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**APPLICATION OF THE UN CONVENTION ON CONTRACTS FOR  
THE INTERNATIONAL SALE OF GOODS (CISG) IN  
UZBEKISTAN**

Bachelor's Thesis

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I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading.

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## TABLE OF CONTENTS

ABSTRACT.....	4
INTRODUCTION .....	5
1. GLOBALIZATION OF THE TRADE LAW .....	9
1.1. Modern Law Merchant Doctrine .....	9
1.2. Movement Towards the Unification of International Sales Law .....	11
1.3. Different Stages of Development of the CISG .....	13
1.4. Case Law on the CISG.....	14
1.5. International Efforts to Promote the Convention.....	16
2. THE SITUATION IN UZBEKISTAN WITH REGARDS TO THE CISG.....	18
2.1. Possible Reasons for the Lack of the Case Law in Uzbekistan .....	18
2.2. Ideas for Future Empirical Studies .....	25
CONCLUSION.....	27
LIST OF REFERENCES .....	29
APPENDICES .....	36
Appendix 1. Timeline of Different Phases of Development of the CISG .....	36
Appendix 2. Non-exclusive Licence.....	37

## **ABSTRACT**

The promotion of international trade under fair, equal and mutually beneficial terms is a key element for promoting international peace and stability. Therefore, the adoption of the United Nations Convention on the International Sale of Goods (CISG) in order to establish uniform rules governing contracts for the international sale of goods has been an important step towards that goal. The CISG is considered to be the uniform law for cross-border transactions in countries that account for over three-quarters of all international trade. It is often regarded as one of the most successful tools to unify international trade laws.

However, the number of ratifications of the Convention does not prove its actual significance. Studies have shown that the CISG is disregarded in many Contracting States. Uzbekistan is known to be one of those countries. Despite its ratification of the Convention in 1997, there have been no cases reported where Uzbek courts or arbitrators applied the CISG to the facts of a case; a perplexing situation considering that its main trading partners such as China and Russia have reported a significant amount of case law applying the CISG. Having described this enigma, the study examines several hypotheses that could explain the lack of the CISG case law in Uzbekistan. In addition, the thesis proposes the guidelines for potential empirical research which can uncover the actual role of the Convention in Uzbekistan on a more comprehensive level.

This is the first study to address the issue of neglect of the CISG in this country. It uses a theoretical approach to explain this phenomenon. Apart from contributing to the understanding of factors that could promote the uniformity of rules governing the international sale of goods, this thesis acts as a stepping stone to further studies.

Keywords: international trade laws; CISG; case law; uniform rules; Uzbekistan;

## INTRODUCTION

Over the last three decades, the United Nations Convention on Contracts for the International Sale of Goods (hereafter the “CISG” or “Convention”) has been regarded as one of the most successful treaties to harmonize international trade laws.<sup>1</sup> The Convention has been described as “the most successful treaty in terms of states’ participation among those prepared by UNCITRAL,”<sup>2</sup> “a success beyond imagination,”<sup>3</sup> which has served as a model text for domestic sales laws<sup>4</sup> in countries like the Netherlands,<sup>5</sup> Germany<sup>6</sup> and China<sup>7</sup>.

Admittedly, some figures might prove this success. The CISG has become effective as of January 1, 1988, and since then, 94 out of 193 of the United Nations member states have adopted the Convention.<sup>8</sup> Therefore, the pace of ratification of the CISG is comparable to that of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards which makes it the second most ratified convention in the field of international private law.<sup>9</sup> Moreover,

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<sup>1</sup> Meyer O. (2014). *The CISG: Divergences between Success-Scarcity and Theory-Practice*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 23-36; Smits J. M. (2014). *Problems of Uniform Laws*. In DiMatteo L.A. (Ed). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 605-611.

<sup>2</sup> Castellani L. G. (2014). *The CISG in Context of Complementary Texts*. In DiMatteo L.A. (Ed.) *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 683-693.

<sup>3</sup> Gaviria J. A. (2015). The Puzzle of the Lack of Colombian Cases on the CISG. *International Law, Revista Colombiana de Derecho Internacional*, 26, 289-328. (2015).

<sup>4</sup> Andersen C. A. (2014). *The CISG in National Courts*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 63-76; Rogers V., Lai K. (2014). *History of the CISG and Its Present Status*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 8-22, 11.

<sup>5</sup> Kruisinga S. A. (2014). *The Netherlands*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 486-502.

<sup>6</sup> Kiene S. (2014). *German Country Analysis: Part II*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 377-398.

<sup>7</sup> Wei L. (2014). *People’s Republic of China*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 548- 561, 548.

<sup>8</sup> Institute of International Commercial Law (IICL). *Table of Contracting States*. Pace Law School. Retrieved from <https://iicl.law.pace.edu/cisg/page/identification-contracting-states>, 11 April 2021.

<sup>9</sup> Rogers V., Lai K. (2014), *supra nota* 4, 11; See also, United Nations Commission on International Trade Law (UNCITRAL). (1958). *The Convention on the Recognition and Enforcement of Foreign Arbitral Awards —New York Arbitration Convention, New York Convention* —. New York. Retrieved from <https://www.newyorkconvention.org/countries>, 11 April 2021.

countries that have adopted the Convention account for over three-quarters of all cross-border trade since only four countries (the UK, India, Indonesia and Saudi Arabia) from the top 20 economies of the world have not adopted the CISG yet.<sup>10</sup> Also, this claim is evidenced by the fact that the CISG acts as a governing law with regard to the cross-border sale of goods – unless parties agree otherwise<sup>11</sup> – when (i) the parties’ places of business are located in Contracting States,<sup>12</sup> or when (ii) “the rules of international private law lead to the application of the law of a Contracting State”.<sup>13</sup> Thus, the CISG has acted as the governing law of thousands of cross-border transactions and has been applied to over 4,500 cases.<sup>14</sup> It has also become the subject of extensive research in many countries which has resulted in over ten thousand texts in about thirty languages of the world.<sup>15</sup>

However, it is also argued that the number of ratifications of the CISG is not sufficient to prove its practical significance and the role in the harmonization of international trade laws.<sup>16</sup> Taking a closer look at the available case law on the CISG reveals that the Convention has been successful in some member states, while being continuously neglected in others.<sup>17</sup> It can be evidenced by obvious disproportionality in the distribution of case law among Contracting States. For example, while more than half of all reported cases were decided in Europe,<sup>18</sup> most of the member states in Africa, Latin America, Middle East, Central, Eastern and Southern Asia have reported very few or no cases at all. Therefore, the success of the CISG in terms of the number of participating countries should not be confused with its actual role in practice.

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<sup>10</sup> Morales-Olazábal A., Emerson R. W., Turner K. D., Sacasas R. (2012). Global Sales Law: An Analysis of Recent CISG Precedents in U.S. Courts 2004-2012. *Business Lawyer*, 67(4), 1351-1381. Retrieved from [http://www.americanbar.org/publications/the\\_business\\_lawyer/volume\\_67/number\\_4.html](http://www.americanbar.org/publications/the_business_lawyer/volume_67/number_4.html), 11 April 2021; The World Bank. *Indicators*. Retrieved from <https://datacatalog.worldbank.org/dataset/gdp-ranking>, 21 April 2021.

<sup>11</sup> United Nations Convention on Contracts for the International Sale of Goods (CISG). 11.04.1980. § 6.

<sup>12</sup> *Ibid.*, § 1(1)(a).

<sup>13</sup> *Ibid.*, § 1(1)(b).

<sup>14</sup> United Nations Commission on International Trade Law (UNCITRAL). *Clout Cases*. Retrieved from [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/cisg\\_digest\\_2016.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/cisg_digest_2016.pdf), 11 April 2021.

<sup>15</sup> Schwenger I. (2014). *Divergent Interpretations: Reasons and Solutions*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 102-119; Rogers V., Lai K. (2014), *supra nota* 4, 21.

<sup>16</sup> Ziegel J. (2005). The Scope of the Convention: Reaching Out to Article One and Beyond. *J. L. & Com.*, 25(59), 67; Gordon M. W. (1998). Some Thoughts on the Receptiveness of Contract Rules in the CISG and UNIDROIT Principles as Reflected in One State’s (Florida) Experience of (1) Law School Faculty, (2) Members of the Bar with an International Practice, and (3) Judges. *Am. J. Comp. L.*, 46(361), 361; Fitzgerald P. L. (2008). The International Contracting Practices Survey Project: An Empirical Study of the Value and Utility of the United Nation’s Convention on the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts to Practitioners, Jurists, and Legal Academics in the United States. *J. L. & Com.*, 27(1), 25-26.

<sup>17</sup> Gordon M. W. (1998), *supra nota* 16, 361; See also, Fitzgerald P. L. (2008), *supra nota* 16, 26; See also, Murray J. E. (1998). The Neglect of CISG: A Workable Solution. *J. L. & Com.*, 17(365), 365.

<sup>18</sup> DiMatteo L. A. (2014). *The CISG across National Legal Systems*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 588-602;

Uzbekistan is known to be one of those member states which, despite its accession to the CISG more than two decades ago<sup>19</sup>, has not reported a single case applying the Convention.<sup>20</sup> That is to say that the number of cases where Uzbek courts or arbitral bodies have applied the Convention to the facts of a case is zero, and as for the number of cases resolved in other countries where one of the parties was from Uzbekistan is only two.<sup>21</sup> This situation seems even more perplexing when we take into consideration that the main trading partners of Uzbekistan<sup>22</sup> such as Russia and China are both the CISG member states<sup>23</sup> and have reported a significant amount of case law since their accession to the CISG, 318 and 494 cases respectively<sup>24</sup>. Such reluctance of Uzbekistan to apply the CISG, if there has been any, could be said to undermine the role which it intends to play in the promotion of international trade.

This work is the first attempt to explain the absence of case law on the CISG in Uzbekistan. The study has gained even more relevance in the light of recent political and economic developments in the country.<sup>25</sup> Since the death of a long-time President Islam Karimov in 2016, and election of Shavkat Mirziyoyev as a new President, Uzbekistan has experienced significant policy transformations which *inter alia* focus on transitioning from Soviet-style planned economy to Western-style market economy, promoting economic liberalization and reforming the judicial system.<sup>26</sup> One of the most recent results of these reforms is its accession to EU's GSP+ arrangement which grants Uzbekistan a right to export two-thirds of product lines covered by the

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<sup>19</sup> Decree 294-I of the Parliament of Uzbekistan. 30.08.1996. Retrieved from <https://lex.uz/docs/-2635662>, 11 April 2021.

<sup>20</sup> The CISG Database of the Institute of International Commercial Law in Pace Law School does not mention any CISG cases resolved in Uzbekistan. As further evidence of the absence of Uzbek cases on the CISG, a search in other databases such as the Case Law on UNCITRAL Texts (CLOUT) and the Unilex Database returns no results either. Moreover, the most notable books on the CISG do not refer to any Uzbek cases. National database of case law in Uzbekistan also does not mention any cases where the CISG was applied. *See* Supreme Court of Uzbekistan. Publication on the Internet of Judicial Acts Adopted on Considered Cases by the Economic Courts of the Republic of Uzbekistan. Retrieved from <https://public.sud.uz/#!/sign/economy>, 12 May, 2021.

<sup>21</sup> Institute of International Commercial Law (IICL). *Case Law Search*. Pace Law School. Retrieved from <https://iicl.law.pace.edu/cisg/search/cases>, 11 April 2021. (Hereafter: Pace Database).

<sup>22</sup> The Observatory of Economic Complexity (OEC). *Uzbekistan*. Retrieved from <https://oec.world/en/profile/country/uzb>, 11 April 2021.

<sup>23</sup> Table of Contracting States, *supra nota* 8.

<sup>24</sup> Pace Database, *supra nota* 21.

<sup>25</sup> Bowyer A. C. (2018). Political Reform in Mirziyoyev's Uzbekistan: Elections, Political Parties and Civil Society. *Silk Road Paper*. Institute for Security & Development Policy. Retrieved from <https://isdsp.eu/publication/political-reform-mirziyoyevs-uzbekistan/>, 12 May 2021.

<sup>26</sup> *Ibid.*

arrangement to the Union without paying any tariffs.<sup>27</sup> Under the circumstances, by conducting a proper assessment of the role of the CISG in Uzbekistan's cross-border transactions, one will be able to evaluate the usefulness of the Convention in the advancement of international trade.

For this purpose, the work proceeds as follows. The first chapter of the thesis provides a theoretical framework of modern international commercial law and a brief history of the movement towards its unification. After having explained previous attempts to create uniform sales law, it describes the development of the CISG in various stages. Next, it illustrates how, in contrast to Uzbekistan, the Convention has been applied in other Contracting States. Also, the chapter includes a discussion of current efforts to increase awareness about it. The second chapter describes possible reasons for the lack of Uzbek cases on the CISG by examining various hypotheses, starting from the least to the most likely. Finally, the study proposes ideas for future empirical research to investigate the actual role of the Convention in Uzbekistan on a more comprehensive level.

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<sup>27</sup> Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008. Retrieved from <http://data.europa.eu/eli/reg/2012/978/oj>, 12 May 2021.



# 1. GLOBALIZATION OF TRADE LAW

## 1.1. Modern Law Merchant Doctrine

Although modern doctrine on law merchant (also known as *lex mercatoria*) is based on divergent theories, it can generally be characterized as a transnational law governing international contracts.<sup>28</sup> It is based on a premise that the rules of international private law and national substantive laws, both of which are of national origin, are unable to adequately address the disputes arising from the cross-border transactions.<sup>29</sup> The most distinctive aspect of *lex mercatoria* is the origin of its rules. In contrast to national laws, this law is not based on the system-created legal rules, and it is not limited to a specific country. The sources of law merchant are non-national, and often include international sources such as customary trade usages, general principles of law, uniform laws on international commerce, standard contracts, etc.<sup>30</sup> There are two influential authors, Berthold Goldman and Clive Schmitthoff, who can be considered as the founding fathers of modern law merchant doctrine.<sup>31</sup> The following paragraphs will examine the theories of these two authors and draw relevant comparisons.

According to Goldman, national substantive laws which are designed to govern the contracts between parties from the same country are not fit to resolve international disputes.<sup>32</sup> When they are applied to international contracts, the outcome can be uncertain, unpredictable or inappropriate.<sup>33</sup> Therefore, he argued in favor of the application of mercantile law to the substance of disputes that have international character. According to him, mercantile law constitutes a legal order which can be described as the set of specific rules and various institutions that arise due to the formation and activities of a certain social group. In this case,

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<sup>28</sup> Elcin M. (2012). *Lex Mercatoria in International Arbitration. Theory and Practice*. (Ph.D. Dissertation). European University Institute. Florence. 1.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Goldman B. (1983). *Lex Mercatoria. Forum Internationale*, 3. 4.

<sup>33</sup> Ibid.

Goldman refers to international merchants as the social group. However, he admits that this legal order is incomplete since it needs the enforcement mechanisms of national legal orders in order to be effective.

When it comes to the sources of the law merchant, Goldman's theory argues that they are autonomous and non-national in nature. General principles of law, according to him, are a genuine source of *lex mercatoria*.<sup>34</sup> Although the origin of those principles are ambiguous, they have, nonetheless, become embodied in both international and national laws, and are of constant use in international trade practices. Some of the examples of those principles are *pacta sunt servanda*, mitigation of damages, etc. Another interesting point regarding the sources is whether standard contracts issued by international organizations can be considered as a source of *lex mercatoria*. According to Goldman, the response to this question depends on whether the standard contract has been prepared by state actors or business representatives.<sup>35</sup> For example, such distinction is obvious in his assessment of standard contracts by the Council for Mutual Economic Aid (COMECON) and the United Nations Economic Commission for Europe (UNECE). The former has been formulated by a decision of certain number of nations and therefore, cannot be qualified as a source of *lex mercatoria*. Whereas the latter is composed of representatives from various business sectors, in other words, merchants and therefore, constitutes a genuine source of *lex mercatoria*.

Unlike Goldman, Schmitthoff argues that law merchant is ultimately built on national law, but it has been amended by merchants in order to properly address the nature of international commercial transactions.<sup>36</sup> His theory's main foundation is the parties autonomy in the choice of law applicable to their contract. It is on this foundation that an autonomous set of rules governing the international transactions, *lex mercatoria*, can be built. He believed that uniformity of international trade laws should be an ultimate goal which can be achieved through the establishment of various intergovernmental organizations. Schmitthoff pointed out two main sources of modern law merchant which are (i) international legislation and (ii) international commercial usages and practices.<sup>37</sup> International legislation implies various international

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<sup>34</sup> Goldman B. (1986). *The Applicable Law: General Principles of Law – the Lex Mercatoria*. In Julian D. M. (Ed.). *Contemporary Problems in International Arbitration*. London. 115.

<sup>35</sup> *Ibid.*

<sup>36</sup> Schmitthoff C. M. (1986). *Finality of Arbitral Awards and Judicial Review*. In Julian D. M. (Ed.). *Contemporary Problems in International Arbitration*. London. 115.

<sup>37</sup> *Ibid.*

conventions and soft laws which are adopted by states as normative regulations in the field of cross-border trade. Whereas international commercial usages and practices imply a set of customs commonly used and widely accepted by international community of merchants. As for the historical origin of *lex mercatoria*, both Goldman and Schmitthoff believe in romantic vision of medieval *lex mercatoria* which they use as a justification for the modern law merchant.<sup>38</sup>

## 1.2. Movement Towards the Unification of International Trade Law

In the second half of the 19<sup>th</sup> century, a movement of internationalists emerged in Europe which aimed to establish a *uniform ius commune*.<sup>39</sup> This movement, in turn, led to the creation of L'Institut de Droit International in Belgium and the International Law Association in Brussels in 1873.<sup>40</sup> Continuous efforts to promote international trade called for greater certainty with regards to applicable law for cross-border transactions.<sup>41</sup> One of the most influential figures in unifying and harmonizing sales law is Ernst Rabel, an Austrian scholar, who was the founder of the Institute of Comparative Law at the University of Munich in 1917.<sup>42</sup> Almost a decade later, in 1926, a couple of comparative law institutes were established by the Kaiser Wilhelm Foundation for the Advancement of Science.<sup>43</sup> While one of them focused on the matters of international public law, the other one dealt with the matters of international private law.<sup>44</sup> In this way, Ernst Rabel continued his work as the director of the Kaiser Wilhelm Institute for Foreign and International Private Law in Berlin.<sup>45</sup> Along with his work at the Institute, he established his *Journal of Foreign and International Private Law*.<sup>46</sup> One of the most important studies conducted at the Institute was the comparative study of domestic sales laws of various countries. In 1926, apart from the two comparative law institutes mentioned earlier, another organization for the unification of sales law was created. In Rome, the League of Nations founded an intergovernmental organization, the International Institute for the Unification of Private Law

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<sup>38</sup> Goldman B. (1983), *supra nota* 32; Schmitthoff C. M. (1988). The Unification of the Law of International Trade. In Cheng Ch. (Ed.). *Clive M. Schmitthoff's Select Essays on International Trade Law*. 206

<sup>39</sup> Butler A. E. (2006). *A Practical Guide to the CISG: Negotiations through Litigation*. New York: Aspen Publishers. 7.

<sup>40</sup> Eiselen S. (1999). Adoption of the Vienna Convention for the International Sale of Goods (the CISG) in South Africa. *So. African L.J.*, 116, 323.

<sup>41</sup> Nadelmann K. H. (1965). The Uniform Law on the International Sale of Goods: A Conflict of Laws Imbroglio. *Yale L.J.*, 74, 449-50.

<sup>42</sup> Rheinstein M. (1956). In Memory of Ernst Rabel. *American J. of Comparative L.*, 5, 185, 190.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> Rogers V., Lai K. (2014), *supra nota* 4, 9;

<sup>46</sup> Rheinstein M. (1956), *supra nota* 42, 191.

(UNIDROIT).<sup>47</sup> It was an important step towards the goal of harmonization of the law of the sale of goods.

In 1930, a committee was set up by UNIDROIT to work on drafting a uniform sales law.<sup>48</sup> This project was based on Ernst Rabel's suggestion who at the time was one of the members of the board of directors of UNIDROIT.<sup>49</sup> The committee included members from four different legal systems: Germanic, Latin, Anglo-American and Scandinavian systems.<sup>50</sup> After eleven meetings between 1930 and 1934,<sup>51</sup> the committee was able to produce an initial draft in 1935.<sup>52</sup> After members of the League of Nations commented on the first draft, the second draft was produced in 1939.<sup>53</sup> However, any further efforts by the League of Nations to unify international trade law was halted due to the start of World War II.<sup>54</sup>

The project was only resumed in 1951 when UNIDROIT organized an international conference in the Hague.<sup>55</sup> The conference was attended by representatives of twenty-one countries who, having revised the drafts, sent them to governments for comments.<sup>56</sup> At the same time, work on drafting a uniform law for the formation of sales contracts began.<sup>57</sup> In 1964, representatives from twenty-eight states gathered at the Hague for another diplomatic conference to work on the drafts.<sup>58</sup> The conference participants agreed upon definitive versions of the two drafts: the Uniform Law for the International Sale of Goods (ULIS) and the Uniform Law on the Formation

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<sup>47</sup> "Following the demise of the League [of Nations], [UNIDROIT] was re-established as an independent intergovernmental organization on the basis of a multilateral agreement, the UNIDROIT Statute, on 15 March 1940." See, Vogenauer S., Kleinheisterkamp J. (Eds.) (2009). *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)*. New York: Oxford University Press. 6.

<sup>48</sup> Huber P., Mullis A. (2007). *The CISG: A New Textbook for Students and Practitioners*. United States. Sellier European Law Publishers. 2.

<sup>49</sup> Schlechtriem P., Schwenger I. (2005). *Commentary on the UN Convention on the International Sale of Goods (CISG)*. (2<sup>nd</sup> ed.) New York: Oxford University Press. 1.

<sup>50</sup> Nakata G. K. (1994). *Filanto S.P.A. v. Chilewich Int'l Corp.*: Sounds of Silence Bellow Forth Under the CISG's International Battle of Forms. *Transnational Lawyer*, 7, 141, 145.

<sup>51</sup> Huber P., Mullis A. (2007), *supra nota* 48, 2.

<sup>52</sup> Honnold J. O. (2009). *Uniform Law for International Sales under the 1980 United Nations Convention*. (4<sup>th</sup> ed.) The Netherlands: Kluwer Law International. 5.

<sup>53</sup> Winship P. (1984). *The Scope of the Vienna Convention of International Sales Contracts*. In Galston N. M., Smit H. (Eds.). *International Sales: The United Nations Convention on Contracts for the International Sale of Goods*. New York: Matthew Bender. 4.

<sup>54</sup> Fransworth E. A. (1962). Formation of International Sales Contracts: Three Attempts at Unification. *U. of Pennsylvania L. Rev.*, 110, 305, 306.

<sup>55</sup> Honnold J. O. (2009), *supra nota*, 52, 5.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*, 6.

of Contract for the International Sale of Goods (ULF).<sup>59</sup> Consequently, in 1972, both of the documents came into force and were only ratified by nine States.<sup>60</sup> Its failure to achieve mass ratifications was due to the vagueness of several important legal concepts.<sup>61</sup> Apart from that, it was also criticized for not meeting the needs of the USA, Eastern Europe and many developing countries.<sup>62</sup>

The next attempt to harmonize sales law began in 1966 with the establishment of a new permanent committee, the United Nations Commission on International Trade Law (UNCITRAL), which originally consisted of twenty-nine member states.<sup>63</sup> A Working Group of UNCITRAL was created in 1968 which started working on the draft of uniform sales law which could be accepted by countries belonging to different legal, social and economic systems.<sup>64</sup> Despite their failure, the two Hague Conventions played an important role in providing the foundation for the next sales law convention, the CISG.<sup>65</sup>

### **1.3. Different Stages of Development of the CISG and Its Current Status**

The whole process of developing the Convention can be divided into three stages.<sup>66</sup> The first stage took place between 1970 and 1977 during which the Working Group was able to organize nine sessions.<sup>67</sup> By 1977, the Working group completed and unanimously passed drafts of the Convention on the International Sale of Goods (Sales Draft) and Draft on Formation of the Sales Contract (Formation Draft).<sup>68</sup> In the second stage of the development of the CISG, UNCITRAL held meetings in Vienna between May and June in 1977 in order to finalize the Sales Draft and unanimously approve it.<sup>69</sup> One year later, UNCITRAL was able to finalize its work with the

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<sup>59</sup> Honnold J. O. (1989). *Documentary History of the Uniform Law for International Sales: The Studies, Deliberations, and Decisions that Led to the 1980 United Nations CISG with Introductions and Explanations*. The Netherlands: Kluwer Law and Taxation Publishers. 1.

<sup>60</sup> Winship P. (1984), *supra nota* 53, 25.

<sup>61</sup> *Ibid.*, 11-12.

<sup>62</sup> *Ibid.*

<sup>63</sup> Rogers V., Lai K. (2014), *supra nota* 4, 11.

<sup>64</sup> John O. Honnold, *Uniform Law for International sales under the 1980 United Nations Convention*, 3<sup>rd</sup> ed. (The Hague: Kluwer Law International, 1999), 8.

<sup>65</sup> Perea T. (2008). *Treibacher Industrie, A.G. v. Allegheny Technologies, Inc.*: A Perspective on the Lackluster Implementation of the CISG by American Courts. *Pace Int'l L. Rev.*, 20, 191, 196.

<sup>66</sup> Honnold J. O. (1989), *supra nota* 59, 2-3.

<sup>67</sup> *Ibid.*, 3.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*, 318.

Formation Draft and it, eventually, unanimously approved the Draft Convention on Contracts for the International Sale of Goods, which is referred to as the New York Draft.<sup>70</sup>

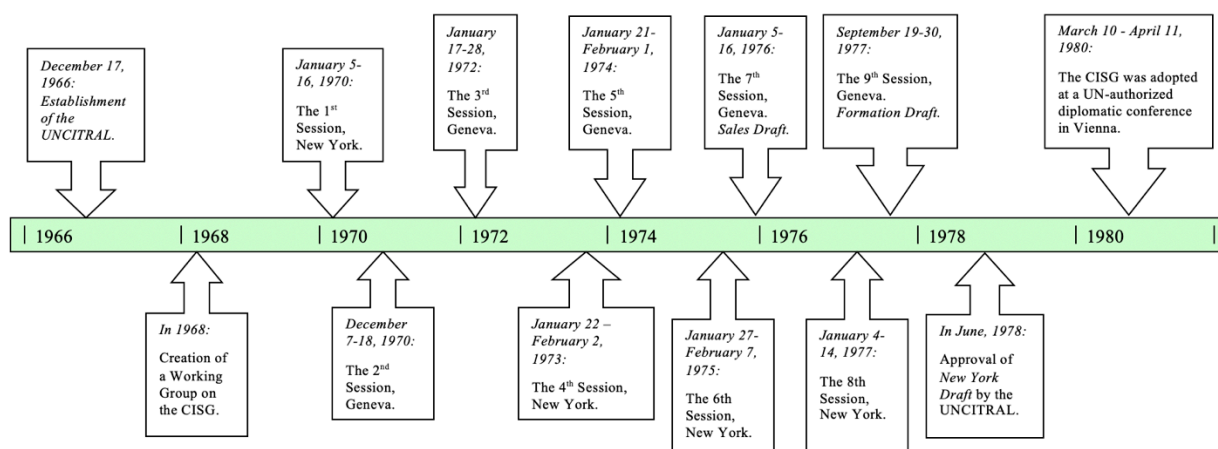


Figure 1. Timeline of different phases of development of the CISG  
Source: Author's original work

In the third stage of this process, representatives from sixty-two countries and eight international organizations participated in a diplomatic conference in Vienna authorized by the UN to vote on the New York Draft. The conference took place between March and April of 1980.<sup>71</sup> After state representatives reviewed the draft, the Convention was put for voting. In order for an article in the CISG to be approved, it had to receive approval from at least two-thirds of countries.<sup>72</sup> While seventy-four out of eighty-eight articles of the CISG's Parts I-III were approved unanimously, the rest of the articles received support by large majority of participants.<sup>73</sup> After that, a roll call vote approved the entire CISG unanimously.<sup>74</sup>

#### 1.4. Case Law on the CISG

In order to demonstrate that, in comparison with Uzbekistan, there is a significant number of the CISG cases in other countries, this section discusses the case law in major Contracting States of

<sup>70</sup> Schlechtriem P., Schwenger I. (2005), *supra nota* 49, 2.

<sup>71</sup> Honnold J. O. (1989), *supra nota* 59, 10.

<sup>72</sup> *Ibid.*, 12.

<sup>73</sup> *Ibid.*

<sup>74</sup> Ferrari F. (1995). *The Sphere of Application of Vienna Sales Convention*. The Netherlands: Kluwer Law International. 4.

the Convention such as (i) Germany, the Netherlands, France and other European countries; (ii) the United States of America and even more importantly, Uzbekistan's main trading partners<sup>75</sup> (iii) the Russian Federation and China.

As mentioned earlier,<sup>76</sup> more than half of all reported cases on the CISG come from European countries. Not only among those European countries, but also in the whole world, Germany has the biggest amount of case law on the CISG with 615 cases.<sup>77</sup> It also leads in terms of producing legal literature on the CISG.<sup>78</sup> It is a widely accepted notion that Germany has played a fundamental role in the jurisprudential development of the Convention.<sup>79</sup> The Netherlands is another European country with a significant contribution to the case law of the CISG. According to Pace Law School Database,<sup>80</sup> the number of cases reported from the Netherlands stands at 411. Other European countries with a notable contribution in this regard are Switzerland (248 cases), France (213 cases), Belgium (210 cases), Austria (160 cases), Spain (127 cases) and Italy (81 cases).<sup>81</sup>

Another country with a relatively higher number of the CISG cases (292)<sup>82</sup> is the US. However, considering that the US is the world's biggest economy<sup>83</sup> and nine out of its top ten trading partners are the CISG member states (Canada, China, Mexico, Japan, Germany, South Korea, France, Brazil, and Taiwan, the United Kingdom being the only exception), the figure seems astonishingly low. Previous empirical research on this topic suggests that many companies and their lawyers prefer to opt out of the Convention and instead, opt into the U.S. Uniform Commercial Code due to the lack of familiarity with the CISG.<sup>84</sup>

Two major trading partners of Uzbekistan, China and Russia, are both CISG member states and an important number of the CISG cases were decided in those countries. Notably, in terms of the case law, China is only second to Germany. Since its entry into force on January 1, 1988, 494

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<sup>75</sup> OEC, *supra nota* 22.

<sup>76</sup> See *Introduction*

<sup>77</sup> Pace Database, *supra nota* 21.

<sup>78</sup> Kröll S. (2014). *German Country Analysis: Good Faith, Formation, and Conformity of Goods*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 361-376.

<sup>79</sup> DiMatteo L. A. (2014), *supra nota* 18.

<sup>80</sup> Pace Database, *supra nota* 21.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> The World Bank, *Indicators*. Retrieved from <http://data.worldbank.org/indicator>, 11 April 2021.

<sup>84</sup> Larry A. DiMatteo, *Future Challenges of International Sales Law*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 725-732.

cases were reported from China. This is all despite the fact that Chinese representatives did not take part in the drafting stage of the final text of the Convention.<sup>85</sup> Moreover, China made a declaration under Article 95 that it would not be bound by Article 1(b) of the Convention according to which the CISG applies “when the rules of private international law lead to the application of the law of a Contracting State”. The abundance of the CISG case law in China becomes less surprising when we take into consideration that they are the second biggest economy in the world.<sup>86</sup> As for Russia, there are 318 cases that were submitted to the Pace Law School Database where Russian courts or arbitrators applied the CISG to the facts of a case. One of the popular Russian legal databases “Konsul’tant Pljus” contains over 2600 cases from Russian commercial courts which mention the CISG in one way or another.<sup>87</sup> Overall, it can be said that in Russia, since its adoption in 1991, a noticeable amount of case law on the CISG has been produced.

## 1.5. International Efforts to Promote the Convention

The success of the CISG with regards to the number of ratifications and its impact on other regional and domestic laws is a result of continuous international efforts to promote the Convention. One of the examples of those efforts is the creation of a Technical Assistance and Coordination Unit by UNCITRAL in 2004. The tasks of this unit include, inter alia, (i) “organizing briefing missions and seminars and participating in conferences to familiarize participants with UNCITRAL texts and their use; (ii) “assisting with the drafting of national legislation to implement UNCITRAL texts”, (iii) “and organizing group training activities to facilitate the implementation and interpretation of modern commercial legislation based on UNCITRAL texts by judiciaries and legal practitioners.”<sup>88</sup> Since then, most of the conferences organized in order to promote awareness about the CISG are sponsored by UNCITRAL.<sup>89</sup> Another such initiative is the development of the Case Law on UNCITRAL Texts (CLOUT) database. Currently, the database contains 968 CISG cases which are translated into all official

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<sup>85</sup> Wei L. (2014), *supra nota* 7.

<sup>86</sup> The World Bank, *supra nota* 83.

<sup>87</sup> Bilić, A. (2017). 35 Years of CISG - Present Experiences and Future Challenges, National Report: Russia. U: Sikirić, H., Jakšić, T. & Bilić, A. *International Conference 35 Years of CISG: Present Experiences and Future Challenges*. Zagreb: University of Zagreb. 388.

<sup>88</sup> United Nations Commission on International Trade Law (UNCITRAL). *Technical Assistance to Law Reform*. Retrieved from <https://uncitral.un.org/en/TA/technical-assistance-law-reform>, 11 April 2021.

<sup>89</sup> Castellani L. G. (2009). *Promoting the Adoption of the United Nations Convention on Contracts for the International Sale of Goods (CISG)*.



UN languages.<sup>90</sup> Apart from that, UNCITRAL also publishes UNCITRAL Digest of Case Law which presents “selected information on the interpretation of the Convention in a clear, concise and objective manner”.<sup>91</sup>

Furthermore, case law, scholarly commentaries as well as other developments regarding the CISG are regularly reported by different academic institutions from all over the world. Apart from the CLOUT database, such reports are collected by other independent network of databases such as the CISG Database of the Institute of International Commercial Law in Pace Law School, UNILEX, the CISG database of the Faculty of Law at the University of Basel and various other national legal databases. All of them contribute to the promotion of the uniform application of the Convention.

Establishing the Willem C. Vis International Commercial Arbitration Moot (Vis Moot) competition has been one of the most successful initiatives to raise awareness about the Convention. The moot problem is always based on an international sale of goods dispute and governed by the CISG. Currently, more than 300 law schools from around the globe participate in the competition. This astonishing success of Vis Moot has developed a great interest in the CISG among thousands of law students who, upon graduation, can enter the ranks of legal practitioners with previous knowledge and practical experience of the CISG.

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<sup>90</sup> United Nations Commission on International Trade Law (UNCITRAL). *CLOUT*. Retrieved from <https://www.uncitral.org/clout/index.jsp#legislativeText>, 11 April 2021.

<sup>91</sup> United Nations Commission on International Trade Law (UNCITRAL). *Digests*. Retrieved from [https://uncitral.un.org/en/case\\_law/digests](https://uncitral.un.org/en/case_law/digests), 11 April 2021.

## 2. THE SITUATION IN UZBEKISTAN WITH REGARDS TO THE CISG

### 2.1. Possible Reasons for the Lack of the Case Law in Uzbekistan

As mentioned earlier,<sup>92</sup> the absence of the CISG case law from Uzbekistan is a perplexing situation because (i) it has been part of Uzbekistan's law for more than two decades,<sup>93</sup> and (ii) its main trading partners are the CISG member states and there is an important amount of the CISG case law produced in those countries.<sup>94</sup> There might be various reasons for the lack of court practice applying the CISG. A handful of research has been conducted in the past to reveal the hindrances against the usage of the Convention in the US and Europe.<sup>95</sup> However, according to knowledge of this work's author, no similar studies exist about the situation in Uzbekistan. Considering the importance of uniformity of rules in the development of international trade and increased importance of foreign trade in Uzbekistan in the context of recent developments,<sup>96</sup> it is useful to inquire into the reasons for the continuous non-application of the Convention in this country. For this purpose, the study will analyze various hypotheses that may explain this phenomenon. The list of hypotheses is not exhaustive and therefore, other reasons than those which will be discussed here may exist.

#### A. Little Importance of International Trade in Uzbekistan

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<sup>92</sup> *Supra* Introduction.

<sup>93</sup> Decree 294-I of the Parliament of Uzbekistan, *supra nota* 19.

<sup>94</sup> Pace Database, *supra nota* 21.

<sup>95</sup> See Ziegel J. (2005), *supra nota* 16; Gordon M. W. (1998), *supra nota* 16; Fitzgerald P. L. (2008), *supra nota* 16; Koehler M. F. (2006). Survey Regarding the Relevance of the United Nations Convention for the International Sale of Goods (CISG) in Legal Practice and the Exclusion of Its Application. *Pace Law School Institute of International Commercial Law*. Retrieved from <https://198.105.44.141/cisg/biblio/koehler.html>, 30 April 2021; Dodge W.S. (2000). Teaching the CISG in Contracts. *Journal of Legal Education*, 50. 72-94; Coyle, J.F. (2016). The role of the CISG in U.S. contract practice: An empirical study. *University of Pennsylvania Journal of International Law*, 38(1); Clayton, P. G., Steven D. W. (2017). Judicial refusal to apply treaty law: domestic law limitations on the CISG's application. *Uniform Law Review*, 22(2). 452-491;

<sup>96</sup> *Supra* Introduction.

Limited knowledge in law and economics is sufficient to predict that companies in countries where foreign trade indicators are lower than their GDP are likely to enter into fewer international contracts and therefore, generating fewer cross-border legal disputes. Although Uzbekistan's foreign trade indicators are not as high as those of developed countries, the proposition that the lack of international trade is the reason behind the absence of the CISG case law in Uzbekistan does not seem convincing. According to the data from the World Trade Organization (WTO), Uzbekistan's merchandise exports in 2019 reached little more than US\$14 billion, whereas imports amounted to US\$21.8 billion.<sup>97</sup> When combined, these indicators constitute approximately 61% of the GDP of Uzbekistan in 2019.<sup>98</sup> Moreover, this hypothesis seems even less convincing when we remember the fact that majority of trading partners of Uzbekistan (e.g. the Russian Federation, China, Turkey, Switzerland, etc.)<sup>99</sup> are also Contracting States to the CISG.<sup>100</sup> Thus, disputes arising from contracts on the sale of goods between an Uzbek company and a party from any of these countries are subject to the CISG, unless parties agree otherwise.<sup>101</sup>

#### *B. Cross-Border Transactions Do Not Generate Any Disputes*

Another hypothesis with regards to the lack of the CISG case law in Uzbekistan is that transactions that fall within the scope of application of the CISG exist in Uzbekistan, but (i) those transactions do not generate any legal disputes or, (ii) all disputes are resolved amicably.<sup>102</sup> However, it is highly unlikely that zero out of hundreds and thousands of contracts in which the Convention is applicable results in legal disputes. For example, such legal disputes regularly take place, not only in other countries, but also in Uzbekistan when both parties are local companies and when applicable law is Uzbekistan's Civil Code.<sup>103</sup> Moreover, there is no evidence to prove that Uzbek companies are less prone to bringing a lawsuit than their counterparts in other countries. Therefore, this hypothesis does not seem plausible either.

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<sup>97</sup> World Trade Organization. *Uzbekistan*. Retrieved from [https://www.wto.org/english/res\\_e/statist\\_e/daily\\_update\\_e/trade\\_profiles/UZ\\_e.pdf](https://www.wto.org/english/res_e/statist_e/daily_update_e/trade_profiles/UZ_e.pdf), 11 April 2021.

<sup>98</sup> The World Bank. World Development Indicators. Retrieved from <https://datacatalog.worldbank.org/dataset/world-development-indicators>, 12 May, 2021.

<sup>99</sup> World Trade Organization, *supra nota* 97.

<sup>100</sup> Table of Contracting States, *supra nota* 8.

<sup>101</sup> CISG, Art. 1(1)(a).

<sup>102</sup> Schroeter U. G. (2014). *Empirical Evidence of Courts' and Counsels' Approach to the CISG (with Some Remarks on Professional Liability)*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 649-668.

<sup>103</sup> National database of case law mentions many such cases resolved between parties from Uzbekistan. See Supreme Court of Uzbekistan, *supra nota* 20.

### C. Lack of Awareness of the CISG by Companies and Lawyers

The next hypothesis is that companies and their legal counsels in Uzbekistan are ignorant of the existence of the Convention and therefore, do not indicate the CISG as the governing law of their cross-border transactions. However, this is unlikely to be the case since (i) the CISG has been part of Uzbekistan's law for more than 20 years leaving enough time to learn about it and (ii) a significant number of companies in Uzbekistan that engage in cross-border trade are represented by highly qualified lawyers. However, even if we assume, for the sake of the argument, that this is the case, it still does not explain the non-application of the CISG by courts since (a) the CISG is applicable law by default between parties when they have their places of business in the CISG member states,<sup>104</sup> and (b) choosing "Uzbekistan's laws" as the governing law in contracts does not exclude the application of the CISG.<sup>105</sup> Thus, this hypothesis does not seem convincing either.

### D. The CISG Is the Governing Law but Courts and Arbitrators Ignore It

According to this hypothesis, legal disputes which fall within the scope of the CISG do exist in Uzbekistan, but state judges and arbitrators that decide these cases prefer to use the Civil Code of Uzbekistan as applicable law.<sup>106</sup>

One possible explanation why this might be the case was partly mentioned in the previous subsection. Due to the lack of awareness of the Convention, lawyers may fail to base their claims on the CISG when filing a civil lawsuit. However, this does not excuse the ignorance of the CISG by courts. According to the Decree 294-I of the Parliament of Uzbekistan from 1996, the Convention has become a part of Uzbekistan's laws and therefore, the CISG must act as a governing law of disputes arising from the cross-border sale of goods in Uzbekistan. So far, there

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<sup>104</sup> CISG, *supra nota* 11, § 1(1)(a).

<sup>105</sup> United States, Court of Appeals for the Fifth Circuit, *BP Oil International Ltd. v. Empresa Estatal Petróleos de Ecuador*, 332 F.3d 333 (2003). Retrieved from <https://law.justia.com/cases/federal/appellate-courts/F3/332/333/550400/>, 11 April 2021. Court of Appeals decides that by indicating Ecuadorian law as the governing law, parties did not exclude the application of the CISG since the Convention is incorporated into the legal systems of Contracting States; See also, Davies M., Snyder D. V. (2014). *International Transactions in Goods, Global Sales in Comparative Context*. New York: Oxford University Press. 64.

<sup>106</sup> According to Ferrante, this was the case in Italy after the CISG was ratified in this country in 1988. Ferrante E. (2014). *Italy*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 399-413, 401.

is at least one reported case when a court disregarded the CISG due to the failure of parties to mention the Convention in their briefs.<sup>107</sup> According to Professor Ulrich G. Schroeter, such cases are rare in the international practice since most of the courts do not omit the application of the CISG even when parties do not explicitly refer to it in their briefs.<sup>108</sup> However, assessing the extent to which this can be the case in Uzbekistan requires further empirical studies.

Another possible reason is that both parties and courts intentionally disregard the CISG and instead, decide to apply their domestic law. In this way, they can avoid spending time on learning about the Convention and reading its case law which is not available in the Uzbek language. Such practice of applying domestic law instead of the CISG is called the “homeward trend”.<sup>109</sup> Common law countries such as Australia,<sup>110</sup> New Zealand<sup>111</sup> and the USA<sup>112</sup> are often characterized by the homeward trend as displayed by their legal practitioners. Although the exact number of those instances where the CISG was not applied despite being the applicable law does not exist, “it is likely to be in the thousands.”<sup>113</sup>

There are also examples of rather anecdotal cases when courts neglected the CISG in cases where it should have been the applicable law. In a survey conducted in US, a judge claimed that he refused to apply the CISG in one case due to his general opposition to global laws.<sup>114</sup> In a similar case, a German judge argued that the CISG was not in force in the country,<sup>115</sup> whereas another judge from Germany, in response to the lawyer of one of the parties who argued in favor

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<sup>107</sup> Chile, Supreme Court. (2008). *Jorge Plaza Oviedo v. Sociedad Agrícola Sector Limitada*. Retrieved from <https://iicl.law.pace.edu/cisg/case/chile-september-22-2008-corte-suprema-jorge-plaza-oviedo-v-sociedad-agricola-sacor>, 22 April 2021.

<sup>108</sup> Schroeter U. G. (2014). *Empirical Evidence of Courts' and Counsels' Approach to the CISG (with Some Remarks on Professional Liability)*. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 649-668.

<sup>109</sup> Honnold J. O. (1989), *supra nota* 59.

<sup>110</sup> Spagnolo L. (2009). The Last Outpost: An Australian Pre-History of the Convention on Contracts for the International Sale of Goods (CISG). *Mel. J. Int'l L.* 10. 1; Zeller B. (2000). The UN-Convention on Contracts for the International Sale of Goods (CISG): A Leap Forward Towards Unified International Sales Laws. *Pace Int'l. Rev.* 12. 79, 80;

<sup>111</sup> Butler P. (2008). New Zealand. In Ferrari F. (Ed.). *The CISG and Its Impact on National Legal Systems*. Munich: Sellier. 251, 252.

<sup>112</sup> Levasseur A. A. (2008). United States of America. In Ferrari F. (Ed.). *The CISG and Its Impact on National Legal Systems*. Munich: Sellier. 313, 314.

<sup>113</sup> Schwenger I. (2014), *supra nota* 15, 104.

<sup>114</sup> Gordon M. W. (1998), *supra nota* 16.

<sup>115</sup> Schroeter U. G. (2014), *supra nota* 108.

of the application of the CISG, told that he was not familiar with the Convention and suggested both parties to settle the case.<sup>116</sup>

The hypothesis that courts and arbitrators disregard the application of the Convention in cases where it must act as the governing law seems to be one of the reasons for the absence of the CISG case law in Uzbekistan. However, further empirical research is needed in order to duly prove this hypothesis.

#### *E. Parties Opt Out of the CISG*

Parties of a contract for the international sale of goods may consider that there is another, more suitable law to govern their transaction than the CISG and therefore, opt out of it. Previous empirical studies have shown that such practice is a frequent occurrence in the international trade of goods.<sup>117</sup> Various surveys conducted in other Contracting States reveal that a substantial number of lawyers exclude the CISG from the contracts that they draft for their clients.<sup>118</sup> This may happen for a variety of reasons. According to CISG experts, some practicing lawyers consider the CISG to be too unfamiliar and considerably different from their domestic laws and thus, advise their clients to opt out of it in favor of a more familiar law.<sup>119</sup> In some other circumstances, attorneys may exclude the application of the Convention because they consider their domestic law to be of higher quality.<sup>120</sup> There is also an opinion that the CISG lacks legal certainty since there is no single court that unifies its case law.<sup>121</sup>

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<sup>116</sup> Ibid.

<sup>117</sup> Adar Y. (2014). Israel. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 518-538; Butler P. (2014). New Zealand. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 539-547; Ferrante E. (2014), *supra nota* 106, 403; Widmer-Luchinger C. (2014). Switzerland. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 466-485.

<sup>118</sup> Davies M., Snyder D. V. (2014), *supra nota* 105, 41; Kiene S. (2014), *supra nota* 6, 377; Koehler M. F. (2006), *supra nota* 95.; Schwenzler I., Kee C. (2011). Global Sales Law – Theory and Practice. In Schwenzler I., Spagnolo L. (Eds.). *Towards Uniformity: the 2nd Annual MAA Schlechtriem CISG Conference*. The Hague: Eleven International Publishing. 155-164.

<sup>119</sup> Andersen C. A. (2014), *supra nota* 4.

<sup>120</sup> Cohen K. S. (2005). Achieving a Uniform Law Governing International Sales: Conforming the Damages Provisions of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Commercial Law. *University of Pennsylvania Journal of International Economic Law*, 26 (3). 601-622, 610;

<sup>121</sup> Schwenzler I. (2014), *supra nota* 15, 115.; Ly de F. (2003). The Relevance of the Vienna Convention for International Sales Contracts. Should We Stop Contracting it Out? *Business Law International*, 2003 (3). 241-249.

One must note that it is less likely that parties to the international sale of goods would prefer the same domestic law instead of a more neutral international instrument. However, it is often enough for a party with a stronger bargaining position to decide to exclude the CISG in favor of its domestic law. Considering that the main trading partners of Uzbekistan<sup>122</sup> are countries such as China, Russia and South Korea whose companies are often bigger than their Uzbek counterparts, it is more likely that they have a stronger say when it comes to choosing applicable law. Therefore, they may opt in for the law which is more familiar to them.

Nevertheless, the possibility of parties excluding the CISG from their contracts should not be overrated. In cases when one of the parties to a contract fails to convince the other party to apply a different law, the Convention remains applicable.<sup>123</sup> Through his empirical research, Professor Russell Korobkin demonstrated that parties often use default rules to govern their contracts rather than spending time and money to negotiate and draft a customized governing law clause.<sup>124</sup> Apart from that, a number of cross-border sale of goods contracts are concluded over phone calls, web chats and emails without the help of lawyers. It is highly unlikely, in such circumstances, that parties would waste time negotiating if they should exclude the application of an international convention in favor of some domestic law. If this were to happen, it would create extra transaction costs for both parties.

According to Schwenger and Kee, existing empirical studies which suggest that companies and their lawyers often prefer to opt out of the CISG should be taken with a grain of salt since the samples used to conduct those surveys are too small to be conclusive.<sup>125</sup> Moreover, many of those empirical studies have been conducted years ago. There is a possibility that the outcome of those surveys would have been different if they were conducted today since (i) the new generation of lawyers might be more open to using international instruments and less attached to their domestic laws, and (ii) those who were not familiar with the CISG years ago have had enough time to get to know about it. Although the practice of opting out of the CISG might

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<sup>122</sup> OEC, *supra nota* 22.

<sup>123</sup> The Convention acts as an applicable law by default when (i) the parties' places of business are located in Contracting States, or when (ii) "the rules of international private law lead to the application of the law of a Contracting state". See CISG, *supra nota* 11, 12, 13.

<sup>124</sup> Korobkin R. (1998). The Status Quo Bias and Contract Default Rules. *Cornell Law Review*, 83. 608-687, 611-612.

<sup>125</sup> Schwenger I., Kee C. (2011), *supra nota* 118.

partially be the reason for the lack of the CISG case law in Uzbekistan, only empirical studies (e.g. surveys and interviews) can verify this hypothesis properly.

*F. Disputes Arising from Cross-Border Transactions Are Resolved Outside of Uzbekistan*

As mentioned earlier,<sup>126</sup> there are two cases known so far which include parties from Uzbekistan and both of those cases were resolved in the Russian Federation.<sup>127</sup> Nevertheless, the existence of two such cases is not sufficient to support this hypothesis and therefore, other possible explanations should be considered. One of the plausible explanations, in this regard, is that many international contracts include arbitration clause<sup>128</sup> and Uzbekistan is not a common venue for international arbitral tribunals. The legislation establishing the basis for arbitral proceedings is relatively recent in Uzbekistan. It adopted the “Law on Arbitration Courts” in 2006. Therefore, the experience of Uzbek courts in such matters is limited. Also, Uzbek court decisions are rarely disclosed publicly. All of these factors contribute to the inconsistency and uncertainty regarding their practice on issues related to arbitration. Therefore, parties might prefer to choose the venue for dispute resolution outside of Uzbekistan.

However, a puzzle remains unsolved: a search in the CISG databases returns only two cases which were resolved outside of Uzbekistan. This might be explained by the confidentiality rules of many international arbitral tribunals. Janssen and Spilker consider that the actual number of arbitral awards on the Convention is significantly higher than what has been reported.<sup>129</sup> In the same vein, Jan Ramberg states that most of the arbitral awards regarding the CISG are not disclosed.<sup>130</sup> Mistelis suggested a decade ago that all reported arbitral awards constituted less than 5% of the actual number of awards and therefore, he estimated that the number of arbitral awards where the CISG was the governing law could be between 4.250 and 5.000.<sup>131</sup>

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<sup>126</sup> *Supra* Introduction.

<sup>127</sup> Pace Database, *supra nota* 21.

<sup>128</sup> Ferrante E. (2014), *supra nota* 106, 405; Schwenzler I. (2014), *supra nota* 15, 115; Janssen A., Spilker M. (2014). The CISG and International Arbitration. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 135-153.

<sup>129</sup> Janssen A., Spilker M. (2014), *supra nota* 128.

<sup>130</sup> Ramberg J. (2014). The Nordic Countries. In DiMatteo L. A. (Ed.). *International Sales Law, A Global Challenge*. New York: Cambridge University Press. 414-418.

<sup>131</sup> Mistelis L. A. (2009). CISG and Arbitration. In Janssen A., Meyer O. (Eds.). *CISG Methodology*. Munich: Sellier European Law Publishers. 375-395.



Along with other hypotheses suggested earlier, this hypothesis might be one of the contributing factors to the lack of the case law on the CISG in Uzbekistan. Nevertheless, since the explanations offered to prove this hypothesis are theoretical, it requires empirical verification.

## **2.2. Ideas for Future Empirical Studies**

This study attempts to shed light on the reasons for the lack of the CISG case law in Uzbekistan from a theoretical perspective. To uncover the actual role of the Convention in the country on a more comprehensive level, it is preferable to conduct empirical studies.

Such studies have already been conducted in some other Contracting States and have contributed to the understanding of the role of the CISG significantly. One of those studies was done by Gordon in 1998.<sup>132</sup> It aimed to assess the role of the CISG in Florida's legal education and practice. Surveys were sent to university professors and legal practitioners to assess their level of familiarity with the CISG. Based on the responses, he concluded that the Convention was not being taught in most law schools and that many practicing lawyers and judges were not sufficiently familiar with it.<sup>133</sup> In 2008, Fitzgerald, in a similar study, concluded that despite some rise in the awareness of the CISG, the Convention continues to be underutilized.<sup>134</sup> He also attributed it to the lack of familiarity of legal practitioners with this legal instrument.<sup>135</sup> Overall, the commonly used research methodology in most empirical studies on the role of the CISG was sending out surveys to legal practitioners and law school professors to investigate their level of awareness on the Convention. Based on analysis of those surveys, researchers attempted to explain the scarcity of the CISG case law.

While the above-mentioned studies might partially explain the lack of the CISG case law, one could argue that to get a better understanding of the issue, it is also important to investigate contracting practices of companies in Uzbekistan that engage in cross-border sale of goods. Firstly, it is necessary to narrow down and identify the contexts in which the CISG might act as the governing law. This can be done by (i) analyzing foreign trade statistics of Uzbekistan in order to examine the type of commonly traded goods, main trading partners, the volume of

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<sup>132</sup> Gordon M. W. (1998), *supra nota* 16.

<sup>133</sup> *Ibid.*

<sup>134</sup> Fitzgerald P. L. (2008), *supra nota* 16.

<sup>135</sup> *Ibid.*

traded goods and the size of companies that usually engage in cross-border sales, (ii) learning about other bilateral and multilateral agreements governing the sale of goods in the region, and (iii) examining commonly used standard form contracts and (iv) the contexts where lawyers are involved in negotiating over the governing law. Having narrowed down the scope, the researcher should start reaching out to targeted industries, enterprises and individuals in order to investigate patterns in the contract negotiations of parties. Particular attention should be paid to the behavioral patterns when negotiating over the governing law. It is important to understand (i) how often such negotiations take place, (ii) factors that decide the outcome of such negotiations, and (iii) reasons behind utilizing a particular manner of negotiation. By analyzing all the gathered data on contracting practices of Uzbek companies, the study can reveal the actual significance of the CISG in Uzbekistan.

Such study, if conducted, will be the first one not only in Uzbekistan but also in the world. The results of the proposed empirical research would be particularly beneficial not only for Uzbekistan, but also for other post-Soviet countries since they are the main trading partners of Uzbekistan. As one country's attitude with regards to the usage of CISG influences the attitude of its trading partners, the research will be conducive to the promotion of international trade in the post-Soviet area.

## CONCLUSION

The movement towards the unification of international trade laws has been a continuous process. The adoption of the CISG has certainly been an important milestone in this respect. While it is undeniable that it has become a huge success in terms of states' participation, its actual role in practice is still debatable.

This study has two main contributions to the existing literature on the CISG. First, it brings attention to the issue of the lack of the CISG case law in Uzbekistan. According to the documentation reviewed in this study, this thesis is the first attempt to address this issue. The second main contribution has been to examine possible reasons behind this phenomenon. Some of these reasons are not unique to Uzbekistan (e.g. using alternative methods of dispute resolution without resorting to court litigation or arbitration), while some others are not satisfactory (e.g. little importance of international trade, cross-border transactions do not generate any disputes, lack of awareness of the CISG by companies and lawyers). Other and more plausible explanations were discussed such as (a) legal disputes which fall within the scope of the CISG do exist in Uzbekistan, but state judges and arbitrators that decide these cases claim that the Civil Code of Uzbekistan is the applicable law, (b) parties of a contract for the international sale of goods may consider that there is another, more suitable law to govern their transaction than the CISG and therefore, opt out of it, and (c) disputes arising from cross-border transactions which fall within the scope of the CISG are resolved outside of Uzbekistan. This study also acknowledges that other reasons which were not mentioned here might exist.

The absence of the CISG case law in Uzbekistan is daunting to the achievement of the Convention's primary goal – advancement of international trade through the unification of international sales law. The analyses provided in this thesis contribute to the understanding of factors that may hinder the application of the CISG in Uzbekistan. However, due to its theoretical nature, discussions of possible reasons for the lack of the case law cannot be conclusive. Therefore, the study proposes guidelines for potential empirical research. The

research, in the form proposed by the author of this paper, can uncover the actual role of the Convention and become a solid touchstone against which other states with similar disinclination to apply the CISG could be tested.

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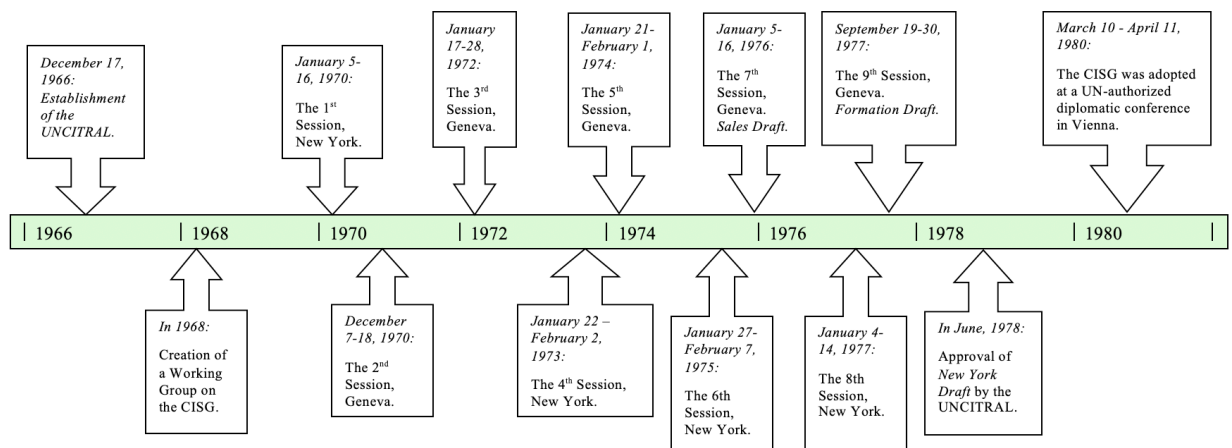
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## APPENDICES

### Appendix 1. Timeline of Different Phases of Development of the CISG



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