THE NEW DIMENSIONS OF INTERNATIONAL COMMERCIAL TRANSACTIONS: THE CISG IS A "FRIEND" TO SERVICES

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ABSTRACT

The CISG was created as an instrument to harmonize "private trade law". While the scope of the Convention was traditionally directed to sales of goods, post-CISG trade relationships have profoundly evolved. Nowadays, international business covers a wide array of items (apart from traditional trade in goods, all trade in services, intellectual property); new types of contracts have emerged which contain complex obligations (such as collaboration agreements, franchising, R&D contracts); multilateral international treaties cover issues of trade, services, intellectual property. Hence, international trade nowadays is not only about the sales of goods but also covers services. These developments raise the problem of the applicability of the CISG to international trade contracts due to the mentioned background. The issue is whether and to what extent the Convention can be applied to other, not "pure" sales of goods, contracts. In such circumstances, it is crucial to establish whether the CISG can still promote harmonization and integration in international private law.

To ensure the viability of the CISG to follow its initial aim, the core question of the present thesis is to examine the possibility and ways of applying the CISG to service transactions. Firstly, directions of economy transformation and its effect on international trade law are discussed. Further, it is argued that there are no groundbreaking differences between service and sale contracts. Based on the interpretation and *travaux préparatoires* of the text of the Convention it describes the initial aim of the CISG and reasons why services were excluded from its scope. This thesis argues that the CISG can and should govern service transactions. In addition to that, the need and possibility of an update of the Convention are discussed.

INTRODUCTION

The United Nations Convention on Contracts for the International Sale of Goods (*hereinafter the CISG, the Convention, the Treaty*) is a crucial historical development and accomplishment for international private trade law unification. This Convention entered into force in 1988 and became the first international tool widely used by private parties as it governs private transactions and is invoked by parties in courts. Nowadays, there are 94 Contracting States[1] what makes it able to cover a significant number of sales contracts. Moreover, parties from non-contracting States are often opting in the CISG for their contracts, which again confirms the importance and success of the Convention. It has affected the domestic law of many countries and thus contributed to the harmonization of trade law. Such triumph can be reasoned by the fact that it answered the demand for uniform law pursuant to an increasing number of international trade relationships. The business needed a proper mechanism to govern their contracts providing legal certainty. For the time of adopting it, the CISG was a culmination of a long history of domestic and international trade practice as it absorbed the best with respect to every jurisdiction.

However, the success of the CISG can be fragile. Like any other law, it ages. For example, in Art. 13 of the CISG it is stated that "writing" includes telegram and telex[2] and no reference to e-mail. Indeed, in most cases, omission can be remedied by jurisprudence or interpretation, but sometimes the Convention presents direct limits that cannot be overruled. One of such limits is discussed in the present thesis, namely the scope of application. According to Art. 1 CISG,

[1] 'CISG: Table of Contracting States' (Institute of International Commercial Law, 17 July 2013) <https://iicl.law.pace.edu/cisg/page/cisg-table-contracting-states> accessed 5 April 2021.
[2] United Nations Convention on Contracts for the International Sale of Goods (adopted 11 April 1980 UN Doc. A/CONF. 97/18, Annex I, reprinted in 19 LL.M. 668) [hereinafter CISG]. available at < https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf > Art 13, accessed 5 April 2021.

"this Convention applies to contracts of sale of goods"[3]. At the same time, pursuant to the preamble, it is aimed to develop international trade[4], which includes not only sales of goods. These provisions co-existed perfectly, and the Convention has been doing its job for a long time. Nevertheless, time changes everything. At the time of drafting, which began in 1968, trade was mainly about the sale of goods and goods were only "tangible and movable", by 2021 it has been changed. According to the World Bank's data in 2018, the service sector accounted for almost 65% of the world GDP[5]. Contracts became more complex and often include "non-sales-of-goods components" such as licensing and other services. Moreover, the boundaries between goods and services are fading[6]. The major industries now relate to the media, internet, technology etc. Even traditional goods do not meet the initial requirements of goods under the CISG as turns into a "virtual" format. A good example of such "transformation" is contracts related to the online sale of software, where there is no "traditional" good and transaction presents multiple components such as transfer of property, licensing, providing additional assistance, etc.

All of these developments stress the need to adjust the legal framework with respect to trade in services. The key question, which this thesis seeks to explore, is whether the CISG can and should apply to business transactions that do not qualify as sales of goods. There are already indicators that accept the importance of services in international trade, including the General Agreement on Trade in Services[7] and EU Services Directive[8]. In its current form, the CISG itself can cover the service components of sales contracts. Such possibility can be found in Art.

[3] CISG (n 2), Art 1.
[4] Ibid, Preamble.
[5] The world bank, 'Services, value added (% of GDP)' (The World Bank, 3 March 2000) <https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS> accessed 22 March 2021.
[6] See Damien Broussolle, 'Service, Trade in Services and Trade of Services Industries' (2014) Journal of World Trade 48, 31.
[7] See General Agreement on Trade in Services (adopted 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 UNTS 183, 33 ILM 1167).
[8] See Directive on services in the internal market [2006] OJ 2 376/36.

3 CISG, according to which the Convention governs a contract with a service component provided that such component is not "preponderant"[9]. Would it be a problem to extend the scope of the CISG to service contracts at large, thus further promoting international trade? The raised issue is not comprehensively addressed in academic literature. As the main contributors in this field, Professor Ingeborg Schwenzer, Leandro Tripodi, Franco Ferrari[10] can be named. However, only the first two did research directly related to the present issue, while others just touched some aspects thereof.

In light of the above, this thesis inquires into the possibility and methods of applying the CISG to service transactions. The argument proceeds as follows. The first chapter of the thesis answer the question of why we need to regulate sales and services contracts under the same treaty. A close link between two types of contracts is explored through analysis of tendencies in economy and business fields regarding their role and a brief overview of domestic legal treatment. A general overview of the CISG as a text and as a legal phenomenon confirm that there are grounds to extend its scope to services. Moreover, the first chapter discusses the reasons behind the initial exclusion of service contracts from the scope of the Convention is conducted. The second chapter directly addresses the application of the Convention to services. Firstly, it describes the existing mechanism for extending the scope of the CISG to mix contracts under Article 3(2) CISG and the problems that mechanism faces. Related to the mixed contract the issue of separability is also discussed. Generally, it is found undesirable to divide the contract and apply different rules to separated parts. Then, the chapter "tests" whether the CISG is practically able to govern services contracts in the current variant. Finally, the thesis proposes

[9] CISG (n 2), Art 3(2).
[10] See Ingeborg Schwenzer, Julian Ranetunge and Fernando Tafur, 'Service Contracts and the CISG' (2019) 10 Indian J. int'l econ.l. 172; Leandro Tripodi, Towards a New CISG (Brill | Nijhoff 2015); Franko Ferrari and Marco Torsello, International Sales Law--CISG in a Nutshell (Second edition, West Academic Publishing 2018).

that nevertheless the CISG is capable to govern services, it is more reasonable to make changes in the Convention reflecting the faces challenges.

To achieve the thesis's set objectives, provisions of the CISG and related case law are analyzed and interpreted with reference to the drafting history and object and purpose of the Convention. As the present work's interest is highly affected by the surrounding circumstances such as changes in business practice, the aim of the CISG, acceptance of different models of regulation, related considerations were also taken into account. In this regard, the present thesis applies cumulatively doctrinal analytical methodology and socio-legal approach, where the first one prevails. Secondary sources, such as books, articles and commentaries, were also used to support the analysis.

CHAPTER ONE: WHY THE CISG SHOULD COVER SERVICES

1.1. Sales v services: economy and law

This thesis's genesis was an interest in how the CISG can address the changing realm of international private trade law. This first subchapter will show why sales and services transactions should be regulated by a single treaty mechanism, namely the CISG itself. This will be done by exploring the ongoing transformation of business models and economy, as well as arguing that there is no significant difference between sales and services from a legal perspective.

Economy has been evaluating step by step. Initially based on raw materials, it turned into manufacturing, and now it is changing into a service economy. It is not the aim of this paper to present the reasons for such changes, but merely to describe this process and its effect on the place of services in the context of global business.

Manufacturing economy presents a simple business model: manufactures produce goods and transfer it to buyer for the agreed price while the last one use it independently. However, nowadays, from simple one-pay transaction for transfer of property business came to complex contracts that often include "non-sales-of-goods components" such as licensing and other services. It is becoming uncommon to have "pure sale" contracts and the value of services is increasing. According to the World Bank's data in 2018, the service sector accounted for almost 65% of the world GDP[11]. The changing ratio between sales and services is true both for

[11] The world bank (n 5).

developed and developing countries. For example, in the United Kingdom, services part in economy in 2019 was 79%[12] and it accounted for almost 50% in the Nigerian economy[13].

The world faces a new megatrend – servitization[14]. Servitization is a process that creates value by adding services to products, ranging from renting and maintaining expensive capital goods to producing smart objects[15]. In other words, this concept presents a new realm where "sellers" provide "buyers" not with the simple good but with the full package of goods and needed and integrated services. This is a logical outcome of globalization, competition, digitalization and the turn to sustainability that will only deepen and broaden in the future.

There are three main types of servitization models:

(a) Product oriented, where the title to the goods is transferred to the buyer with additional services. For example, a car is sold with included maintenance service.

(b) Usage oriented, where the title to the product remains with the "seller", but the rights to use are sold to the buyer[16]. A good example is car sharing.

(c) So-called advanced services, with a stress to the result, where the provider (the manufacturer) engages in in-depth customer interaction and extensive capability integration, and through a co-creation process delivers functional values to that customer[17]. There is also usually no full transfer of property rights. The most known examples are business models of

[12] Lorna Booth, 'Components of GDP: Key Economic Indicators' (UK Parliament, 12 May 2021) <https://commonslibrary.parliament.uk/research-briefings/sn02787/> accessed 15 May 2021.
[13] Aaron O'Neill, 'Nigeria: Distribution of gross domestic product (GDP) across economic sectors from 2009 to 2019' (Statista, 31 March 2021) <https://www.statista.com/statistics/382311/nigeria-gdp-distribution-across-economic-sectors/> accessed 15 May 2021.
[14] Janja Hojnik, 'The Servitization of Industry: EU Law Implications and Challenges' (2016) 53 Common Market Law Review 1575, 3.
[15] Ibid, 1.
[16] N Gluhova' The Servicification and servitization of manufacturing: an analysis of global trends' (2020) Minsk, Institut Bisnessa BGU 31, 35.
[17] Ali Z. Bigdeli, 'What Do We (Really) Mean by Advanced Services? (LinkedIn, 30 September 2016) <https://www.linkedin.com/pulse/what-do-we-really-mean-advanced-services-ali-z-bigdeli/> accessed 27 May 2021.

Rolls-Royce and Xerox. Power-by-the-Hour by Rolls-Royce is a rent of airplane instead of buying it, another invention is TotalCare programme – using special sensors that monitoring engines' conditions all time. Xerox provides photocopy services within its cost-per-print model instead of selling the whole machine. All these companies have thus succeeded in converting from selling goods to integrated solutions[18].

Another ongoing process is productization that describes an evolution of the services component to include a product[19]. It is defined as "the process of analyzing a need, defining and combining suitable elements, tangible and intangible, into a product-like object, which is standardized, repeatable and comprehendible"[20]. A basic example is a book with a tutorial that is an educational service in the form of a book.

The result of new trends is a merger of services and sales into product-service system (PSS). The boundaries between goods and services are fading[21]. When we buy a new iPhone, do we really buy tangible good or our interest is mostly about software inside it and related services? Another example is internet of things. Smart products are tangible things which main purpose is intangible services starting from voice control of other things and ending with autonomous driving. Nowadays goods and services "are two sides of the same coin" and "you cannot choose the one or the other… you must do both" [22].

Described changes in business models also affect contracts' structure. Modern contracts cover a variety of components of different nature that are highly interrelated. Traditional sales

[18] Charlotta Windahl and Nicolette Lakemond, "Integrated solutions from a service-centered perspective: Applicability and limitations in the capital goods industry", 39 Industrial Marketing Management (2010), 1278 < https://www.sciencedirect.com/science/article/pii/S0019850110000362> accessed 15 May 2021.
[19] Janja Hojnik (n 14), 4.
[20] Janne Harkonen, Harri Haapasalo and Kai Hanninen, 'Productization: A Review and Research Agenda' (2015) 164 International Journal of Production Economics 65 <https://www.sciencedirect.com/science/article/pii/S0925527315000584> accessed 16 May 2021.
[21] See Damien Broussolle (n 6), 31.
[22] Elżbieta Bien'kowska, "Reindustrialisation of Europe: Industry 4.0 – Innovation, growth and jobs", Forum Europe conference, speech of 23 June 2015 as cited in Janja Hojnik (n 14), 13.

contracts or service contracts are not suitable for the new business models. Some parties still try to structure their relations by relying on a number of standard contract forms recognized by the law of contracts, but the majority drafts customized contracts with respect to particular situation. In the latter contracts, rights and obligations related to the sale component and service component are hardly separated. This leads to the uncertainty regarding applicable law, given that traditionally sales and services are governed by different legal provisions. The question then arises: are there actual reasonable grounds for such differentiation? Or legal order offers a possibility to further developing of economy without great obstacles?

Understanding of sale is common to all countries and is followed by the CISG, that is exchange of goods against the price[23]. It is also well described what is a good however such understanding varies from country to country[24]. Sales in goods also usually regulated by the separate chapter of codes, where firstly goes general provision of sales followed by specific regulation of different types of sales contracts.

Contrary to goods, service contracts have an ambiguity in regulation. Usually, there are no "general provisions" regarding services, where the definition shall be given. A commonly used scheme is to have a number of chapters that regulate different types of service transactions. Based on related provisions, the service contract is simply described as a contract where the performer undertakes to provide services at the request of the customer and the customer undertakes to pay for these services[25]. Services can be divided into those that oriented to an outcome, such as repair, or to a process, for example, storage. That presents a wide definition

[23] See for example, Sale of Goods Act 1979, Art. 2(1); Uniform Commercial Code 2002, Art. 2; BGB § 433; Civil Code of Russian Federation, Art. 454(1); Schlechtriem and Schwenzer, Commentary of the UN Convention on the International Sale of Goods (CISG) (Ingeborg Schwenzer, 3rd edn, OUP 2016), 30, para 8.

[24] For example, under the Sale of Goods Act 1979, Art. 61 goods is all personal chattels other than things in action and money, while in the common law there is a notion of that goods should be tangible and movable, see Chadwick L. Williams, 'Not So Good: The Classification of "Smart Goods" Under UCC Article 2' (2018) 34(2) Georgia State University Law Review 453, 455.

[25] Civil Code of Russian Federation, Art. 779 (1); BGB, Title 8; Supply of Goods and Services Act 1982, Art. 12(1).

without clearly stating what services are. At the same, the concept of sale and services are close with the main difference in object: whether it is tangible or not. However, there is already jurisprudence that considers intangible objects and even activities as sales of goods. The ECJ decided in *Commission v. France* that "printing work cannot be described as a service, since it leads directly to the manufacture of a physical article"[26].

Domestic laws do not provide explicitly reasons for different treatment of services and sales. In an article written by Ingeborg Schwenzer, Julian Ranetunge and Fernando Tafur, two possible arguments were suggested. The first is based on historical circumstances: as sales in goods appeared earlier than trade in services, the relative legal framework also was stipulated earlier and separately, while there was no attempt to harmonize these two fields. However, authors do not see this historical quirk as a plausible reason. Rather, they found such distinction an intentional one as legislators could merge treatment of these contracts but did not. However, exactly why such a choice was made is not clear. The second argument is based on different standards of liability that sales and service transactions entail. While sales obligations are usually lead to the strict liability derived from contracts, services entail negligent or fault-based ones based on tort law. However, such argument also has been found unconvincing as there are examples where services tied with strict liability and vice versa[27]. In other words, there is no sufficient reason to treat differently services and sales.

These considerations notwithstanding, qualifying a contract as a sale of goods or a service transaction still has important repercussion on how that contract is treated. For example, there are differences with regard to liability and remedies[28]. As noted, there are so-called mixed contracts and *sui generis* contracts. This leads courts to face difficulties in understanding the

[26] Case 18/84, Commission v. France, EU:C:1985:175, para 12.
[27] Schwenzer, Ranetunge and Tafur (n 10), 174-175.
[28] Ibid, 181-182.

nature of the contracts. Different approaches exist to resolve this problem: some courts try to separate the contracts and apply different norms, others trying to fit the contract to the existing one, for example by the essence test, and third also apply different provisions from sales or services field but not due to separation of contract but by filling the gaps through analogy[29]. All of mentioned approaches have imperfections and lead to legal uncertainty for the parties. But what is more important, if courts have such a discretion of choosing what law to apply, is it not the real point that both sales and services should be treated by the same rules? In practice, very often services are treated by sales provisions and vice versa.

Moreover, both in common law and in civil law traditions, there is a general contract part that is applicable to every kind of a contract. At the same time, in all legal systems, the main civil legal unit is considered to be a sale contract, and those principles that make up the content of the general part of the law of obligations have developed mainly on the basis of normative material related to the sale and purchase. As provisions of service contracts also governed by general rules on obligations that also shows the possibility of expanding provisions of sales to services. According to a well-established principle of law, like cases should be treated alike unless there is a valid reason to treat them differently. When we are talking about the international uniform law, we are not looking for highly regulating mechanism. We are looking for a general and suitable framework.

In terms of transforming the economy towards service priority and merging services and sales into a single unit, it is reasonable to reconsider legal rules governing these contracts. The close connections between these two types of contracts are also found from a legal perspective. The main difference between sales and services is object, however that is not the case today. While sales are well regulated contract, services have lack of detailed governance. Moreover, courts

[29] Schwenzer, Ranetunge and Tafur (n 10), 176.

applies sales-related provision to service contracts and vice versa. All of mentioned circumstances prove a possibility to govern sales and services by the same treatment.

1.2. Why the CISG as a platform for services

In the present subchapter, the text, context, object and purpose of the CISG and subsequent practice will be explored to justify that this Convention presents the best base to provide regulation of international trade in services.

The role of the CISG shall be considered from two sides: as a legal text and as a legal phenomenon[30]. From the former standpoint, the Convention consists of four parts regarding: its sphere of application and general provisions such as its interpretation; formation of the contract; obligations of parties and damages; final provisions about ratification, reservations etc. The CISG does not govern all matters regarding the sale but the ones that actually can be treated in the uniform matter and is in the high interest of such regulation. Drafters initially narrowed the scope within such limits[31]. In other words, the CISG picked up the most essential and common features of sales. As was stated in the previous subchapter, services and sales are not that differ what makes already exciting and proved provisions suitable for the services. The issue of suitability will be explored in more detail in subchapter 2.2.

The text of the Convention is precisely directed to govern sales contracts. This can be seen from the name of the treaty itself, its scope of application stipulated in Art. 1, and its consistent reference to the parties as "buyer" and "seller". However, Art.3 of the CISG allows to apply the Convention to "mixed" contracts (i.e. contracts that contain both a goods and a services component) provided that the "preponderant" part remains for sales, as well to manufacturing

[30] Tripodi (n 10) 92.
[31] Filip De Ly, 'Sources of International Sales Law: An Eclectic Model' (2005-2006) 25 Journal of Law & Commerce 1, 2-3.

contracts unless the buyer provides a "substantial" part of the materials. The CISG also allows to opt-in for service contracts[32] what means that parties may expand the scope of the Convention to their contract even if it is out of the original scope of the Treaty. For example, when parties are not from Contracting States or the contract is not the about sale. These provisions show that the CISG itself confirms the existence of a close connection between sales in goods and services.

Turning to the Preamble, the second paragraph directly stipulates the aim of the Convention, namely "the development of international trade"[33], while the third paragraph stresses the way how this development is going to be achieved – harmonization and unification[34]. As the preamble presents the intention of the drafters[35] we can conclude that idea of the CISG is something more than only sales.

The drafting history of the CISG took place long before the first notion of this Convention. It is a successor of earlier attempts to unify commercial law, namely the Uniform Law on the Formation of Contracts for the International Sale of Goods and the Uniform Law for the International Sale of Goods. The creation of the CISG was supported by the activity of the United Nations Commission on International Trade Law (*hereinafter UNCITRAL*). In this regard, it is interesting to review this institution's background as it should correspond with the CISG's object. According to the Report of the Secretary General of the UN General Assembly, the field of the Commission's activity relates to the international trade law, while the sale of

[32] Karen A Monroe, 'The CISG: tool or trap for contracts for the sale of goods?' (Lexology, 12th December 2011) <https://www.lexology.com/library/detail.aspx?g=0919f0e3-32a3-4cbe-a571-bd170ae90a44> accessed 5 April 2021; Triângulo Pisos e Painéis Ltda. v. BR-111 Imports & Exports, Inc., 27 September 2010, ICC <https://iicl.law.pace.edu/cisg/case/september-27-2010-triangulo-pisos-e-paineis-ltda-v-br-111-imports-exports-inc> accessed 15 May 2021.
[33] CISG (n 2), Preamble.
[34] Ibid.
[35] Schlechtriem and Schwenzer (n 23), 13 para 3.

goods is considered to be "the first entry on a list of examples containing topics falling within the scope and notion of international trade law"[36].

It is uncontroversial that the promotion of international trade relies on overcoming challenges that affect business transactions, the main challenge being the difference in regulations among different States. Hence, to foster trade the unification and harmonization is needed. The "economic need" is used to establish branches that are suitable for harmonization. The report also presents a hint on how to identify if there is such a "need", precisely "worldwide unification may be desirable and feasible"[37]. All of these considerations inspired the UNCITRAL to serve as negotiating site for the Convention on Contracts for the International Sale of Goods, with a focus on sales of goods as the main priority.

It is seen that the CISG was created to promote international trade law and accent on sales was done pursuant to the existed "economic need" to uniform sales in the first point. In other words, while the text of the CISG was limited in scope, its aim as a normative phenomenon looked forward to more significant achievements. Unifying treatment of the services transactions is the new "economic need" that is "desirable and feasible".

Even though the CISG is already more than 40 years old, it is still very usable due to the flexibility provided by drafters that predicted future change in the economic world. Many articles of the Convention are constructively ambiguous, allowing it to be adjusted to new circumstances. Already, without touching the text, the scope of the CISG is extending by the contribution of academics, jurisprudence, and other means like CISG Advisory Council Opinions[38]. Such tendency proves the desire of the CISG as a phenomenon to broaden its scope.

[36] Tripodi (n 10) 26.
[37] Tripodi (n 10) 28.
[38] For example, the interpretation of the CISG pursuant to the sale of software see Schlechtriem and Schwenzer (n 23) 34 para 18 and Corporate Web Solutions v. Dutch company and Vendorlink B.V., No. C/16/364668 / HA ZA 14-217, Rechtbank Midden, Netherlands, 25 March 2015; see generally CISG Advisory Council Opinion No. 4:

Moreover, some already see the need for textual amendments. A prime example is the Swiss proposal regarding "Possible future work in the area of international contract law", where particular Switzerland calls the UNCITRAL to reflect on several issues not only about sales contract but "possibly other types of transactions"[39].

Numerous right choices regarding this Convention made it popular and acceptable to be used as a reference for reforms at different levels, including domestic legislation. Hence, it already has made a great impact to harmonize law all over the world. To start the same with respect to services would be unreasonable. If there is already a workable and widely recognized mechanism that is, as would be discussed in details later, generally suitable for services, it is correctly to use it as a basis rather than create something new.

At first glance, based solely on a literal interpretation of the CISG as a legal text, it would seem that this instrument only about sales of goods. However, this Convention as a legal phenomenon is willing to broaden its scope and promote international private trade including trade in services. The Convention already accept the possibility to govern services by the means of Art. 3. The same outcome is confirmed by the higher aim of this treaty stated in the preamble and subsequent practice that interpretate the CISG in favor of more broad scope of application. Moreover, using this treaty as a starting point to regulate international service transactions supported by a number of arguments. Sales and services are closely connected from the point of economy and domestic legal regulation what simplify and require common treatment. Also, the Convention already affected jurisprudence worldwide and in terms of unification, it is better

Contracts for the Sale of Goods to Be Manufactured or Produced and Mixed Contracts (Article 3 CISG), 17 Pace Int'l L. Rev. 79 (2005).

[39] United Nations Commission on International Trade. 2012. Note by the secretariat: Possible future work in the area of international contract law: proposal by Switzerland on possible future work by UNCITRAL in the area of international contract law (8 May 2012). A/CN.9/758 < https://digitallibrary.un.org/record/729645 > accessed 24 March 2021.

to continue this practice than evolve a new one. To sum up, the CISG constitutes the proper legal instrument to govern services.

1.3. Services under the CISG: in or out?

If the CISG was created as an instrument to ensure the development of international private trade as such and drafters predicted the relationship between sales and services as components of the trade, then why they excluded services from its scope? Are there any drawbacks that prevent doing it and because of its recognition drafters made a Convention mainly about sales? In this subchapter, the reasons behind the exclusion of services from the scope of the CISG will be discussed. It will be argued that in fact there were no serious obstacle against such regulation.

This issue brings to the official records of the Conference regarding the CISG. The only part where the question of applicability of the CISG to the service contracts was raised in the discussion of Art. 3. The representative of Czechoslovakia proposed to delete the paragraph that deals with the applicability of the CISG to the mix contract (Art. 3(2) in the final variant). It is said that "In the everyday practice of international trade, a great many contracts contained stipulations for the supply of services, and he saw no reason why contracts of that kind should be excluded from the scope of the Convention"[40]. At first glance, it is thought that their view was that the CISG should also govern service contracts. Such a view was also taken by some authors[41]. However, it is seen that the Czechoslovakian representative intended to broaden the scope of the CISG only with regard to mix contract, in other words, he still found the existence of sale component needed for the contract to be within the scope of the CISG. It confirmed by

[40] United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980. Official records, Documents of the Conference and summary records of the plenary meetings and of the meetings of the Main Committees. A/CONF.97/19 (1991) UN 241 [hereinafter Official Records]. available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/a-conf-97-19-ocred-eng.pdf> accessed 24 March 2021.
[41] Schwenzer, Ranetunge and Tafur (10) 174.

the fact that he criticized the ambiguity of this provision and stressed that "it was perfectly clear that the draft Convention … [dealt] only with the sale of goods"[42].

The same understanding also confirmed by the reasons for rejecting this proposal. It was noted that in case of deletion discussed provision the nature of the contract would be decided by national courts what would lead to the uncertainty[43]. Thus, during the negotiating of the provisions of the CISG, nobody was looking at the possibility to extend its scope to the services itself. But why is that so?

The first reason is that the CISG was not created from a blank page. One of the UNCITRAL's tasks was to review Hague Uniform Laws[44]. Nevertheless, that it turned to the drafting of new Convention predecessors' templates still were used. As Hague Uniform Laws dealt with sales in goods, same does the CISG.

The second reason lies in the fact that UNCITRAL was instructed to produce such legislation that would be acceptable worldwide[45]. To achieve this, the mere procedure required consensus between states to adopt the Convention. As generally sales and service transactions are treated separately in domestic jurisprudence, it would be hard to pursue states to change the practice at that point of historical development. Hence, that can also be considered a fact that prevented the extension of the scope of the CISG.

The final reason is the prevalence of sales in goods rather than services in trade. Uniform such a significant part of the transaction was task number one. Finding ways to treat both types would

[42] Official Records (n 40) 241.
[43] Official Records (n 40) 242.
[44] Franco Ferrari, 'Uniform interpretation of the 1980 Uniform Sales Law' (1994) 24(2) Georgia Journal of Int'l and comparative law 183, 193.
[45] Schwenzer, Ranetunge and Tafur (n 10) 175.

take even more time, while drafting the CISG already took nine years. Considering this, it was more reasonable to focus only on sales.

It is seen that there was not any substantial obstacle to make the CISG not only about sales but also services. It was just not on the agenda at those times. However mentioned reasons are not the point nowadays. Jurisprudence already has a great practice of governing the services by international treaty, and there is no rush to make amendments. And finally, the ratio between sales and services shifted to the latter one that actually force to rethink the nature of the CISG.

CHAPTER TWO: EXPENDING THE CISG TO SERVICES: ADAPTATION OR REFORM

2.1. Existing mechanism of the CISG to govern services: Art. 3(2)

To recall, the aim of this thesis is to prove that the CISG is able to govern service transactions as part of the contracts with sales obligations as well as pure service contracts. In this regard Art. 3(2) CISG shall be examined. The provision in question describes a scenario where the CISG governs services in sales contracts. Article 3(2) CISG reads as follows:

"*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*.[46]"

A careful reading of this provision shows following important points for the object of this thesis:

First of all, it shall be noted that pursuant to Art. 3(2) the CISG is applicable not only to the sales part of such contract but to the whole contract, including services obligations[47]. There is a view that it is possible to "separate" contract into two sales and services and hence apply different provisions to each of them. However, such a view seems to be wrong and highly challengeable.

The main question is how to separate such contracts. The CISG consists of an international approach to sales and does not specify explicitly what is a sale and what is not. Professor Schlechtriem proposes to use domestic law pursuant to such distinguishing[48]. Such conclusion can be found reasonable based on the fact that there is no other treaty that can suggest such a

[46] CISG (n 2), Art. 3(2).
[47] Tribunale d'Appello di Lugano, Switserland, October 29, 2003 <http://www.unilex.info/cisg/case/986> accessed 5 April 2021.
[48] Peter Schlechtriem, Uniform Sales Law: The UN-Convention on Contracts for the International Sale of Goods (Vienna: Manzsche 1986) 32 as cited in Honnold JO, Uniform Law for International Sales under the 1980 United Nations Convention (Kluwer Law International BV 2009) 68, para 60.2.

full and complex regulation of services and sales as domestic law does. However, the mentioned approach is weak, as it runs counter to the international character of the CISG and Art. 7 in particular. It may deprive Art. 3(2) CISG as domestic law may see severability of contracts differently and thus contracts with the same content would be treated also differently. Another question that presents difficulty with this approach is which exactly domestic law to use. Thus it is undesirable to separate contracts at least because there is no sufficient rule how to do it in a uniform manner. Another issue that it is arguable that parties intended or at least desire to have different laws applicable for the same circumstances[49].

Secondly, the applicability of the Convention is presumed[50]. Wording of the Art. 3(2) CISG states that the Convention generally applies to mixed contract and its application is precluded only in certain scenario. If it was otherwise, the discussed provision would be formulated in a form "this Convention ONLY APPLIES to …" and by this limiting the scope. This outcome presents the intention to create legal certainty for parties in understanding what law applies to their relations. It also shows the sense of the CISG to cover more contracts rather than less. In other words, Art. 3(2) itself is seeking to broaden the scope of the applicability of the CISG.

Thirdly, applicability is still tied with the sales nature of the contract as in cases where preponderance is on the service side, and thus the contract is more about service, contract would be out of the scope of the CISG. But such correlation is not surprising taking into account the negotiation history of the Convention. Hence, given point should not prevent findings that the CISG is suitable for the services.

Fourthly, to establish whether the contract is sale or services the preponderance shall be examined. However, there is no indicators how to assess such preponderance. It is seemed that

[49] Schlechtriem and Schwenzer (n 23) 68-69, para 16.
[50] Ibid, 72, para 23.

such wording was used intentionally to give parties, courts and tribunals wide discretion and the possibility to adjust the CISG to every possible scenario. Two main tests are applied: economic value test and essential criteria[51].

The first test is generally based on the comparison of prices for services and goods. The threshold for this test also does not specified, but it is commonly accepted that the value of the services must 'significantly' exceed 50%[52]. Such understanding of threshold again confirms the will of the CISG to govern the broad scope of the contract, not only clearly sales one. It should be also noted, despite the fact that economic value test is prevailing one[53], it can face a number of challenges. For example, the price for service and/or sale part can be non-specified or highly variable, or the service component has more price weight, but objectively services are not in the center of the contract.

In scenarios where such challenges appear second test shall be applied. It can be done cumulatively as well as the conclusion may be based only on the essential criteria. Under the second test intention of the parties, denomination and structure of the contract, objective as well as other surrounding circumstances shall be analyzed by the court[54]. But such ambiguity in applicable test leads to legal uncertainty what is contrary to the initial aim of the law, CISG and Art. 3(2) itself.

So, finally, the CISG is already applicable to services. In particular, Art. 3(2) allows the CISG to regulate services obligation. There is no exemption or other limitation. In other words, such service obligation can be not related to the sale one, but simply because it was incorporated to the sales contract, it would be governed by the CISG. There is no difference between service as

[51] CISG Advisory Council Opinion No. 4 (n 38) para 3.2.
[52] Schlechtriem and Schwenzer (n 23) 70, para 20.
[53] CISG Advisory Council Opinion No. 4 (n 38) para 3.3.
[54] Schlechtriem and Schwenzer (n 23) 70, para 19, CISG Advisory Council Opinion No. 4 (n 38) para 3.4.

part of the sale agreement and pure service. Thus, there is no doubt that conceptually the CISG has no restriction with regard to govern services.

2.2. Eligibility of the CISG to govern service transactions

If the previous subchapter proved that there is a possibility of the CISG to govern "pure" services transaction from a general point of view, this subchapter turns into direct examination suitability of the CISG to service transaction. Taking into account that despite similarities and close link between sales and services, these types of contracts are still separated one with different features, it is important to check whether such differentiations are not of that volume to prevent treatment under a single treaty.

The content of the CISG shows that there are a number of provisions that deal with exclusively sales in goods such as transportation, characteristics of goods, passing of risks, destruction, etc. Although such issues do not appear with services, irrelevant provisions do not prevent the CISG to be applicable to services contracts[55].

But at the same time, others "sales" provisions can be interpreted to fit services transactions. The Convention consists of a very good notion of interpretation rules in Art. 7. Paragraph one of this provision stresses the international sense of the Convention, while the second one notes that if the issue is not expressly settled in the Convention, it is to be settled in conformity with the general principles on which the CISG is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law[56]. Indeed the second paragraph is aimed to adjust the text of the CISG to new circumstances by the way

[55] Honnold (n 48), 68, para 60.1.
[56] CISG (n 2), Art 7.

of interpretation. By using such an approach, there is no difficulties to fill the gaps and do it in accordance with general lait motive of the treaty.

To cover unregulated issues, there are different solutions: first, applying other provisions of the CISG by analogy; if that does not work, then the gap can be filled by internal general principles of the CISG; in the absence of the latter, then external principles common to international law can be used and the last resort is reference to the domestic legislation[57].

Let us turn back to the text of the Convention with respect to the services. To see the correlation between the CISG and services transaction main fields of regulation will be explored. For the purpose of this thesis notion of sales and goods will be disregarded. Only articles that raise sufficient questions are to be examined, all omitted provisions are found suitable for services. Also, further governance of "pure" service transactions would be analyzed as in case the CISG is suitable for both "pure" sale and service transaction it unarguably can be used pursuant complex agreement.

All general provisions regarding the scope of the CISG easily fit services contracts. As talking about applicability this Convention to services transaction it is still about harmonization of trade law thus the requirement of the Art. 1 regarding the international nature of the contract are stay true. This article also establishes the material scope of applicability that is contract of sale. The CISG does not provide the definition of it, however it can be deduced from Art. 30 and 53: is a contract where goods are exchanged for money[58]. As was stated in the previous chapter, such a notion can be easily adopted for services: a contract where services provided for money. The CISG recognize different types of contracts. For example, a contract for the delivery of goods

[57] Stefan Kroll, Loukas A Mistelis and Maria del Pilar Perales Viscasillas, 'UN Convention on Contracts for the International Sale of Goods (CISG): Commentary' (1st edn, Nomos Verlagsgesellschaft mbH & Co KG 2011) 134.
[58] Ibid, 28.

by instalments (Art. 73) that greatly shows a long-lasting contract what is common for the service agreements. Another issue is notion in Art. 2 contracts that are explicitly excluded from the scope. Basic justification in this rule is suitable for the services such as object (consumer contracts), need of more detailed regulation or absence of contractual basis. Such justification can be used by analogy to exclude certain type of service contracts, for example, providing credits as it requires specific regulation. However, a better option would be to add such exceptions to ensure legal certainty.

The legal scope of the Convention is described in Art. 4 and 5. It is limited only to the formation of the contract, the rights and obligations of parties and exclude issues of liability for the death or personal injury. Such scope only helps to "merge" regulation of services and sales with such limits only the most important and more close issues are stay in.

The same holds true for the rules regarding the formation of the contract, rights and obligations, etc. Despite the fact that Art. 14(1) stipulates that a proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price, that easily can be used by analogy to the services. As this provision mention essential characteristic of sale contract to be defined, thus the same shall be indicated regarding services, that is mainly description of the service and price.

The next relevant field of regulation is the obligations and liability of the parties. Seller's main obligations are delivery of the goods that are conform with contract and free from third party rights and handing over of documents. By the means of interpretation, only one obligation should be reconsider – delivery. Understanding of this obligation is important as it is tied with the moment of execution of the contract. As services are intangible "product", there is no delivery. At the same time, there are different types of services: some are directed to a particular result, while others are about process. The answer when "service of result" is done can be based

on provision regarding delivery, including Art. 31-34. Performing of "services of process" may be tied solely with the provision of the contract or, additionally, based on Art. 33 (a) and thus date of performance will be "determinable from the contract".

For further discussion distinguish between *obligation de résultat* and *obligation de moyens* should be presented. The main difference is the allocation of liability. If the responsibility was one of result, the debtor is liable for damages if the result was not achieved, unless he can prove that he was prevented from doing so by force majeure or accident (strict liability). Contrary, in the case of an *obligation de moyens* the debtor shall only make a reasonable effort and apply due care (negligent)[59].

The concept of conformity is described in Art. 35 of the CISG. The main criteria established in para. 1 states that goods should be in conformity with the agreement, including quantity, quality, description and packaging if any. Such subjective standard[60] provides no obstacles with regard services. The only issue is that not all of mentioned features can be common for services, but as this paragraph deals with party autonomy, that is not a problem. When contractual arrangements concerning conformity are inadequate, this second paragraph of mentioned article preserves the parties' reasonable expectations[61]. For the contracts where the result is expected last rule on conformity can be used in the same way as for the sale of goods[62]. Such approach already has been used in a case where the seller had an obligation to dismantle a warehouse, but during dismantling several defects in good appeared and the court applied strict liability

[59] Jansen Nils, and Reinhard Zimmermann, Commentaries on European Contract Laws (OUP 2018), 1904.
[60] Kroll, Mistelis and Viscasillas (n 57), 489.
[61] Ibid, 489.
[62] Schwenzer, Ranetunge and Tafur (n 10), 186.

rule[63]. Rule under Art. 35(2) is applicable for obligation de moyens too as related standard of liability already is based on reasonableness.

The "seller" also obliged to deliver goods free from third party property and intellectual property rights or claims (Art. 41 and 42 CISG). The first one usually is out of the scope of consideration in services transaction, while the second one is even more important for services than for sales. Nowadays, when services are discussed it is often connected to activities tied with patents and know-how. The wording of Art. 42 does not put any difficulties with application to services. At the same, as it is rightly pointed out in the literature, the Convention approach to this issue is more favorable. Unlike domestic law that usually require to guarantee such "freedom" worldwide, the CISG ask only that the goods are free from third party intellectual property rights under the laws of narrow categories of countries: the place where the goods would be resold or the place[64] of the buyer's business.

In order to initiate liability of "seller" based on non-conformity, "buyer" shall comply with other provision of the CISG. The first one is examination the goods under Art. 38 CISG. It states the time and place of examination. As time is described "within a short period as is practicable in circumstances" that fits services. However, place is tied with delivery which does not occur when service has no result. This issue should be resolved in the same way as with duty to deliver itself.

Another important provision is the need to give notice to the seller of any non-conformity under Article 39 or third party rights or claims under Art. 43. Despite the fact, that in domestic jurisdiction there is no such requirement for services contract, it is viable for international

[63] M. Marques Roque Joachim v. La Sarl Holding Manin Rivière, 26 April 1995 <https://iicl.law.pace.edu/cisg/case/france-april-26-1995-cour-dappel-court-appeals-m-marques-roque-joachim-v-la-sarl-holding> accessed 15 May 2021.
[64] Schwenzer, Ranetunge and Tafur (n 10), 187.

transaction simply based on the principle of good faith and fair dealing in international commerce[65]. The jurisprudence also confirms it[66].

Another breach of contract that the CISG provides are delayed performance and complete non-performance. However, even in domestic jurisdictions sales and services are treated alike with regard of such breaches[67].

The CISG provides remedies both for the “buyer” and “seller” and they are following common principles of contract law. Examination of section III showed, that remedies that "seller" can use are of such general nature that well suit any kind of contract, including services. However, remedies for the buyer are more specified. Nevertheless, none of the provided by the CISG remedies are found inappropriate for the services. Moreover, courts face no difficulties by applying such remedies. For example, in already mentioned case the courts analyzed whether such breach constituted fundamental to trigger avoidance and the seller cured defects in good by repair what constitute a remedy in the form of specific performance[68].

In other words, the current version of the CISG already is applicable to the service transaction. However, as services is similar, but not totally the same with sales, application of such provisions require significant interpretation and gap-filling. Also, there are some features of service contract that deserve separate regulation.

2.3. Tendency of expanding the scope of the CISG: the need for a new Convention?

In the previous parts of this work, it was proved that generally, the CISG is applicable to mixed contracts as well as pure service transactions. However, such applicability is based on the

[65] Schwenzer, Ranetunge and Tafur (n 10), 188.
[66] Case No. HG920670 <http://www.unilex.info/cisg/case/166> accessed 15 May 2021.
[67] Schwenzer, Ranetunge and Tafur (n 10), 185.
[68] M. Marques Roque Joachim v. La Sarl Holding Manin Rivière (n 63).

general content and object and purpose of the Convention, as well as the means of its interpretation. Such an approach does not contribute to the uniformity of the legal regulation as well to legal certainty for parties. It sounds more correctly to ask for the renovation of the Convention by adjusting it to cover services in the same way as sales.

First of all, there is no confidence that courts and tribunals will apply the same principles with regard to the similar services. Even if that would be the same, they can be interpreted differently as it is always quite a subjective process. That holds true even when courts decide cases based on sale transactions, which are directly stipulated and regulated in the Convention. For example, the question of which party's state regulation shall be applied in order to establish conformity of the goods. The German court decided to consider the seller's sates[69] while US court decided to use buyer's state rules[70]. In case of interpretation, the CISG provision pursuant to service contracts courts and tribunal have no even minimal benchmark what may lead to great difference in rulings like cases.

Secondly, such approach still excludes pure service contracts from the scope of the Convention due to the direct exclusion it by its provisions[71]. It is impossible to use Art. 7 to broaden its scope as rules of interpretation under this provision covers only questions concerning matters governed by this Convention.

Thirdly, it will allow to regulate services more precisely, including its specific features. For example, to exclude from the scope banking services that are deemed to have distinguishing nature even comparing with other services.

[69] Federal Supreme Court of Germany. Case: VIII ZR 159/94, 8 March 1995, BGHZ 129, 75 https://germanlawarchive.iuscomp.org/?p=145 accessed 15 May 2021.
[70] United States 17 May 1999 Federal District Court Louisiana (Medical Marketing v. Internazionale Medico Scientifica).
[71] CISG (n 2), Art. 1, Art. 3.

Leandro Tripodi considers the following possible ways of such reform: by Amending protocol, by supplementation of ad-hoc instruments, by the enactment of a Model Law on Obligations and, finally, adoption of a new Convention as the most suitable solution. However, this thesis is more in favor of amending the CISG rather than creating new Convention.

Many factors of such choice have been already explored. The CISG already consists of well working provisions and resulted in a number of case law. Such heritage should not sink into oblivion. There is no need to create new rules as already exciting ones are suitable for the services. Thus, there is simply no need to initiate the process of drafting new Convention as proposed renovation is calling only for several textual edits, such adding notion of services, and adding limited number of specific service provisions.

The issue of amendment of the CISG is governed by the Vienna Convention on the Law of Treaties. According to its provision in order to amend a treaty notification of the contracting parties about such proposal shall be done. Each party may negotiate and make its own decision regarding the amendments. In case if any state declines such amendment old version of the treaty will apply to them.

As it is seen, renovation through amendment has pros and cons. And the main argument against that can be found is that it can lead to step back from uniformity as some states may refuse from it. However, this is a minor sacrifice that would be resolved with time.

The biggest advantage here is that all contracting state will have an opportunity to adjust the current version of the CISG and save its wide recognition. In terms of discussed underlying grounds of the need of such renovation, it is likely that states would be in favor of the "new" CISG. Regarding potential opposed states, that is just a question of time for them to reconsider their decision as economic circumstances are going to change even more. Natural

accommodation that made states to join the CISG originally would do the same with amended Convention[72].

In this way, the CISG does not need to be "redrafted" into a new treaty as potential changes are minor and have mostly technical character. It is sufficient to adjust the already working mechanism through amendment of the treaty.

[72] Tripodi (n 10), 118.

CONCLUSION

In the new economic environment, the CISG is at risk of failing its mission to promote international private trade. Sales are already not the main transaction in trade. Services contract are on the way to fit the main place in this field. In this regard, the international community needs to fight this challenge. Using the CISG as a weapon in this fight is still possible and even desirable, however several amendments should be done.

As this thesis has sought to show, the CISG is found to be the best template to govern service contracts. Such outcome is proved by the fact that the CISG as a legal phenomenon is looking forward to expand its scope in order to ensure the development of trade, it already has a practice to cover services transaction and left relevant practice and impact that is undesirable to be changed. Moreover, even the original exclusion services from the Convention's scope is not based on any sufficient grounds as from the point of drafting history. Sales and services, despite of different objective does not require significantly different treatment and under the ongoing trends such transactions are merging what fades any difference between them. Additionally, the CISG is not a law that provide detailed regulation to every possible situation rather a framework with main lighthouses that make international transactions easier to conduct and provide certainty. Hence, there is no need to include specific and detailed provisions with regard to sales and services transaction that could deprive uniform style of the Convention.

The CISG already deals with services where it is part of the sales contract. However existing approach face challenges that fades benefits of such regulation. Generally, there is no obstacles to use the CISG as governing law to pure services. Exiting provisions of the Convention is applicable to the service contracts mainly by the means of interpretation. At the same time, there is a direct limitation of the scope of the CISG that preclude expanding it to the pure service contracts. Moreover, services still have some features that would be better to be regulated

explicitly. Thus, the most reasonable scenario to overcome the current problem of regulating international trade with respect to services is to amend the CISG.

BIBLIOGRAPHY

Primary sources:

Bürgerliches Gesetzbuch

Case 18/84, Commission v. France, EU:C:1985:175

Case No. HG920670 <http://www.unilex.info/cisg/case/166> accessed 15 May 2021

Civil Code of Russian Federation

Corporate Web Solutions v. Dutch company and Vendorlink B.V., No. C/16/364668 / HA ZA 14-217, Rechtbank Midden, Netherlands, 25 March 2015

Directive on services in the internal market [2006] OJ 2 376/36

Federal Supreme Court of Germany. Case: VIII ZR 159/94, 8 March 1995, BGHZ 129, 75 https://germanlawarchive.iuscomp.org/?p=145 accessed 15 May 2021

General Agreement on Trade in Services (adopted 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 UNTS 183, 33 ILM 1167)

Sale of Goods Act 1979

Supply of Goods and Services Act 1982

Triângulo Pisos e Painéis Ltda. v. BR-111 Imports & Exports, Inc., 27 September 2010, ICC <https://iicl.law.pace.edu/cisg/case/september-27-2010-triangulo-pisos-e-paineis-ltda-v-br-111-imports-exports-inc> accessed 15 May 2021

Tribunale d'Appello di Lugano, Switserland, October 29, 2003 < http://www.unilex.info/cisg/case/986 > accessed 5 April 2021

M. Marques Roque Joachim v. La Sarl Holding Manin Rivière, 26 April 1995 <https://iicl.law.pace.edu/cisg/case/france-april-26-1995-cour-dappel-court-appeals-m-marques-roque-joachim-v-la-sarl-holding> accessed 15 May 2021

Uniform Commercial Code 2002

United Nations Commission on International Trade. 2012. Note by the secretariat: Possible future work in the area of international contract law: proposal by Switzerland on possible future work by UNCITRAL in the area of international contract law (8 May 2012). A/CN.9/758 < https://digitallibrary.un.org/record/729645 > accessed 24 March 2021

United States 17 May 1999 Federal District Court Louisiana (Medical Marketing v. Internazionale Medico Scientifica)

United Nations Convention on Contracts for the International Sale of Goods (adopted 11 April 1980 UN Doc. A/CONF. 97/18, Annex I, reprinted in 19 LL.M. 668) [hereinafter CISG]. available at < https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf > Art 13, accessed 5 April 2021

Secondary sources:

Bigdeli, A, 'What Do We (Really) Mean by Advanced Services? (LinkedIn, 30 September 2016) <https://www.linkedin.com/pulse/what-do-we-really-mean-advanced-services-ali-z-bigdeli/> accessed 27 May 2021

Booth, L, 'Components of GDP: Key Economic Indicators' (UK Parliament, 12 May 2021) <https://commonslibrary.parliament.uk/research-briefings/sn02787/> accessed 15 May 2021

Broussolle, D, 'Service, Trade in Services and Trade of Services Industries' (2014) Journal of World Trade

Chadwick L. Williams, 'Not So Good: The Classification of "Smart Goods" Under UCC Article 2' (2018) 34(2) Georgia State University Law Review 453

CISG Advisory Council Opinion No. 4: Contracts for the Sale of Goods to Be Manufactured or Produced and Mixed Contracts (Article 3 CISG), 17 Pace Int'l L. Rev. 79 (2005)

'CISG: Table of Contracting States' (Institute of International Commercial Law, 17 July 2013) <https://iicl.law.pace.edu/cisg/page/cisg-table-contracting-states> accessed 5 April 2021

De Ly, F, 'Sources of International Sales Law: An Eclectic Model' (2005-2006) 25 Journal of Law & Commerce 1

Ferrari, F, 'Uniform interpretation of the 1980 Uniform Sales Law' (1994) 24(2) Georgia Journal of Int'l and comparative law 183, 193

Ferrari, F and Torsello, M, International Sales Law--CISG in a Nutshell (Second edition, West Academic Publishing 2018)

Gluhova, N, 'The Servicification and servitization of manufacturing: an analysis of global trends' (2020) Minsk, Institut Bisnessa BGU 31

Harkonen, J, Haapasalo, H and Hanninen, K, 'Productization: A Review and Research Agenda' (2015) 164 International Journal of Production Economics 65 <https://www.sciencedirect.com/science/article/pii/S0925527315000584> accessed 16 May 2021

Hojnik, J, 'The Servitization of Industry: EU Law Implications and Challenges' (2016) 53 Common Market Law Review 1575

Honnold JO, Uniform Law for International Sales under the 1980 United Nations Convention (Kluwer Law International BV 2009)

Kroll S, Mistelis L and Perales Viscasillas P, ‘UN Convention on Contracts for the International Sale of Goods (CISG): Commentary’ (1st edn, Nomos Verlagsgesellschaft mbH & Co KG 2011)

O'Neill, A, ‘Nigeria: Distribution of gross domestic product (GDP) across economic sectors from 2009 to 2019’ (Statista, 31 March 2021) https://www.statista.com/statistics/382311/nigeria-gdp-distribution-across-economic-sectors/ accessed 15 May 2021

Monroe, K, 'The CISG: tool or trap for contracts for the sale of goods?' (Lexology, 12th December 2011) <https://www.lexology.com/library/detail.aspx?g=0919f0e3-32a3-4cbe-a571-bd170ae90a44> accessed 5 April 2021

Nils, J and Zimmermann, R, Commentaries on European Contract Laws (OUP 2018)

Schwenzer, I, Ranetunge, J and Tafur, F, ‘Service Contracts and the CISG’ (2019) 10 Indian J. int’l econ.l.

Schlechtriem and Schwenzer, Commentary of the UN Convention on the International Sale of Goods (CISG) (Ingeborg Schwenzer, 3rd edn, OUP 2016)

The world bank, 'Services, value added (% of GDP)' (The World Bank, 3 March 2000) <https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS> accessed 22 March 2021

Tripodi, L, Towards a New CISG (Brill | Nijhoff 2015)

Windahl, C and Lakemond, N, ‘Integrated solutions from a service-centered perspective: Applicability and limitations in the capital goods industry’, 39 Industrial Marketing Management (2010), 1278 < https://www.sciencedirect.com/science/article/pii/S0019850110000362> accessed 15 May 2021