UNDERSTANDING THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

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Introduction

The age of internationalisation and global market is upon us. An international contract of sale is usually the product of long formal negotiations, culminating in the execution of a single comprehensive document. The aim of this article is to introduce the United Nations Convention on Contracts for the International Sale of Goods, an important international document on contracts, binding also for the Czech Republic.

The main purpose of the article is to give a brief and informative guide to a study of the English–Czech terminology and most basic terms used in the Convention. It aims to meet the special needs of translators and interpreters specialised in sales, international business transactions, commercial law and international private law. The article can also meet needs of Czech law students with English as a second language.

What is the CISG?

The “CISG” is abbreviation for the United Nations Convention on Contracts for the International Sale of Goods (Úmluva OSN o smlouvách o mezinárodní koupi zboží). The CISG Convention was signed in Vienna, therefore it is also sometimes referred to as the “Vienna Convention”. It was opened for signature in 1980. Given the growing list of Contracting States, the CISG is fast becoming the sales law of world. The CISG is the first sales law treaty to win acceptance on a world-wide scale. The CISG treaty contains substantive rules which regulate contracts for the international sale of goods. The Convention regulates not only the contract formation process, it also fills in the contractual gaps as regards the obligations of parties, their rights and

1. For the Czech Republic the Convention entered into force on 1 January 1993.
2. Some say 4 letters individually, some say the acronym as one word.
3. Argentina, Australia, Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Canada, Chile, China, Cuba, Denmark, Ecuador, Egypt, Estonia, Finland, France, Georgia, Germany, Hungary, Iraq, Italy, Mexico, Netherlands, New Zealand, Norway, Romania, Russian Federation, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Ukraine, United States of America etc.
4. Regarding the ULIS and ULF conventions, which preceded the CISG
remedies for breach, etc. The CISG is not the first uniform sales law. The ULIS/ULF\textsuperscript{5} treaties date back to 1964, but these pre–CISG efforts met with only limited success.

**CISG Parts I–IV**

The CISG contains a total of 101 articles, organised in four main parts (I–IV). The substantive core of the convention is located in Part II (on sales contract formation) and Part III (on the sale of goods). Part I of the Convention contains important provisions which tell us when and how to use the substantive rules in Parts II and III. The final provisions in Part IV regulate, among other things, the making of reservations which (e.g.) permit States to opt out of CISG Part II entirely.

The main rule as regards CISG application is Article 1(1)(a): Czech courts will apply the Convention to contracts for the “sale of goods” (koupě zboží) between parties whose “places of business” (místa podnikání) are in different CISG “Contracting States” (smluvní státy), unless the parties have exercised their freedom to contract out. The “General Provisions” (obecné ustanovení) in CISG Part I contain rules for the interpretation of the Convention text as well as for the concrete interpretation of contracts which are subject to the Convention regime.

Part II of the Convention regulates the “formation” (uzavírání) of international sales contracts. The CISG regulates the contract formation process, it does not generally regulate contract “validity”\textsuperscript{6} (platnost).

Part III of the CISG, entitled Sales of Goods, contains the substantive rules for international sales. This part of the Convention defines the parties’ “obligations” (povinnosti), “rights” (práva) and “remedies for breach” (práva při porušení smlouvy). It also contains the rules which regulate the “risk of loss” (nebezpečí ztráty). The key to the seller’s performance is that the right goods must be delivered at the right time and place, as required by the contract and the CISG rules. Unless otherwise agreed, the goods do not conform to the contract unless they are both fit for ordinary purposes and for any particular purpose made known to the seller at the time of contracting. Every breach of a CISG obligation gives rise to one or more CISG remedies for breach. The three main remedial categories are “specific performance” (plnění), “avoidance” (odstoupení) and “damages” (náhrada škody).

The CISG fits the description of substantive law. This set of rules provides the means whereby courts actually decide sales contract disputes. If, for example, the seller commits a breach, and the buyer brings suit, the CISG provides remedies to right the wrong and thus determine the outcome of the case.

\textsuperscript{5} The Uniform Law for the International Sales of Goods (ULIS) and the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF) were both signed in 1964.

\textsuperscript{6} See Article 4 of the Convention.
Internationality and Places of Business

According to the main criterion in CISG Article 1(1), the Convention applies to sales of goods between parties whose relevant places of business are in different states. Internationality – the requirement that the relevant places of business of the parties are in different States – is the common criterion. Article 1(1), subparagraph (a) means that whenever a party in the Czech Republic sells goods to – or buys goods from – a party whose relevant place of business is in another State (country) where the CISG has entered into force, the Convention may apply, simply because the sale is between parties whose places of business are in different CISG Contracting States.

Sale of goods

Although the CISG does not provide a positive definition of the “sale of goods”, Article 2 and 3 do at least tell us what a CISG sale of goods is not. According to Article 3, the Convention does not apply to contracts of “manufacture” (zhotovení, výroba) where the buyer supplies a “substantial” (podstatný) part of the raw materials or to mixed (goods and services) transactions where the service-element is the “preponderant” (převažující) part. Where the CISG does not apply, recourse must be made to national law (via the applicable rules of private international law).

According to Article 4, the Convention regulates only sales contract formation (in Part II) and the rights and obligations of the parties to the sale (in Part III).

Article 6 corresponds with Czech national law, that both the CISG and Czech domestic law adopt the rule of contractual freedom. The parties remain free to contract out of the treaty regime, in whole or part. The parties to a CISG contract enjoy the freedom to draft a clause which select in advance a set of national law rules as a supplement to Convention.

Sales Contract Formation

Part II (comprising Articles 14 to 24) regulates the “formation of contract” (uzavírání smlouvy) – the rules relating to offer, acceptance and the like. “Offer” (nabídka) and “acceptance” (přijetí) are the two key elements in the contract formation process. In order to constitute an offer to sell or buy goods in the international market, “a proposal for concluding a contract” (návrh na uzavření smlouvy) must meet certain minimum requirements. Under the CISG, a proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provisions for determining the quantity and price. The Convention distinguishes between an offer, which binds the “offeror” (navrhovatel), and an invitation make offers, which does not.

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7. Article 10 defines the relevant place in the situation where a party has more than one place of business.
8. The Convention enters into force 12 months after ratification by the State concerned, see Article 99(1).
9. Eventhough the official translation of “sale” in the Convention is “koupě”, which arises from the context of the Convention, in general the term “sale” is translated as “prodej”.

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Assuming a proposal constitutes an offer under CISG Article 14, the next step is to determine when that offer takes effect. According to Article 15 paragraph (1), an offer becomes effective when it reaches the “offeree” (osoba, které je nabídka určena), i.e., when made orally or when delivered to the offeree or his place of business. Until that point in time, according to paragraph (2), the offer may be “withdrawn” (zrušena). This is true even if the offer is “irrevocable” (neodvolatelná), a term defined in Article 16. Once an offer, not effectively withdrawn, has been received by the offeree, the issue is the offeror’s right to “revoke” (odvolat) his offer. CISG offers are revocable: an offer may be revoked if the revocation reaches the offeree before he has “dispatched an acceptance” (odeslal přijetí). Whether or not the offeror has made an irrevocable offer under Article 16, the offer “dies” when a “rejection” (odmítnutí) is received (Article 17). Upon receipt of such a rejection from the offeree, the offeror is free to take his/her business elsewhere. Articles 18–22 deal with the subject of acceptance. Article 18(1) defines the acceptance content. An acceptance may consist of a statement or of other conduct, such as shipping the goods. In either case, the key to an acceptance is the offeree’s “indication of assent” (náznak souhlasu). A CISG acceptance must reach the offeror within the time which the offeror has fixed or within a “reasonable time” (rozumná doba).

Although the Convention is not generally concerned with validity, provisions relating to the subject of sales contract validity can be found in Articles 14 and 29. According to the rule in Article 29, a sales contract may be modified or terminated by the “mere agreement” (pouhá dohoda) of the parties, so an agreement which e.g. modifies an existing sales contract needs no consideration (in the Anglo-American sense) to be binding.

**Obligations of Parties**

The “seller’s obligations” (povinnosti prodávajícího) are set forth in Chapter II\(^{10}\), while those of the buyer are defined separately in Chapter III\(^{11}\). The various obligations of the CISG seller are summarised in Article 30: in essence, the seller must deliver the right goods and documents at the right time and place, as required by the contract (and custom) and the CISG rules.

The CISG provides an injured buyer with a full range of remedies for seller’s breach. Particularly as regards “claims” (nároky) arising from the delivery of non-conforming goods, the seller in breach must receive “notice” (oznámení) of the nature of a given claim.

The main obligations of the CISG “buyer” (kupující) are summarised in Article 53. The buyer must pay the price for the goods and take delivery as required by the contract and the CISG. The buyer’s general obligation to pay the price includes an

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\(^{10}\) Articles 30–44

\(^{11}\) Articles 53–59
implied obligation to take such steps as may be required – by contract or by law – to “enable payment to be made” (umožnit zaplacení kupní ceny)\(^{12}\).

**Passing of Risk and Remedies for Breach**

CISG Articles 66–70 regulate the “passing of the risk” (přechod nebezpečí). These Articles refer to, but do not actually define the risk. The most important risk rules in the Convention are those which apply when the contract of sale involves “carriage of the goods” (přeprava zboží).

Article 45(1) summarises the “remedies for breach of contract” (práva při porušení smlouvy) which the Convention makes available to the buyer for seller’s breach. If the seller fails to perform any of his obligations under the contract or the Convention, the buyer may:\(^{13}\):

“exercise the rights” (uplatnit práva) provided in Articles 46 to 52,
“claim damages” (požadovat náhradu škody) as provided in Articles 74 to 77.

Subparagraph (a) refers to rules, which concern the buyer’s right to require performance and the right to avoid. As regards termination, the Convention speaks of “avoidance” (odstoupení). The effect of avoidance is to release both parties from their obligations under the contract.

The Convention contains two specific rules that measure damages for direct “loss” (ztráta) in situation where an injured buyer or seller exercises the right to avoid the sales contract. The first of these provisions is Article 75. If a seller’s delayed or non-conforming delivery constitutes a breach, the buyer may avoid the contract, arrange for a substitute transaction, and then measure his damages by the difference in price, as well as any further damages recoverable under Article 74. There is no Convention duty to “mitigate the loss” (zmenšit ztrátu). However, under Article 77, a party who fails to take reasonable measures to avoid loss cannot recover damages for the loss which could have been mitigated. The CISG also deals with “interest” (úrok) as a common provision (in Article 78), a remedy available to injured buyers and sellers alike.

**Conclusion**

Part IV of the Convention entitled “Final Provisions” (závěrečná ustanovení) contains, inter alia, the rules that define when the CISG enters into force in those States which ratify it. The Final Provisions also contains rules that define the relationship between the CISG and other treaties (most importantly, the 1955 and 1964 Hague Conventions), and that define the rights of Contracting States to make certain “declarations (reservations)” (prohlášení) with respect to specified articles and/or parts of the CISG.

\(^{12}\) Article 54

\(^{13}\) Compare the remedies which the Convention makes available to the seller for buyer’s breach in Articles 61–77
RÉSUMÉ

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is an important international document, opened for signature in 1980. The Convention is the most recent, successful attempt at a unification of international rules for sale of goods. Regarding the growing list of Contracting States, the Convention is fast becoming the sales law of world.

The Czech Republic ratified the CISG in 1993 and the Convention became an important international document on contracts, binding for the Czech law. Therefore, knowledge of terms used in this Convention is essential part and necessary tool for work in this field of law, as well as for understanding and preparing legal documents valid in the Contracting States.

LITERATURE


SOURCES OF CORPUS TEXTS