NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
LAW MASTER'S PROGRAM

MASTER'S THESIS

FORMATION OF CONTRACT FOR THE INTERNATIONAL SALES OF GOODS

Saman Othman SALEEM

NICOSIA
2016

NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
LAW MASTER'S PROGRAM

MASTER'S THESIS

FORMATION OF CONTRACT FOR THE INTERNATIONAL SALES OF GOODS

PREPARED BY
Saman Othman SALEEM
20135372

Supervisor
Asst. Prof. Dr Resat Volkan GUNEL

NICOSIA
2016

NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
Department of Law Master's Program

Thesis Defence

Thesis Title: Formation of Contract for the International Sales of Goods

We certify the thesis is satisfactory for the award of degree of Master of Law

Prepared By: Saman Othman SALEEM

Examining Committee in charge

Asst. Prof. Dr. Reşat Volkan Günel	**Near East University** **Thesis Supervisor** **Head of Law Department**
Dr. Tutku Tugyan	**Near East University** **Law Department**
….……	**Near East University** **…… Department**

Approval of the Graduate School of Social Sciences
Assoc. Prof. Dr. MUSTAFA SAĞSAN
Acting Director

ABSTRACT

The Convention for the International Sale of Goods called the Vienna Conference 1980 is an astute international statute that regulates the sale of goods globally. It has been ratified by about 83 countries of the world and countries that have not ratified it have at a point or the other made reference to it. Major economic players apart from England have ratified and have their courts pronounce on the CISG. The Convention provides for the well-known elements of contract and also allows for the usage of standard user terms, for example, general terms known or related to certain goods. It is imperial to state that there are also certain regional statutes that are similar to the CISG although with varying differences. It is important to also mention that the CISG also has its lacunae and defects such as allowance for exemption, contents and so on. The CISG has been pronounced upon by courts across the world and has been seen to be highly justiciable.

Keywords: CISG, United Nations, Iraq, English Law, Convention

ACKNOWLEDGMENT

I give all my biggest thanks to Allah for making my academic existence a reality from the very beginning till this moment. Allah is great.

I would like to thank all the people who contributed in some way to the work described in this thesis. First and foremost, I thank my academic Supervisor, Prof Dr Volkan for accepting me into his group. Additionally, I would like to thank Mr Hamza Ruso who I am indebted to and deserves the credit for the success of this thesis.

Finally, I would like to acknowledge friends and family who supported me during my time here. I thank my parents for their constant love and support. Goran, Rawand, Hadi, Faman, Tuana made my time here at NEU a lot more fun. I am lucky to have met Nzar here, and I thank him for his friendship, love, and unyielding support. I owe a debt of gratitude to the Kurdish Government for giving me the opportunity to acquire more in my academic world.

Saman Othman Saleem

NICOSIA
JANUARY, 2016

TABLE OF CONTENTS

LIST OF CASES

1. Hilaturas Miel S.L. ("Hilaturas")
2. Impuls I.D International, S.L Impuls I.D, Systems Inc, Psiar, S.A vs. Psion Teklo Gix Inc. (2002) 1122, U.S District Court, Southern District of Florida.
3. M+H. Gambh V.As.P.T. Kft. Commercial Court Zurich (2012) Aerosol Can Manufacturing Case
4. Miternet S.A. vs. Henan Local Product Import And Export Company (2050) High People's Court (Appellate Court) Of Henan Province, China
5. Hispafruit Bv. V. Amuyen S.A (2001) District Court, Rotterdam, Netherlands
6. Geneva Pharmaceuticals Tech. Corp. vs. Barr Labs Inc. (2002) Federal District Court New York
7. Chateau Des Charmes Wines Ltd vs. Sabate Usa (2005) Superior Court,
8. Silicon Refractory Anchoring Systems B. vs. Refrattari Sirc S.R.L (2015) Netherlands
9. Zapatos Mediterranoes vs. Shoe B122 (2002) District Court Hasselt, Belgium
10. Shuttle Packaging Systems vs. Tsonakis (2001) Federal District Court, Michgan, America
11. Victoria Alloys vs. Forts Bank (United States of America) 2001. Federal Bankruptcy Court
12. Treibacher Industries, Ag vs. Allegheny Technologies Inc. 464. 3d 1235
13. Teevee Toons, Inc. (D/B/A Tvt Records) & Steve Gottlieb, Inc. (D/B/A Biobox), Plaintiffs, vs. Gerhard Schubert Gmbh, Defendant. 00 Civ. 5189 (Rcc) United States District Court For The Southern District Of New York 2006 U.S. Dist. Lexis 59455
14. Chicago Packers Inc. vs. Northern Food Trading Company, 408 F. 3rd 894, 897 (7th Cir. 2000)
15. Can Int'l Inc. vs. Guang Dong Kelon Electronical Holidays (United States of America, Northern District Of Illinois, 3rd September 2008).
16. James Buchanan & Co Ltd. vs. Babco Forwarding and Shipping (UK) Ltd (An Unreported Case).
17. Gran .Canaria Tomatoes (2005)

18. Corocraft Ltd vs. Pan American Airways Inc (1969) 1 Qb 616 At655, (1968) 2 Lloyd's Rep 459.
19. Industrie Tessili Italiana Como V. Dunlop Ag2008), Cited In Anastasia Vezyrti, Jurisdiction And International Sales Under The Brussels Regulation: Does Forum Shopping Come To An End? 15 Column J. Eur. L.F. 83 (2009
20. Chicago Packers Inc. vs. Northern Food Trading Company, 408 F. 3rd 894, 897 (7th Cir. 2000).

LIST OF STATUTES

1. CISG: Convention for the International Sale of Goods
2. UN: United Nations
3. UCC: Uniform Commercial Code
4. OHADA: ORGANISATION POUR L'HARMONIZATION EN AFRIQUE DU DROIT DES AFFAIRES (OHADA)
5. UN CHARTER: United Nations Charter

ABBREVATIONS

1. GDP: Gross Domestic Product.
2. ULF: A convention that dealt with the formation of contracts for International sale.
3. ULIS: A convention that dealt with Obligations to sale contracts.
4. UNIDROIT: International Institute for the Unification of Private Law
5. UNCITRAL: United Nations Commission on International Law
6. UK: United Kingdom
7. USA: United States of America
8. SOGA: Statute of General Application
9. OFFP: United Nations Oil for Food Programme.
10. SUT: Standard User Terms
11. PER: Parole Evidence Rule
12. CISG: Convention for the International Sale of Goods
13. UN: United Nations
14. UCC: Uniform Commercial Code
15. OHADA: ORGANISATION POUR L'HARMONIZATION EN AFRIQUE DU DROIT DES AFFAIRES (OHADA)
16. UN CHARTER: United Nations Charter

CHAPTER ONE

1 INTRODUCTION

The independence of Nations coupled with the fact that Nations of the world transacts and enters business relationships called for a unifying standard and arrangement. The Technologically sophisticated countries, the politically solidified, the religious sovereign nations and other countries with one good or the other to offer have transacted with other countries in dire need of the goods they lack or want. So, taking into consideration the importance and volume of international business, a uniform law to regulate the trade at the international level was an absolute must in the last quarter of the twentieth century (Belkis, 2013: p.112). It is very important that the topic is defined word for word so as to assist in the dyspepsia of the topic. The word "Contract" means a legally binding agreement. Agreement arises as a result of Offer and Acceptance but a number of other requirements must be satisfied for an agreement of be legally binding such as consideration, capacity, intention to enter into legal relations etc (Oxford Dictionary of Law). From the definition of contract given, it is fashionable that for an agreement to be in place between parties (in this context, nations) there must be offer and there must be acceptance as seen in regular transactions of individuals, as well as bringing into consideration other necessary factor listed forthwith. "International" means to involve countries, or existing between countries. We can thus say that this thesis is concerned with; a legally binding agreement that exists between countries or even persons of different states location or residence in relation to sale of goods'. This thesis is concerned with the formation, the rudiments, the underlying legal details and principles that guide the agreement that exists between parties whose places/countries of businesses are different. This thesis is concerned with the uniform ways that regulates the formation of agreement of sales of goods amidst nations of the world.

Let it be said that one way states have been able to coordinate their choices to achieve a desired result is through the creation of International Institutions and regimes. International Institutions have become such an indispensable form in the globalize world

as international institutions are used to facilitate cooperation across state frontiers, allowing for the identification discussion, and resolution of difficulties in a wide range of subjects, from peace keeping to the economic concerns vis-à-vis trade relations and development. The evolution of the modern nation-state and the consequent development of an International Order founded upon a growing number of independent and sovereign territorial units gave rise to a question of international co-operations (C.F Amerasinghe, N.D: p.23). What is being said here is the fact that international institutions have been established to deal with transactions of nations and to serve as the creator of the laws to guide and see to response of nations, this points straight to the United Nations Convention on Contracts for the International Sale of Goods often referred to as 'CISG' Enacted in 1980 and it has covered more than two- thirds of the world trade (John, Kleefeld, 2003: p.17-22). Many authors and writers have acknowledged the fact that state judicial institutions and even the arbitral tribunals are increasingly applying the Convention for International Sale of Goods, it has wide range of acceptance and globally recognized. While authors like Franco Ferrari has opined that the CISG is not exhaustively reliable and claimed that the CISG governs not all international transactions and international trades and have called for non-too relieve on the CISG (Ferrari, 2003, p.177). Opinions like that of Franco Ferrari have failed to diminish the acceptance and wide usage of the CISG. Clair M. Gernain stated that researchers must acquire some familiarity with any applicable foreign sales law and choice of law rules because according to her, the CISG does not deal exhaustively with all international sale transactions. Criticisms against the CISG shall be further revised as this thesis progress.

It is pertinent to ask that what goods are covered by the CISG and does the CISG guides and governs over all international contracts for sale of goods? The 'good' to be emphasized on in this thesis shall be "Oil and Gas" as it is popular and widely transacted and in usage in virtually all places of the world. This paper will allow for the international standards for formation of contract of sale of oil and gas, it will open up the legal regime of contract of sale, formation of the contract and general provisions under the CISG.

1.1 Background of the Study

Arguably, the single most noticeable development in the last forty years in economic terms is globalization and this has increased cross border trade (Bruno, N.D: p.8), contributing greatly to the internalization of trade for many countries, international trade represents a significant share of their Gross Domestic Product (GDP) (Uche, 2015: p.11). Consequently, increasing international trade is central to the continuance of globalization. The need for a uniform laws to help in sustenance and continued development of international trade is so central and important to both the developing and developed nations of the world for the continuance of globalization and as well, relationships of the world in enjoying and for participation in the International Economic Order. So, a key factor in the development of international trade law is globalization (Zeller, N.D.) and a uniform law represents a part of that phenomenon (Michael, 2003: p.55-89).in essence, this theses tends to enunciate why a uniform trade law and a globally acceptable guide for formation of contract would assist countries in achieving an equal balance in transactions, trade and development. Understanding that the commercial strength of countries is necessary in making the world economy, and as such, there is need to have a sturdy commercial legal framework encouraging globalization and harmonized considering the volume of transactions that goes around the world with credence to interstate transactions, economic relations of nations, there exists the need for a uniform law which ensures certainty and predictability in international transactions. The convention for the International Sale of Goods (CISG) which offers the right regulatory framework to deal with globalization and a credible incentive to foster international trade would be right policy for sale transactions and agreement of nations of the world (Michael, 2003: p.55).

1.2 Aims and Objectives of the Study

The aim of this work is to see clearly the modus operandi of the CISG, to see the legal regime behind the formation of Contract for the International Sale of Goods, to clearly break down the response of countries to the unifying law to guide in inter-state transaction and agreement for sale of goods.

1.3 Research Methodology and Material

This thesis starts by providing the history of the establishment of the convention; it also starts with the brief description of International Institutions in order to give an understanding for the underlying reason behind the development of International Trade Law and the subsequent establishment of the CISG. Furthermore, the aims of the convention are demonstrated to illustrate the goals of the CISG, all based on what is vividly seen in the preamble of the convention and also in the preparatory industry of the convention. The convention's influence on other regulations and some regional instruments such as the OHADA is reported to illustrate why the convention is often referred to as a success. This part is based on what, after examining different academic writings, seems to be the general opinions regarding the convention's achievements in doctrine (Lundgren, 2014). The convention primarily tends to demonstrate low the legal, regime work in practice based strictly in the provisions of the convention. Opinions of knowledgeable and brilliant international law experts and Lawyers are also duly used to broadly shed light on the provisions and postulations of the convention. The CISG developed in order to promote and provide for a uniform legal regime for international sales contract, aiming to contribute certainty in commercial exchanges and decreasing transaction cost for the contracting parties. It is however clear that the more existence of a unified document, such as the CISG, does no guarantee uniformity. It is therefore expedient to make postulations as to how states have conformed to the provisions of the CISG, so also how nations have responded to the ratification of the CISG, top lucidly explain this and associated problems of the CISG, various sources of academic articles and literatures are used. The general provisions of the CISG are lucidly examined and the main "Good" referred to this thesis is the "oil/gas" with adequate references also made to countries in Asia, Nigeria and the United Kingdom sparingly. All these done and lucidly explained with various article gotten from the database of the CISG, various Internet sources, journals and articulated texts. The problems associated with the CISG are also well-discoursed and considered considering peculiar problems of different jurisdictions (Felemegas, 2006). Moreover, to give a fair picture regarding these problems, various sources of academic articles and literatures are need. This is because a difficulty

regarding these problems are that academics seems too precise them in different manner, hence, the need to highlight their different approaches to the problems of the CISG.

Other relevant revelations of the CISG are also seemed in this thesis; its practical applicability and exclusion are also looked into using academic articles and interactions as a guide.

1.4 Research Questions

This study seeks to answer the following questions below:

1. Why was an International Contract law of sale of goods important?
2. How effective is the CISG?
3. What are the elements of Contracts as postulated by the CISG?
4. What are the criticisms leveled against the CISG?
5. Challenges faced by the CISG: as regards ratification and enforceability.

1.5 Statement of Problem

This paper attends to problems that arise out of the lack of a uniform law to guide in international transactions/ contracts. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is the prime example of unification of private law at the global level (Uncitral.org, 2015). This paper asks how parties perceived this covenant.

This paper addresses issues of lack of uniformity that enveloped sales agreement in the international market and postulates how the CISG aims to achieve it. The sales law of country differs and as contract formation differs, the problem associated with which country law is applicable was laid to rest with the establishment of the CISG. The problem of obligations and remedies available that was creating uphill problems in international transactions was also clearly laid by the CISG. Despite this, the CISG does not deprive the sellers and buyers of the freedom to mould their contracts to their specifications, as parties are allowed the freedom to modify the rules established by the convention or to agree that the convention is not to apply at all. Current problems or

loopholes of the CISG are also appropriately looked into and recommendations aimed at fixing the loopholes are also put forward in this paper.

1.6 Structure of the Study

This work is arranged into five chapters of articulated research and subsequently labeled

The first chapter houses the Introduction, which gives a lucid introduction and overview of the thesis. Housed with the introduction are the background of study, which sets the foundation of this thesis, the research methodology and material, Aims and objectives, to lucidly explain what this thesis aims to achieve or teach. The statement of problem is also in this apartment; the structure as it is being done in this segment also falls within this chapter.

The Second chapter delves straight into the evolution and historical developments of the CISG, it also explains the ratification overview of the CISG which is the international instrument guiding the formation of contracts of sale of goods internationally, the response of states is also discussed in this chapter.

The third chapter deals extensively with the contents of the CISG, elements of contact as enunciated by the CISG, rights of parties under the CISG. This chapter is of paramount importance as it also compares the CISG with some selected regional documents.

The fourth chapter deals with the enforceability of the CISG, justifiability of the CISG using select jurisdictions as a guide.

The fifth chapter embodies the criticisms, loopholes, and general defections of the CISG and its negative effect on International transactions. This chapter concludes with conclusion and astute recommendations.

CHAPTER TWO

2 EVOLUTION AND HISTORY OF CISG

A seemingly inconsequential agreement can become a major headache if another party's terms and condition trump yours, and if your company does business in or with other states or countries, there are number of states, and international conventions that comes into play (Burton, 2009: p.4). The CISG came into being to allow a uniform and encompassing legal regime for International Contract sales. The aim with a uniform convention is to provide and promote the development of international trade and contribute to the removal of legal barriers (Loud Green, 2014). Goods comprise a broad range of products including grains, wheat, oil, cotton, chemicals etc. Commodities are characterized as being sustainable goods that are produced in bulk quantities. In international sales, interaction between parties prior to a sale will vary depending on the type of goods being sold, the parties involved and the requirements of quality, description and quantity entailed in the market (Electronic Library on International Commercial Law and the CISG, 2015). For instance, an international contract for the sale of oil which happens to be in quantity and measured in barrels involves more of legal rudiments and understanding simply because most oil producing nation's bank on it for survival. The contract of sale is the backbone of international trade in all countries, irrespective of their legal traditional or level of economic development. The CISG is therefore considered one of the core international trade law conventions whose universal adoption is desirable (Uncitral.org, 2015).

The most recent segment of the legislative history of the CISG is reported in the United Nations Conference on Contracts for the International Sale of Goods, held in Vienna, 10th march to 11th April 1980, official records, UN document no. a/ Conf. 97/19 CE. 81. IV.3, the current uniform rules are rooted in two earlier conventions sponsored by the International Institute for the Unification of Private Law (UNDROIT). These conventions, one dealing with formation of contracts for International Sale (ULF), the other with Obligations for parties to such contracts (ULIS)- were developed over the course of three decades by leading Commercial Law experts of Western Europe and were

finalized is 1964 by a diplomatic conference at the Hague. The 1964 Hague Convention entered into force among nine States but in spite of their fundamental importance, failed to receive substantial acceptance outside Western Europe (Cisg, 2015).

The CISG thus resulted from a work instituted in 1968 by the United Nations Commission on International Law (UNCITRAL). Ten years of work in UNCITRAL produced the 1978 UNCITRAL Draft Convention (Cisg, 2015). The UNCITRAL Secretariat laid this draft before the 1980 Conference with a commentary on it. The 1980 Vienna Conference, after weeks of intensive work, unanimously approved the current uniform rules (Cisg, 2015).

According to Hannold, the convention for the International Sale of Goods can be described to have made in three stages, which are:

1. The UNCITRAL working group between the years (1970-1977). The group produced draft Conventions. The first draft of the group was referred to as ‘sales” while the second draft was referred to as “ formation”;
2. The third stage was the 1980 Vienna Diplomatic Conference. After the commission gave the draft convention a unanimous approval, the draft was recommended to the UN General Assembly to review the draft and finalize a convention (Cisg, 2015). Sixty-two nations participated in the Vienna conference, which took place at the Neue Hofburg (Ibde.org, 2015). The conference's consultations were generally free from political impact, the principle interest behind the issues discussed and amendments carried out were dependably to accomplish an outstanding goal and not to constrain the national law or position of signatory countries.

“Bearing in mind the broad objectives in the resolution adopted by the sixth special of the general assembly of the United Nations on the establishment of a new international Economic Order, considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among states (UNCITRAL Convention on the CISG, 2008).

Being of the opinion that the adoption of uniform rules which govern contracts for the international sale of good and take into account the different social economic and legal systems would contribute the removal of legal barriers in international trade and promote the development of international trade (Cisg, 2015).

The preamble of the CISG is easily understandable and points straight to the overall objectives of the CISG. It is a workman-like attempt to devise legal rules and practical procedures for international sale transactions "through language free of legal shorthand, free of complicated legal theory or jargons and easy for business men to understand (Cisg, 2015).

2.1 Ratification Overview of CISG

It is important to state that as at the 26th of September 2014, UNCITRAL reports that Eighty-three (83) states have adopted the CISG. Albania, Argentina, Australia, Bahrain, Belarus, Belgium, Benin, Bosnia- Herzegovina, Brazil, Bulgaria, Burundi, Canada, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El-Salvador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea, Guyana, Honduras, Hungary, Iceland, Iraq, Israel, Italy, Japan, South Korea, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Lithuania, Luxemburg, Macedonia, Madagascar, Mauritania, Mexico, Moldova, Mongolia, Montenegro, Netherlands, new Zealand, Norway, Paraguay, Peru, Poland, Republic of Congo, Romania, Russian federation, Saint Vincent & Grenadines, fan Marino, Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syria, Turkey, Uganda, Ukraine, United States, Uruguay, Uzbekistan, Zambia (Cisg, 2015).

It is noticed that the United Kingdom has not ratified the CISG perhaps because of its long standing pride and believe in the common law or in its treasured believe and feeling of the superiority of English law to anything else that could even challenge it. United Kingdom has failed to ratify the CISG despite the fact that major economic players like United States and most European states are parties to it, (A.F.M., CISG, 2015) although it has been said that does not mean that there have been no ruling on the CISG by English

Courts or arbitral tribunals – particularly the latter unlike the in the United States international sales law proceedings, citations to ruling on the CISG by English jurists are not yet found (Cisg, 2015).

Certain countries have adopted the CISG subject to authorized declarations. There are also instances of states accompanying their acceptances with interpretative comments, which are not authorized by the CISG.

Nigeria and other countries of Africa (with the exception of 10 countries) have failed to ratify the CISG and in fact, the status of uniform international trade law in Africa in general is not satisfactory. In fact, the rate of adoption of the most fundamental texts on uniform international trade in Africa is very reticent (Cisg, 2015). Castellani suggests this is because of political instability; legislative priorities being set in other fields and a failure of political and economic integration (Cisg, 2015). This impaired the openness and warmth reception of a uniform commercial law. Moreover, Africa's major trading and partners focused on legal reforms in the field of good governance and human rights, ignoring the trade sector and even the little cognizance given to the trade sector was badly melted with corruption and lack of adequate and requisite understanding. Most multi- national Oil Companies negotiated long-term licensees, which placed a country like Nigeria on a big losing side despite the fact that the country owns the oil being exported. The CISG despite the fact that African countries are always on the losing side of negotiations has only been ratified by just Ten (10) African States excluding Nigeria.

The CISG has not been ratified in more than 130 countries of the world (Ferrari, 2003). Different countries with different reasons for non-ratification. Some countries seem to favour regional approach them the convention's global approach (Ferrari, 2003). In Africa for instance, there is preference for regional unification in the area of sales law. This is enunciated in the Organization Pour l'harmonization en Afrique du Droit des Affaires (OHADA) Uniform Act relating to General commercial law, out of Sixteen countries that are parties to OHADA, only three are signatories to the CISG (Beauchard & Kodo, 2011: p.121). The OHADA's attempt at unification is commendable but it has uphill challenges making it unsuitable especially for a country like Nigeria. It is

suggested that unification of trade law at a global level is to be preferred. This is to ensure the elimination of obstacles arising from differences in the world's legal system (Cisg, 2015). For instance, many OHADA member states have strong commercial relations with Ghana and Nigeria, two common law countries that have no business with OHADA. The ratification of the CISG which is a global trade law text would ensure trade and economic exchange is carried out effectively amongst these state (Castellan, N.D.: p.156-158).

Uche Anyamele's thesis on the United Nations Convention on Contracts for the International Sale of Goods' a proposal for Nigeria, submitted to the University of Durham, references made to countries that have failed to ratify and for reasons are of important reference at this point. In the former Soviet Regions, countries such as Azerbaijan and Kazakhstan have not acceded to the CISG, others such as Georgia, Kyrgyzstan and Uzbekistan have (Cisg, 2015). It has been said that it is not a result of systematic or ideological resistance but just sheer neglect. This is evident in steps taken by some of these countries towards membership. In Azerbaijan, the convention is still with the ministry of Economic Development (Cisg, 2015). In Kazakhstan, the Ministry of Industry and Trade and the Ministry of Justice are presently working on the matter and have approved it as representations of the governments (Sub regional Progress in National Coordination for Trade and Transport Facilitation in the Unescap Region, 2015). It can thus be said that the accession to the CISG will provides stability where the legislative frame for doing business is still quite volatile and subject to frequent and sometimes erratic changes.

Despite the fact that the United Kingdom played an active role in the drafting of the CISG, the country has not ratified it, although steps have been taken the couple of times yet, till date, accession has not been made (Cisg, 2015). Ratification has not been seen as a legislative priority. Some concerns also raised include; the preference for English law over the CISG with respect to commodity sales, the vagueness of the provisions of the CISG, the danger that London will lose its edge in international arbitration and litigation, the fear that implementation would involve a greater number of disputes and the fear that many commercial traders would simply opt out of the application of the convention, thus

negating the effect of the CISG (Moss, 2005: p.483). These fears are unfounded because the convention not only aims to preserve contracts in the face of breach but fills in the gap to facilitate commerce. Rather than London losing its edge in arbitration, ratification will decidedly affect the number of parties who need to have their debate there to the detriment of contesting in new territory will likewise be dodged. Also, there are relationships between the CISG and Statute of General Application (SOGA) (Williams, 2000: p. 9,57). It is suggested that the UK ratify the convention because most states belonging to the European Union as well as leading world traders have ratified it. It is inevitable that the English courts will apply the convention even without ratification because most parties in commercial transactions opt for the CISG as the applicable law. Upon UK's ratification, the convention is possibly going to benefit from the expertise of English lawyers and commercial courts, this promoting certainty and consistency in interpretation. This would enhance globalization and consequently improve international trade law.

For some countries, the arguments against ratification have not been expressly made known. For illustration, the Brazilian Ministry of Foreign Affairs has stated that there are no substantial reasons to justify Brazil's non-adhesion to the CISG (Ferrari, 2008: p. 112-115). Scholars suggest reason for south-Africa's reluctance are the immutability of the convention and the adaptation of South Africa to the reigning customs of International trade that have already taken place. Nevertheless, the instance for ratification supersedes the case. For Venezuela domestic law (Eiselen, 2007: p.14-25). It is obvious that with time countries will get around to ratify the CISG with parties' insistence on implementation and practice of the CISG.

The Arab world has not been left out in the ratification of the CISG Syria ratified on the 1st of January 1988, Iraq on the 1st of April 1999, Mauritania on the 1st of September 2000 and Lebanon on the 1st of December 2009. Normally, courts usually apply the conflict of law rules in setting international commercial contracts so as to determine the applicable law. In disputes arising from agreements contracts for the international sale of goods, however, the court not only in the contracting state (Bell, 1996.p.237). but also in non-contracting state (Ulrich, 2013). Anywhere that the CISG is applicable; it supersedes

any other applicable natural law (Rosett, 1984: p.265). It is important at this juncture to street the autonomous application of the CISG postulated by Article 1 (1)(a) of the CISG which enunciates the international nature the sale of goods must carry which means the places of business of the contracting parties must be located in different states and the states must be contracting.

The focus country of this thesis is Iraq at it is important to state that Iraq is in a serious economic, infrastructural and legal negative movement. On the 22nd of May 2003, the UN Security Council effectively lifted all non-military sanctions against Iraq. Foreign companies are likely to play a significant role in the reconstruction of the Iraq infrastructure destroyed by the trade embargo and the war, in essence, foreign countries and parties are to enter into various international agreement and sales to revive the infrastructural decay and decadence prevalent as a result of the war. The war stalled the oil market in Iraq. Iraq was the largest oil producer in 2009 and has the World's fifth largest proven petroleum reserves after Venezuela, Saudi- Arabia, Canada and Iran. Just a fraction of Iraq's known fields are in development (Pike, 2015: P.1). Iraq's energy sector is heavily based upon oil with approximately of percent of its energy needs met with petroleum. Also, about two third of the country's GDP was made up of oil in 2009. It is expedient to stress that Iraq's oil sector suffered massively as a result of international sanctions and wars and presently, the country is in dire need of infrastructural development in its oil and gas sector, there is urgent cry for investment and modernization. Different multinational institutions and companies are to partake in the infrastructural development that is to happen to the Iraq's oil and gas field, which according to reports is to cost over a hundred billion dollar (Donovan, 2010: p. 24-30). It is important to state that, international disputes involving Iraq war, Hilaturas Miel S.L. ("Hilaturas"), a Spanish company, decided to trade yarn with the Republic of Iraq ("Iraq") under the U.N. oil for food program (OFFP). The OFFP delivered letters of credit to the recipients (sellers), but needed impartial inspection of commodities when received on the ground in Iraq. So when the war broke out, the approved United Nations Independent Inspectors left the country and as such, inspection on the Hilaturas yarn couldn't take place. Shortly thereafter, the government of Iraq ceased to function, later,

letter of credit for the Hilaturas yarn expired. Hilaturas at a big loss and sued for damages. The Southern district of New York (Sweet, J.) decided the case, Hilaturas having brought suit under the Foreign Sovereign Immunities Act. The court thereby granted Iraq's Nation for summary judgment. Applying Article 9 of the CISG, it was concluded that since inspection was required and necessary, subsequent withdrawal of the inspectors cannot allow for performance, which means that payment for the yarn under the letter of credit could only be made after presentation of the required documents, including the inspector's report gathered from the inspection (Martin, 2008: p.79). What is evident at this point is the obvious fact that the CISG is effective and on a working footing in Iraq before the War. Therefore, if the contracting parties decides on being bound by the Iraq law or the law of another CISG member state, Article 1 (1) of the CISG stipulates that the provisions of this convention are to be applied as a part of national law, except where the parties so expressly expunge application of the CISG. Dispute mechanism system stated in specific contracts also decides.

If the CISG to be applied, if it is stated in an agreement that disputes arising are to be settled by the International Arbitral Tribunal which is very familiar with the CISG, a resolution based on the CISG may be more efficient then a decision pursuant to the provision of a legal system in which not all arbitrators feel at home (Kilan, 2010: p.88). If however, a foreign party accepts a dispute to be resolved by an Iraq state court, it boils down to the question of if the state court understands or is experienced in the application and interpretation of the CISG, (Kilan, 2010: p.88). This applies, in particular that in present day Iraq, as a result of sanctions, International legal relations too have largely come to a halt (Kilan, 2010: p.88).

CHAPTER 3

3 CONTENTS OF THE CISG

Business activities in the oil and gas sector, which definitely involves the extraction of natural resources which are essential for the maintenance and sustenance of so many inventions begins definitely with the negotiation of oil and gas exploration and exploitation contracts. Putting aside the well-established and the traditional parties' contractual autonomy, determining the legal regime of these contracts brings to fore the role of international law (Castrillon, 2013: p.4).

Oil and Gas business activities are divided into two main sectors, upstream operation identify deposits, drill wells and getting and materials underground, it also includes rig operations, feasibility studies, machinery rental and extraction channel supply (Investopedia, 2015). Downstream operations includes refineries and marketing. These service turn crude oil into usable products such as gasoline, fuel oils and petroleum based products (Investopedia, 2015). All of these operations are legally framed by contracts and because of the location of these resources hydrocarbons on one side and infrastructure and economic and human capital on the other) coupled with the global nature of the demand these contracts are mostly international.

Going by various resolutions of the United Nations which bothers on permanent control (sovereignty) over natural resources, have established that states have a sovereign and undiluted permanent right that must be exercised on national development and to the benefit of the people, to cater for owner nations, welfare and to freely dispose (Permanent sovereignty over natural resources, 1803).

So, to profit from these resources in actual sense requires a very high level of investments which states with the resources (unfortunately) cannot on themselves do alone because the necessary expertise for both the upstream and downstream sectors are usually with private professional companies which are foreign to the host nations (Permanent sovereignty over natural resources, 1803). Bringing the private foreign companies into a joint venture agreement with the host nation. Pursuant to article 1, the

CISG only applies to contracts involving the sale of Goods when the parties' places of business are in different states in principle, International Law should not be used unless the parties have expressly so agreed (Leboulanger & Mayer, N.D.). For the sake of this thesis, we are openly concerned with how the provisions of the CISG applies to the sale of hydrocarbons (Oil and Gas) and how the contents of the CISG operates to form a sales agreement contract.

Article 1 of the Convention for the international sale of Goods deal with Basic Rules of Applicability and states categorically that the mere fact that the parties have their places of business in different states is to be disregarded whenever the fact does not appear in the face of the contract at any time before or at the conclusion of the contract (CISG, N.D.). This simply implies that the mere fact that places of business of parties differs does not make the CISG automatically usable, it must be stated on the face of the contract as seen in Impuls I.D International, S.L Impuls I.D, systems Inc, PSIAR, S.A vs. Psion Teklo gix Inc. (2002) 1122, U.S District Court, Southern District of Florida.

Article 2 of the CISG states categorically where the convention does not apply or when/where not applicable, goods bought for personal and household use, gods by auction, or on execution or otherwise by authority of the law, shares, stocks, negotiable instruments or money, ships, vessels, aircraft and electricity are not to be governed by the CISG . This has been pronounced upon in M+H. GambH V.AS.P.T. KFT (Commercial Court Zurich 2012).

Article 4 and 5 enunciates the Convention' stance forgiven only the formation of the contract of sale and the rights and obligations of the seller and buyer and states categorically that the CISG is not concerned with the validity of the contract or any of its provisions or of any usage and the CISG is intact not concerned with the effect the contract or any of its provisions may have on the property in the goals sold (*Beth&Cole?& Werner and opoliele, 2012*).

Article 7 states clearly The international nature of the convention and its essence is basically to promote uniformity in international trade and also enunciates that questions

and issues concerning the convention are to be resolved in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law (Pace International Law Review, 2007: p. 223). It should be made known that the difference between Article 7 (1) and Article 8 lies simply in the fact that Article 7 is directed towards the courts and Article 8 to the parties but it can be argued again that both are directed towards the court since the court is the body that delivers judgment, and both are also directed to the parties since they are the ones to comply with the convention (Mattew, 1984: p.324).

Article 9 states clearly that the parties are bound by the usage to which they have agreed and also parties are bound by the parties established between themselves, also practices known to international trade and business unless otherwise agreed are impliedly believed to be part of the agreement (Civil Court Basel, 1992).

Article 12 of the CISG makes compulsory, the documentation of international trade and states emphatically that any provision of the CISG that is not in fandom with article 12 does not apply A Chinese court in the year 2000 pronounced on this provision and lucidly explained how necessary it is to have contracts governed by the CISG written and documented *see Miternet S.A. Vs. Henan Local Product Import And Export Company (2050) High People's Court (Appellate Court) Of Henan Province, China,* see also *Hispafruit Bv. v. Amuyen S.A (2001) District Court, Rotterdam, Netherlands* (Linguee, 2015).

The dictum of 'offer" is the dominant position in article 14 of the convention and states clearly that" a proposal for concluding a contract addressed to one or more specific person constitutes an offer if it is sufficiently definite and indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price. A statement which is intended to be an offer but lacks definite price will be treated as an invitation to make offer, while the addressee's reply may contain sufficient indication of the price or of its determination to be an offer; the addressee's conduct, such as the acceptance of delivered gods, can then be considered as an indication of assent. (Allan, 1984). Article 17 of the CISG states lucidly that an offer, even if it is irrevocable,

is terminated when a rejection reaches the offeror (Cisg, 2015). Another may be rejected expressly or by implication, thus, an offer is terminated once it is rejected, it is also terminated when the period or time stated or scheduled for acceptance fixed by offeror lapses or when a counter offer is given or sent to the offeror although, late acceptance may be accepted or remedied as seen at article 21 of the CISG. The purport or article17 is to assure the offeror of freedom to contract with another state without fear or anxiety that the offered state will change its mind and accept an offer earlier disallowed (*Gyula*, (1982.P.5)

Article 22 talks about withdrawal of offer and says that an offer may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective. Article 22 thus allows the offeree to withdraw acceptance if the withdrawal reaches the offerror not later than the time when the acceptance becomes effective. As seen under Article 18, the time when the acceptance become effective is generally the moment and time the indication of assent to the offer reaches the offeror (Farnsworth, 1987: p.3).

Article 27 of the CISG is optional, the parties are free and at liberty to set other requirements. Article 27 does not include a rule for oral declarations. The wording "transmission of the communication" and "failure to arrive" makes it clear, however, the article refers only to messages transmitted by means of similar means or correspondence (Cisg, 2015). All that is required to make any notice effective or make any request effective is for the notice to be sent by a means that is appropriate and appears reasonable to the circumstances of the transaction, business or agreement (Schelchtirem, 1986).

Article 29, a CISG contract of sale under the CISG are not subject to any other requirement as to form. Following up on his, Article 29 eliminate the formal necessity as regards CISG contract modification and contract termination. The general rule is thus enunciated in paragraph 1, "a contract may be modified or terminated by the mere agreement of the parties (Acquisition.gov, 2015).

Article 29 (1) thus serves to extend the postulation of Article 11, unless the state parties so otherwise agree, a contract to modify or terminate a CISG agreement need not be in writing (Lookkofsky, 2003: p.17-21).

Article 34 provides that documents relating to goods purchased must be given at the time and place and in the form as stated and required by the contract agreement and if the documents are delivered before due date as agreed, the seller may incur or run afoul of nonconformities with the document/agreement until the date agreed upon. Although, the buyer is entitled to damages as a result of the seller's exercise of the right to cure non-conformities in the document (Peter, 1986). Article 38 is of opium importance as it states firstly that the goods as the object of the contract must be examined within a reasonable short period as it looks practicable in the circumstance. The circumstances as enunciated in this section also applies to situation/destination of the goods actually delivered but if the seller fixes failure to perform his obligations in accordance with the position of the Convention or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price (Unilex, 2015).

Article 54 to 58 of the CISG obliges the buyer to pay price either as fixed in the contract or as determined according to contractual terms. The provision on determination of the price renewed the argument concerning the need for a definite price term, and it has been widely accepted by authors and courts that in the absence a fixed price, the parties implicitly made reference to the " price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned (Hannold, 2001: p.354).

Article 60 of The CISG talks about the buyer's obligation to take delivery, it is important to state that it also corresponds with the seller's obligation to deliver as seen in article 30 of the Convention. So, the obligation to take delivery of goods as specified by agreement of parties is premised on the obligation to deliver and also relates to time and place of delivery (Bianca & Bonell & Graf, 1987: p.34).

According to Ziegel, Article 65 of the CISG is consistent with the theory of specific performance adopted by the Convention but, from a practical point of view, the number of occasions when a seller needs to substitute his own specifications for the buyer's specification in order to protect his interests are likely to be frequent. Thus, in most cases, damages should be an adequate remedy. Article 70 talks about the seller's fundamental breach of contract. Therefore, in the case of fundamental breach, although the risk has passed, the buyer may be able to insist on the delivery of substitute goods or to avoid the contract that is, avail herself of remedies which would not ordinary be available as regards goods lost or damaged as a result of Acts of God etc (Lookofsky, 2003: p.17-21).

Article 74-76 of the convention discusses the extent and measure of damages recoverable and it is trite according to the provisions of the CISG that it is only breach foresaw or ought to have foreseen at will be compensated with damages. The underlying idea is that the parties at the conclusion of the contract, should be able to calculate risks and potential liability they assume in their agreement. Again, when a contract is avoided, damages generally amount to the difference between the contract price and the costs of a cover transaction together with any further damages (Cisg, 2015) and definitely the cover transaction must as a matter of fact be undertaken within a reasonable time after advance (ULIS, N.D.). And where the goods have a started well-known price, the injured party can also measure his damages "abstractly" that is independent from any cover transaction.

Article 80 allows a party to rely on the fact that the other state/party as a result of non-performance or breech impaired his own performance. As such, clearly, a party may not rely on a failure of the other party to perform to the extent that such failure was caused by the first party's own act or omission (Lookofsky, 2004: p.17-21). If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. The seller is then entitled to retain the goods until he has been reimbursed reasonable expenses by the buyer (Cisg.law.pace.edu, 2015). Article 90 go to the CISG states clearly that the CISG

does not prevail over any international document which has already been or may be entered into and which contains provisions concerning the matters governed by this convention (i.e. CISG) provided that the parties have their places of business in state parties to such agreement (Cisg, 2015).

Article 99 is concerned with the entry into force of the convention as regards the international obligations of the state contracting states that contracts under the CISG. Article 100 determines the true and point the convention becomes applicable to specific transactions or when international sales contract are to be governed by the CISG.

3.1 Elements of Contract Under the CISG

A contract is an exchange of assents between two or more persons that creates an enforceable legal obligation. In order to create a binding contract, the exchange of intentions of the contracting parties must be necessary and real. Where the exchange of assent of parties is inconsistent, if must be interpreted according to the rules of good faith (Schelchtriem & Schwenzer, 2010: p.456-458).

The CISG adheres strictly to the classical manner in which actors create legal and binding obligations which thus makes international contractual obligations arise out of expressions of mutual agreement. A contract is therefore concluded on concurrent statements of the parties will, the convention for the international sale of goods does not vitiate the need to prove concepts familiar to the common law, including Offer, Acceptance, Validity and performance (Allison, 2007: p.56). The CISG also allows for a contract to be formed without following the offer and acceptance structure. It is also provided for in article 18 of the CISG that a statement (including terms of agreement) are to be interpreted to include terms and trade usages and the parties' practices and also are to be constructed in the light of "any subsequent contact of the parties". Common Law qualified Lawyers are confronted with the challenges of how the elements of formation of contract can be proven by any means since the statute of frauds does not apply nor does the Parol Evidence rule under the CISG (Ontlaw.com, 2015). According to Article 11 of the CISG, a contract for the sale of goods does not have to be concluded in writing, nor

do any other requirements regarding form exist with the sole exception of countries who have declared an Article 92 reservation (Cisgw3, 2015).

Hence, all documentations, actions in accordance with the contract can be admissible to prove a contract. Thus, the usages and practices of the parties and the industry guides and norms are incorporated automatically into any agreements governed by the convention for the international sale of Goods unless expressly excluded by the parties (*Treibacher V. Allegheny).* It is important to state that the CISG opted for the civil law approach eliminating the element of consideration.

3.1.1 Offer

As it is established, contract to be binding requires at least two persons and two corresponding declaration of intent. The first of these corresponding declaration is called offer. An offer is a declaration of the intent of the offeror to another party in order to enter into a contract and it is seen as the first declaration of assent and for an offer to be effective, it has to be communicated to the offeree. The basic criteria for an offer are set out under Article 14 of the CISG, thus, each proposal does not mean an offer and according to the CISG, proposal to constitute an offer must fulfill certain requirements which are:

(a) sufficient definiteness of the offer;
(b) intention to be bound in case of acceptance;
(c) Effectiveness of the offer, in order to be accepted as an offer (ankarabarosu.org).

3.1.1.1 Sufficient Definiteness of the Offer

According to the CISG article 14 to be precise, an offer must addressed to one or more specific persons in order to be definite, and if it is not specifically addressed, it will be treated as a mere invitation to make an offer. That is why it said, offers made to the public are not considered or regarded as offers for lack of definiteness. Offers such as price list, circulars, newspaper advertisements etc (Vural, 2013: p. 125). According to

Hannold, offers made to the general public will cause practical difficulties in acceptance (Cisg, 2015).

3.1.1.2 Intention to Be Bound In Case of Acceptance

The CISG is very clear and definite and allows for no ambiguity. Accordingly, a proposal requires being "binding" in order to be an effective offer under the CISG and therefore the offer being made must categorically include the offeror's intention to be bound by the offer when the offeree accepts the offer. Such criterion provides to an offer to be distinguished from a simple nonbinding proposals.

3.1.1.3 Effectiveness of the Offer, In Order To Be Accepted As an Offer

According to article (14) (1) of the CISG, for an offer to be effective, it must efficiently indicate the goods and expressly or implicitly fixes or makes provision for determining the quantity and price. Therefore, all essential elements must be stated in an offer for it to be effective. It is obvious that if the essential terms of the contract are explicitly fixed, there will be no problem of determination (Cisg, 2015).

For the sake of clarity and express understanding of an offer, the following are to be clearly indicated.

i. **Price indication**: According to the construction of article 14 of the CISG, the contract is not to be concluded without specifying the price as such, the indication of price. Price has to be determined or at least determinable one, an effective offer does not exist (Mistelis & Viscasillas, 2011: p.102-105) moreover, in case a proposal refers to a price list or a market price, it is adequate to accept a determination impliedly.
ii. **Indication of nature and quantity of goods**: The nature and quantity of goods offered must be spelt out or at least determinable in the offer but it has also been said by some learned authors that the explicit description of the goods is not strictly required and may be impliedly determined (Schelchtriem, 1986). Schlectriem accepts that there may be just a simple indication of the goods and

their amounts but at least, that indication must be interpretable. So also, besides written form of indications, a verbal/oral indication of the goods in nature and quantity is also acceptable.

3.1.2 Termination of Offer

3.1.2.1 Withdrawal and revocation of offer:

The CISG distinguishes between "withdrawal of an offer" and a "revocation of an offer". An offer, even if it is irrevocable, may be withdrawn provided the withdrawal reaches the offeror (CISG, N.D.). However, after the offer reaches the offeree, the offeror may no longer withdraw the offer but may been entitled to revoke the offer in accordance with Article 16 of the CISG (Cisg, 2015). According to the CISG, an offer can be revoked at any time provided the revocation reaches the Offeree before he has dispatched acceptance. In a nutshell, Article 16 (1) of the CISG allows for revocation of offer, until the offeree dispatches his acceptance. The revocation must therefore get to the offeree before the offeree dispatches acceptance to an effective offer (Unilex, 2015). It is fair to say that the "revocability of offer" under the CISG is limited because, the offeror is bound by his offer between the dispatch time for acceptance and its arrival at the offeror.

3.1.3 Rejection of Offer and Expiry Time Set for Acceptance

With regards to the CISG "rejection" is the third termination ground apart from withdrawal and revocation of offer. According to Article 17 of the CISG, an offer can also be terminated through rejection of the offer by the Offeree. Accordingly, rejection of an offer must be either expressly or by an implication but an explicit rejection must reach the offeror. The receipt theory here applies to declaration of rejection as well. An offer may be rejected even after acceptance has been dispatched but this acceptance does not have to receive to the offeror (Unilex, 2015). It can be said that the rejection avoid the conclusion of a contract only if it reaches the offerror before or at the same time of the receipt of acceptance of the offeror.

Under the CISG, there is no provision that indicates whether the expiry time period as fixed by the offeror for acceptance terminates the offer itself or not (Kindler, 2009. P.

13). It should be noted that expiration of time for acceptance" which has been written under article18 (2) does not terminate the offer itself. As postulated by Kindler, the time set for acceptance has a meaning that shows until when offeror is bound by his offer, which is governed under Article 16 (2), it does not have a function to terminate offer after the time period expires. It should be noted that the CISG does not govern the potential termination grounds like death or loss of capacity of the offeror (Moccia, 1989).

3.1.4 Acceptance

Article 18 (1) provides that "a statement made by or other conduct of the offeree indicating as sent to the offer made is an acceptance" The most important thing here is "assent" and it is to be determined by the rules set in Article 8 of the CISG. Assent to an offer can be in a verbal or written statement or by conduct. Oral offers must be accepted immediately unless circumstances indicate otherwise according to Article 18 (2) of the CISG. Oral offer includes conversation face to face, by telephone, or by any other technical or electronic means of communication that allows immediate oral contract but does not include statements captured in a material medium such as most notably fax (Allison, Butler, 2009: p.56). Electronic acceptance becomes effective when an electronic indication of assent has entered the offeror's server provided the offeror has consented either expressly or implicitly to electronic communication (Christian, 2003.).

Request for modifications, issuance of credit, confirmation of invoice, and execution and/or performance of condition set forth in the offer or contract in general would not as been taken as fact of assent. Silence or inactivity does not amount to acceptance. It is noteworthy to state that, former usage to which parties have agreed and any practices which parties may have established in their past contractual relations may indicate assent to an offer (CISG, N.D.).

3.1.5 Time Limitation for Acceptance

For an acceptance to be valid effective, it must be reviewed and within the time limitation set forth in the offer or late acceptance in accordance with article 21 of the CISG (ICC court of Arbitration, 1994). If acceptance is not received by the offeror, the offeree bears

the risk of transmission. The CISG uses the “receipt theory” of acceptance absent contrary agreement between parties. The receipt theory is common in a civil law tradition and is based on the premises that “the sender” has a greater opportunity to know whether the medium he uses is then subject to hazards or delays (ICC court of Arbitration, 1994).

It is important to state that the mode of communication determines the time period for acceptance and time period begins to run immediately the letter, telegrams or mail is handed in for dispatch or from the date shown on the letter/envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication begins to run from the moment that the offer reaches the offeree (LEGISLATIVE HISTORY, CISG, 1978). Thus, an offer from the Iraq government to Shell Petroleum Company to help exploit oil gets to Shell if by instantaneous communication, the moment a Shell staff or representative receives the message. Official Holidays or non-business days occurring during the period for acceptance are include in estimating the period.

A late acceptance is nevertheless effective as an acceptance if without delay, the offeror orally so inform the offeree or dispatches a notice to that effect (Cisg, 2015). Thus, if a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission has been normal, it would have reached the offeror to due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect (CISG, N.D).

3.1.6 Assent with Modification and/or Additions Battle of the Forms

Any reply to an offer which contains additional terms or modification of the initial offer is a rejection of the offer and does not qualify as an acceptance, it is called a counter offer. Article 19 (3) CISG that additional or different terms relating to price, payment, quality of goods, place and time of delivery, liability and settlement of disputes etc. amounts to counter offer and as such cannot be referred to or accepted as acceptance. If additional terms do not materially alter the terms of the offer, then the terms of the

contract are the terms of the offer with the modifications contained in the acceptance unless the offeror, without undue delay, objects orally to the discrepancy or dispatched notice to that effect (Cisg, 2015).

3.1.7 Standard User Terms

It is today accepted that standard user terms provides facilitation to daily trade and practice and although the CISG is silent on standard user terms, a majority of Courts applies Standard User Terms and Courts do apply part II of the CISG and particularly rules found in article 8 to determine whether the parties have agreed incorporate standard terms into their agreement (Harry& Flechtner, Cisg, N.D). Pursuant to Article 19 (2) of the CISG, for the standard user terms to be effective and have legal force the parties' assent is very necessary. Any party to the contract must not oppose standard user terms.

3.2 CISG and Other Related Documents

3.2.1 The CISG and The Uniform Commercial Code

If a sales contract between a foreign corporation and a US corporation provides that the contract will be governed by a specific state's "Uniform Commercial Code" (UCC) rules, then all of the disputes arising under your contract will be so resolved. (UCC versus CISG, 2015). The UCC has been enacted and in force by all fifty (50) of the United States (Mooney, 1986). If the country of one of the parties of the agreement is one the seventy (70) countries that have signed and ratified the 1980 "United Nations Convention on Contracts for the International Sales of Goods" (CISG), Then, the parties must clearly, explicitly and specifically exclude the applicability of the CISG (Drago & Zoccolillo, 2015), The CISG will apply to sales contract, where the Buyer and Seller's respective dominant places of business are both in CISG contracting states. In other words, if both parties' principal places of business are in CISG countries the CISG is the default and applicable choice.

The UCC contains the statute of fraud which automatically means that any business transaction above $500 must be evidenced in writing so as to be enforceable in courts in the United States of America. The CISG on the other hand was drafted to meet the needs

of businessmen who prefer to conduct business without restraints imposed by formalistic requirements. Unlike contracts governed by the UCC, a contract of sale under the CISG need not to be in writing, and is not subject to any form requirements. The writing requirement in the UCC is believed to prevent fraudulent claims. However, one should keep in mind that although the CISG does not require a written contract, the existence of the contract still needs to be proved by the party seeking enforcement. Under the CISG a party can prove a sales contract by any means, i.e. invoices, purchase orders, witnesses, etc.

US Courts when applying the UCC will generally exclude trial testimony that contradicts the specific terms of the parties' written agreement. This is known as the Parol Evidence Rule (PER), and it has been a bedrock of the Common Law. The Parol Evidence Rule presumes that a written contract encapsulates the parties' all-inclusive agreement. Therefore, under the UCC, oral evidence cannot be used to contradict the terms of a written contract (BUDOW, 2015). This is a big difference to the postulation of the CISG that will allow an oral evidence vary or vitiate the terms of written agreements of transactions (Teevee & Steve Gottlieb , Plaintiffs, GERHARD SCHUBERT GMBH, USA DISTRICT COURT 2006).

The term “Battle of the Forms” refers to the situation where the customer sends in a purchase order containing certain terms of sale, and the seller respond with an acceptance, or an invoice, that contains different terms of sale. The issue that now arises is whether there is a valid contract and if so, what are the terms in which the parties have agreed upon. The CISG and UCC differ on these important questions: The UCC deems a valid contract to have been formed as long as both sets of forms (basically the offer and acceptance) agree on basic business terms, such as the description of the goods, the price involved in the transaction, the quantity, and maybe a few additional terms. The additional terms you have put in your acceptance are disregarded, and the terms of the original purchase order govern the contract. This is the UCC rule unless you make it clear in your acceptance form that your additional terms are mandatory. Then, if the buyer refuses to accept your terms, the UCC provides that there is no contract. On the other hand, in this situation, the CISG follows the old rule and provides that a contract is

formed only when “consent” occurs, that is the parties or states to the agreements must have met at a point accepted by both parties. The CISG has express provisions to handle the problem of forms that contain additional terms. If the additional terms do not materially alter the facts of the offer, then a contract is formed under CISG. If the additional terms alter the offer, there is no “meeting of the minds” and no valid contract.

Both the CISG and UCC places the obligation to provide good and service fit for purpose obligation on the seller. The UCC calls this fitness “implied warranty of merchantability.” This warranty enforces on the seller to make provision in accordance with the contract merchantable services Because it is by operation of law implied in every such contract, regardless of whether the merchant seller is aware of such a warranty, its impact is widespread and generally recognized. It is important to state that this does not mean the seller is to provide perfect and flawless goods but merely goods that will be usable for the ordinary purposes for which such goods are generally used. This condition is implied to put the buyer at ease of expecting good in reasonable condition and fit for what it is meant for. Again, once a sample was used during the bargain, or a model was shown, it automatically becomes the minimum standard in terms of quality of good expected (Ziegel, 1981: p.789).

Again where certain terms of the agreement, specifically the price, are actually not set forth in the offer, the CISG would most likely conclude that no contract was created. Article 14 of the CISG has been interpreted to mean that the offer must either explicitly or implicitly refer to the price, quantity and quality etc. Under the UCC, a valid contract can be created even if the offer fails to state certain items such as quantity or price. This can be of advantage in the common situation where the contract was essentially negotiated orally or there is only a purchase order from the buyer, but it does not state the price, and you, as the seller, are now in the difficult situation to prove the existence of a valid contract.

Under the UCC, a party may revoke an offer at any time before acceptance by the other party. However, if the offering party has promised in writing to keep the offer open, then the party making the offer is not allowed to revoke the offer, either for the period

specified or, if none is specified for a reasonable time period not to exceed three months. The CISG, however, makes an offer irrevocable if the recipient of the offer has reasonably taken action by relying on the offer before receiving a notice that the offer is revoked. The CISG does not set an express time limit for the offer to remain open (however, Article 18 (2) states that when there is no set time for the acceptance, it must occur within a "reasonable" time).If, for example, an overseas seller makes an offer to an American buyer, under the CISG it may be obligated to perform on this offer if the buyer can show that it acted in reasonable reliance on the offer. The UCC permits the supplier to retract the offer as long as the offeror did not promise the contrary, and provided the offer is revoked before the offeree has accepted the offer. Under these circumstances, the UCC provides an easier way out if you made an offer on which you do not want to follow through afterwards.

3.2.2 The CISG and Organization Pour L'harmonization En Afrique Du Droit Des Affaires (Ohada)

The common goal for both OHADA and the CISG is to unify the international sales law. However, the former focuses on the regional level, and the latter on "universal" or world-wide unification (Penda, 2015). Although OHADA was modelled after the CISG, there are notable differences.

The rules guiding the formation of contract under both laws are by and large comparable. However, there is one notable exception. Whereas under the CISG it is in principle possible to conclude a contract without specifying a price - although this has been subjected to a very high debate by authors and fellows on the International law field (Schwenzer, 2011: p.3-4).

However, unlike the CISG, the OHADA has a point related to the payment of the price, whereby the price stated in the contract of sale is presumed free from other charges, like taxes. We can therefore draw inference that OHADA provides therefore more predictability for the seller to receive the price of the good sold and thus, provides more certainty in application of a contract of sales (Ferrari, 2003).

The OHADA rules relating to giving adequate notice as per provisions are quite similar to those of the CISG. Both regimes imposes an obligation on the buyer to examine the goods and to give notice to the seller of any non-conformity. A buyer that does not comply with this duty loses all remedies relating to the non-conformity (Penda, 2015). However, there is a major striking difference between the two regimes. The CISG tends to guide and protect the buyer that has a reasonable excuse for its failure to give the required notice, by allowing such party a chance to reduce the price of the goods if they are non-conforming to the contract, or to claim damages except for loss of profit. OHADA fails to protect a buyer that does not provide a timely notice, even if it has a reasonable excuse. Thus, under the OHADA, even a buyer with a reasonable excuse for not giving timely notice will lose all remedies and will have to pay the full purchase price for non-conforming goods. Again, the CISG allows the buyer to give notice of non-conformity for up to two years from the date on which the goods were actually delivered to the buyer while the OHADA gives just a year period (CISG, N.D.).

As regards the termination of the contract, both regimes allows for unilateral termination by mere declaration. However, OHADA differs from the CISG by stating in clear terms that unless a reasonable and timely warning was given to the defaulting party, any consequence resulting from a unilateral termination remains on the party declaring it, even if the court later confirms the breach to have been fundamental (Penda, 2015). Given the sophisticated procedure under the OHADA, that as such means that even a serious breach may not be fundamental, reducing certainty and definiteness, and therefore the security, of a contract of sale. It is expedient to say that the duty to mitigate damages is covered in the OHADA only in cases related of fundamental breach, while the CISG applies the duty more broadly (CISG, N.D.).

CHAPTER 4

4 ENFORCEMENT AND JUSTICIABILITY OF THE CISG

The CISG is a unique transformation that signifiers a quantum shift in international business; it thus signifies a quite radical revision in the very prism through which we view transnational business deals and disputes.

It is highly debatable whether uniformity under the CISG exists or achieves justifiability and it is however crystal clear that wearing an international coat for a law does not automatically make it applicable and justiciable. Several oil deal contracts have been settled with reference to the CISG that was once consulted in the formation of the agreement.

So, In order to provide a uniform application and justifiability, the convention must be uniformed applied by national courts and tribunals (Lundgren, 2014: p.7). Under the United States of America law, the CISG is known to be a self-executing document, it means that it needs no congressional pronouncement to make it enforceable or justiciable (*Chicago packers' inc, 2000*). It is at this point imperial to state that one solid distinction of the CISG which pronounces its justifiability is that it requires Courts to first consider the parties' subjective intent when interpreting agreements (CISG, N.D.). The Convention for International Sale of Goods automatically applies to contracts for the sale of goods between parties whose places of business are in different signatory countries unless the parties expressly opt out of the applicability of the convention. This simply implies that, once the contracting parties agrees that the position of the CISG is to govern the agreement, the convention becomes enforceable and justifiable which means the agreement reached or made under the CISG can be pronounced upon by the Court of Law. In an oil magnate case involving Iraq and the Finnish authorities, the arbitral court ruled that since the parties agreed to be governed by and followed the CISG, the agreement will be enforced upon and within the tenets of the Convention. So the CISG can be said to be the default applicable law when parties from two different signatory countries execute an agreement for the sale of good except the parties therein decides to

“opt out” and not be bound by the provisions of the CISG, this makes the provision of the CISG enforceable and justiciable. It is important to state that the preamble of the Convention on its own has been invoked despite the fact that it does not contain substantive laws. Specifically, the preamble has been cited to support the conclusion that certain domestic law causes of action related to a transaction governed by the CISG were pre-empted by the convention (Guang & Kelon, 2008: p.5).

It is important to state that justifiability concerns the limits upon legal issues over which a court can exercise its judicial authority, so in essence, the point driven by this chapter is that, the courts deciding on the CISG. That is the court delivering judgments and judicial views on the skeletal provisions of the CISG. There is no doubt about the justiciability of the CISG, courts from different countries have pronounced upon it and enforced its provisions. In fact, International Lawyers have been advised to encourage their clients to ensure the application of the CISG in their international contracts as its enforcement is easy to come by and largely shuts out conflicts of laws. It is important to state that the justifiability of the CISG is not automatic, the practitioner handling the agreement must be adequately informed of the current status of the contracting states including any declarations allowed under Article 90 to 96 of the CISG that the states or contracting parties have made (Judith, 2001). These declarations bind the contracting states that have not themselves made such declarations. For example, the Scandinavian states, for instance, declared in accordance with Article 92 (1) that they would not be bound by part II of the Convention that deals with the formation of contract and, in accordance with Article 94 (1) (2), that the Convention would not apply to contracts of sale where the parties have their places of business in Denmark, Finland Sweden, Iceland or Norway. It can thus be said that an agreement or contract with Scandinavian states must be carefully made or drafted and consideration must be given to the already exempted part of the provision of the CISG so as to make such agreement enforceable and valid. It is so far established that the court can enforce the Convention for the International Sale of Goods, that makes conclusive that the CISG is highly justiciable, in fact, England that has so far not sign or ratify the CISG has on many occasions have her courts refer to the CISG in

numerous occasions, an instance is seen in *James Buchanan & Co Ltd. V. Babco Forwarding and Shipping (UK) ltd (an unreported case).*

In getting to enforce an agreement under the CISG or better put, in getting to enforce agreement made in tandem with the CISG, the position of certain countries to certain articles in the CISG must be adequately considered because the convention allows for the exclusion of certain articles in the convention. Pursuant to articles of the CISG, China, Singapore, St. Vincent and Grenediness, and even the United States have declared that they would not be bound by article 1 (1) (b) of the CISG, this means that any agreement not in tandem with this becomes unenforceable against this country or even their nationals. In fact, pursuant to article 93, several states have made territorial declarations, Australia declared that the convention shall not apply to the territories of Christmas Island, the Cocos (keeling) Islands; Denmark also declared that the Convention shall not apply to the Faroe Islands and Greenland; New Zealand has declared that the Convention shall not apply to the Cook Islands, Nine and Tokelau. Again, Pursuant to the provisions of article 96 of the CISG, Argentina, Armenia, Belarus, Chile, Estonia, Hungary Latvia, Lithuania, Paraguay, Russian Federation, and Ukraine have declared that any provision of article 11, Article 29 or part II of the Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place in the country that has filed this declaration. China has filed a similar declaration (United Nations Commission on International Trade Law, 2008).

It can thus be said that once an agreement fails to recognize exemptions, it might make such an agreement unenforceable since the exempted articles cannot be made enforceable by the court against a wall stated and well recognized exemptions.

It is imperial to say that various scholarly articles and papers have been written on Article by Article enforcement and various courts and arbitral decisions have pronounced on different articles of the CISG. So also, each writer has been influenced in his/her writings by the country he or she belongs or even in comparism with the local contract legislation in his/her home country. That takes us to the earlier discussed position on various

countries exploiting the allowed “exemption” privilege of the CISG, thereby countries exempt certain articles in CISG as unenforceable against them or unenforceable against their nationals involved in international agreements governed by the CISG. Authors like Franco Ferrari, Silva Ferrari has written various scholarly articles to push certain unenforceable articles against Italy and Italians. Peter Schlechtriem, Petre Butter have also written on how enforcement of articles of the CISG varies from country to country picking their different home countries as a stead. It is important to stress at this juncture that Article 7 (1) (2) of the CISG talks about the uniform interpretation for the CISG, the CISG is to be interpreted and enforced in such a manner that will promote the international character and the uniformity of the CISG, reference is to be made to its international character and promotion of good faith in international transactions is of opium importance in enforcing and in court pronouncements on agreements and contracts involving the CISG (Badmus-Busari, 2012). Enforcing the tenets of Article 7 (1) and (2) requires a two pronged approach, there is to be determined whether the contract is governed by the CISG or domestic International Laws, secondly, whether there is a general CISG principle on which the issue at hand can be solved. This might appear a simple task upon the understanding of mere words, in application, delicate challenges are posed in practice. An illustration of the difficulties encountered in interpreting provisions of Article 7 (1) (2) of the CISG showed vividly in a Dutch case decided by the Dutch Supreme court. The case was in relation to a sale of tomato plants from a seller in Gran Canaria (Gran, 2005) and it was clearly shown on expert evidence that the plants sold were infected by a bacteria, whereas there were no express warranties obtained from the seller in Gran Canaria and the Dutch seller relied on its general conditions of sale containing an exemption clause. At the trial court, it was held that under the CISG, there was agreement between the parties as to the application of the seller’s general conditions and that the Dutch seller was exempted from liability. However, the Belgian buyer wanted to escape the application of the CISG, he invoked Article 8 (2) of the Rome Convention on the Law applicable to Contractual obligations, a convention which protects a buyer against acceptance by silence if any such protection is afforded by the law of its place of residence. The Dutch Supreme Court stood its ground and insisted that the Rome convention was not applicable since the transaction was an international

one and governed by the CISG. As such, Article 7 of the CISG seeks to protect against domestic rules that might seek to frustrate the enforcement of agreements under the CISG.

In Corocraft Ltd V. Pan American Airways Inc (Lloyd's, 1968) the English court of Appeal in deciding on a contract made under the CISG said, "even if I disagreed, I would follow them in a matter which is of "International concerns, the court of all counties should interpret this convention this way (Per Lord, N.D.). The court in this case rejected two conflicting decisions which does not seek to protect the uniformity enforcement procedure and guide enunciated by the convention. One of the major problems faced by European countries in enforcing the CISG happens to be with the problem associated with "place of delivery" which renders the determination of a Court's jurisdiction rather complex, most European countries that imports oil and gas for sustenance of automobiles and factory machines have encountered running battles with supplier states that have insisted on the cost of delivering at one part or being forced to a changed location of delivery for best reasons known to the buying countries. The question that has divided the Courts is, is the place of performance the place where the goods are handed over to the buyer, or the place at which the goods were handed to the first carrier for transmission to the buyer?

In a German Federal Supreme Court decision, *Industrie Tessili Italiana Como V. Dunlop Ag* (Vezyrtzi, 2009: p. 19-24.) owing to the contradicting approach adopted by state courts in Germany. In its decision of July 9, 2008, the German Federal Supreme court decided to stay the proceedings and request a preliminary ruling by the ECJ. Meanwhile, in its preliminary position on the matter, the German Supreme court seemed to regard "place of delivery" as the place where the actual buyer obtains or should have obtained under the contract control over the delivered goods (Vezyrtzi, 2009: p.19-24).

In oil production, the Middle East has an enormous impact on international sales and the economy at large for example, Arab contributes the second major source of European Market funds (Rodney, 1983: p. 56). So in countries like Iraq, the buying and selling of petroleum is not just for massive oil conglomerates but smaller and companies as well.

The constitutional role of Islamic laws in the Middle East maximally affects the enforcement of certain international documents, with Iraq and the CISG not exempted. As it stands, Iraq is a signatory to the CISG (alongside two other Islamic Nations, Egypt and Syria). Therefore it is important for any International Law practitioner to be aware of the implications of international sales transactions that many fall under the governance of the CISG and the influence of Islamic law (which could possibly vary the application of the CISG in Iraq) in certain circumstances (Badr, 1978).

CHAPTER 5

5 CRITICISM AND LOOPHOLES OF THE CISG

Without doubt, the advantages of the CISG are numerous and established but criticism against the convention are also rife and cannot be brushed aside, although some unfounded because they grow from general misunderstanding of the convention and also most criticism arrive out of academic analysis and views which are majorly untested or not yet pronounced upon by a competent Court of Law.

5.1 Uniform Interpretation

One major criticism against the CISG is that of uniform interpretation of the CISG, the CISG is blamed for its lack of precision and vagueness such as usage of terms like “reasonable” and for the usage of general clauses (Alastair, 1998). According to the postulation of Koji Takahashi (2003) “the CISG rules do not provide a high degree of legal certainty and predictability, in as much as they rely upon ambiguous concepts such as “fundamental breach” and “reasonable length”. This allows for vagueness and uncertainty, leaving loophole for parties to exploit and use if allowed to their advantage against the adverse party in the agreement. While it has been the position of common law attorneys who are extremely accustomed to common law background and accustomed to extremely detailed statutes, the delicate relationship of the Judiciary and the Lawyers having transcend into different views and interpretation supremacy leading to extensive and different catalogues of definitions for the vague and imprecise words of the CISG (UCC, 1978). And it is a well-established fact that the CISG does not correspond to the common law system but has instead been greatly inspired by continental civil codes. According to article 7 (1) CISG the Convention must be interpreted with due credence "to its international characteristics and natural tendencies and in direct conformity with the uniformity in its application". This undertaking is undoubtedly not stress-free for legal writers and practitioners. The biggest risk for uniformity is that the Convention is interpreted in a way that preserves the domestic rules of each interpreting lawyer or state. This is especially crucial in the areas of the Convention's sphere of application and gap-

filling (article 7 (2). Such "homeward trend" can have various reasons, it can be caused by the similarity of a concept or term with a domestic legal tradition (Wesiack, CISG, N.D). An example for such a "false friend" (faux ami) is the "German" Nachfrist rule in article 47. Additionally, the similar peril subsists with the broad approaches of explanation. Though the CISG has gone through a tangible transformation into national law, the Convention needs to be coloured with interpretation in accordance with the standards internationally technical. In contrast to the traditional common law tendency to interpret legislation narrowly, the Convention should therefore be interpreted broadly, giving more weight to purposes and policies underlying particular provisions and the convention as a whole. Furthermore, the "homeward trend" can also be caused by the vagueness and flexibility of specific terms, properties often associated with civil law traditions. Even though there is an absence of higher court as in national systems that resolves doubts impartially without difficulty and speedily, consistency is realizable. If legal texts and exercise in other States is critically viewed and acknowledged as comparable, undeviating and definite elucidations can be formed sooner. With more certainty and uniformity established, the convention shall become even more accepted and less often excluded by parties (Wesiack, CISG, N.D). Uniformity can however only become reality, if legal writers and practitioners are indeed willing to part from their legal traditions and accept the international character of the Convention. (cisg, N.D.).

Again, unlike the European communities or the partly African OHADA, the CISG member states have no common or overseeing supreme court guiding the interpretations of the uniform or harmonized CISG although it has been said that there is now a common ground to safeguard the uniformity of the CISG and that is the fact that it is now a common ground that the CISG is to be interpreted autonomously and regard is to be given to its international character. It has been argued that "international situation does not possess the coherent background for interpretation", so that "elastic words are undesirable in international enactments even more than in national enactments (Wesiack, CISG, N.D.). This arose the opinion whether the Convention can be subjected under uniform interpretation, which however is the doorway to its feat. In regards to this aim,

uniformity can be defined as allowing a level of imperfection that does not encourage "forum shopping (CISG, N.D.).

In achieving this uniformity, due consideration is to be given foreign judgments and arbitral award which without doubt have shown to be important on the international level. Whatever the situation in a domestic legal system may be, there can be no doubt that foreign decisions do not have a binding effect upon national courts (Schwenzer & Hachem, 2009). But the cogent effect can never be over emphasized. The incapacity to adapt the CISG to changing conditions suggest clearly that it will grow as an inferior alternative to the more adaptable sales law rules of individual nations. This is well captured by Lord Wilberforce, who wrote that "to plead for complete uniformity may be to cry to the moon (Securicor, 1980). Consequently, similar to the claim previously, the general opinion seems to be that some form of "consistent" Interpretation, may serve as a guide and helper in deciding on interpretation of certain postulations of the CISG (Eriz, 2009). The lack of final court of Appeal that deals with disputes arising of the CISG has also been widely criticized and also the lack of a major CISG administrative body to give guidelines and guide on how to interpret the provisions of the CISG. Method used in interpreting The CISG are not too in line with the ambitious aim to have uniformity, the court is not allowed to rely on national laws but rather, should engaged in a truly autonomous decision and interpretation. This creates a big vacuum in the uniformity objective of the CISG (Bianca Bonell1987: p.34).

5.2 Exclusion by Contracting Parties

A second well established criticism against the CISG is that parties often excludes it and most times to avoid critical and perpetuate sometimes liable breaches. A survey by Koehler shows that 70.8% of parties in the United States of America, 72.2% of contracting parties in Germany exclude the applicability of the CISG (Koehler, 2006: p.123). In a wider survey carried out at the Netherlands, smaller Dutch companies and in fact government owned corporations exclude the applicability of the CISG. The usual (although feeble) arguments given for the exclusion of the CISG are that, in case parties are aware of the substantive rules of the CISG, they fear that it leaves too much

room for varying interpretations and again, when the content is unknown to the parties, they are reluctant to invest the time. This an excuse leaves too much questions unanswered and makes the convention a possible 'do without'. It is often surprising that this exclusion is most times perceived as a problem in the academic side of the CISG. It is to be noted that the CISG as a special convention is that it creates a uniform regime and does not mean or suffice to replace existing national laws or guides on the formation of contact in relation to sale of goods. It only serves to add extra option for parties to feel safer and assured since it is universal and creates uniformity. It is important not to confuse the need for uniformity with interest of parties or the wish to promote international trade.

5.3 Incompleteness of the CISG

Another criticism plaguing the CISG relates to the incompleteness of the convention. Article 4 states that the scope of the CISG encompasses the formation of contracts and the rights and obligations. The CISG is however not concerned with the validity of the contract or of any of its provisions. While some authors have stated that "Validity" as a team is unclear (Bridge, 2007). This has led to wide range of inconsistent application and definitions across jurisdictions, for example, it is clear that a contract relating to nonexistent goods is valid not minding the otherwise stated position of the domestic law (German civil code before 2002). This is because the CISG provide for the risk of loss in cases where at the time of concluding the agreement, the goods (which is the object) of the agreement had already been lost or damaged, for instance, in oil contracts, probably while trying to ship in the product, the ship capsize or ran aground, leading to the complete loss of the oil and unsalvageable. The same holds true for the sale of goods that the seller does not own at the time of the conclusion of the contract.(CISG, N.D.). Likewise errors in expression that are only recognized as relevant in a few legal systems (Erust, Kramer & Thomas, N.D. 1999: p.34-49). Does not qualify as a matter of validity to be resolved by domestic law but from the general principles of the CISG. It can be drawn that where the party that is to receive a declaration was aware or could not have been unaware of the real intent of the party making the declaration as seen in article 8 (1) of the CISG, it is important to state that the receiving party bears the risk that the

declaration has not been expressed the proper way. This some holds where a reasonable third party in the mold of a receiving party would have recognized the real intention of the party that made the declaration. Conclusively, under the CISG, the risk of error of transmission of a declaration has to be borne solely by the receiving party. It is important to state that a special defect of the CISG needs to be addressed and that has to do with the validity of general conditions or Standard Business Terms, it is crystal clear that incorporation of standard terms is regulated solely by the provisions of the CISG on the formation of contract (schelchtriem & Schrometer, N.D.). This has to do with matters that relates to ease of access, linguistic, clarity, battle of forms coupled with analysis. However, sadly, in light of the provision of the clear wordings of article 4 of the CISG, the substantive validity of clauses has to be determined by otherwise applicable domestic law.

5.4 Hardship

Several authors have complained about the hardship created by the absence of rules pertaining to a severe change of circumstances and the lack of an express provision on Hardship (Wesiack, CISG, N.D.). It is important to stress that academics in area of international law have pointed out other uniform projects or domestic laws (German civil, 2004). Which have introduced such provision to regard to hardships and as such, authors have criticized the CISG for lacking such provision and thus advocate the applicability of the remedies laid down in these various rules to matters or cases arising out of the CISG. Authors and practitioners emphasize particularly the duty to renegotiate and the possibility that a court may adjust the contractual obligation to the changed circumstances. The Convention has been criticized for ambiguity and uncertainty in its text, leading to uncertainty in the law and in actions/contracts relating to the CISG. Being said above, verbal cooperation have always surfaced without solution to subject matters with the part of good faith serving as an instance. But this criticism also concerns the vague and suspended drafting style of the Convention. Drafting styles once again differ between common law and civil law traditions/origins (CISG, N.D.).

Generally speaking, the common law is commercially orientated and favors objective approaches that create certainty. Civil law traditions are still mainly connected with impartiality in different circumstances. They, in consequence, have a preference personal method that offer the desirable tractability, which is a source of some vagueness. There is, in other words, a balance between justice and conviction and these have established diverse significances. This likewise illuminates the not the same levels of overview of lawful guidelines in both systems: Common law systems applies to real resolutions to specific problems, while civil law States embraces moves from wide-ranging doctrines. In encouraging the development and application of general principles the Convention has certainly taken a civil law approach. However, this approach should not simply be criticized for being different to the common law. The critical enquiry is, if such comprehensive principles actually brought about many ambiguity in practice. No answer can be given except there is a proper examination of probability an interpretation that is uniform and the Convention's application. In doing this, it must be known that there is a possibility that contradictions may be the reason for the absence of getting an agreement instead of the civil law drafting method. Factually, the language of the Convention "is not typical of the concise style of draftsmanship of the French-inspired civil codes (Wesiack, CISG, N.D.).

5.5 Content

Another criticism that has been advanced against the CISG is that the content or positions therein are seller friendly. Again some commentators argue that the positions therein are buyer friendly. Again, it is still argued that the CISG conflicts with international practice and widely used trade terms and widely contested is the suitability of the CISG to govern commodity trade. The argument in support that the convention is seller friendly is basically based on the obligation of the buyer to examine the goods and give notice of non- conformity (Schwenzer, 2005: p.353). At the Vienna conference, this position was supported by countries whose legal systems did not provides for any notice requirements but it merits emphasis to stress that interpretation of Articles 38 and 39 CISG invalidates such criticism.

On the other hand, practitioners of German background criticize the CISG for being too buyer friendly pointing specifically to the Anglo-American concept of "strict liability" as well as somewhat ironically, to the alternation of the notice requirement. Yet, in practice, the differences between the liability systems are readily negligible (Wesiack, CISG).

5.6 Conclusion and Recommendations

The Convention for International Sale of Goods also known as the Vienna Convention has gained worldwide acceptance and as it stands today, 72 states have ratified it; nine out of ten leading trade nations being member states it has been estimated that about seventy to eighty percent of all international sales transactions are governed by the CISG. It has been described as a worldwide success and applauded by many as the greatest international sale agreement guide. In fact, countries like England that have failed to ratify the CISG have referred to it in various articles and court decisions. Despite few criticisms and loopholes, the convention has faced the test of time. The uniformity standard which the convention sets to achieve although somehow violated by exclusion clauses of the CISG has not been utterly defeated as well as it is well established that the convention seeks to establish uniformity for the formation of international sales contract and save parties of unforeseeable crisis arising out of conflict of laws. This thesis explicitly speaks about the traditional offer and acceptance. While the failure of some countries to ratify the convention cannot be overlooked, it must be stated that it has not frustrated the global acceptance of the convention as many countries as of today are considering or even working on ratifying the CISG. To cap it all, the issues surrounding CISG is universal in its accomplishment. Disapproval witnessed and staged can be flawed, unsubstantiated or obstructed with an adequate and accurate construal of the Convention. The success of the CISG shows that pursing the unification of laws is the right was to help international transactions and agreements reach a friendly and profitable height.

It is recommended that for the CISG to establish an implementation or monitoring council/committee like the economic and social council that monitors the implementation of the economic, social and cultural rights, such as committee will again serve as a body

of review and make necessary interpretations that can serve a persuasive purpose and also send Rapporteurs to sell the goal of the convention to non-member states. It is also recommended that a special arbitral tribunal that serves solely the purpose of adjudicating on matters that arise out of the convention should be established, this will allow for a uniformity in interpretation of the Articles of the CISG and save the convention from different pronouncements on the same subject matter.

BIBLIOGRAPHY

(1969) 1 QB 616 at655, (1968) 2 Lloyd's rep 459

(2005) Gran. Canaria Tomatoes

A.F.M. Maniruzzaman's comparative study of selected provisions of English Law and the CISG and other contract law provisions. p.19. Retrieved 12 September 2015 from www.asg.Law.Pace.edu/cisg/counties

Acceding to the CISG will also be easier since OHADA is inspired by the CISG. Castellan. P.30

Acquisition.gov,. (2015). *Subpart 49.6-Contract Termination Forms and Formats*. Retrieved 5 November 2015, from https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2049_6.html

Allison E. Butler, "A Practical Guide to The CISG: Negtiations Through Litigation," Aspen Publishers. P.56 (2007 Supplement 2). © Author. Reproduced with permission, *Chapter 3* Formation of Contract. Retrieved 13 November 2015 from http://www.cisg.law.pace.edu/cisg/biblio/butler6-ch3.pdf

Article 1, Convention for International Sale of Goods

Article 18 (2), ICC court of Arbitration, case No. 7844 of 1994. Retrieved 15 August from www.CISG.N3.law.Pace.Edu/cases

Article 19 (2) Cisg.law.pace.edu,. (2015). *Guide to Article 19*. Retrieved 19 November 2015, from http://www.cisg.law.pace.edu/cisg/text/peclcomp19.html

Article 21 (1) Cisg.law.pace.edu,. (2015). *2012 UNCITRAL Digest of Article 21 case law*. Retrieved 17 November 2015, from http://www.cisg.law.pace.edu/cisg/text/digest-2012-21.html

Article 8 of the CISG

Article 9 of the CISG

Article 85 CISG. Cisg.law.pace.edu,. (2015). Retrieved 12 November 2015, from http://www.cisg.law.pace.edu/cisg/text/treaty.html

Article 9. *Treibacher Industric, AG v. Allegheny Technologies Inc.* 464. 3d 1235: 19 Fla L., weekly Fed. C. 1046 C11th Cir. CAla) September 12 2006); 2006 Wl 2595225

Badmus-Busari, F. (2012). A Comparative Analysis of Attitudes of National Courts to Choice of Law and Interpretation of Contracts for International Sale of Goods. p.9. *Available at SSRN 2339963*.

Badr, G. M. (1978). Islamic law: Its relation to other legal systems. *The American Journal of Comparative Law*, p.187-198.

Beauchard, R., & Kodo, M. J. V. (2011). Can OHADA Increase Legal Certainty in Africa? Hudson Publishers.

Belkis viral, formation of contract according to CISG, 2013

Bell, K. (1996). Sphere of Application of the Vienna Convention on Contracts for the International Sale of Goods, The. *Pace Int'l L. Rev.*, *8*.

Beth Schiffer fine photographic Art Inc. v. Cole imaging Inc., Werner Wadon and opoliele flornica (2012) U.S district court (vew Jersey) 10-05321. Retrieved 1 October 2015 from http://cisgw3.law.pace.edu/cases/120319u1.html

Bianca, C. M., Bonell, M. J., & Graf, J. B. (1987). *Commentary on the International Sales Law: The 1980 Vienna Sales Convention*. Giuffrè.

Bridge, M. (2007). Law for International Sale of Goods, A. *Hong Kong LJ*.

Bruno Zaller, 'The Development of Uniform Laws- a Historical perspective pace Law School CISG Database www.CISG.Law.Pace.Edu/cisg/biblio/zellers.

BUDOW, L. (2015). *The Law that Dare Not Speak Its Name in the USA: the CISG | Fashion Law Blog*. *Fashion Law Blog*. Retrieved 19 November 2015, from http://fashionlaw.foxrothschild.com/2015/09/articles/the-business-of-fashion/the-law-that-dare-not-speak-its-name-in-the-usa-the-cisg/

C.F Amerasinghe, principles of international law of international organization, 2nd edition, Cambridge.

Case no 433 (United States of America Northern district court of California, 27th Jul 2001. see also Can Int'l Inc. V. Guang dong Kelon Electronical Holidays (United States of America, Northern District of Illinois, 3rd September 2008).

Chicago packers inc. V. Northern Food Trading Company, 408 f. 3rd 894, 897 (7th Cir. 2000)

CISG article. 39(2). OHADA art. 259.

CISG article. 77

Cisg.law.pace.edu. (2015). *2012 UNCITRAL Digest of Article 15 case law*. Retrieved 17 November 2015, from http://www.cisg.law.pace.edu/cisg/text/digest-2012-15.html

Cisg.law.pace.edu. (2015). *Article 90*. Retrieved 15 October 2015, from http://www.cisg.law.pace.edu/cisg/text/e-text-90.html

Cisg.law.pace.edu. (2015). *Chengwei, Liu*. Retrieved 10 November 2015, from http://www.cisg.law.pace.edu/cisg/biblio/chengwei-75.html

Cisg.law.pace.edu,. (2015). *CISG: participating countries*. Retrieved 13 September 2015, from http://www.cisg.law.pace.edu/cisg/countries/cntries.html

Cisg.law.pace.edu,. (2015). *CISG: participating countries*. Retrieved 13 September 2015, from http://www.cisg.law.pace.edu/cisg/countries/cntries.html.

Cisg.law.pace.edu,. (2015). *Electronic Library on International Commercial Law and the CISG*. Retrieved 29 September 2015, from http://www.cisg.law.pace.edu/cisg/biblio/anyamele.html

Cisg.law.pace.edu,. (2015). *Guide to Article 27*. Retrieved 4 November 2015, from http://www.cisg.law.pace.edu/cisg/text/peclcomp27.html

Cisg.law.pace.edu,. (2015). *GUIDE TO CISG ARTICLE 14*. Retrieved 10 October 2015, from http://www.cisg.law.pace.edu/cisg/text/secomm/secomm-14.html

Cisg.law.pace.edu,. (2015). *GUIDE TO CISG ARTICLE 17*. Retrieved 3 November 2015, from http://www.cisg.law.pace.edu/cisg/text/secomm/secomm-17.html

Cisg.law.pace.edu,. (2015). *John Felemegas*. Retrieved 15 September 2015, from http://www.cisg.law.pace.edu/cisg/biblio/felemegas.html

Cisg.law.pace.edu,. (2015). Retrieved 12 September 2015, from http://www.cisg.law.pace.edu/cisg/linkd.html

Cisg.law.pace.edu,. (2015). Retrieved 16 September 2015, from http://www.cisg.law.pace.edu/cisg/text/treaty.html

CISG-AC opinion no. 1 Electronic Communications under CISG, 15 august 2003, Rapporteur: Professor Christian, Hoffenberg, Sweden. p.13-16

Cisgw3.law.pace.edu,. (2015). *Austria 9 March 2000 Supreme Court (Roofing material case) [translation available]*. Retrieved 13 November 2015, from http://cisgw3.law.pace.edu/cases/000309a3.html

Commercial Court Zurich (2012) Aerosol CAN manufacturing case

Donovan, T. W. (2010). Iraq's Upstream Oil and Gas Industry: A Post-Election Analysis. *Middle East Policy*, *17*(2).

Drago, T., & Zoccolillo, A. (2015). *Be Explicit: Drafting Choice of Law Clauses in International Sale of Goods Contracts*. *Cisg.law.pace.edu*. Retrieved 19 November 2015, from http://www.cisg.law.pace.edu/cisg/biblio/zoccolillo1.html

E. Allan Farnsworth (1984) Parks School Seminar of the American association for the Comparative study or law. Ch3, pp. 5, 8-12 see also, GENEVA PHARMACEUTICALS TECH. CORP. V. BARR LABS INC. (2002) FEDERAL DISTRICT COURT NEW YORK.

E.A. Farnsworth (1987), commentary on internaitonla sales law, Ginffre; Milan.p.3. See also, SILICON REFRACTORY ANCHORING SYSTEMS B.V REFRATTARI SIRC S.R.L (2015) Netherlands.

Eiselen, S. (2007). Adopting the Vienna Sales Convention: reflections eight years down the Line. *SA Mercantile Law Journal= SA Tydskrif vir Handelsreg*, *19*(1). p.14-25.

F. Ferrari, International Review of Law and Economics (2005) p.314-341

Felemegas, J. (2006). The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation, in PACE REVIEW OF THE CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS 115, 147 (2002), cited in Alexander S. Komorov, Internationality, Uniformity and Observance of Good Faith as Criteria in Interpretation of CISG: Some Remarks on Article 7 (1). *JL & COM.*, *25*.

Ferrari, F. (2003). Universal and Regional Sales Law: Can They Coexist.*Unif. L. Rev. ns*, *8*.

Ferrari, F. (2008). *The CISG and its impact on national legal systems*. Walter de Gruyter.p.112-115

Franco Ferrari: 'universal and regional sales law" can they co-exist (2003) 8 uniform law review.

Gyula E. (1982) Commentary on the international sales Law.p.5. See also Chateau Des Charmes Wines LTD V. Sabate USA (2005) superior court,

Hannold, Commentary 354. See Also *Victoria Alloys v. FORTS Bank (United States of America) 2001*. Federal Bankruptcy Court

Harry M. flechtner, the several texts of the Cisg in a Decentralized system observations translation, Reservations and other challenges to the uniformity principle assessed on www. CISG.om/law.pace.edu.p.12-23

Ibde.org,. (2015). Retrieved 15 September 2015, from http://www.ibde.org/component/content/article/98-convention-on-contracts-for-the-international-sale-of-goods-an-example-of-successful-international-commercial-diplomacy.html

Investopedia,. (2015). *What is the difference between upstream and downstream oil and gas operations?*. Retrieved 3 November 2015, from http://www.investopedia.com/ask/answers/060215/what-difference-between-upstream-and-downstream-oil-and-gas-operations.asp

ISG-AC Opinion No. 15, Reservations under Articles 95 and 96 CISG, Rapporteur: Professor Doctor Ulrich G. Schroeter, University of Mannheim, Germany. Adopted by the CISG Advisory Council following its 18th meeting, in Beijing, China on 21 and 22 October 2013

J. Lookkofsky (2003) understanding the CISG in Europe kluwer Law International, Hagne.p.17-21. See also, SHUTTLE PACKAGING Systems V. Tsonakis (2001) Federal District court, Michgan, America.

Janssen, A., & Meyer, O. (2009). *CISG methodology*. Walter de Gruyter..

John C. Kleefeld, Rethinking "like a Lawyer". An Incrementalists proposals for first-years curriculum reform 53 J. Leg .ed. 254, 262 note 29 (2003); Michael Van Alstine, Dynamic Treaty interpretation, 146 U. Penn. L. Rev 687, 689 (1998).

Judith H. (2001) practical Application of the United Nations convention on contracts for the International sale of Goods. Deffice & Horgan publishers.

Kilan Batz, *Reconstructing Iraq: The Legal framework* (2010) oxford publishers.

Kindler, P. (2009). Einführung in das neue IPR des Wirtschaftsverkehrs.*Verlag Wirtschaft und Recht*.

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.

L. loud green, the UN convention on contracts for the international sales of good (2014) Jonkoping University

LEGISLATIVE HISTORY, Legislative history of CISG article 20: Match-up with 1978 Draft to assess relevance of Secretariat Commentary Cisg.law.pace.edu,. (2015). Retrieved 21 November 2015, from http://www.cisg.law.pace.edu/cisg/text/matchup/matchup-d-20.html

Linguee.de,. (2015). *district Court of Rotterdam - Deutsch-*[illegible]*bersetzung – Linguee W*[illegible]*rterbuch*. Retrieved 4 November 2015, from http://www.linguee.de/englisch-deutsch/uebersetzung/district+court+of+rotterdam.html

Lookofsky, J. (2003). In Dubio Pro Conventione-Some Thoughts about Opt-Outs, Computer Programs and Preemption under the 1980 Vienna Sales Convention (CISG). *Duke J. Comp. & Int'l L., 13*. p. 263-264.

Lookofsky, J. M. (2004). *Understanding the CISG in the USA: a compact guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods*. Kluwer Law International.

Lundgren, L. (2014). The United Nation's Convention on Contracts for the International Sale of Goods: Why is it being excluded from International Sales Contracts?

Martin, J. (2008). *Commercial Law: Impossibility Doctrine Under CISG 79. Ucclaw.blogspot.com.cy*. Retrieved 28 September 2015, from http://ucclaw.blogspot.com.cy/2008/09/impossibility-doctrine-under-cisg-79.html

Mattew Bender (1984) International Sales: the United Nations Convention on Contracts for International Sale of Goods. Galston & Smit ed; Forestal Gurani S.A VS. Daros International Inc (2010) Federal Appellate court, United States of America

Michael Bridge, 'Uniformity and Diversity in the Law in International sales' (2003) 15 PILR.

Mistelis, L. A., & Viscasillas, P. P. (Eds.). (2011). *UN Convention on Contracts for International Sale of Goods (CSIG)*. Verlag CH Beck.

Moccia, C. (1989). United Nations Convention on Contracts for the International Sale of Goods and the Battle of the Forms, The. *Fordam Int'l LJ, 13*.

Mooney, C. W. (1986). Introduction to the Uniform Commercial Code Annual Survey: Some Observations on the Past, Present, and Future of the UCC. *The Business Lawyer*, p.1343-1361.

Moss, S. (2005). Why the United Kingdom Has Not Ratified the CISG, The *JL & Com., 25*.

Mullis, A. (1998). Avoidance for Breach under the Vienna Convention; A Critical Analysis of Some of the Early Cases. *Published in Andreas & Jarborg eds., Anglo-Swedish Studies in Law, Lustus Forlag*, p.326-355.

Ontlaw.com,. (2015). *evidence*. Retrieved 19 November 2015, from http://ontlaw.com/parol-evidence/

Otero Garcia-Castrillon, C. (2013). Reflections on the law applicable to international oil contracts. *The Journal Of World Energy Law & Business*, *6*(2), 142. http://dx.doi.org/10.1093/jwelb/jwt004

Oxford Dictionary of Law (6th edition) 2006, Oxford University press

P. Schelchtirem (1986) uniform sales law- the UN CISG, Manz, Vienna see also, *Zapatos MEDITERRANOES V. Shoe B122 (2002) District Court Hasselt, Belgiu*m

Pace International Law Review, 2007. Review of the Convention on Contracts for the International Sale of Goods (CISG): 2005-2006 Review of the Convention on Contracts for International Sale, page 223, sellier. european law publ., 3866530161, 9783866530164

Penda J. A. (2015) OHADA and the CISG. Retrieved 19 November 2015 from http://cisgbasel2015.com/index_htm_files/20_paper_Jean%20Alain%20Penda_OHADA%20and%20the%20CISG.pdf

Pentassuglia, G. (2004). *Minorités en droit international: une étude introductive*. Council of Europe.

Permanent sovereignty over natural resources, 1803 (xvii), right to exploit freely natural wealth and resources 626 (vii), concerted effort in favor of economic development, 15 (xv).

Photo poduciton Ltd. V. Securicor Transport Ltd. 9 1980) 1 ALLER 556. P.562

Pike, J. (2015). *Oil*. *Globalsecurity.org*. Retrieved 4 October 2015, from http://www.globalsecurity.org/military/world/iraq/oil.htm

R. Burton, International contracts for the sole and purchase of goods (2009)

Rodney, W. (1983). Banking and Finance in the Arab Middle East. *London: Mac Millan*.

Rosett, Arthur. "Critical reflections on the United Nations convention on contracts for the international sale of goods." *Ohio St. LJ* 45 (1984).

Schelchtriem & Schwenzer (2010). *Commentary on the United Nations Convention on the International Sale of Goods* (third edition) New York, Oxford University press. P.456-458

Schwenzer I., (2011) Regional and Global Unification of Sales Law, European Journal of Law Reform 2011 (13) 3-4. Retrieved 19 November 2015 from http://www.ankarabarosu.org.tr/siteler/AnkaraBarReview/tekmakale/2013-1/5.pdf

Schwenzer, I. (2005). Noble Month (Articles 38, 39 CISG)-The Story behind the Scenery. *Eur. JL Reform*, *7*.

Schwenzer, I., & Hachem, P. (2009). The CISG—successes and pitfalls. *The American Journal of Comparative Law*, p.457-478.

Subregional Progress In National Coordination For Trade And Transport Facilitation In The Unescap Region. Retrieved 24 September 2015 from http://www.unescap.org/sites/default/files/Study_on_Coordination_Mechanisms_Ch2.pdf

Teevee Toons, Inc. (D/B/A Tvt Records) & Steve Gottlieb, Inc. (D/B/A Biobox), Plaintiffs, - against - GERHARD SCHUBERT GMBH, Defendant. 00 Civ. 5189 (RCC) UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK 2006 U.S. Dist. LEXIS 59455

UCC versus CISG- which one should a foreign seller opt for? Retrieved 18 November 2015 from http://zaralawny.com/english/articles/pdf/2010-03-30%20-%20Article%20on%20UCC%20v_%20CISG%20-%20SC.pdf

Uche Anyamele, ' The United Nations Convention on Contracts for the International sale of goods: a proposal for Nigeria. University of Durham. CISG Database, www.CISG.Law.Pace. Edu/cisg/biblio/anyamele assessed on the 14th September 2015. P. 11

UNCITRAL Digest of Case Law on the United Nations Convention on the International Sale of Goods, UNCITRAL, United Nations Commission on International Trade Law. United Nations Publications, 2008

Uncitral.org,. (2015). *1980 - United Nations Convention on Contracts for the International Sale of Goods (CISG)*. Retrieved 12 September 2015, from http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html

Unilex.info,. (2015). *Untitled*. Retrieved 16 November 2015, from http://www.unilex.info/instrument.cfm?pid=2&do=comment&pos=16

United Nations Commission on International Trade Law. (2008). *UNCITRAL Digest of case law on the United Nations Convention on the International Sale of Goods*. United Nations Publications.

Vezyrtzi, A. (2009). Jurisdiction and international sales under the brussels I regulation: Does forum shopping come to an end. *Columbia Journal of European Law Online*, *15*. P.19-24

VURAL B. Formation of Contract According to the CISG Retrieved 15 November 2015 from http://www.ankarabarosu.org.tr/siteler/AnkaraBarReview/tekmakale/2013-1/5.pdf

Vural, B. (2013). Formation of Contract According to the CISG. *Ankara B. Rev.*, *6*.

W.T. GmBH V. PAG (1992) Civil Court Basel, Switzerland

Williams, A. E. (2000). Forecasting the potential impact of the Vienna Sales Convention on International Sales Law in the United Kingdom. In *Review of the Convention on Contracts for the International Sale of Goods* (Vol. 2001) p.9-57.

Ziegel, J. S. Report to the Uniform Law Conference of Canada on Convention on Contracts for the International Sales of Goods, University of Toronto, July 1981.