abhishek Negi & Utkarsh K. Mishra, Dissecting the CISG Framework and the Indian Sale of Goods Regime in the Context of ‘delivery’, ‘time’ and ‘risk’: A Comparative Account, 3 IJLSI. 373, 393 (2021).

²⁴⁷ CISG, Art. 74.

²⁴⁸ The Indian Contract Act, 1872, §73.

²⁴⁹ (1854) EWHC J70

²⁵⁰ CISG, Art. 77.

²⁵¹ Murlidhar Chiranjilal v. Harish Chandra Dwarkadas (1962) 1 SCR 653.

Article 79

“A party is not liable for any failure to perform its obligations if it was due to an impediment beyond its control. He could not reasonably have been expected to have taken the impediment into account at the time of the conclusion of the contract, or to have avoided or overcome it or its consequences.”²⁵²

In comparison, Section 56 of the Indian Contract Act provides that “an agreement to do an impossible act is void”.²⁵³

The CISG has clear provisions regarding frustration of contract and impossibility. Another major shortcoming of Indian domestic law is that even though it recognises the doctrines of frustration and force majeure under Sec 56 of the Indian Contract Act, it does not recognise the principle of hardship. This doctrine refers to the circumstances arising after the conclusion of a contract, which do not render the performance of the contract impossible but will significantly alter the equilibrium between the parties.²⁵⁴

As a common law country, India has strictly adhered to the principle of *Pacta Sunt Servanda*, which means that agreements must be kept. India also recognises two exceptions to this rule, that is, the Doctrine of Frustration and *Force Majeure*, which Cambridge dictionary defines as ‘an unexpected event such as a war, crime or an earthquake which prevents someone from doing something.’

The current domestic framework is not equipped enough to provide relief for non-performance of contracts. The doctrine of Hardship, that is, *Clausula Rebus Sic Stantibus*, is distinguished from force majeure in that performance will be made substantially difficult but not rendered impossible.

The injustice that has been suffered by parties due to the lack of acceptance of the doctrine of hardship is evident from the case *Satyabrata Ghosh v. Mungneeram Bangur*. In this case, Mungneeram Bangur & Co agreed to sell land in Calcutta for development, with an earnest payment made by Bejoy Krishna Roy, later succeeded by Satyabrata Ghose. During World War II, the land was requisitioned by the military, urging the

²⁵² CISG, Art. 79.

²⁵³ The Indian Contract Act, 1872, §56.

²⁵⁴ Peter Schlechtriem and Ingeborg Schwenzer, *Commentary on the UN Convention on the International Sale of Goods (CISG)*, (4th ed., Oxford University Press 2016).

company to cancel the agreement and offering either a refund of the earnest money or a resumption of the deal after the war. The court interpreted that the requisition of land did not render the contract impossible to perform. But it has merely delayed it. It was held by the court that the performance of a contract can only be considered as impossible due to a supervening event and not because it merely became impracticable or commercially inexpedient.²⁵⁵ It was clearly deviating from the landmark case *Taylor v Caldwell*²⁵⁶. The Supreme Court held that the doctrine of frustration had a higher threshold than English law. It was considered something that was impossible rather than something which is a hardship. In *Alopi Parshad and Sons Ltd v Union of India*, it was held that a war cannot be held as a reason to invoke the doctrine of frustration, as parties have already anticipated the change of circumstances when they have entered into the contract.²⁵⁷ In other cases, such as *Continental Construction Co Ltd v State of MP*²⁵⁸ and *Bharati Cellular Limited v Union of India*,²⁵⁹ the party has suffered a disadvantage due to increased cost of performance, but as the contract was not impossible to perform, the court did not discharge the contract. The reason there was a higher threshold was that the parties would not resort to avoiding these agreements on the grounds of trivial reasons. But this is detrimental to one party. The unfairness of such a strict and narrow interpretation of the doctrine of frustration has become evident during the COVID-19 pandemic. In the case of *Standard Retail Pvt. Ltd v. G.S. Global Corp*, the petitioner had a contract with a South Korean company to supply steel to Mumbai. They sought an injunction under Sec 9 of the Arbitration and Conciliation Act 1996 to prevent Wells Fargo Bank from encashing a letter of credit. The argument was that due to the COVID-19 lockdown, the contract had become impossible under Sec 56 of the Indian Contract Act, 1872, under the frustration of contract. The court ruled against the petitioner, stating that the *force majeure* clause applied only to the South Korean supplier, and the bank was an independent party to the transaction and was unaffected by the dispute. The Court held that government advisories have classified steel distribution as an essential service. There were no movement restrictions that could justify non-performance of the contract. The petitioners were still obligated to fulfil their contractual payments. The judgment held that *force majeure* cannot be invoked

²⁵⁵ Satyabrata Ghosh v. Mungneeram Bangur AIR (1954) SC 44.

²⁵⁶ Taylor v. Caldwell 122 Eng. Rep. 309 (1863).

²⁵⁷ Alopi Parshad and Sons Ltd v. Union of India (1960) AIR SC 588.

²⁵⁸ Continental Construction Co Ltd v. State of MP AIR 1988 SC 1166

²⁵⁹ Bharati Cellular Limited v Union of India, (2010) 10 SCC 174.

unilaterally, and a party cannot escape obligations due to difficulties arising from a lockdown.

Thus, not introducing the doctrine of hardship is not conducive to justice, as there is a strict interpretation in case of force majeure clauses.²⁶⁰ Thus, a more flexible approach is needed.

The CISG Art. 79 provides a clearer approach by incorporating the doctrine of hardship. Even though it is not expressly provided by the CISG, the Advisory Council Opinion 7 has clarified that Art. 79 does indeed cover the situation of hardship.²⁶¹ It includes the situations where the performance of the contract has become difficult, including due to an increase in the cost of performance. But all such hardships must be unforeseen. The article also allows the parties to decide the threshold for invoking the hardship clause, which is a flexible approach.²⁶²

3.1.4 Provisions Where Indian Law Offers More Clarity for Transnational Sales as Compared to CISG

Section 36(3) of the Sale of Goods Act

“Where the goods at the time of sale are in the possession of a third person, there will be no delivery until the third person acknowledges that he holds the goods on behalf of the buyer”.²⁶³ The Indian law is clearer in this area as there is no corresponding provision in CISG. Parties remain free to agree on delivery terms under the CISG’s general party autonomy principle.

Section 36 (5) of the Sale of Goods Act

According to Indian law, the expenses of putting the goods into a deliverable state are paid by the seller.²⁶⁴ The CISG is silent on preparatory expenses, and the parties must expressly agree on who bears the costs of making goods deliverable.

²⁶⁰ Isha Janwa, Navigating Contractual Non-Performance: Embracing CISG Article 79 in Indian Contract Law, SSRN (Mar. 14, 2025, 09:00 PM), <https://ssrn.com/abstract=4759522>.

²⁶¹ CISG AC Opinion No 7, Exemption of Liability for Damages Under Article 79 of the CISG (Rapporteur Professor Alejandro Garro, 12 October 2007).

²⁶² Isha Janwa, Navigating Contractual Non-Performance: Embracing CISG Article 79 in Indian Contract Law (Mar. 14, 2025, 09:00 PM), <https://ssrn.com/abstract=4759522>.

²⁶³ The Sale of Goods Act, 1930, §36(3).

²⁶⁴ The Sale of Goods Act, 1930, §36(5).

Article 51

“ If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, Articles 46 to 50 apply in respect of the part that is missing or that does not conform.

The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.”²⁶⁵

Article 52

“If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.”²⁶⁶

In comparison, Section 37 of the Sales of Goods Act provides for the delivery of the wrong quantity of goods.

“If the seller delivers a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered, he shall pay for them at the contract rate.

If the seller delivers a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

If the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.”²⁶⁷

The Sales of Goods Act is clearer in the case of the delivery of the wrong quantity of goods.

²⁶⁵The Sale of Goods Act, 1930, §36(5).

²⁶⁶ CISG, Art. 52.

²⁶⁷ The Sale of Goods Act, 1930, §37.

Section 38 of the Sales of Goods Act

Instalment deliveries

“The buyer of goods is not bound to accept delivery thereof by instalments.”²⁶⁸ If the delivery is by stated instalments which are to be separately paid for, and if no delivery or defective delivery is made by the end of the seller, then remedies for it as compensation or breach of the whole contract will depend on each case, and the doctrine of severability in case of the concerned instalment will be applied.²⁶⁹ The CISG does not address instalment deliveries.

3.1.5 CISG v. Indian Law - Dissimilar Provisions with no Direct Equivalence

Article 7

It provides that in the interpretation of the Convention, there must be emphasis on the international character of the Convention and the need to promote uniformity in application.²⁷⁰ According to the provision, CISG must be interpreted and applied in a way that promotes observance in good faith.²⁷¹ But the CISG does not contain a provision that the individual contract must be obeyed in good faith.²⁷²

The matters that are not governed by the Convention are to be governed in conformity with the general principles on which it is based, or if there are no such principles, by rules of private international law. But according to certain scholarly articles under CISG, the good faith principle applies to the interpretation of individual contracts and the contractual relationship between the parties²⁷³.

The principle of good faith is not emphasised in contract interpretation under Indian Law. CISG is better suited for international transactions as it focuses on uniformity and the principle of good faith.

²⁶⁸ The Sale of Goods Act, 1930, §38

²⁶⁹ The Sale of Goods Act, 1930, §38

²⁷⁰ CISG, Art. 7.

²⁷¹ CISG, Art. 7.

²⁷² Ulrich Magnus, Remarks on Good Faith: The United Nations Convention on Contracts for the International Sale of Goods and the International Institute for the Unification of Private Law, Principles of International Commercial Contracts, 10 PACE INT'L L. REV.89,90 (1998).

²⁷³ Ulrich Magnus, Remarks on Good Faith: The United Nations Convention on Contracts for the International Sale of Goods and the International Institute for the Unification of Private Law, Principles of International Commercial Contracts, 10 PACE INT'L L. REV.89,90 (1998).

Article 14, Art. 55

Under Art. 14, nor any other CISG provision, makes consideration a formation requirement. Art. 14 should be read together with Art. 55. But Section 2(d) of the Indian Contract Act requires valid consideration for a contract.²⁷⁴

Art 55 provides that if the contract is made without specifying the price, it is assumed that the parties agree to the usual market price for similar goods at the time when the contract was finalised unless it is stated otherwise.²⁷⁵

Comparing it to Sec 10 of the ICA, under Indian law, for an agreement to be a contract, in addition to other conditions, there must be a valid consideration.²⁷⁶

The common law principle of consideration is excluded from the scope of the CISG.

Article 21

“A late acceptance is also considered effective as an acceptance if, without delay, the offeror orally so informs the offeree or dispatches a notice to that effect.

(2) If a letter or other written communication containing a late acceptance indicates that it was sent under conditions where, had transmission proceeded normally, it would have reached the offeror on time, the acceptance remains valid. The offeror may reject it by promptly notifying the offeree orally or by sending a notice stating that the offer has expired.”²⁷⁷

There is no direct provision in the Indian Contract Act as the problem of acceptance, which is received late because of the delay of transmission, does not arise in cases where the acceptance is sent through the post, as the Indian Contract Act follows the postal rule for acceptance.

Article 23

“A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of the Convention. It means that only when the acceptance reaches the offeror.”

²⁷⁴ The Indian Contract Act, 1872, §2(d).

²⁷⁵ CISG, Art. 55.

²⁷⁶ The Indian Contract Act, 1872, §10.

²⁷⁷ CISG, Art. 21.

Sections 3 and 4 of the ICA

Acceptance is complete against the proposer when sent and against the acceptor when received.

The Indian Contract Act follows the dispatch rule, CISG follows the receipt rule, and the Indian Contract Act follows the dispatch rule. Thus, CISG provides more control to the offeror while the Indian Contract Act protects the offeree.

Article 24

It clarifies the meaning of the term reaches the addressee.

When an offer or acceptance is made orally to him or delivered by any other means to him personally or to his place of business or mailing address, or if he does not have a place of business or mailing address, to his habitual residence, it is said that it reaches the addressee.²⁷⁸

In comparison, Sections 3 and 4 of the Indian Contract Act follow the dispatch rule for acceptance, which means that the offer or acceptance is effective when sent, but the receipt rule for revocation, which means that it must reach the recipient.

CISG focuses on actual receipt to ensure clarity. It also clearly defined the term 'reaches the addressee'.

Article 25

Fundamental breach

The CISG has a provision for fundamental breach. A breach is considered fundamental if it results in such detriment to the other party as to substantially deprive him of what is entitled to be expected under the contract. It must be foreseeable and use the reasonable person test to determine the foreseeability.²⁷⁹

The Indian Contract Act does not differentiate between fundamental and non-fundamental breach.

Under CISG, there must be a fundamental breach, and then a contract can be avoided. But in the Indian Contract Act, any material breach can lead to rescission of the Contract. The Indian law is comparatively more forthright regarding the provision of breach of contract.

²⁷⁸ CISG, Art. 24.

²⁷⁹ CISG, Art. 25.

Article 26

“A declaration of avoidance of the contract is effective only if made by notice to the other party.”²⁸⁰

Under the Indian Contract Act, there is no strict requirement for notice unless contract terms or specific provisions require it.

Article 27

“If any notice, request or other communication is made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.”²⁸¹ There is no equivalent provision in Indian law.

Article 37

It provides that if the seller has delivered goods before the date for delivery, he may remedy any deficiency in quantity or lack of conformity in the goods delivered.²⁸²

The buyer still has the right to claim damages.

The provision is not present in Indian law. It is a much-needed provision in international transactions.

Article 38(1)

The buyer has the duty to examine the goods within as short a period as is practicable in the circumstances.²⁸³

Article 38 (2)

If there is carriage of the goods, examination may be deferred until after the goods have arrived at their destination.²⁸⁴

Article 38 (3)

“If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or

²⁸⁰ CISG, Art. 26.

²⁸¹ CISG, Art. 27.

²⁸² CISG, Art. 37.

²⁸³ CISG, Art. 38(1).

²⁸⁴ CISG, Art. 38(2).

redispatch examination may be deferred until after the goods have arrived at the new destination.”²⁸⁵

In comparison, Section 41 of the Sale of Goods Act provides the buyer’s right to examine the goods.

The buyer has the right to examine the goods, and he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for ascertaining that they are in conformity with the contract.²⁸⁶

A reasonable time must be afforded to the buyer

In CISG, a duty is imposed on the buyer to examine the goods, but in the Sale of Goods Act, a right is afforded to the buyer. Indian law, while guaranteeing the buyer a reasonable opportunity to examine, lacks comparable express provisions for deferral. The CISG provision is much needed as carriage of goods and redispatch are often common circumstances that arise in international transactions, and there must be legal provisions in place to address these.

Article 20 (1)

In case of the offer by telegram or letter, the period of time for acceptance fixed by the offeror begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter, or if no such date is shown, from the date shown on the envelope.

In case of the offer by telephone, telex, or other means of instantaneous communication, the offer begins to run from the moment that the offer reaches the offeree.²⁸⁷

Article 20 (2)

“In case of official holidays or non-business days occurring during the period for acceptance it is included in calculating the period. If a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday, the period is extended until the first business day that follows.”²⁸⁸

The Indian Contract Act does not address communication of an offer through the

²⁸⁵ CISG, Art. 38(3).

²⁸⁶ The Sale of Goods Act, 1930, §41.

²⁸⁷ CISG, Art. 20(1).

²⁸⁸ CISG, Art. 20(2).

instantaneous mode of communication. But the Indian courts follow the receipt rule similar to the provisions of the CISG.

Article 46 (2)

“If the goods do not conform to the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice.”²⁸⁹

Article 46 (3)

“If the goods do not conform to the contract, the buyer can also require repair from the seller.”²⁹⁰

Indian law does not recognise fundamental breach, and no equivalent provision exists for requiring substitute goods.

Even though the CISG provision is not explicitly found in the Sale of Goods Act, it is often included in provisions of the contract by the parties themselves.

Article 48(1)

The seller may remedy defects even after the delivery date, but it should not cause unreasonable delay or inconvenience to the buyer.²⁹¹

Article 48(2)

If the seller asks the buyer to confirm whether they will accept the performance and the buyer fails to respond within a reasonable period, the seller is allowed to proceed with performance within the specified timeframe. During this period, the buyer cannot take any action that contradicts the seller’s attempt to fulfil the contract.

There is no equivalent provision in Indian Law. The CISG provides more rights to the seller as compared rights under Indian law.

Article 50

If the goods do not conform to the contract, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time.²⁹²

²⁸⁹ CISG, Art. 46(2).

²⁹⁰ CISG, Art. 46(3).

²⁹¹ CISG, Art. 48(1).

²⁹² CISG, Art. 50.

But if the seller remedies any failure to perform his obligations in accordance with Article 37 or Article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

Reduction of price is a valid remedy that can be availed in international transactions in the interest of justice to the buyer. There is no equivalent provision in Indian law. The buyer has more remedies in the CISG as compared to Indian law.

Article 56

“If the price is fixed according to the weight of the goods, in case of doubt, it is to be determined by the net weight.”²⁹³ There is no equivalent provision in Indian law.

Article 71

A party may suspend obligations if it becomes evident that the other party will not fulfil a substantial part of their obligations due to financial issues or conduct.²⁹⁴ There is no equivalent provision in Indian law.

Article 78

Interest is payable on delayed payments under the CISG.²⁹⁵ Under the Indian Contract Act, interest is not automatically granted unless agreed in the contract or applicable under law. The CISG tends to adopt a seller-friendly orientation, offering greater protection to the seller’s interests.

Preservation of the Goods

Article 85

“If the buyer is in delay in taking delivery of the goods or if the payment of the price and delivery of the goods have to be made concurrently, and if he fails to pay the price, the seller must take such steps as are reasonable in the circumstances to preserve them. The seller is entitled to be reimbursed for the preservation of the goods.”²⁹⁶

²⁹³ CISG, Art. 56.

²⁹⁴ CISG, Art. 71.

²⁹⁵ CISG, Art. 78.

²⁹⁶ CISG, Art. 85.

Article 86

Similar provisions apply under Article 86(1) where the goods have been received by the buyer but he intends to reject them. He is entitled to retain them until he has been reimbursed for his reasonable expenses by the seller.²⁹⁷

Article 87

A party who is bound to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party, but the expense should not be unreasonable.²⁹⁸

Article 88

A party who is bound to preserve the goods may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods²⁹⁹ or if the goods are subject to rapid deterioration or their preservation would involve unreasonable expense the party must take reasonable measures to sell them but a reasonable notice of the intention to sell has been given to the other party.³⁰⁰

The party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.³⁰¹

The Indian law does not provide for the preservation of goods.

Section 54 (2) of the Sale of Goods Act

“It provides that if the goods are of a perishable nature, an unpaid seller who exercises their right of lien or stoppage of transit after giving notice to the buyer can resell the goods and recover damages for any loss occasioned by the breach of contract.”³⁰²

Such a right is not afforded to the buyer.

²⁹⁷ CISG, Art. 86.

²⁹⁸ CISG, Art. 87.

²⁹⁹ CISG, Art. 88(1).

³⁰⁰ CISG, Art. 88(2).

³⁰¹ CISG, Art. 89(3).

³⁰² The Sale of Goods Act, 1930, §54(2).

The CISG has clear provisions for the preservation of goods. This is an important duty of the seller as he is engaged in the international sale of goods. And the remedies under the Indian law are not taking into consideration the time taken for transboundary movement of goods and the losses which may occur as a consequence of it.

Under Indian law, only an unpaid seller can resell the goods. But CISG provides elaborate provisions regarding the rights of the person preserving the goods. It is also clear on the reimbursement of expenses involved in the preservation of goods.

Conclusion

Following the comparison, it is clear that Indian law and CISG share a number of parallels and differences. The way that the CISG and Indian law handle fundamental contractual principles, offer and acceptance, revocation, performance, breach, and remedies is very similar. Both CISG and Indian law have provisions to differentiate between invitations to treat and offers, reject silence as acceptance, support mutual modification, and account for the predictability of loss and damage mitigation. They also acknowledge frustration and inability as legitimate excuses for poor performance. Irrevocable offers, receipt-based acceptance, fundamental breach, mitigation, delivery methods, inspection responsibilities, and hardship are some of the provisions covered by the CISG in detail.

Indian law is still vague on topics including the repercussions of delayed acceptance, duties pertaining to the inspection and preservation of goods, and regulations controlling distribution through third parties.

The CISG has provisions that are either absent or inadequately established in the Indian law. These include the elimination of consideration as a prerequisite for the creation of contracts, consistent interpretation based on good faith, and comprehensive guidelines for price reductions, withdrawals, and late acceptances. In addition, it has provisions for risk allocation, obligation suspension in the event of an expected breach, and interest collection on late payments. These ideas are not clearly codified in Indian law.

Clarity and uniformity could be enhanced by judicial clarification of Sections 73 on damages and 56 on frustration, as well as by legislative modifications to the Sale of

Goods Act that address matters such as inspection periods, delivery to third parties, and timing extensions because of holidays.

Although the contractual foundation of both systems is the same, the CISG provides a more transparent, organised, and globally adaptable framework.

CHAPTER 4

PERCEIVED BARRIERS TO INDIA'S ACCESSION TO CISG

4.1 Introduction: Perceived Barriers

India's non-ratification of the CISG can be attributed to a wide range of reasons spanning from legal to economic concerns. This reluctance stands in contrast to India's major trading partners, who have seamlessly adopted the CISG and accepted it as governing law for international transactions for the sale of goods. Even after 45 years of the enactment of the CISG, India's non-accession has not been discussed in any official forum, nor has it been laid out in any official policy document. Thus, several misconceptions exist as to the reason why India has not yet ratified one of the most successful private law instruments in the world. Thus, examination of the perceived barriers is necessary to understand whether these impediments can be surmounted. These barriers include both theoretical concerns, like the language used in the CISG, and realistic ones, like the unfamiliarity of the judges with the various provisions of CISG that will affect the interpretation of law across various jurisdictions. Thus, it is essential to address these concerns should India consider the potential accession to CISG in the future.

4.1.1 Vague and Imprecise Language³⁰³

One of the main criticisms against CISG is that it has vague and imprecise language, especially for provisions like 'fundamental breach' under Art. 25. This was especially put forward by common law countries. The statutes of common law countries contain clear definitions and instructions for the interpretation of provisions of law. This was lacking in the case of CISG. There does not exist an international court to interpret the provision of the CISG, which also poses a problem. But despite this, various measures can be undertaken to overcome this hurdle. In order to ascertain the original meaning of the provision of CISG, a comparative legal method can be adopted. Under this method, due consideration must be given to judgments of foreign courts and arbitral awards. Even though they have no binding effect upon national courts, it does have

³⁰³ Yashasvi Nain and Shashank Manish, Why India Should Opt for CISG, India Law Journal (May 23, 2025, 09:30 PM), https://www.indialawjournal.org/archives/volume4/issue_3/article_5.html.

persuasive authority. These judgements are readily available under the CLOUT database³⁰⁴, Pace Law School - CISG Database³⁰⁵, UNILEX on CISG³⁰⁶ & CISG online³⁰⁷ and several other platforms. There is also a CISG Advisory Council that provides opinions and has guidelines for providing uniform interpretation of the Convention. Thus, the problem of imprecise language can be easily rectified.

4.1.2 Parties Prefer to Choose Their Own Laws or a Neutral Third Law to Govern Their Sales Transactions³⁰⁸

Under the law, parties to a contract are free to choose the law that governs their transactions. In practice, it is only true for certain developed and industrialised countries. The belief is that both parties will choose either one of their laws to govern the transaction when given the choice. But this is not an accurate assumption. To avoid giving unfair advantage to the developed countries, developing countries are hesitating to recognise the choice of law clauses. Brazil is a prominent example of the same.³⁰⁹

Even if choice of law is recognised, if a party chooses its domestic law, it will need to be translated in the foreign courts. The statutes, legal texts and even expert opinion need to be garnered and presented before the foreign court in a language that is familiar to them. It will be a very time-consuming and expensive process. There can also be a high margin of error in the interpretation of the provisions by these foreign courts. Even in the case of commercial arbitration, the language barrier will act as a hindrance in the way in which the arbitrators from different legal backgrounds will apply the domestic law. Another choice is to apply a neutral third law, but even if the countries choose a neutral third law, they would have to exert even more effort to understand the law and apply it effectively. Considering all these aspects, it is safe to assume that the parties will refuse to choose any law that is unfamiliar or difficult to translate in foreign courts.

³⁰⁴ Case Law on UNCITRAL Texts (CLOUT), United Nations Commission on International Trade Law (May 13, 2025, 08:30 PM) https://uncitral.un.org/en/case_law

³⁰⁵ <https://iicl.law.pace.edu/cisg/cisg>

³⁰⁶ <https://www.unilex.info/instrument/cisg>

³⁰⁷ <https://cisg-online.org/search-for-cases?caseId=12894>

³⁰⁸ Shishir Dholakia, Ratifying the CISG - India's Options, in *Celebrating Success: 25 Years United Nations Convention on Contracts for the International Sale of Goods 186-194* (UNCITRAL & SIAC, 2005)

³⁰⁹ Dana Stringer, Choice of Law and Choice of Forum in Brazilian International Commercial Contracts, 44 *COLUM. J. TRANSNAT'L L.* 959, 960 (2006).

CISG provides obvious solutions for all major problems that arise due to the choice of law provisions.

The advantage of CISG is that it is available in six authoritative languages, which are of equal authority, and in addition to that, it can be translated into numerous other languages. Even the court decisions, arbitral awards and scholarly writing are available in English. The UNCITRAL has compiled all the case laws in the CLOUT database so that it is readily available. Thus, CISG is not difficult to apply as is claimed.

4.1.3 The CISG Does Not Meet the Needs of International Trade ³¹⁰

Another criticism of CISG is that it does not suit the needs of trade. It is mainly contended based on two areas, that is, the relationship between the CISG provisions on risk of loss and the INCOTERMS, and on the specific needs of commodity trading.³¹¹ But these arguments can be resolved by focusing on the drafting process of CISG. During the drafting process, one of the main institutions that contributed to its development was the International Chamber of Commerce.³¹² Consequently, the ICC has also adopted provisions of CISG as ICC model terms, for instance, the *force majeure* clause of 2003. The argument that CISG provisions relating to risk of loss do not go in par with the delivery terms like FOB and CIF and other INCOTERMS is not a valid argument as the default system of the CISG comes into the forefront when the parties have not made provision for a certain issue in the contract. This system provides the freedom to the parties to tailor the contract according to their needs, and the CISG provisions on risk of loss as a default system are perfectly compatible with the INCOTERMS 2000 as contractual terms.³¹³

³¹⁰Ingeborg Schwenzer & Pascal Hachem, *The CISG-Successes and Pitfalls*, 57 AM. J. COMPAR. L.457, 476 (2009).

³¹¹ Ingeborg Schwenzer & Pascal Hachem, *The CISG-Successes and Pitfalls*, 57 Am. J. Compar. L.457, 457 (2009).

³¹² Peter Schlechtriem, *25 Years of the CISG: An International Lingua Franca for Drafting Uniform Laws, Legal Principles, Domestic Legislation and Transnational Contracts*, in *Drafting Contracts Under the CISG* 167, 177 (Harry M. Flechtner et al. eds., 2008)

³¹³ J Jan Ramberg, *To What Extent Do INCOTERMS 2000 Vary Articles 67(2), 68 and 69?*, 25 J.L. & COM. 219, 219 (2005–06).

4.1.4 The CISG Is Not Advantageous to Common Law Countries³¹⁴

One of the main arguments against the adoption of CISG is that there is only a low number of case laws from common law countries applying CISG, and it is difficult to apply CISG to common law countries. The assumption is that even though the Convention is widely known, its functioning in practice is not very popular. Mostly, domestic law prevails over the Convention. Even in countries where CISG is already ratified, the parties to the contract are often criticised for unknowingly ignoring the application of CISG and its provisions. In an Australian Case, *Roder Zelt-Und Hallenkonstruktionen Gmbh v Rosedown Park Pty Ltd and Reginald R Eustace*,³¹⁵ the applicant agreed to sell tent structures to the respondent. The applicant was a German company, and the respondent was an Australian company. But the respondent failed to pay the arrears of the purchase price, and subsequently, he went into administration. Both countries are parties to the CISG, and this contract was for the international sale of goods, so it was governed under Art. 1(1)(a). Thus, it was the CISG that determined whether there was a valid contract instead of the Australian domestic law. In this case, the judge held that the parties' pleadings had been framed incorrectly by using common law terms like repudiation and acceptance of repudiation. This was replaced by Art. 64 and Art. 74 of the CISG. This is a classic case where the parties were criticised for their lack of knowledge of the Convention by the court.

Another case is *Perry Engineering Ltd v Bernold AG*³¹⁶. In this case, the Australian buyer who was the plaintiff of the case claimed damages from a Swiss seller for breach of contract under Section 82 of the Trade Practices Act, 1974. The suit was filed under the South Australian Sale of Goods Act. But in this case, the court found that it is the CISG that will be applied instead of the South Australian law. Thus, the court refused the damages because of other deficiencies in the claims made by the plaintiff.

Thus, it is clear that it is not that the CISG is ineffective, but the lack of familiarity with the CISG by the parties and their advocates is the reason for the non-application of CISG. CISG is not a new law. It is a tried and tested law that has been ratified by 97

³¹⁴ Parvati Giri, CISG, 1980 and the Indian Legal Sphere, 4 IJLMH 1388, 1395 (2021).

³¹⁵ *Roder Zelt-Und Hallenkonstruktionen Gmbh v Rosedown Park Pty Ltd and Reginald R Eustace*, 1995 FCA 1221.

³¹⁶ *Perry Engineering Ltd v Bernold AG* (2001) SASC 15.

countries, with a substantial number of case law and scholarly articles from both civil law and common law countries.

This argument is unfounded, as the problem exists even if a foreign law is chosen to govern the transaction.

4.1.5 The CISG Is Designed to Reflect Civil Law Traditions³¹⁷

One of the most common arguments against CISG is that it is closely aligned with civil law traditions and does not cater to common law. The main points of divergence are the good faith notion under Art. 7, but this is not an effective argument. Various common law countries were part of the Working Council that drafted the CISG. They have considered and incorporated various common law traditions into the Convention as well. 14 common law countries are members of the CISG, including the USA, Australia, Canada and Singapore. Some of these countries have a well-established legal system. For the United States, even with a comprehensive sales law, the main reason for the adoption of CISG was that it would help exporters avoid disputes over negotiating which law governs a contract.³¹⁸ The claim that CISG is more in line with civil law remedies is not entirely true. There are only a few variations in the CISG that are different from common law remedies, and there are certain provisions in the CISG itself that can remedy these variations. One of the main examples is that of the provision of remedies. Under Art. 46 of the CISG, one of the normal remedies for breach is performance. But the courts of the contracting states are not required to order specific performance if such a remedy would not be granted under their own domestic law under similar circumstances.³¹⁹ Thus, every one of the variations can be solved by a clear-cut interpretation of the word of law and with the judgments of courts.

4.1.6 The Provision of Good Faith³²⁰

One of the main arguments against the adoption of CISG is the ambiguity in Article 7. The provision of good faith is provided under Art. 7(1) of the CISG. It is provided that

³¹⁷ Shishir Dholakia, Ratifying the CISG - India's Options, in *Celebrating Success: 25 Years United Nations Convention on Contracts for the International Sale of Goods* 186-194 (UNCITRAL & SIAC eds.2005).

³¹⁸ US Department of Commerce: U.S. Dep't of Commerce, The U.N. Convention on Contracts for the International Sale of Goods (Mar. 21, 2002, 09:05 PM), <https://www.osec.doc.gov/ogc/occic/cjsg.html>

³¹⁹ CISG, Art. 28.

³²⁰ Swarna Sengupta, India and the CISG- An Incogruent Harmonisation, *Society for International Trade & Competition Law*, (May 16, 2025, 09:00 AM), <https://nujssitc.wordpress.com/2017/10/26/india-and-cisg-an-incongruent-harmonization/>

“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 observation of good faith in international trade.”³²¹ The Article does not define the term good faith and there is a lack of clarity on where and upon whom the good faith duty is imposed.

The approach to good faith is different in common law countries and civil law countries, and the common law countries have been showing reluctance to adopt the Convention terms due to the ambiguity. The German Civil Code defines the principle of good faith as “governing the basis of all obligations, not only those arising in contract and tort law but also property, public law and procedural law.”³²² But under English law, there is no principle of good faith. But it covertly exists in the concepts of reasonableness, fairness and equity.³²³ Despite its common law heritage, the United States’ Uniform Commercial Code expressly codifies a duty to act in good faith in commercial transactions. “Good faith, except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing”.³²⁴ Thus, this argument is not applicable to all common law countries.

Another point of contention was regarding whether the principle of good faith would extend to the conduct of parties. But the Secretariat Commentary clarified that it does not extend to the conduct of parties and that it is a broad principle and will be applied to all aspects of the interpretation and application of the provisions of the CISG.³²⁵ Various scholarly writings also suggest that the principle of good faith should be applied only for the interpretation of the CISG and should not be used as a general principle, nor should it be viewed as imposing a duty on parties to act in good faith.³²⁶ But this provision is not always considered as a tool for interpretation, and doubts often arise whether it extends to parties’ conduct.

³²¹ CISG, Art. 7(1).

³²² Nathalia Hofmann, Interpretation Rules and Good Faith as Obstacles to the UK’s Ratification of the CISG and to the Harmonisation of Contract Law in Europe, 22 PACE INT’L L. REV. 145, 159 (2010).

³²³ Nathalia Hofmann, Interpretation Rules and Good Faith as Obstacles to the UK’s Ratification of the CISG and to the Harmonisation of Contract Law in Europe, 22 PACE INT’L L. REV. 145, 159 (2010).

³²⁴ Uniform Commercial Code, Art. 1, (May 17, 2025, 08:00 AM), <https://www.law.cornell.edu/uniform/ucc.html>.

³²⁵ Secretariat Commentary, Guide to CISG Article 7 (May 20, 2025, 09:00 PM), <http://www.CISG.law.pace.edu/CISG/text/secomm/secomm-07.html> at 17 April 2011

³²⁶ John O. Honnold, Uniform Law for International Sales under the 1980 United Nations Convention 9 (4th ed. Wolters Kluwer Law & Business 2009).

It is evident from the case laws of various countries. One of the most famous cases in which good faith provision was interpreted is the *BRI Production Bonaventure v Pan. African Export*. In this case, a French jeans manufacturer entered into a contract with a buyer in the USA. The jeans were to be sent to South America and Africa. During the negotiation, the seller demanded proof of the destination of the goods sold, but the demand was not complied with, and during the second delivery, it came to be known that it was wrongly shipped to Spain. A suit was filed, and Art. 1(1)(a) of the CISG was invoked as both countries were parties to the Convention. Under Art. 8 (1), it was held that the buyer did not acknowledge the demand of the buyer and it was held to be a fundamental breach, and the buyer had to pay 10000 French francs as compensation to the seller. It was held that the conduct of the buyer is “contrary to the principle of good faith in international trade laid down in Art. 7 CISG, aggravated by the adoption of a judicial stand as plaintiff in the proceedings, constituted abuse of process.”³²⁷ In this case, good faith was used to govern not only the conduct of the buyer in fulfilling his contractual obligations but also regarding buyer’s conduct with respect to court proceedings. The buyer acting as the plaintiff in the case was clearly considered to have acted not in good faith.

But a contrary view is given by the Chinese courts in the *Frozen Monkfish case*³²⁸. A buyer from the Republic of Korea purchased frozen monkfish from a Chinese seller. But after it was shipped to Korea, it failed the quality inspection, and the seller agreed to accept the goods back. But the buyer did not get a refund payment from the seller, and a suit was filed for the refund payment and interest thereon. The court held that under Art. 1(1) CISG was applicable and based on Art. 7 of the Convention, Art. 4 of the General Principles of Civil Law of the People’s Republic of China and Art. 61 of the Contract Law of the People’s Republic of China, it was held that the seller should refund the payment for the transaction. In this case, the application of good faith was also supported by the domestic law, and it was only used to govern the transaction and did not extend to the conduct of the parties.

³²⁷ S.A.R.L. Bri Production Bonaventure v. Societe Pan Africa Export , Case 154, 1995.

³²⁸ Royal Supreme Seafoods v. Rizhao Jixiang Ocean Food Co , Case 1702, 2013

In the *Marble Construction Materials Case*³²⁹, a Singapore seller agreed to sell marble stone to a Chinese buyer. The buyer delayed the payment after he received the goods. Following this, the seller initiated an arbitration proceeding in accordance with the arbitration agreement and asked the arbitration tribunal for the contract price and the interest. The buyer, in turn, asked the seller to replace the goods as they did not meet the required quality. It was held by the court that as both parties have ratified CISG, the Convention should take precedence for the settlement of disputes.

The Tribunal held that the contract clearly provided that the method of payment was a letter of credit. The seller would hand the original copy of the bill of lading over to the buyer only on condition that the buyer requested and promised to accept all risks to allow him to take delivery of the goods after considering this, and also applying the principle of good faith. The Tribunal ruled that the buyer had an obligation to make payment for the goods under Art. 53 CISG upon receiving the original bill of lading and taking delivery of the goods.³³⁰ In this case, the principle of good faith is interpreted in broad terms governing the entire transaction. Thus, the interpretation of good faith differs in different jurisdictions.

Good faith in Indian law

Indian Law does not categorically recognise good faith at the stage of performance and enforceability of commercial contracts. But the Indian courts have held that every contract contains an implied covenant of good faith and fair dealing, obligating the contracting parties to refrain from doing anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.³³¹ The insurance contracts in India have also incorporated the provision of *uberrima fidei*. It provides for rescission of the contract if any material facts are not disclosed.³³² Thus, it shows that good faith is there to protect the rights and obligations of the parties involved.

³²⁹ Marble Construction Materials Case, CISG/2000/12.

³³⁰ Marble Construction Materials Case, CISG/2000/12.

³³¹ Association of Unified Telecom Providers v UOI. (2011) 10 SCC 543

³³² Life Insurance Corporation of India v. The Insurance Ombudsman, (2009) 5 MLJ 181

As there are different interpretations of good faith in different jurisdictions, it can be interpreted within the context of the particular agreement. The expectations of the buyer and the seller can also be defined in the contract so that there can be no point of ambiguity regarding their level and scope of performance.

4.1.7 The UK's Non-Accession to the Convention

One of the main trepidations that prevents common law countries, especially India, from adopting CISG is that the United Kingdom has not yet ratified CISG. All the common law countries had taken guidance from the English Sale of Goods Act to draft their domestic law for the sale of goods, and thus, this trepidation to ratify CISG is potentially hindering the ratification. Even though the UK was a member of the Working Council responsible for drafting the CISG, it has not taken any early steps towards ratification. Rather, they employed a wait-and-watch policy during the initial years.³³³

There are several explanations for why the CISG has not been adopted. Eiselen divides these justifications into three categories: political, economic, and legal. “Economic objections centre on the CISG’s seeming insignificance in comparison to ordinary contracts and current trade practices, as well as the needless complexity it adds to international trade law. Political factors highlight opposition to using foreign fixes for well-known home issues, and scepticism about the efficiency of uniform laws. Legal unification has also been severely hampered by the challenge of creating a methodology for the investigation, measurement, or interpretation of the CISG, particularly across various legal, social, and economic contexts. Another obstacle mentioned is the drawn-out bureaucratic procedure needed to enact or amend uniform law treaties. As a result, not every state may have shown interest in bringing its laws together.”³³⁴

In the UK, no specific reason has been attributed to this hesitation; rather, this reluctance has been chalked up to the belief that such an adoption will result in a

³³³ Barry Nicholas, *The United Kingdom and the Vienna Sales Convention: Another Case of Splendid Isolation?*, Lecture at Saggi, Conferenze e Seminari, Centro di Studi e Ricerche di Diritto Comparato e Straniero, March 1993 (Mar. 07, 2025, 09:05 AM) <http://servizi.iit.cnr.it/~crdcs/crdcs/frames9.html>.

³³⁴ Loukas Mistelis, *Is Harmonisation a Necessary Evil? The Future of Harmonisation and New Sources of International Trade Law*, in *Foundations and Perspectives of International Trade Law* 3, 11 (Ian Fletcher, L. Mistelis & M. Cremona eds., Sweet & Maxwell, 2001).

diminished role for English law in the international trade arena.³³⁵ But beyond the obvious outcomes, the UK's non-ratification has wide ramifications. It has resulted in a substantial reduction in precedents and has hindered the development in the arena of law governing the international sale of goods.

In international commercial disputes regarding the international sale of goods, England is often chosen as the seat for litigation and arbitration. Certain scholars have recognised that choosing the CISG would cause the loss of this seat and diminish the value of English Contract Law.³³⁶

But rather than any of the perceived reasons, the true reason for non-ratification is that it was not considered a legislative priority in the UK. While other countries were adopting the CISG, the parliament had concentrated their attention on other matters like energy, employment and company law, and these were considered as more important.³³⁷ The government has never issued an official statement as to why it is reluctant to ratify the CISG. But several attempts were conducted in order to set the pace for possible ratification. In 1980, to ascertain the reactions of its trading partners, the UK conducted two public consultations in 1989 and 1997, showing the government's intention to accede³³⁸. But for both these consultations, only a few responses were received. 55 responses for the 1989 consultation³³⁹ and 36 for the 1997 consultation³⁴⁰. There was no further advancement, and the UK's practitioners considered English law to be superior and sophisticated.³⁴¹ In 2004, another mini consultation was undertaken. Two meetings were conducted, one among the business communities and another among academics and arbitrators. The view of the business community³⁴² was that "if it ain't broke, don't try to fix it." There were also various arguments put forward in its

³³⁵ Law Reform Committee of the Council, 1980, *Convention on Contracts for the International Sale of Goods*, Law Society of England and Wales, 1981.

³³⁶ Barry Nicholas, *The United Kingdom and the Vienna Sales Convention: Another Case of Splendid Isolation?*, Address at Centro di Studi e Ricerche di Diritto Comparato e Straniero. March 1993 (Mar. 07, 2025, 09:05 AM), <https://www.cisg.law.pace.edu/cisg/biblio/nicholas3.html>.

³³⁷ Sally Moss, *Why the United Kingdom Has Not Ratified the CISG*, 25 *J. L. & Com.* 483, 483 (2006).

³³⁸ Dept of Trade & Industry, *United Nations Convention on Contracts for the International Sale of Goods (the Vienna Sales Convention), A Consultation Document* (Oct. 1997).

³³⁹ 28 in favour, 17 against, and 10 neutral.

³⁴⁰ 26 in favour, 7 against, and 3 neutral

³⁴¹ J. Beatson, *Anson's Law of Contract* (28th ed. 2002).

³⁴² BP, Shell, the Confederation of British Industry, and the Law Society of England and Wales were opposed to the ratification.

favour.³⁴³ The CISG was considered beneficial to lawyers but unfavourable for clients, and it was believed that its implementation would result in a greater number of disputes.

On the contrary, academicians and arbitrators argued that if there was a failure to adopt CISG, then London would lose its edge as a forum for litigation and arbitration. There was also a positive benefit that it would change the face of the UK, as it is usually reluctant to participate in international trade initiatives. Even if the Convention was not adopted, the companies in the UK would still be urged to apply the CISG in certain transactions³⁴⁴. Thus, it is clear that there is no substantive reason for the non-adoption of CISG by the UK. There is no substantial reason for India to refrain from ratifying the convention based on the UK's non-ratification of the CISG, as India's other major trading partners have ratified the convention.

In the UK, there were two official consultations regarding the ratification of CISG. But this was not the case in India. There was no discussion as to why India should or should not adopt CISG. Thus, a consultation with the required stakeholders regarding the adoption of CISG can be undertaken to understand the potential benefits of CISG based on the Indian trade scenario.

4.1.8 CISG Is Not a Complete or Comprehensive Treaty³⁴⁵

CISG is perceived as an incomplete treaty. It is claimed to be incomplete because it does not include provisions for the validity of the contract. In practice, a uniform law cannot be rigid. It must be flexible enough to adapt to new legal developments. Unlike a domestic law that can be easily adapted to new changes, it is difficult to bring together all the signatory nations in order to make regular adjustments in the wording of the CISG. Thus, even if CISG does not contain provisions for the validity of contracts, the parties can include a choice-of-law clause to designate the governing law that will determine the contract's validity.

³⁴³ British Telecom, British Airways, the Law Commission of England and Wales and British Gas were in favour of ratification.

³⁴⁴ Sally Moss, Why the United Kingdom Has Not Ratified the CISG, 25 J. L. & Com. 483, 483 (2006).

³⁴⁵ Why India is hesitating from CISG, The Lawyers and Jurists, (Mar. 30, 2025, 09:30 AM), <https://www.lawyersnjurists.com/article/why-india-is-hesitating-from-cisg/>

4.1.9 The Sale of Goods Act is adequate for International Transactions³⁴⁶

India engages in international sales of goods by relying on the Sale of Goods Act of 1930, supplemented by the Indian Contract Act of 1872. The Sale of Goods Act is nearly 100 years old, and it was inspired by the English Sale of Goods Act of 1893. It was drafted in order to govern the sale of goods within India, and it is less than ideal for transactions across borders. There have been rapid changes in the means of transport and communication since 1930; thus, this law is not suitable in modern situations. There is also a lack of gap-filling nature in cases where the contract is made by phone, telex or by similar means, which is a notable disadvantage of the domestic law. The argument that CISG would have a diminishing effect on domestic law is also baseless, as the Indian sales law can be used to govern domestic sales, and CISG can be restricted to international sales alone. Accession to the CISG would offer an opportunity to harmonise the existing legal framework with a modern, internationally recognised standard.

4.1.10 Opting Out Clause Of The CISG

This argument is raised by almost all countries that have ratified the Convention. The CISG has been adopted by 97 countries. This Convention is considered one of the most successful private law instruments across the world. It provides for declarations and reservations. There is an argument that providing these reservations and declarations would affect the uniformity of the Convention. The argument is mostly unfounded. It is evident that only 8 countries out of 97 had made a reservation to Art. 12 and 96. Only 7 countries have made a Reservation as to Art. 1(1)(b). Germany is the only country that declared that it would not apply Art. 1(1)(b) in respect of any State that had made a declaration that that State would not apply Art. 1(1)(b). Denmark, Finland, Iceland, Norway and Sweden declared that the Convention would not apply to contracts of sale or to their formation where the parties have their places of business in Denmark, Finland, Iceland, Norway or Sweden. The reservations are made by a substantially low number of countries. Thus, these reservations do not affect the uniformity of the Convention.

³⁴⁶ Why India is Hesitating from CISG?, The Lawyers and Jurists (Mar. 30, 2025, 09:30 AM), <https://www.lawyersnjurists.com/article/why-india-is-hesitating-from-cisg/>

Conclusion

The hesitation to ratify the CISG seems to stem more from assumptions than from reasonable arguments. After careful consideration, it becomes clear that the concerns surrounding this matter can largely be addressed. Many of these wide-ranging reasons often break down when closely examined.

India's reluctance to ratify contrasts with its growing role as a global player in modern trade. As the complexities of global commerce continue to expand, the CISG offers a well-tested and adaptable framework that bridges the gap between civil and common law traditions. It provides effective solutions for many of the challenges involved in cross-border transactions.

India's non-ratification of the CISG, even with its growing popularity in international trade, seems to be motivated more by presuppositions than by legal or practical hurdles. The obstacles, ranging from imprecise terminology to common law incompatibility, do not stand up to closer examination.

Criticism like the vagueness of the concepts of 'fundamental breach' or uncertainty as to the good faith provision is not an insurmountable hurdle. International judicial practices and academic readings that are easily viewable through websites like CLOUT, UNILEX, and the CISG Advisory Council can help provide certainty and regular application. Additionally, the language objection is alleviated by the availability of CISG in six authoritative languages and the majority of applicable case law and literature in English.

The proposition that parties will prefer their own laws or third-party neutral laws is also not a strong argument in practice. Developing countries tend to have an unfavourable position when foreign courts interpret foreign legal systems. CISG, by providing a neutral, widely accepted legal framework, eliminates this problem by default.

Moreover, concerns regarding incompatibility with trade practices, particularly INCOTERMS and commodity trading, are alleviated by the flexible, default status of the CISG provisions. The contention that CISG favours civil law systems is also misplaced, as many common law jurisdictions, such as the United States, Singapore,

and Australia, have joined the CISG and are still successfully applying it, even in the face of initial unfamiliarity.

Issues regarding the good faith provision under Art. 7, although sound in terms of interpretational incongruence, can be addressed through party autonomy under Article 6 or defined through contract-specific provisions.

Even the effect of the UK's non-ratification has been demonstrated to be symbolic and not substantive. Compared to the UK, India has not held formal consultations or policy discussions on the CISG, highlighting that the resistance is not based on informed legislative discussion but passive supervision.

Other objections, like the perceived incompleteness of CISG or the adequacy of India's century-old Sale of Goods Act, lose credibility in the face of modern legal and commercial realities. The Sale of Goods Act, influenced by outdated English legislation, is ill-equipped to handle the demands of contemporary international trade. Conversely, the CISG has proven its value over decades and is adaptable to varying legal traditions through its optional clauses and interpretive flexibility.

India's reluctance is not on account of insurmountable obstacles, but of the absence of dialogue and institutional effort. The CISG is an imperfect document, but it is a worldwide tried, realistic, and harmonised prescription for international sale of goods contracts. India must recognise that joining this Convention is a progressive step forward. It presents a clear opportunity to align our laws with today's global standards.

CHAPTER 5

FINDINGS, SUGGESTIONS, RECOMMENDATIONS AND CONCLUSION

5.1 Practical Application of the CISG

In the absence of a uniform international framework, identical contractual disputes tend to produce differing outcomes based on the applicable domestic law. It creates uncertainty and unpredictability in international sales. The CISG mitigates this problem by providing a neutral and harmonised legal regime that governs international sales of goods.

The CISG would often be preferred by parties because it is a neutral law that will simplify negotiations and reduce delays. If both parties are familiar with the CISG, it can reduce compliance costs substantially. Another benefit is that there is reduced risk of misapplication of law in the forum where the dispute is adjudicated, as CISG has a better chance of being uniformly applied across jurisdictions. It provides greater stability as compared to any other domestic law. The CISG also ensures considerable certainty about the substantive outcomes regardless of where the dispute is adjudicated. The parties also benefit from the accessibility and understandability of CISG. It is available in six official languages, and extensive literature is readily available in academic databases.

The SMEs particularly benefit from the adoption of CISG. Unlike MNCs, which possess efficient legal teams capable of drafting customised contracts, SMEs may be at a disadvantage in transnational sales due to limited legal resources. A standard set of rules, as provided by the CISG, can streamline negotiations and reduce the cost incurred for legal consultation and contract negotiation.

Unlike the Indian sales law, which is nearly a century old and inspired by the English Sale of Goods Act, CISG is designed especially for international trade. Indian law was designed to regulate domestic sales and lacks provisions that account for the unique circumstances of international trade, like delays, distance, and interaction between

different legal systems. CISG's flexibility makes it better suited for international transactions.

The CISG is increasingly being considered as a model for legislative projects or amendments to national sales law.³⁴⁷ Countries like China used accession to the CISG as a tool to assert their leadership in global trade. China aligned its domestic law with CISG, and its application of the CISG provisions serves as a strategic tool to influence international arbitration and legislative developments.

Although CISG has been widely ratified by major trading nations of the world, the convention is not without flaws. The main disadvantage encountered by countries in the application of the CISG arises from the practice of automatically opting out of CISG. It often results in an absence of effective utilisation and misapplication of CISG by the judiciary. This tendency is detrimental to the best interests of the parties and the administration of justice.

Another major criticism against the CISG is that even in countries where the CISG has been ratified, it is not consistently applied due to a lack of familiarity. The parties often prefer their domestic law, and they are not convinced of the advantages of the uniform law as compared to their domestic law.

In many Western jurisdictions, the parties are generally free to choose the law applicable to their contract. However, in many developing nations, this freedom is not afforded to the parties. The developing nations are often cautious about giving unparalleled freedom to developed nations, with the developing nations frequently refusing to even recognise the choice of law clauses. Brazil is one of the countries in which the validity of choice clauses is highly controversial.³⁴⁸ The reason is that the developing countries perceive that the developed nations frequently impose contractual terms that serve their own interests. This practice is often undertaken by developed countries, particularly disadvantaging the countries that rely on foreign direct

³⁴⁷ Peter Schlechtriem and Ingeborg Schwenzer, *Commentary on The UN Convention on the International Sale of Goods (CISG)*, 4th ed., Oxford University Press 2016.

³⁴⁸ Dana Stringer, *Choice of Law and Choice of Forum in Brazilian International Commercial Contracts*, 44 *COLUM. J. TRANSNAT'L L.* 960 (2005-06).

investment, as they may be compelled to accept the terms dictated by the developed countries.

The conflict of law can also sometimes act to the detriment of the parties. These conflicts often lead to the application of the law in a language that is not understandable or accessible to one of the parties.

The party that chooses its own domestic law may still subject the other party to litigation in a foreign court, where that law is unfamiliar and difficult to navigate. The respective law has to be proved in court. The court judgments, scholarly articles and even expert opinions need to be translated. The party may also have to encounter a high level of unpredictability regarding the interpretation and application of the law by foreign courts. Thus, these problems can be mitigated by the application of CISG.

5.2. Findings And Suggestions

5.2.1 Interpretative Challenges

5.2.1.1 India's Reluctance is Rooted in Policy, Legal, and Cultural Factors

A mix of policy hesitation, concerns about losing interpretative sovereignty, and the belief that the Convention favours Western legal traditions has led to India's non-ratification of the CISG. It is mostly founded on a few significant arguments. However, these disadvantages can be readily addressed by relying on the widely accessible resources.

5.2.1.2 Imprecise and Vague Language

One of the main criticisms against CISG is that the language of CISG is imprecise and vague. The lack of clarity of terms like 'reasonable' and clauses like 'fundamental breach' has always been a point of contention.³⁴⁹ Even if these provisions are civil law concepts, India can resolve these points of contention through judicial interpretation. These provisions can be interpreted autonomously with due regard given to the international character of the Convention. Taking into account foreign judgments and

³⁴⁹ Alastair Mullis, Avoidance for Breach under the Vienna Convention; A Critical Analysis of Some of the Early Cases, in Anglo-Swedish Studies in Law, M. Andreas & N. Jarborg eds., 338, 339 (1998).

arbitral awards can significantly aid in achieving a uniform interpretation. Even though it does not have the binding authority, persuasive authority can be attributed to these judgments to aid uniform interpretation. UNCITRAL and several academic databases also provide extensive access to foreign legal materials related to the CISG.

5.2.1.3. Validity of Contract

The CISG is often criticised as being incomplete, especially regarding the validity of the contract. To avoid ambiguity in interpretation, the term validity can be determined autonomously.³⁵⁰ Regarding the general validity clauses, any questions dealt with by the CISG or the general principles underlying the Convention can no longer be defined as a validity issue.

The substantive validity clause can be governed by otherwise applicable domestic law.

5.2.1.4 Doctrinal overlap exists between CISG and Indian Law

Many CISG provisions are similar to the Indian Contract Act and the Sale of Goods Act, especially regarding acceptance, damages regime and transfer of risk. The incomparable provision like good faith and fundamental breach requires judicial interpretation, but various foreign judgments and scholarly articles have interpreted these provisions, and they can guide the application of these provisions in the Indian context, should India choose to ratify CISG.

5.2.1.5 Lessons from CISG-Adopted Jurisdictions

Comparative study of the jurisdictions that have ratified the CISG revealed that a common law system is not an impediment to the implementation of CISG provisions. An analysis of the policy decisions of the United Kingdom and Japan reveals that legislative priority for other matters is one of the main reasons for the avoidance of ratification of CISG. The reluctance to ratify CISG is not solely rooted in conceptual ambiguities, it can equally arise due to a lack of awareness among stakeholders and perceived sufficiency of existing domestic laws.

³⁵⁰ Peter Schlechtriem and Ingeborg Schwenzer, *Commentary on The UN Convention on the International Sale of Goods (CISG)*, 4th ed., Oxford University Press 2016.

Even the countries that have ratified the CISG are not implementing it in their contract, and even the case laws reveal that a lack of awareness about the applicability of CISG provisions is causing detriment to the parties. Thus, providing proper training and imparting awareness to the legal community is equally important to implement the Convention.

5.2.2 Advocacy for Ratification

The COVID-19 pandemic has expanded the scope for foreign direct investment in India. CISG ratification would be beneficial to the interests of the country as it improves the ease of doing business.³⁵¹ To improve the ease of doing business, the Government could establish a task force under the Ministry of Commerce and Industry to assess the Convention's compatibility with domestic laws and propose amendments to facilitate accession. Public consultations with stakeholders like exporters, small and medium-sized enterprises, and legal experts would be helpful to address the sector-specific concerns and assess the practical benefits of ratifying the CISG. India could adopt a phased approach to CISG ratification, starting with a reservation under Art.95 to limit the Convention's applicability to contracts where both parties are from signatory states. This would allow Indian businesses to familiarise themselves with the CISG while minimising immediate disruptions. Over time, India could lift such reservations as its legal system gets familiarised with CISG.

Adopting a phased implementation spanning over 3-5 years with pilot programs in key sectors like textiles, pharmaceuticals, and IT hardware exports would be beneficial. Establishing a national monitoring authority to track the implementation impact would be helpful to ensure proper implementation of CISG.

If India chooses to ratify the convention, it must be done by keeping in mind the international character of the convention. Care must be taken to maintain consistency in its application. The CISG must be interpreted autonomously, without resorting to a homeward trend or interpreting its provisions through the lens of domestic law. There must be avoidance of domestic statutory terminology and legal notions. A globalist

³⁵¹Raj Pipara & Yashashwani Parashar, The Intersection of CISG and Arbitration Agreements: A Holistic Understanding, Legal Bites (May.09, 2025, 07:30 PM), <https://www.legalbites.in/topics/articles/the-intersection-of-CISG-and-arbitration-agreements-a-holistic-understanding-358371>.

perspective must also be adopted by considering the CISG sources from around the world. There must also be a reference to CISG cases from other jurisdictions, which must be applied with persuasive authority. The CISG Advisory Council opinions and the *travaux préparatoires* can also guide the interpretation. The interpretation method must be CISG's own interpretive method and contractual construction rules. CISG must be recognised as pre-emptive in scope, thereby excluding concurrent application of domestic legal provisions in matters governed by the Convention.

Above all, the best interest of the parties must be kept in mind, and the lack of knowledge regarding CISG should not unnecessarily disadvantage the parties. The ratification would help to make it familiar throughout the legal system. It will also provide the courts with a rare opportunity to influence the international jurisprudence on CISG.

5.2.2.1. Capacity Building and Training

As CISG is gaining popularity, it is necessary to ensure that the Indian legal profession remains aware of its provisions and application. To address the unfamiliarity with the CISG provisions, India should focus on capacity building for legal practitioners, judges, and businesses. The judiciary should be equipped to handle international sales disputes efficiently. Workshops for SMEs must be organised by trade bodies like FICCI and CII to improve awareness about the benefits of CISG.

The government must also set up systems to assist SMEs in navigating the adoption of the CISG. Subsidised legal advisory services may be able to assist SMEs in creating contracts that comply with the CISG.

5.2.2.2. Strengthening engagement through UNCITRAL Membership

India should actively engage in CISG-related debates as a member of UNCITRAL in order to influence its interpretation and fill up any gaps in the Convention. For instance, in light of the expanding significance of e-commerce in global trade, India can push for more precise clauses on digital contracts. India's influence on the control of international trade would grow as a result.

5.2.2.3 Global Acceptance and Functional Implementation

97 countries, including India's major trading partners like China, the USA, and Germany, have ratified the CISG. Other common law jurisdictions such as Australia, Singapore, and New Zealand have effectively harmonised their legal practices with the CISG. Certain countries, like China, have particularly insisted on CISG in recent years. With the increasing popularity of CISG, if certain countries like China, which has more bargaining power, insist on CISG, then opting out of CISG would be difficult.

India's commitment to stable, rule-based international trade would be demonstrated by its ratification of the CISG. It can improve India's reputation in international forums and trade discussions.

Conclusion

India's non-signatory status represents a lost opportunity to improve economic competitiveness, conform to international trade standards, and solidify its position in international commercial law. The non-ratification can limit India's worldwide influence, it can raise transaction costs, cause legal ambiguity, and adversely affect SMEs. Predictability, lower legal costs, and increased trust in cross-border trade are just a few advantages of the CISG's consistent framework, which is crucial for a large trading country like India.

In order to resolve domestic concerns and maximise benefits, the recommendations support a strategic approach to ratification that combines legal reforms, capacity building, and phased implementation. India can promote its SMEs, simplify its international trade procedures, and increase its influence in global trade governance by ratifying the CISG. The growing global market integration and the expanding CISG adoption by India's trading partners highlight the urgency of this shift.

Despite all the perceived shortcomings, the CISG is one of the most successful international sales law conventions to date. The criticisms against the Convention are not insurmountable and largely depend on the correct interpretation of its terms.

The unification of law has several benefits. This is reflected in the effects that the CISG has had on the national laws of various legal systems around the world. The CISG's reach is not confined to governing the international sale of goods but also extends to other uniform instruments. The unification is necessary to reduce transaction costs for parties. It helps in resolving disputes by facilitating a common understanding of key concepts.

Ultimately, all criticism against the CISG stems from a reluctance to leave the comfort of domestic law and familiar practices. Given the increasing competitiveness in global trade, India cannot ignore the CISG. Consideration must be given to the interests of foreign entities doing business in India, our position in the ease of doing business index, and the suitability of Indian courts to resolve international trade disputes. However, changes in the long-standing system are necessary if India hopes to gain an unparalleled position in the global trade scenario.

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APPENDIX

A1. India's Major Trading Partners based on Share of Imports in 2024

Country	% Share of import
China	14.9996
Russia	9.0168
UAE	7.0837
USA	6.2200
Saudi Arabia	4.6317
Iraq	4.4194
Switzerland	3.1341
Singapore	3.1258
Korea RP	3.1168

A2. India's Major Trading Partners based on Share of Exports in 2024

Country	% Share of Export
USA	17.7335
UAE	8.1541
Netherlands	5.1192
China	3.8123
Singapore	3.2991
UK	2.9557
Saudi Arabia	2.6448
Bangladesh	2.5326
Germany	2.2509

A3. India's Key Trade Commodities in 2024

EXPORTS		IMPORTS	
Product	Value - US\$ million	Product	Value - US\$ million
Electronic Goods	29,121.26	Petroleum, Crude & Products	179,618.18
Drugs & Pharmaceuticals	27,849.24	Coal, Coke & Briquettes	38,886.93
Handloom Products	11,682.93	Transport Equipment	26937.03
Meat, Dairy & Poultry Products	4,527.31	Organic & Inorganic Chemicals	26710.73
Ceramic Products & Glassware	4,277.37	Pearls, Precious & Semi-Precious Stones	23,831.88
Spices	4,251.05	Vegetable Oil	14871.65
Iron Ore	3,913.85	Fertilizers, Crude & Manufactured	10456.90
Fruits & Vegetables	3,653.31	Textile Yarn Fabric & Made-Up Article	2,277.85
Cereal Preparations	2,852.29	Pulp & Waste Paper	1,856.67
Handicrafts	1,802.36	Project Goods	1321.39

APPENDIX

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CERTIFICATE ON PLAGIARISM CHECK

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