



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 5 AND ISSUE 1 OF 2025

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 1 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-1-of-2025/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



ILE Publication House is the  
**India's Largest  
Scholarly Publisher**

© Institute of Legal Education

**Copyright Disclaimer:** All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

## THE ROLE OF CISG AND UNIDROIT PRINCIPLES IN SHAPING GLOBAL TRADE

**AUTHOR** – MYDRI GOPINATH, LL.M. SCHOLAR AT DEPARTMENT OF STUDIES IN LAW, UNIVERSITY OF MYSORE, MYSURU

**BEST CITATION** – MYDRI GOPINATH, THE ROLE OF CISG AND UNIDROIT PRINCIPLES IN SHAPING GLOBAL TRADE, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (1) OF 2025, PG. 206-216, APIS – 3920 – 0001 & ISSN – 2583-2344.

### Abstract

*The United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principles have played a significant role in harmonizing international trade law, fostering fairness, predictability, and consistency in cross-border transactions. However, both frameworks have critical gaps that hinder their effectiveness. The CISG provides a unified structure for sales contracts but does not address essential issues like contract validity, consideration, or matters of fraud, undue influence, and misrepresentation, which are key to determining enforceability. These gaps cause legal uncertainties, especially when national legal systems conflict. Similarly, while the UNIDROIT Principles offer flexibility and neutrality, they lack clear enforcement guidelines, exacerbating the complexities of international trade. The absence of clear rules on contract fairness, particularly in cases of coercion or misrepresentation, remains a major limitation. This paper proposes the creation of a comprehensive global legal framework that addresses the formation and enforcement of contracts while protecting against fraud and undue influence. Furthermore, establishing a unified dispute resolution mechanism and encouraging collaboration between international organizations like the WTO, UCC, and HCCH would create a more predictable, transparent legal environment. This would reduce uncertainty, simplify international transactions, and promote global economic growth by facilitating smoother cross-border trade.*

**Keywords:** International Contracts, CISG, UNIDROIT Principles, Harmonization of Laws and Cross-border Trade

### INTRODUCTION

Trade achieves an international character when it involves the interplay of multiple sovereign entities, necessitating a codified framework to regulate cross-border transactions and maintain uniformity in commercial exchanges. A contract, as a legally enforceable pact between two or more parties, assumes paramount significance in this context. International contracts, particularly those related to sales, carriage, insurance, and financing, are indispensable to global trade. Sales contracts, in particular, are fundamental, facilitating the exchange of goods and services across borders and bolstering global economic interdependence. In India, domestic contract

law is primarily governed by the Indian Contract Act, 1872, which sets forth the foundational principles of contract law. However, in international trade, sales contracts are predominantly governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG), which provides a harmonized legal framework for cross-border sales transactions, ensuring predictability and legal consistency. Moreover, the principles espoused by UNIDROIT (International Institute for the Unification of Private Law) are critical for regulating international commercial contracts beyond mere sales, offering standardized rules to ensure fairness and clarity in cross-border

agreements.<sup>491</sup> Complementary legal instruments such as the UCC (Uniform Commercial Code), HCCH (Hague Conference on Private International Law), and INCOTERMS (International Commercial Terms) further contribute to the regulation of international trade, providing uniformity in the sale of goods, international legal cooperation, and delineation of responsibilities in transactions. In India's evolving global trade engagement, international contract law assumes increasing relevance. While India adheres to the Indian Contract Act domestically, it recognizes conventions like the CISG, which though not yet ratified may align with global contract law principles as India intensifies its participation in international commerce. The HCCH is a central body in governing international private law, crafting uniform principles to resolve disputes in cross-border contractual dealings. Its major contribution lies in the establishment of standardized rules regarding jurisdiction and the recognition and enforcement of foreign judgments.<sup>492</sup> The Hague Convention on Choice of Court Agreements and the Hague Convention on the Recognition and Enforcement of Foreign Judgments are instrumental in providing legal clarity and fostering predictability in international contracts.<sup>493</sup> These agreements reduce uncertainties arising from jurisdictional conflicts and facilitate the enforcement of foreign rulings, thereby ensuring the stability and efficacy of cross-border transactions. Thus, the HCCH's role in unifying international jurisdictional

standards,<sup>494</sup> alongside promoting the recognition of foreign judgments, substantially strengthens the legal infrastructure governing international trade. By mitigating the risks of forum shopping and conflicting rulings, it fosters an environment conducive to more efficient and secure international trade relations.<sup>495</sup> Together, these instruments promote consistency and fairness in international commercial law, supporting smooth and reliable global trade.

### NOTION OF CONTRACT

Section 2 (h) of the Indian Contract Act, 1872 defines a contract "*as an agreement that is enforceable by law*"<sup>496</sup>The Preamble starts with "The Parties to this Agreement..."<sup>497</sup>

the definition of a contract under Section 2(h) of the Indian Contract Act, 1872, it is stated that a contract is "an agreement that is enforceable by law." This definition highlights the essential element of enforceability, which distinguishes mere agreements from legally binding contracts. For an agreement to qualify as a contract, it must meet specific legal requirements and be subject to judicial enforcement if breached. This enforceability is a foundational principle not only in domestic law but also in international trade, where the certainty of legal recourse is critical for facilitating cross-border transactions. The Preamble of the WTO Agreement begins with the phrase, "The Parties to this Agreement...", setting the stage for the global trade framework that underpins international commerce. This opening reflects the consensual nature of international agreements, where states, through mutual agreement, consent to abide by certain obligations and standards. The WTO's framework emphasizes the importance of enforceable commitments between nations,

<sup>491</sup> The hegemony of international standards: How is the ISO legal framework established? (2023) International Journal of Law Management & Humanities. Available at: <https://ijlmh.com/paper/the-hegemony-of-international-standards-how-is-the-iso-legal-framework-established/> (Accessed: 28 January 2025).

<sup>492</sup> Magoge, J.S. (2025) THE PARADOX OF UMBRELLA CLAUSES: BALANCING STATE INTERFERENCE AND INVESTOR PROTECTION IN AFRICA'S INVESTMENT FRAMEWORK. Available at: [https://www.researchgate.net/publication/388221734\\_THE\\_PARADOX\\_OF\\_UMBRELLA\\_CLAUSES\\_BALANCING\\_STATE\\_INTERFERENCE\\_AND\\_INVESTOR\\_PROTECTION\\_IN\\_AFRICA'S\\_INVESTMENT\\_FRAMEWORK](https://www.researchgate.net/publication/388221734_THE_PARADOX_OF_UMBRELLA_CLAUSES_BALANCING_STATE_INTERFERENCE_AND_INVESTOR_PROTECTION_IN_AFRICA'S_INVESTMENT_FRAMEWORK) (Accessed: 28 January 2025).

<sup>493</sup> Born, G.B., Grant, T.D. and Kieff, F.S. (2021) Why it is especially important that states not ratify the Hague choice of Court Agreements Convention, part II, Kluwer Arbitration Blog. Available at: <https://arbitrationblog.kluwerarbitration.com/2021/07/23/why-it-is-especially-important-that-states-not-ratify-the-hague-choice-of-court-agreements-convention-part-ii/> (Accessed: 28 January 2025).

<sup>494</sup> Magoge, J.S. and Hashimy, S.Q. (2023) The hegemony of international standards: How is the ISO legal framework established?, uomeprints. Available at: <http://eprints.uni-mysore.ac.in/17772/> (Accessed: 28 January 2025).

<sup>495</sup> The Hague Principles on choice of Law in International Commercial contracts - 19 March 2015

<sup>496</sup> The Indian Contract Act, 1872

<sup>497</sup> WTO Agreement Preamble.

akin to the enforceability of contracts in domestic law, but in a broader international context. Both legal structures whether under national contract law or international trade law share the principle of creating legally binding obligations that can be enforced to ensure compliance, promoting stability and predictability in trade relations.

#### REQUIREMENTS OF A VALID CONTRACT

Under the Indian Contract Act, 1872, a valid contract is characterized by essential elements such as offer, acceptance, lawful consideration, free consent, lawful object, capacity of parties, and the intention to create a legal relationship. These elements are further elaborated in Sections 10, 13, and 14 of the Act. The concept of "meeting of minds" or consensus ad idem is particularly crucial, as it ensures that both parties mutually agree to the same terms under the same understanding, forming the foundation for a legally binding contract. In the context of international contracts, similar principles are outlined in instruments such as the CISG (United Nations Convention on Contracts for the International Sale of Goods) and the UNIDROIT Principles of International Commercial Contracts. These frameworks set forth the requirements for the formation of international agreements, ensuring consistency in cross-border transactions.

When a dispute arises under an international contract, the contract itself becomes the pivotal point for determining the rights and liabilities of the parties involved. The governing law of the agreement plays a critical role in assessing whether a valid contract exists, how it should be interpreted, and what remedies are available in case of a breach. The choice of law and jurisdiction ultimately guides the resolution of the dispute, underscoring the importance of a clearly defined contract and its legal framework in safeguarding the interests of all parties involved.<sup>498</sup>

<sup>498</sup> Kurt M. Sounders & Leonard Rymza, Contract Formation & Performance under UCC and CISG, Journal of Legal studies Education. Volume 32, Issue 1 p.1

#### THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG).

The CISG is a self-executing treaty of the United States that entered into force on 1<sup>st</sup> January 1988. Initially with eleven contracting States now it is accounting for more than 75 percent of all international trade. The CISG provides a uniform set of rules for international sales contract. The convention is finalized in six official languages which being Arabic, Chinese, English, French, Russian and Spanish. This Convention was adopted and approved by UNCITRAL in 1980 in Vienna hence also called as Vienna Convention. It consists of 101 Articles where formation of contract is dealt under Part II, and from Article 14-24.

#### Background of CISG:

Efforts began in April of 1930 by UNIDROIT by undertaking a project of drafting a uniform law on international Sale of goods. In 1930 a committee was appointed to draft uniform law. Uniform Law on Sale of Goods (ULIS). Two reports were drafted but the work on project was stopped by Second World War in 1939. Later it was resumed and after eleven sessions the draft was prepared in 1978. Later in 1980 it was adopted.<sup>499</sup> The CISG governs international sales contract if either of conditions is fulfilled:

1. *Applicable laws of contracting state is led by Private International law or*
2. *Both parties are located in the Contracting states.*

There are no special tribunals or courts under CISG. The national courts and arbitral institutions which have jurisdiction will deal with the contracting states.

#### ✓ INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)

UNIDROIT was established in 1926 as an offshoot of the League of Nations. It was re-established

<sup>499</sup> James Edward Joseph; Contract Formation Under the United Nations Convention on Contracts for the International Sale of Goods & Uniform Commercial Code, International Law Review, Volume 3, Penn State

in 1940. The Headquarters is situated in Villa Aldobrandini in Rome. UNIDROIT plays significant role in international commercial contracts by providing a set of soft law principles known as 'UNIDROIT Principles of International Commercial Contracts'.<sup>500</sup>

The UNIDROIT Principles serve as a neutral, comprehensive, and flexible set of rules that parties can voluntarily choose to apply to their contracts, especially in the context of cross-border transactions where conflicting national laws may complicate matters. These principles offer a standardized framework, enabling parties from diverse legal traditions to find common ground, thereby promoting consistency and fairness in international commercial dealings. The primary objective of the UNIDROIT Principles is to harmonize the landscape of international commercial contracts by providing a cohesive set of rules that can be uniformly applied across various legal jurisdictions. The first edition of these principles was released in 1994, marking a significant step toward unifying contract law on a global scale. The most recent edition, published in 2016, comprises 211 articles spread across 11 chapters, offering a detailed and structured approach to the formation, interpretation, performance, and enforcement of international commercial contracts. This extensive framework not only enhances the predictability and reliability of cross-border transactions but also facilitates smoother negotiations and dispute resolution, fostering a more integrated global marketplace.<sup>501</sup>

Some important principles covered are Formation & Authority of Agents, Validity, Interpretation, Content, Third Party Rights & conditions, Performance, Non Performance, Assignment of Rights, Transfer of Obligations and Assignment of Contracts.

### UNIFORM COMMERCIAL CODE (UCC):

It is a state law that governs business and financial transactions in the United States. UCC applies to the sale of goods and securities whereas common laws of contract applies to services,<sup>502</sup> real estate, insurance, intangible assets & employment. For UCC to be applied in US the requirement is that the sale of goods must be over \$500 and it must be in writing.

### HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH):

It is an intergovernmental organization that works to unify rules regarding private international laws, including aspects related to International Contracts. The main function is that it creates treaties, conventions that address various aspects of private International law, Such as recognition & enforcement of foreign judgments, choice of applicable law in International contracts, Child abduction. The main conventions are:

- i. 1. The Hague Convention on the Law Applicable to International Commercial Contracts (Rome Convention).
- ii. 2. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. The first conference was held in 1893 which included 13 states.<sup>503</sup>

The Hague Conference includes 12 Articles which includes freedom of choice to contracting states.<sup>504</sup>

The UNIDROIT Principles are designed to be flexible and applicable across jurisdictions, but they are particularly relevant in the context of countries that are signatories to the relevant Hague Convention. These conventions provide a framework for international legal cooperation, ensuring that disputes arising from international

<sup>500</sup> Principles of International Commercial Contracts, UNIDROIT Rome, ISBN 88-86449-00-3

<sup>501</sup> UNIDROIT Principles of International Commercial Controuts. 2016: ISBN:978-88-86449-37-3

<sup>502</sup> Magoge, J.S. (2022) 'Taxation of securitization transactions and its Legal Implications in India', SSRN Electronic Journal available at doi:10.2139/ssrn.4224544.

<sup>503</sup> UNIDIR Resources: The Role and Importance of the Hague Conference: A Historical Perspective

<sup>504</sup> The Hague Principles on choice of Law in International Commercial contracts -19 March 2015.

contracts are addressed within a standardized and predictable legal system. By applying to signatory countries, the Hague Convention simplifies the process of resolving international contract disputes between contracting states, offering clear guidelines on jurisdiction, recognition, and enforcement of judgments. This uniformity not only enhances legal certainty but also reduces the complexities that arise when multiple legal systems are involved. In doing so, it fosters a more efficient dispute resolution process, making cross-border trade and business transactions smoother and more reliable for all parties.

#### CLAUSES TO BE INCLUDED IN INTERNATIONAL CONTRACT

##### ✓ Offer

Art. 14 of the CISG defines offer as “a proposal for concluding a contract that is sufficiently definite and indicates the intention of the offeror to be bound.”<sup>505</sup> Sufficient Definiteness is used in context of goods, quantity of goods, price of goods and to whom the offer is addressed. It should be certain and non-ambiguous. Article 14 (2) [5] deals with offer made to one or more persons.

Intention to be bound is known as “Animus Contrahand”

- a) *Withdrawal of offer.* It must reach offeree before or at the same time as the offer is made
- b) *Revocation of offer.* Revocation can be revoked before offer reaches offeree or acceptance reaches offeror.
- c) *Counter offer.* If there is any restrictions or modifications by Offeree it becomes counter offer.

#### Acceptance

Article 18-22 of CISG deals with acceptance. “It is the declaration of Intent by offeree to conclude a Contract.”<sup>506</sup>

#### Types of acceptance:

1. By Explicit Declaration: written declaration or Oral statement
2. By performance: Through an act.

*Late acceptance:* Offeree must have informed orally or through a notice along with justified reasons.

*Withdrawal of Acceptance:* It must reach offeror before or at the same time of communication of acceptance.

#### Modification and termination:

Once a contract for the sale of goods has been formed between the parties either orally or in writing, “It may be modified or terminated by the mere agreement of the parties.”<sup>507</sup> Any modification must be by the mutual agreement of both parties. Art 29(1) deals with it.<sup>508</sup>

#### Description of goods

The buyer prefers a detailed and more precise description of the goods from the seller if not done properly it will not satisfy the buyer.

#### Delivery terms:

The time and place of delivery should be mentioned as clearly as possible. Which is nothing but the performance of contract.

The International Chamber of commerce has published “Incoterms Rules” which are a set of standardized international Sale of goods Contracts.

#### INCOTERMS

The first Incoterms was published in 1936. Every 10 years it will be updated. The main objective is to set a standard contract terms that define the responsibilities of buyers and sellers in International trade. The recent Incoterms has been released in the year 2020 which includes 11 Incoterms which are:<sup>509</sup>

1. *Free on Board.* Containerized shipments & in land water transport.

<sup>505</sup> CISG. Art 14

<sup>506</sup> CISG. Art 18 to 22.

<sup>507</sup> CISG. Art 29

<sup>508</sup> Chateau des charmes Wines Ltd V. Sabate, 328 F.2d 528

<sup>509</sup> Incoterms 2020 by the International chamber of Commerce (1CC).

2. *Free Carrier (FCA)*: Deals with where the goods will be delivered in the carrier.
3. *Ex Works (ExW)*: Where seller delivers goods to buyers disposal at a previously agreed place.
4. *Free alongside Ship (FAS)*: Seller takes care of clearance, pays for port, documents etc...
5. *Delivered at Place (DAP)*: Seller's obligation to deliver goods at mutually agreed destination.
6. *Delivered at Terminal (DAT)*: When seller delivers cargo at buyers named terminal
7. *Cost, Insurance & Freight (CIF)*: Goods are delivered after safely packed. Seller pays for the contract once goods are on board.
8. *Carriage and Insurance Paid to (CIP)*: Seller covers the payment and insurance.
9. *Cost and Freight (CFR)*: Seller is also responsible for the freight payment.
10. *Delivery Duty Paid (DDP)*: More than one mode of transportation. Both seller and buyer are not obliged to insure the goods
11. *Carriage paid to (CPT)*: The seller is responsible for the export formalities, buyer is responsible for import clearance.

### Price

Parties should have agreed to the price without any ambiguity along with currency. The Import and Export charges are followed upon the INCOTERMS

### Applicable law

The parties are free to decide the law that applies to their international sales contract. When the parties are biased CISG is implemented to cover the situations.

### CHOICE OF LAW

There are some limitations as well to the power of parties to choose the proper law:

1. *Mandatory rules of domestic law*: They are applicable irrespective of any agreement of parties. For instance, rules which render the contracts void under public policy.

2. The Law of the country with which the contract is *most closely connected*: When choice of law cannot be derived properly then the laws of the country with which the contract is most closely connected is deemed the proper law "Proximity rule." However, it is sometimes hard to determine the close connection itself.<sup>510</sup>

3. *Convenience and business efficiency*: The court considers the contract in terms of business efficiency & convenience. In relation to the interest of the parties, the law of that country with whom the party usually belong will be the accurate law.

### Retention of title:

The common practice can be followed here that is the seller retains the title until the full price is paid by the buyer. The seller can still retain his title by extension of the contracting terms. Transfer of Ownership clause can be added but marine bill of lading is an exception as it requires original shipment document

### Inspection of goods

The goods must be inspected twice that is once is before shipment and one after the shipment has been received. Both buyer and seller from their ends must inspect the goods.

### Insurance

Under INCOTERMS parties will decide who has to be responsible but the general rule is that while exporting goods Insurance is done. Parties have to decide who bears the cost.

### Dispute resolution

Parties have the option of litigation and arbitration. The proximity rule as per contract would have determined if in case of dispute which country law will be applied. But if in case parties Choose arbitration it is governed under International Court of Arbitration. The parties must specify place & language of arbitration.

<sup>510</sup> Renozo Cava liexi and Vincenzo Salvatore: An Introduction to International Contract law: G Grappichelli Editore: 2018 Pg. 4



## Document

The exporter should be extra careful with respect to the documents as his will be the first step. In the Contract the list of documents should be mentioned and agreed by the parties & Letter of credit will be obtained once payment is made.

## Force majeure / hardship clause

This is a general clause which will be added in the Contract. This excuses the party from the failure of obligation because impediments are beyond control.<sup>511</sup> There will be unforeseen circumstances like war, natural calamities etc...

## ROLE OF WTO IN FORMATION OF INTERNATIONAL CONTRACTS

WTO plays a significant role in international contract formation by establishing framework of trade rules, a legal environment for business to draft and enforce International contracts. Following

are the roles by WTO,<sup>512</sup> The World Trade Organization (WTO) assumes a seminal function in the orchestration of equitable and transparent trade practices by instituting an unequivocal legal structure for the governance of international commercial interactions. It delineates fundamental standards for the exchange of goods and services through pivotal accords such as GATT, GATS, and TRIPS, which codify stipulations regarding tariffs, non-discrimination, and the protection of intellectual property rights. Moreover, the WTO serves as a conduit for the resolution of disputes, offering a neutral and compulsory mechanism for the adjudication of trade conflicts. Through the promotion of free trade, the WTO engenders the liberalization of markets, thereby catalyzing global economic expansion. It further plays an indispensable role in facilitating the negotiation of trade agreements, thereby enhancing the stability and reliability of international contracts.

<sup>511</sup> Vasile Goldis, The effects of the International Contract for Sale of Goods, Journal of legal studies, Volume 19 Issue 33/2017 ISSN 2457-9017. Online 2392-7054

<sup>512</sup> WTO Information & External Relations division, Understanding the WTO, 1 January 1995, Chapter 2, ISBN 978-92-810-3748-0.

The organization provides a platform for the negotiation of such agreements, while simultaneously establishing standardized terms and conditions, ensuring both transparency and predictability, thereby enabling market participants to comprehend the legal structures underpinning international trade. In addition, the WTO imposes standards and technical regulations aimed at safeguarding the quality and safety of products across international boundaries.<sup>513</sup> Notwithstanding its instrumental role, the WTO has been subject to criticism for its inability to directly formulate or enforce individual contracts, as its mandate is principally centered on the regulation of overarching trade agreements. Furthermore, despite the legal framework provided by the WTO, national laws and regulations continue to exert significant influence in the interpretation and enforcement of international contracts, often complicating the seamless application of universal trade principles.

## LAWS APPLICABLE IN INDIA

The **Code of Civil Procedure 1908**,<sup>514</sup> addresses the enforceability of foreign jurisdiction clauses under **Section 20**, stipulating that a suit for breach of contract must be filed in the court where the cause of action has arisen. In conjunction with this, the **Indian Contract Act 1872**,<sup>515</sup> governs the formation, enforcement, and other essential aspects of contracts within India, providing a foundational legal framework for both domestic and international agreements. Additionally, **Incoterms Rules** play a crucial role in defining the responsibilities of buyers and sellers in international trade, particularly with regard to delivery terms, risk allocation, and payment conditions. Furthermore, **international arbitration laws and regulations** provide an essential mechanism for resolving disputes arising from international contracts, ensuring that conflicts are

<sup>513</sup> Hashimy, S.Q. and Magoge, J.S. (2024) 'Legal regulation of international trade in cryptographic products and technologies: WTO tools and regional agreements', Journal of Digital Technologies and Law, 2(2), pp. 328–344. doi:10.21202/jdtl.2024.17.

<sup>514</sup> The Code of Civil Procedure 1908 Section 20

<sup>515</sup> The Indian Contract Act 1872

adjudicated in a neutral and efficient manner, often with enforceable awards across jurisdictions. These legal instruments collectively shape the landscape of international commercial law, ensuring clarity, fairness, and consistency in cross-border transactions.<sup>516</sup>

#### JUDICIAL APPROACH

In the case of **Vita Food Products V. Unus Shipping Co. Ltd** in liquidation<sup>517</sup> where the issue was Unus shipping company limited company had delivered damaged herrings (fish) hence Vita food products sought damages. The issue revolved around validity & enforceability of bills of lading used for shipment; particularly their compliance with “Hague rules” The Privy Council held that the parties are free to choose any governing law irrespective of its connection to the contract provided the choice was bona fide, legal and not contrary to public policy. In the contract the bill of lading expressly stated that “this Contract shall be governed by English law”. The bill of lading was not in conformity with the provisions of the “Newfoundland Carriage of Goods by Sea Act 1932” which incorporated the Hague rules. The bill had provided an exemption from liability for damage caused due to negligence of the ship owner’s servant. But Hague rules makes such exemption as void. Vita Contended that as the Newfoundland Act had not been complied these exceptions did not avail to Unus. This Contention was rejected by the Supreme Court.

“It was held that the parties are free to choose any governing laws, irrespective of its connection with the Contract but it have to be bonafide.”

In the case of **Bonython V. Commonwealth of Australia**.<sup>518</sup> Interpretation of financial instruments issued under colonial legislation. The holders of Commonwealth Inscribed Stock, contested the manner and currency in which

they were to receive payments upon maturity of stocks. Whether in English currency in London or Australian Currency Australia. The Privy Council analyzed the language of Original debentures and legislative context under which they were issued. It concluded that towns such as ‘pound’ and ‘sterling’ were governed by local laws of Queensland rather than were English standards. Hence Appellant were entitled to receive payment in Australian currency. The Summary of the case is that the proper law of contract is the system of law by reference to Which the contract was made or that with which the transaction has its closest and most real connection as it contained a clause providing the jurisdiction of a proper & particular country. In international commercial contracts, the arbitration clauses which stipulate the place for arbitration may provide the choice of proper law. In the case of **Gramercy Holdings 1, LLC v. Matec SRL**,<sup>519</sup> the US District Court had to deal with two contracts. Where contract 2 included a clause Substantiative laws of New York would apply and they excluded CISG. There was ambiguity between Italian Seller and US buyer with respect to the laws applicable. According to US buyer Newyorks UCC applied and according to Italian seller CISG applied. **Ranzi & Sons Ine V. Puglis**<sup>520</sup> was cited and decided CISG is not applicable as parties agreed. Later in further analysis it was decided that in the first contract there was no Intention to exclude federal law. CISG applied to part of Newyork. CISG Art 93(4) extends to the application of the convention to all territorial units of Contracting state unless the Contracting states declare otherwise. Declaration under A. 93 is compulsory. Thus choice of law means not exclusion of CISG.

#### INDIA AND CISG.

One of the biggest impediments of International trade is lack of harmony in the laws of them &

<sup>516</sup>Incoterms 2020 by the International chamber of Commerce (ICC).

<sup>517</sup> Vita Food Products Inc V. Unus Shipping Co Ltd [1939] AC 277, 63 LIL Rep 21

<sup>518</sup> Bonython V. Commonwealth of Australia [1950] UKPCH CA 3; 81 CLR 486; [1951] AC 201; [1951] ALR 37

<sup>519</sup> Gramercy Holdings 1, LLC V. Matec S... et al. 20 Civ.3937 (SPC) 20 Civ, 4136 (JPC)

<sup>520</sup> Rieng & Sons, Inc. V. Puglisi 638 F. Appx 87 (2d Cir.2016) 08-CV-2540 (DLI) (JMA) (E.D.N.Y May 16.2013).

International Standards.<sup>521</sup> India is not currently a signatory to the CISG because it considers the treaty to be in competent incomplete, not comprehensively addressing key issues like contract validity related to fraud, illegality & misrepresentation, leading to concerns about potential legal complications in international trade transactions if they were to adopt it fully. *India's stance on CISG:*

- i. According to India CISG doesn't cover enough aspects of contract law, & its validity.
- ii. Implementing CISG might significantly alter India's existing Sale of Goods Act causing disruption in legal practices.
- iii. Concern about applicability with respect to unique Complexities of Indian trade practice
- iv. The damages regime under CISG is different from the Indian Contract Act which leads to incompatibility in applying laws.
- v. Another reason being the ambiguous language used in the Convention. Lawyers in India are used to detailed & descriptive laws with clear meaning. CISG uses wide and in exact language. Indian traders have found errors in CISG.

### **Applicability**

Though India has not adopted convention in situations of express incorporation & Implied Inclusion CISG is applicable. *Why India must ratify it?*

- We find that most of our major trade partners have ratified CISG. For having a familiar Sales laws with the host nation must adopt CISG.
- The Sale of Goods 1930 is a very old law the modern means of transport, communication is lacking to fill the gaps CISG is necessary.

- It overcomes the problem of choice of law.
- The doctrine of force majeure and frustration are recognized but the interpretation is strict and narrow. Doctrine of hardship under Article 79 of CISG would benefit India in numerous way<sup>522</sup> Eg: Covid-19 Indian Courts had to interpret hardship clause liberally.

### **CONCLUSION**

In conclusion, international contracts have become the cornerstone of global trade, facilitating economic growth and cross-border commerce in an increasingly interconnected world. The CISG and UNIDROIT Principles are essential frameworks in this regard, providing the legal backbone for harmonizing and standardizing the complexities of international contracts.<sup>523</sup> Despite the immense strides made in unifying contract law across jurisdictions, significant gaps remain, particularly with respect to issues like contract validity, consideration, and fraud. These gaps highlight the urgent need for a more comprehensive and globally consistent legal structure that not only governs contract formation and enforcement but also addresses the fairness and legitimacy of contracts, especially when issues like misrepresentation, coercion, or undue influence arise. A unified legal framework, applied consistently across jurisdictions, would reduce the uncertainties and conflicts created by differing national laws, making international trade more predictable, transparent, and secure. This would promote fair trade, foster international cooperation, and contribute to the stability and reliability of global economic practices. As international trade continues to grow and evolve, the CISG, UNIDROIT Principles, and supporting institutions like the WTO, UCC, and HCCH will remain critical in ensuring that international contracts are governed by fair,

<sup>521</sup> Abhishek Negi and Utkough K. Mishra, Dissecting the CISG Framework & the Indian sale of Goods Regime in the context of delivery, time and risk, Int Journal of legal studies Vol. 3 , 6343 ISSN 2581-9453

<sup>522</sup> Isha Janma, Navigating contractual non-performance: Embracing CISG Article 79 is Indian Contract Law, (March 14.2024) SSRN: <https://ssrn.com/abstract=4759522>

<sup>523</sup> The legal implications of “perverse, arbitrary, and mala fide” as explicit grounds for challenging credit ratings in India’, SSRN Electronic Journal [Preprint]. doi:10.2139/ssrn.4012335.

consistent, and enforceable rules. Their collective contribution will be indispensable in reducing legal ambiguity, enhancing the reliability of cross-border transactions, and facilitating more efficient global commerce, ultimately driving economic development on a global scale.

### SOURCES

1. Michael Joachim Bonell, The UNIDROIT Principles and CISG—Sources of Inspiration for English Courts, Volume 19. Pare International Law Review (2007)
2. The Hague Principles on choice of Law in International Commercial contracts - 19 March 2015.
3. The Indian Contract Act, 1872
4. WTO Agreement Preamble.
5. Kurt M. Sounders & Leonard Rymza, Contract Formation & Performance under UCC and CISG, Journal of Legal studies Education. Volume 32. Issue 1 Pg: 1
6. James Edward Joseph; Contract Formation Under the United Nations Convention on Contracts for the International Sale of Goods & Uniform Commercial Code, International Law Review, Volume 3, Penn State
7. Principles of International Commercial Contracts, UNIDROIT Rome, ISBN 88-86449-00-3
8. UNIDROIT Principles of International Commercial Contracts. 2016: ISBN:978-88-86449-37-3
9. UNIDIR Resources: The Role and Importance of the Hague Conference: A Historical Perspective
10. The Hague Principles on choice of Law in International Commercial contracts -19 March 2015.
11. Hashimy, S.Q. and Magoge, J.S. (2021) 'The legal implications of "perverse, arbitrary, and mala fide" as explicit grounds for challenging credit ratings in India', SSRN Electronic Journal [Preprint]. doi:10.2139/ssrn.4012335.
12. CISG.
13. Chateau des charmes Wines Ltd V. Sabate, 328 F.2d 528
14. Incoterms 2020 by the International chamber of Commerce (ICC).
15. Renzo Cava liexi and Vincenzo Salvatore: An Introduction to International Contract law: G Grappichelli Editore: 2018 Pg. 4
16. Vasile Goldis, The effects of the International Contract for Sale of Goods, Journal of legal studies, Volume 19 Issue 33/2017 ISSN 2457-9017. Online 2392-7054
17. WTO Information & External Relations division, Understanding the WTO, 1 January 1995, Chapter 2, ISBN 978-92-810-3748-0.
18. Hashimy, S.Q. and Magoge, J.S. (2024) 'Legal regulation of international trade in cryptographic products and technologies: WTO tools and regional agreements', Journal of Digital Technologies and Law, 2(2), pp. 328-344. doi:10.21202/jdtl.2024.17.
19. The Code of Civil Procedure 1908 Section 20
20. The Indian Contract Act 1872
21. Incoterms 2020 by the International chamber of Commerce (ICC).
22. Vita Food Products Inc V. Unus Shipping Co Ltd [1939] AC 277, 63 LIL Rep 21
23. Bonython V. Commonwealth of Australia [1950] UKPCH CA 3; 81 CLR 486; [1951] AC 201; [1951] ALR 37
24. Gramercy Holdings 1, LLC V. Matec S... et al. 20 Civ.3937 (SPC) 20 Civ, 4136 (JPC)
25. Bonython V. Commonwealth of Australia [1950] UKPCH CA 3; 81 CLR 486; [1951] AC 201; [1951] ALR 37
26. Gramercy Holdings 1, LLC V. Matec S... et al. 20 Civ.3937 (SPC) 20 Civ, 4136 (JPC)

27. Rieng & Sons, Inc. V. Puglisi 638 F. Appx 87 (2d Cir.2016) 08-CV-2540 (DLI) (JMA) (E.D.N.Y May 16.2013).
28. Abhishek Negi and Utk cough K. Mishra, Dissecting the CISG Framework & the Indian sale of Goods Regime in the context of delivery, time and risk, Int Journal of legal studies Vol. 3 , 6343 ISSN 2581-9453
29. Isha Janma, Navigating contractual non-performance: Embracing CISG Article 79 is Indian Contract Law, (March 14.2024) SSRN: <https://ssrn.com/abstract = 47 59522>
30. Born, G.B., Grant, T.D. and Kieff, F.S. (2021) Why it is especially important that states not ratify the Hague choice of Court Agreements Convention, part II, Kluwer Arbitration Blog. Available at: <https://arbitrationblog.kluwerarbitration.com/2021/07/23/why-it-is-especially-important-that-states-not-ratify-the-hague-choice-of-court-agreements-convention-part-ii/> (Accessed: 28 January 2025).

