

**BARRIERS TO THE APPLICATION OF THE UNITED NATIONS  
CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE  
OF GOODS (1980) IN THE PEOPLE'S REPUBLIC OF CHINA**

**PhD Candidate:** Fan Yang

**Centre for Commercial Law Studies, Queen Mary University of London**

**Email:** [fanyang.hk@gmail.com](mailto:fanyang.hk@gmail.com)

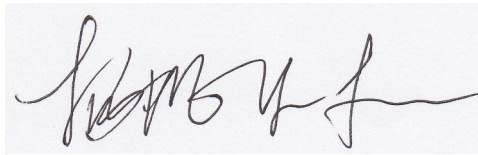
**January 2011**

**Word count: 98,121**

## DECLARATION

The work presented in the thesis is entirely the candidate's own.

Signed

A handwritten signature in black ink, appearing to be 'Fan Yang', written on a light gray rectangular background.

Fan Yang

## **ABSTRACT**

With the meteoric growth in the economy of the People's Republic of China (PRC), the success of the PRC's increasingly vast participation in international trade and commerce could be viewed as resting at the intersection of three bodies of law: PRC Contract Law, the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the UNIDROIT Principles of International Commercial Contracts (UPICC). If these three sources of law are not properly understood or correctly applied, their interplay can undermine uniformity goals that are at the heart of modern efforts to create an international legal regime on which buyers and sellers can, or must, depend. Further, these modern efforts often struggle against historical influences and biases of local law, courts and arbitration tribunals. These tensions are arguably felt most acutely in the PRC today, which, because of its burgeoning growth and enormous contribution as supplier of goods to the world's developed and developing nations, stands to suffer if its internal law cannot be reconciled and applied consistently with international rules of law on contracts for international sales as reflected in the CISG and the UPICC.

This research seeks to identify what barriers that the application of the CISG has faced and continues to face in the PRC. It examines those barriers arise from traditional understandings of contract law in the PRC and the attitudes of the PRC jurists and legal practitioners towards international uniform sales law instruments. It will put forward a number of proposals for overcoming those obstacles to the application of the CISG in the PRC, including the Hong Kong Special Administrative Region (as part of the PRC since 1997) and Macau Special Administrative Region (as part of the PRC since 1999), and Taiwan, whose political and legal status remains contentious.

## Table of Contents

DECLARATION .....	2
ABSTRACT.....	3
Acknowledgements.....	9
List of Abbreviations .....	10
List of PRC CISG Cases .....	11
INTRODUCTION.....	44
1. THE RISE OF THE PRC AS AN ECONOMIC SUPERPOWER .....	44
1.1. THE REFORM AND OPENING-UP .....	45
1.2. THE IMPLICATIONS FOR THE PRC LEGAL SYSTEM.....	46
2. RESEARCH SUBJECT: THE CISG AND THE PRC SALES CONTRACT LAW.....	47
2.1. THE CISG.....	47
2.2. THE PRC SALES CONTRACT LAW .....	49
2.3. BARRIERS TO THE APPLICATION OF THE CISG IN THE PRC .....	50
3. RESEARCH METHODOLOGY .....	52
3.1. REVIEW OF LITERATURE.....	52
3.2. LEGISLATION AND CASE STUDIES.....	53
4. THESIS STRUCTURE .....	55
1. CHAPTER ONE: BARRIERS TO THE ADOPTION OF THE CISG BY THE PRC AND ITS APPLICATION PRIOR TO 1999.....	56
1.0. INTRODUCTION.....	56
1.1. CONTRACT LAW IN THE PRC PRIOR TO THE ADOPTION OF THE CISG .....	57
1.1.1. THE IMPERIAL OR DYNASTIC PERIOD.....	58
1.1.2. THE REPUBLICAN AND CIVIL LAW INFLUENCE.....	59
1.1.3. THE SOCIALIST LAW INFLUENCE .....	62
1.2. THE ADOPTION OF THE CISG IN THE PRC.....	63
1.2.1. POLITICAL AND ECONOMIC CONTEXT .....	63
1.2.2. CHOICE OF MODELS VERSUS CHINESE CHARACTERISTICS .....	67
1.2.3. THE DOMESTIC AND FOREIGN-RELATED SPLIT .....	68

1.2.4.	THE PRC'S RESERVATIONS UNDER THE CISG .....	73
1.2.4.1.	THE RESERVATION TO ARTICLE 1(1)(B) .....	74
1.2.4.2.	THE RESERVATION TO ARTICLE 11 AND PROVISIONS RELATING TO ARTICLE 11 .....	76
1.3.	THE DEVELOPMENT OF CONTRACT LAW AFTER THE ADOPTION OF THE CISG AND PRIOR TO 1999	81
1.3.1.	THE AMENDMENTS TO ECONOMIC CONTRACT LAW (1993) .....	81
1.3.2.	THE INFLUENCE OF THE UPICC (1994) .....	90
1.4.	THE APPLICATION OF THE CISG PRIOR TO 1999 .....	93
1.4.1.	DISCORDANCE: CISG AND PRC PRE-1999 CONTRACT LAW .....	93
1.4.2.	APPLYING THE CISG UNDER THE PRE-1999 CONTRACT LAW REGIME .....	95
1.4.3.	APPLYING THE CISG AS 'INTERNATIONAL PRACTICE' UNDER PRC LAW .....	99
1.5.	THE CHINESE TEXT OF THE CISG .....	103
1.6.	CONCLUSION (Chapter 1).....	108
2.	CHAPTER TWO: BARRIERS TO THE APPLICATION OF THE CISG IN THE PRC AFTER 1999.....	111
2.0.	INTRODUCTION .....	111
2.1.	CONTRACT LAW IN THE PRC (POST-1999) .....	111
2.2.	THE CL1999 AND PRC'S ARTICLE 95 RESERVATION .....	117
2.2.1.	PRC'S ARTICLE 95 RESERVATION IN THEORY .....	117
2.2.2.	ARTICLE 95 RESERVATION IN PRC COURTS' PRACTICE .....	126
2.2.2.1.	APPLYING THE CISG WITH LITTLE OR NO DISCUSSION ON APPLICABLE LAW .....	126
2.2.2.2.	PARTIES EXPLICITLY CHOOSE THE CISG TOGETHER WITH PRC LAWS.....	132
2.2.2.3.	PARTIES EXPLICITLY CHOOSE PRC LAW, THE LAW OF A CONTRACTING STATE OF THE CISG	138
2.2.2.4.	COURT APPLIES RULES OF PRIVATE INTERNATIONAL LAW, WHICH DIRECTS TO THE APPLICATION OF PRC LAW.....	144
2.2.3.	THE PRC SHOULD WITHDRAW ITS ARTICLE 95 RESERVATION.....	155
2.3.	THE CL1999 AND THE PRC'S ARTICLE 96 RESERVATION .....	158
2.3.1.	ISSUES PERTINENT TO THE PRC'S ARTICLE 96 RESERVATION .....	159
2.3.2.	THE PRC'S ARTICLE 96 RESERVATION IN PRACTICE .....	171
2.3.3.	THE PRC SHOULD WITHDRAW ITS ARTICLE 96 RESERVATION.....	176
2.4.	CONCLUSION (Chapter 2).....	176

3. CHAPTER THREE: THE HARMONISATION OF THE PRC CONTRACT LAW 1999, THE CISG AND THE UPICC.....	178
3.0. INTRODUCTION .....	178
3.1. THE INFLUENCE OF THE CISG AND THE UPICC ON THE DRAFTING OF THE CL1999 .....	179
3.2. EVIDENCE OF HARMONISATION IN CONTRACT FORMATION RULES .....	184
3.3. EVIDENCE OF HARMONISATION IN TWO FUNDAMENTAL PRINCIPLES: PARTY AUTONOMY AND GOOD FAITH.....	196
3.3.1. PARTY AUTONOMY .....	197
3.3.2. GOOD FAITH.....	203
3.4. HARMONISATION AND THE UNIFORM APPLICATION OF THE CISG IN THE PRC .....	220
3.5. CONCLUSION (Chapter 3).....	228
4. CHAPTER FOUR: USING THE CISG AND THE UPICC TO FILL GAPS WITHIN THE CL1999 – THE ISSUE OF INTEREST .....	231
4.0. INTRODUCTION .....	231
4.1. INTEREST UNDER PRC LAW AND PRACTICE .....	232
4.1.1. INTEREST ON LOANS .....	232
4.1.2. DOUBLE-INTEREST ON JUDGMENT DEBTS.....	235
4.1.3. INTEREST AS A PENALTY.....	239
4.1.4. INTEREST UNDER THE CURRENT CONTRACT LAW 1999.....	245
4.1.5. INTEREST AS RESTITUTION OF BENEFITS UNDER THE CONSUMER PROTECTION LAW .....	249
4.1.6. INTEREST UNDER THE GUARANTEE LAW AND THE LAW OF RIGHTS IN REM.....	252
4.1.7. CALCULATION OF INTEREST IN PRC LAW AND PRACTICE .....	253
4.1.7.1. CALCULATION OF INTEREST PRIOR TO 1999.....	254
4.1.7.2. CALCULATION OF INTEREST AFTER 1999.....	258
4.2. USING ARTICLE 78 OF THE CISG TO SUPPLEMENT THE CL1999 ON THE AWARDING OF INTEREST .....	260
4.2.1. AWARDING INTEREST NATURALLY?.....	261
4.2.2. AWARDING INTEREST ON ARTICLE 23 OF THE REPEALED FOREIGN-RELATED ECONOMIC CONTRACT LAW .....	264
4.2.3. AWARDING INTEREST UNDER ARTICLE 112 OF THE CL1999 AS ‘OTHER ADDITIONAL’ DAMAGES.....	265
4.2.4. AWARDING INTEREST UNDER ARTICLE 78 OF THE CISG.....	267

4.2.5.	BRINGING THE CL1999 IN LINE WITH THE CISG: AWARDING INTEREST UNDER THE INTERPRETATION II OF THE CL1999 .....	268
4.3.	EXEMPLARY USE OF THE UPICC TO SUPPLEMENT THE CL1999 WITH RESPECT TO THE CALCULATION OF INTEREST .....	269
4.3.1.	THE UPICC’S SOLUTIONS ON CALCULATING INTEREST .....	270
4.3.2.	COMPATIBILITY OF THE SOLUTION PROVIDED BY THE UPICC WITH PRC LAW AND PRACTICE 272	
4.4.	CONCLUSION (Chapter 4).....	274
5.	CHAPTER FIVE: THE APPLICATION OF THE CISG IN HONG KONG, MACAO AND TAIWAN .....	277
5.0.	INTRODUCTION .....	277
5.1.	THE APPLICATION OF THE CISG IN HONG KONG .....	277
5.1.1.	DID THE HKSAR’S REUNIFICATION WITH THE PRC RESULT IN THE HKSAR BECOMING A ‘PARTY’ TO THE CISG? .....	279
5.1.1.1.	THE TELECOMMUNICATIONS PRODUCTS CASE AND THE INNOTEX CASE.....	280
5.1.1.2.	DID THE 1997 PRC DIPLOMATIC NOTE SATISFY THE REQUIREMENTS OF ARTICLE 93 OF THE CISG? 281	
5.1.1.3.	WHAT WERE THE INTENTIONS OF THE PRC CENTRAL GOVERNMENT AND THE HKSAR GOVERNMENT?.....	283
5.1.2.	IS THE APPLICATION OF THE CISG IN THE HKSAR IN ACCORD WITH THE CIRCUMSTANCES AND NEEDS OF THE HKSAR? .....	285
5.1.2.1.	BENEFITS OF APPLYING THE CISG TO THE HKSAR.....	286
5.1.2.2.	CISG CASES INVOLVING HONG KONG PARTIES.....	289
5.1.3.	WHAT VIEWS SHOULD THE HKSAR GOVERNMENT HAVE ON THE APPLICATION OF THE CISG IN THE HKSAR? .....	298
5.1.4.	CONCLUSION TO THE APPLICATION OF THE CISG IN THE HKSAR.....	301
5.2.	THE APPLICATION OF THE CISG IN THE MACAO SAR.....	304
5.2.1.	STATUS OF THE MACAO SAR.....	304
5.2.2.	CISG CASES INVOLVING MACAO PARTIES.....	307
5.2.3.	THE CIRCUMSTANCES AND NEEDS OF THE MACAO SAR AND VIEWS OF THE MACAO SAR GOVERNMENT .....	309
5.2.3.1.	THE CIRCUMSTANCES AND NEEDS OF THE MACAO SAR .....	310
5.2.3.2.	THE VIEWS OF THE MACAO SAR GOVERNMENT .....	311
5.2.4.	CONCLUSION TO THE APPLICATION OF THE CISG IN THE MACAO SAR.....	311

5.3.	THE APPLICATION OF THE CISG IN TAIWAN .....	312
5.3.1.	STATUS OF TAIWAN .....	312
5.3.2.	CISG CASES INVOLVING TAIWAN PARTIES .....	313
5.3.3.	BENEFITS OF APPLYING THE CISG IN TAIWAN .....	319
5.4.	APPLYING THE CISG BETWEEN THE MAINLAND, HONG KONG, MACAO AND TAIWAN .....	319
5.5.	CONCLUSION (Chapter 5).....	323
6.	CONCLUSION .....	325
APPENDIX 1A: THE CL1999 CONTRACT FORMATION RULES THAT CLOSELY RESEMBLE THEIR CISG COUNTERPARTS .....		335
APPENDIX 1B: CONTRACT FORMATION RULES OVERLAPS AND GAPS BETWEEN THE CL1999 AND THE UPICC.....		342
APPENDIX 1C: THE CL1999 CONTRACT FORMATION RULES THAT DO NOT HAVE ANY EQUIVALENT IN EITHER THE CISG OR THE UPICC.....		354
APPENDIX 2: THE CL1999 PROVISIONS THAT EXPLICITLY ALLOW DEROGATION .....		356
BIBLIOGRAPHY .....		361



## **Acknowledgements**

I would like to thank my supervisors Professor Michael Bridge and Professor Loukas Mistelis for their support. I am particularly grateful to Professor Bridge for his generous guidance and comments on the final draft together with suggested corrections and prudent qualifications. Any errors that remain are mine alone. I am especially indebted to the late Professor Albert Kritzer for his inspiration and sharing of numerous materials including all the PRC court cases and CIETAC arbitral awards that are made available at the PACE CISG database. He is sorely missed and fondly remembered by all who came into contact with him. Special thanks also to Professor Ingeborg Schwenzer and Neil Kaplan CBE QC for their encouragement throughout. Last, but not the least, my greatest debt and most heartfelt thanks go to my husband.

## **List of Abbreviations**

CCP	Chinese Communist Party
CEPA	Closer Economic Partnership Agreement
CIETAC	China International Economic and Trade Arbitration Commission
CISG	United Nations Convention on Contracts for the International Sale of Goods (1980)
CL1999	PRC Contract Law 1999
ECFA	Economic Co-operation Framework Agreement
ECL	PRC Economic Contract Law (1981)
ECL1993	PRC Economic Contract Law (1993 amendments)
FECL	PRC Foreign-Related Economic Contract Law (1985)
GPCL	PRC General Principles of Civil Law (1986)
HKSAR	Hong Kong Special Administrative Region
KMT	Kuomintang
LIBOR	London Interbank Offered Rate
Macau SAR	Macau Special Administrative Region
PRC	People's Republic of China
PRD	Guangdong and Pearl River Delta Region
ROC	Republic of China (Taiwan Government)
TCL	PRC Technology Contract Law (1987)
ULF	Uniform Law on the Formation of Contracts for the International Sale of Goods
ULIS	Uniform Law for the International Sale of Goods
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
UPICC	UNIDROIT Principles of International Commercial Contracts

## List of PRC CISG Cases

Source: PACE CISG Database

### Supreme People's Court

Supreme People's Court 1 September 1990. Art. 41, [SPC/01]

- Earlier proceeding Guangdong High People's Court (unreported) [affirmed]

Supreme People's Court 20 July 1999 (Zheng Hong Li Ltd. Hong Kong v. Jill Bert Ltd. Swiss). Arts. 53, 85, 87, 88, 95, [SPC/02]

- Earlier proceeding Jingjiang Autonomous High People's Court

Supreme People's Court 8 August 2000 (*Lianhe Enterprise v. Yantai*). Arts. 1(3), 53, [SPC/03]

- Earlier proceeding Shandong Province High People's Court

Supreme People's Court 11 January 2001 (*Singapore Da Guang Group v. Jiangsu Machines Import & Export Ltd.*). Arts. 74, 80, [SPC/04]

- Earlier proceeding Jiangsu High People's Court

Supreme People's Court 21 September 2005 (*Panda S.r.l. v. Shunde Westband Furniture Co. Ltd.*). Arts. 4, 53, 55, 78, [SPC/05]

---

### High People's Courts and Specialized Courts

#### **Beijing**

Beijing High People's Court 18 March 2005 (*Beijing Chen Guang Hui Long Electronid Technology Development Ltd. v. Thales (France) Co.*). Art. 6, [HPC/01]

#### **Fujian**

Fujian High People's Court December 1994 (*San Ming v. Zhanzhou Metallic Minerals*). Arts. 7, 30, 35, 39, 74, 77, 86, 87, 88, [HPC/02]

- 1st instance Intermediate People's Court 7 March 1993 [affirmed]

Fujian High People's Court 31 December 1996 (*You Li v. Gold Star*). Arts. 18, 53, 62, 78, [HPC/03]

- 1st instance Xiamen Intermediate People's Court Economic Chamber 1995 [CISG applicable; Foreign Economic Law of the PRC was incorrectly applied]

### **Guangdong (Canton)**

Guangdong High People's Court 7 March 1994 (*Zhanjiang Textiles v. Xian Da Fashion*). Arts. 47, 48, 77, 88, [HPC/04]

Guangdong High People's Court 3 January 1999 (*Frozen sea trout case*). Arts. [-] [HPC/25]

Guangdong High People's Court 10 October 2004 (*America Inland Sea Incorporated et al. v. Jiedong Country Fishery et al.*). Arts. 18, 23, [HPC/05]

- 1st instance Jieyang City Intermediate Court of Guangdong Province

Guangdong High People's Court 2005 (*Possehl (HK) Limited v. China Metals & Minerals Import & Export (Shenzhen Corporation)*). Arts. 9, 25, 63, 64, 73, 74, 80, [HPC/06]

- 1st instance Guangdong Intermediate People's Court 2005 [affirmed]

Guangdong High People's Court 11 January 2005 (*Zuhai Zhongyue New Communication Technology Ltd et al. v. Theaterlight Electronic Control & Audio Systems Ltd.*). Arts. [-] [HPC/24]

- 1st instance Zhuhai Intermediate People's Court 2003 [affirmed]

### **Guangxi**

Beihai Maritime Court 5 March 2002 (*Sino-Add (Singapore) PTE Ltd. v. Karawasha Resources Ltd.*). Arts. 6, 41, 74, 78, [HPC/07]

### **Henan**

Henan High People's Court 17 July 2000 (*Minternet S.A. v. Henan Local Product Import and Export Company*) Arts. 12, 29, 60, 74, 75, 77, 78, [HPC/08]

- 1st instance Zhengzhou Intermediate People's Court [reversed in part]

### **Hubei**

Wuhan Maritime Court 10 September 2002 (*Nanjing Resources Group v. Tian An Insurance Co. Ltd.*) Arts. 30, 34, 67, [HPC/09]

Hubei High People's Court 19 March 2003 (*TV broadband network products case*). Art. 93, [HPC/10]

### **Jiangsu**

Jiangsu High People's Court 28 December 2000 (*XM International Inc. v. Jiangsu Metals & Minerals*). Arts. [-] [HPC/11]

Jiangsu High People's Court 19 February 2001 (*Tai Hei v. Shun Tian*). Arts. 7, 30, [HPC/12]

Jiangsu High People's Court 28 November 2001 (*Shanghai Shen He Import and Export Ltd. v. Japan Itodhu Corp.*) Arts. 35, 74, 77, [HPC/13]

- 1st instance Jiangsu Province Wuxi Middle Level People's Court 16 October 1998

- 2d instance Jiangsu High People's Court 3 May 1999

- 3d instance Supreme People's Court 25 September 2001 [remanded]

Jiangsu High People's Court 23 November 2001. Arts. [-] [HPC/26]

Jiangsu High People's Court 25 December 2002 (*Zhuguang Oil Company v. Wuxi Zhongrui Group Corporation*). Art. 1(1)(b) [HPC/14]

- 1st instance Intermediate People's Court of Wuxi City, Jiangsu Province

Jiangsu High People's Court 2 December 2004 (*China Changzhou Kairui Weaving and Printing Company v. Taiwan Junlong Machinery Company*). Arts. 8, 9, [HPC/15]

### ***Jiangxi***

Jiangxi High People's Court 14 December 1992 (*Ao Long v. Jiangxi Province Export*). Arts. 35, 36, [HPC/16]

### ***Liaoning***

Dalian Maritime Court 29 June 2005 (*Minermet S.p.A. Italy v. China Metallurgical Import & Export Dalian Company et al.*). Art. 38, [HPC/17]

### ***Ningxia***

Ningxia Hui Autonomous Region High People's Court 27 November 2002 (*Xinsheng Trade Company v. Shougang Nigong*). Arts. 25, 66, 67, 73, 74, 77, [HPC/18]

- 1st instance Shizuishan Intermediate People's Court 2 December 2001 [reversed]

### ***Shandong***

Shanghai High People's Court 1 April 2003 (*Penglai Trading Group Corp. v. Japan Universal Co. Ltd*). Arts. [-] [HPC/29]

Shandong High People's Court 10 September 2004 (*WS China GmbH v. Longkou Guanyuan Food Company*). Arts. 39, 40, 74, 77, 78, [HPC/19]

- 1st instance Intermediate People's Court of Qingdao City

Shandong High People's Court 27 June 2005 (*Norway Royal Supreme Seafoods v. China Rizhao Jixiang Ocean Food Company et al.*). Arts. 29, 35, 36, 39, [HPC/20]

- 1st instance Intermediate People's Court of Rizhao City [affirmed]

### ***Shanghai***

Shanghai High People's Court 1997 (*Akefamu v. Sinochem Hainan*). Arts. 8, 24, 29, 35, 38, 78, [HPC/21]

- 1st instance Shanghai No. 2 Intermediate People's Court 1996 [reversed]

Shanghai High People's Court 30 August 2005 (*Shanghai Nuo Bo Metal Products Ltd v. Tevel International Trading*). Arts. 53, 78, [HPC/22]

Shanghai High People's Court 17 January 2007 (*Shanghai Lansheng Real Estate Co. Ltd. and Eberin Trading Ltd. v. Shanghai Jinqiao Condodecoration Engineering Co. Ltd.*). Arts. [-] [HPC/27]

Shanghai High People's Court 17 May 2007 (*Plastic inflatable swimming pools case*). Art. 6, [HPC/23]

### ***Sichuan***

Sichuan High People's Court 9 December 2005 (*Global Nutri Co. v. Sichuan Xinguang Industril Import & Export Co. Ltd*). Art. 6, [HPC/30]

### ***Zhejiang***

Zhejiang High People's Court 24 April 2008 (*Zhejiang Henghao Garment Co. Ltd. v. Trio Selection Inc.*). Arts. 18, 29, 53, 62, [HPC/28]

- 1st instance Hangzhou Intermediate People's Court 2007 [reversed]

---

## **Intermediate People's Courts**

### ***Beijing***

Second Intermediate People's Court of Beijing 26 July 2002 (*Finland [...] International Corporation v. Beijing Yinfuli Import & Export Co. Ltd.*). Art. 6, [IPC/43]

### ***Fujian***

Xiamen Intermediate People's Court 31 December 1992 (*Lian Zhong v. Xiamen Trade*). Arts. 53, 54, 74, 78, [IPC/01]

Xiamen Intermediate People's Court 20 April 1993 (*Lianzhong Enterprise Resources (Hong Kong) Ltd v. Xiamen International Trade & Trust Co.*). Arts. 74, 78, [IPC/02]

Xiamen Intermediate People's Court 5 September 1994 (*Xiamen Trade v. Lian Zhong*). Art. 9 [IPC/03]

Xiamen Intermediate People's Court 14 December 2004 (*Xiamen Xiang Yu Group Corporation v. Mefchel Trading AG*). Arts. [-] [IPC/04]

- 1st instance Changzhou Intermediate People's Court at Jiangsu Province

### ***Guangdong (Canton)***

Guangzhou Intermediate People's Court 19 November 2005 (*Ginger case*). Art. 39, [IPC/05]

Guangzhou Intermediate People's Court 29 August 2006. Arts. [-] [IPC/33]

Guangzhou Intermediate People's Court 2008 (*Enders Colman AG v. Guangzhou Qingchu Group Ltd.*). Art. 6, [IPC/06]

### ***Henan***

Xinxiang Intermediate People's Court 13 August 2007 (*Enterprise P. Boucher v. Henan Yuanfeng Leather Manufacturing Co.*). Art. 11, [IPC/07]

### ***Hubei***



Wuhan Intermediate People's Court 4 April 2001 (*Korea Hendai General Trade Company v. China Hubei Province Metal Import & Export Company*). Arts. 53, 78, [IPC/08]

Wuhan Intermediate People's Court 9 September 2002 (*WS China Packaging Import & Export Corp v. Russia Poenix Company et al.*). Arts. 53, 62, [IPC/09]

Wuhan Intermediate People's Court 11 May 2004 (*Wuhan Zhongou Clothes Factory v. Hungary Wandong International Trade Compny*). Arts. 53, 78, [IPC/10]

### **Hunan**

Changsha Intermediate People's Court Economic Chamber 18 September 1995 (*Skandinaviska Metemo AB v. Hunan Co. for International Economy and Trade*). Arts. 1, 4, 18, 73, 74, 75, 77, 78, [IPC/11]

### **Jiangsu**

Nantong Intermediate People's Court 26 January 2006 (*Y.L.F. (USA) Inc. v. Jiangsu Overseas Group Haitong International Trade Co. Ltd.*). Arts. [-] [IPC/29]

### **Jiangxi**

Nantong Intermediate People's Court 29 September 2000 (*Taihei Co. Japan v. Jiangsu Sainty International Group Ltd et al.*). Art. 30 [IPC/12]

### **Shandong**

Rizhao Intermediate People's Court 17 December 1999 (*Hang Tat Foods v. Rizhoa*). Arts. 74, 77, 84, 86, 88, [IPC/13]

Qingdao Intermediate People's Court of Shandong 13 June 2005 (*Qingdao Benefim Trading Co. Ltd. v. Sinochem International*). Art. 1(1)(b) [IPC/36]

Dongyang Intermediate People's Court of Shandong 12 May 2008 (*Hong Kong Topway Trading Co. Ltd. v. Dongying Hongyu Import & Export Co. Ltd.*). Arts. [-] [IPC/38]

### ***Shanghai***

Shanghai Second Intermediate People's Court 22 June 1998 (*China Yitou Group Company v. Germany Gerhard Freyso Ltd GmbH*). Arts. 53, 71, 73, 74, 77, 78, 85, 88, [IPC/14]

Shanghai First Intermediate People's Court 21 August 2002 (*Gamatex International S.r.l. v. Shanghai Eastern Crocodile Apparels Co. Ltd.*). Art. 6, [IPC/15]

Shanghai First Intermediate People's Court 2003 (*Shanghai Weijie Electronic Devices Ltd v. Superpower Supply Inc.*). Arts. [-] [IPC/16]

Shanghai Second Intermediate People's Court 20 June 2003 (*Dong Feng Trade Co. Ltd. v. Hangzhou Dongli Rubber & Plastomer Co. Ltd.*). Art. 1(1)(b) [IPC/37]

Shanghai First Intermediate People's Court 23 June 2003 (*Cashmere sweaters case*). Art. 6, [IPC/17]

Shanghai First Intermediate People's Court 24 February 2004 (*Shanghai Yankee Engine Co. Ltd. v. Shanghai Materials & Equipment Group Import & Export Co. Ltd.*). Art. 4, [IPC/35]

Shanghai First Intermediate People's Court 23 March 2004 (*Singapore Company v. Dongling Trade Company et al.*). Arts. 4, 53, 78, [IPC/18]

Shanghai Second Intermediate People's Court 23 April 2004. Arts. [-] [IPC/32]

Shanghai Second Intermediate People's Court 25 August 2004. Arts. [-] [IPC/19]

Shanghai Second Intermediate People's Court 24 May 2005 (*Medical products case*). Art. 30, [IPC/21]

Shanghai Second Intermediate People's Court 24 June 2005 (*Children's furniture case*). Arts. 53, 59, 74, [IPC/20]

Shanghai First Intermediate People's Court 29 June 2005 (*Yiwu Ma Ji Import and Export Co. Ltd. v. Y & O International Group*). Arts. 53, 62, 78, [IPC/22]

Shanghai First Intermediate People's Court 28 November 2005 (*Vishaybe Components Beyschlag GmbH*). Art. 53 [IPC/23]

Shanghai Second Intermediate People's Court 30 May 2006. Arts. [-] [IPC/24]

Shanghai Second Intermediate People's Court 10 July 2006 (*Cloth case*). Arts. 53, 58, [IPC/25]

Shanghai Second Intermediate People's Court 25 December 2006 (*Cabinets and accessories case*). Arts. 30, 33, 45, 67, 74, [IPC/26]

Shanghai First Intermediate People's Court 25 December 2008 (*Shanghai Anlil International Trading Co. Ltd. v. J & P Golden Wings Corp.*). Arts. 25, 38, 39, 40, 51, 81, [IPC/34]

Shanghai First Intermediate People's Court 19 March 2009 (*Salem Street North American LLC v. Shang Shang Stainless Steel Pipe Co.*) [Case 1]. Arts. 53, 62, 78, [IPC/39]

Shanghai First Intermediate People's Court 19 March 2009 (*Salem Street North American LLC v. Shang Shang Stainless Steel Pipe Co.*) [Case 2]. Arts. 53, 62, 78, [IPC/40]

Shanghai First Intermediate People's Court 19 March 2009 (*Salem Street North American LLC v. Shang Shang Stainless Steel Pipe Co.*) [Case 3]. Arts. 53, 62, 78, [IPC/41]

Shanghai First Intermediate People's Court 19 March 2009 (*Salem Street North American LLC v. Shang Shang Stainless Steel Pipe Co.*) [Case 4]. Arts. 53, 62, 78, [IPC/42]

### **Unknown**

N.N. People's Court (PRC) 1993 (*International Industrial Company C of Hong Kong v. Five Mines Machinery Industrial Chemicals et al.*). Art. 74 [IPC/27]

### **Zhejiang**

Hangzhou Intermediate People's Court 2002 (*Gulf Resources Development Co. Ltd. v. Hangzhou Hanggang Foreign Economic Co. Ltd.*). Arts. [-] [[IPC/31]

---

## **Basic People's Courts**

### **Hubei**

Wuhan Economic and Technology Development Zone People's Court 30 June 2000 (*Shenzhen Fengshen Industry Development Co. v. Inter Service Internation France*). Arts. 35, 38, 78, 79, [BPC/01]

### **Shanghai**

Shanghai New Pudong District People's Court 24 November 1997 plus appellate decision by Shanghai First Intermediate People's Court 10 February 1998 (*Hong Kong [...] Co. Ltd. v. Shanxi Yanquan Import & Export Corp.*). Arts. [-] [BPC/06]

Shanghai Huangpu District People's Court 30 August 2000. Arts. [-] [BPC/05]

Shanghai Yangpu District People's Court 4 November 2002 (*China Xhanghai Dongda Import & Export Corp. v. Germany Laubholz-Meyer Corp.*). Arts. 25, 35, 39, 48, 51, 74, 81, 86, [BPC/02]

Shanghai New Pudong District People's Court 23 September 2005 (*Xi'an Yun Chang Trade Ltd. v. An Tui International*). Arts. 35, 59, 64, 74, 78 [BPC/03]

### **Zhejiang**

Cixi People's Court 18 July 2001 (*Carl Hill v. Cixi Old Furniture Trade Co. Ltd.*). Arts. 11, 12, 32, 74, 77, [BPC/04]

## China arbitral rulings

- *China International Economic and Trade Arbitration Commission = CIETAC*
- *Accession numbers , e.g., [CISG/1988/01], are cisgw3 database accession nos. not CIETAC accession numbers.*

### ***pre-1993 CIETAC awards***

Award of 4 August 1988 [CISG/1988/01] (*Calculator assembly parts case*). Art. 39, [translation available]

Award 1989 [CISG/1989/02] (*Thai-made emulsion case*). Arts. 71, 72, [translation available]

Award of 13 June 1989 [CISG/1989/01] (*Sesame / urea barter case*). Arts. 4, 74, 75, 76, 77, [translation available]

Award of post-1989 [CISG/1990/01] (*Cloth wind coats case*). Arts. 9, 53, 60, 74, 77, [translation available]

Award of 18 April 1991 [CISG/1991/01] (*Silicate-iron case*). Art. 76(1), [translation available]

Award of 19 April 1991 [CISG/1991/02] (*Metal silicon case*). Arts. 8, 38, 39, 74, 78, [translation available]

Award of 6 June 1991 [CISG/1991/03] (*Cysteine monohydrate case*). Arts. 9, 77, 79, 86(1), 88(2), [translation available]

Award of 30 October 1991 [CISG/1991/04] (*Roll aluminum case*). Arts. 25, 47, 49, 64, 75, 76, 77, 78, 81, 84(1), [translation available]

- Preliminary award of CIETAC arbitration tribunal (award No. 1740) 20 June 1991

Award of 16 December 1991 [CISG/1991/05] (*Cold-rolled steel plates case*). Arts. 9, 38, 74, 77, [translation available]

Award of 1992 [CISG/1992/01]. Art. 76,

Award of 21 September 1992 [CISG/1992/02]. Art. [-]

### ***1993 CIETAC awards***

Award of post-1992 [CISG/1993/14] (*White cardboard scrap paper case*). Arts. 4, 8, 25, 29, 74, 78, 82(1), [translation available]

Award of 9 January 1993 [CISG/1993/03] (*Linseed cake case*). Arts. 35, 61(2), 63, 64, 74, 77, 78, 88, [translation available]

Award of 20 January 1993 [CISG/1993/04] (*Ferrosilicon case*). Art. 74, 76, [translation available]

Award of 25 February 1993 [CISG/1993/05] (*Terylene draw-texturing machine case*). Arts. 25, 74, 84, [translation available]

Award of 27 February 1993 [CISG/1993/01] (*Bread improving tablet case*). Arts. 61, 74, [translation available]

Award of 26 March 1993 [CISG/1993/06] (*Cement case*). Arts. 53, 78, [translation available]

Award of 30 March 1993 [CISG/1993/07] (*Talcum block case*) [translation available]

Award of 1 April 1993 [CISG/1993/02] (*Steel products case*). Arts. 18, 19, 74, 75, 76, [translation available]

Award of 5 July 1993 [CISG/1993/08] (*Copperized steel tubes case*). Arts. 38, 74, 77, 78, [translation available]

Award of 10 July 1993 [CISG/1993/09] (*Heliotropin case*). Arts. 8, 9, 35, 74, 77, [translation available]

Award of 20 July 1993 [CISG/1993/10] (*Shaping machine case*). Arts. 25, 49, 74, 81, 84, [translation available]

Award of 7 August 1993 [CISG/1993/11] (*Semi-automatic weapons case*). Arts. 74, 78, 79, [translation available]

Award of 26 October 1993 [CISG/1993/12] (*Frozen beef case*). Arts. 25, 64, 74, 75, 76, 78, 81, [translation available]

Award of 20 December 1993 [CISG/1993/13] (*Equipment case*). Art. 74, [translation available]

### **1994 CIETAC awards**

Award of 20 January 1994 [CISG/1994/02] (*Hydraulic press machine case*). Art. 35, [translation available]

Award of 20 February 1994 [CISG/1994/03] (*Cysteine case*). Arts. 12, 26, 39, 49, 76, [translation available]

Award of 30 March 1994 [CISG/1994/04] (*Cow's liver fungus case*). Arts. 35, 38, 58, 71, 77, [translation available]

Award of 6 April 1994 [CISG/1994/05] (*Printing machine case*). Arts. 25, 46, 48, 84, [translation available]

Award of 11 April 1994 [CISG/1994/06] (*Old paper case*). Arts. 30, 34, 84, [translation available]

Award of 10 May 1994 [CISG/1994/07] (*Carbamide case*). [translation available]

Award of 17 June 1994 [CISG/1994/08] (*Warm rolled steel plates case*). Art. 74, 79, [translation available]

Award of 11 August 1994 [CISG/1994/09] (*Bicycle case*). Art. 74, [translation available]

Award of September 1994 [CISG/1994/01]. Arts. 30, 35(1), 53,

Award of 5 September 1994 [CISG/1994/10] (*Weaving machines, tools and accessories case*). Arts. 25, 47, 49, 74, 77, 84, [translation available]

Award of 19 September 1994 [CISG/1994/11] (*Steel case*). Arts. 47, 49, 74, 76, [translation available]

Award of 29 September 1994 [CISG/1994/12] (*Umbrella case*). Arts. 8, 53, 78, 88, [translation available]

Award of 25 October 1994 [CISG/1994/13] (*High tensile steel bars case*). Arts. 23, 25, 49, 74, 76, [translation available]

Award of 12 December 1994 [CISG/1994/14] (*Sunflower seeds and groundnut case*). Art. 73, [translation available]

Award of 28 December 1994 [CISG/1994/15] (*Round steel case*). Arts. 38, 39, 74, 78, [translation available]

### **1995 CIETAC awards**

Award of 4 January 1995 [CISG/1995/02] (*Shirts case*). Arts. 33, 35, 39(1), 58(1), 78, [translation available]

Award of 23 February 1995 [CISG/1995/01] (*Jasmine aldehyde case*). Arts. 38(2), 39(1), 66, 74, 78, [translation available]

Award of 10 March 1995 [CISG/1995/03] (*Polyethylene film case*). Arts. 8, 32, 68, 74, 77, 78, 84(1), 88, [translation available]

Award of 10 March 1995 [CISG/1995/04] (*Wool case*). Art. 8, 38, 67, 74, 77, 78, 79, [translation available]

Award of 22 March 1995 [CISG/1995/05] (*Down jacket and winter coat case*). Arts. 8, 25, 26, 35, 49, 50, 74, 77 [translation available]

Award of 18 April 1995 [CISG/1995/06] (*Clothes case*). Arts. 18, 33, 39, 47, 74, 75, 77 [translation available]

Award of 23 April 1995 [CISG/1995/07] (*Australian raw wool case*). Arts. 9(2), 25, 49, 54, 64, 74, 76, [translation available]

Award of 28 April 1995 [CISG/1995/08] (*Rolled wire rod coil case*). Art. 6, 74, 79, [translation available]

Award of 15 May 1995 [CISG/1995/09] (*Copper cable case*). Arts. 8, 9, 74, [translation available]

Award of 16 May 1995 [CISG/1995/10] (*Leather bags case*). Arts. 62, 78, [translation available]

Award of 5 August 1995 [CISG/1995/11] (*Hot-rolled steel billets case*). Art. 74, [translation available]

Award of 15 December 1995 [CISG 1995/12] (*Used re-rolling rails case*). Arts. 25, 45, 74, 78, [translation available]

### **1996 CIETAC awards**

Award of 12 January 1996 [CISG/1996/03] (*Scrap copper case*). Arts. 74, 76, 78, [translation available]

Award of 22 January 1996 [CISG/1996/04] (*Palm oil case*). Art. 74, [translation available]

Award of 30 January 1996 [CISG/1996/05] (*Compound fertilizer case*). Arts. 8, 25, 26, 49(1), 51(2), 72, 74, 76, 77, [translation available]

Award of 5 February 1996 [CISG/1996/06] (*Peanut case*). Arts. 74, 75, 76, [translation available]



Award of 5 February 1996 [CISG/1996/07] (*Antimony ingot case*). Arts. 6, 8, 25, 52(1), 53, 54, 61, 72(1), 74, 75, 77, 78, [translation available]

Award of 12 February 1996 [CISG/1996/08] (*Art paper case*). Art. 74, [translation available]

Award of 14 February 1996 [CISG/1996/09] (*Bicycles case*). Arts. 35, 53, 61, 74, 78, [translation available]

Award of 15 February 1996 [CISG/1996/10] (*Hot-rolled plates case*). Arts. 25, 49(1)(a), 59, 75, 78, 80, [translation available]

Award of 27 February 1996 [CISG/1996/11] (*Wool case*). Arts. 53, 71, 77, 78, 85, [translation available]

Award of 8 March 1996 [CISG/1996/12] (*Old boxwood corrugated carton case*). Arts. 35, 45, 74, 77, 78, 88, [translation available]

Award of 8 March 1996 [CISG/1996/13] (*Horsebean case*). Arts. 8, 25, 30, 60, [translation available]

Award of 14 March 1996 [CISG/1996/14] (*Dried sweet potatoes case*). Arts. 74, 75, 76, 78, 79(1), [translation available]

Award of 29 March 1996 [CISG/1996/15] (*Caffeine case*). Arts. 6, 47, 72, 74, 75, 76, 77, 78, [translation available]

Award of 29 March 1996 [CISG/1996/16] (*Natural rubber case*). Art. 19, 29, 71, [translation available]

Award of 3 April 1996 [CISG/1996/17] (*Plastic bags case*). Arts. 7, 62, 74, [translation available]

Award of 4 April 1996 [CISG/1996/18] (*Three-ply board case*). Art. [-] [translation available]

Award of 17 April 1996 [CISG/1996/19] (*Air purifier case*). Arts. 25, 26, 39, 48, 49, 74, 78, [translation available]

Award of 30 April 1996 [CISG/1996/20] (*Jacks and bearing brackets case*). Arts. 30, 53, 74, 78, [translation available]

Award of 2 May 1996 [CISG/1996/21] (*"FeMo" alloy case*). Arts. 7, 74, 76, 78, 79, [translation available]

Award of 10 May 1996 [CISG/1996/22] (*Hot-rolled steel plates case*). Arts. 8, 29, 32, 74, 78, [translation available]

Award of 14 May 1996 [CISG/1996/23] (*Down coat case*). Arts. 53, 61, 74, [translation available]

Award of 16 May 1996 [CISG/1996/24] (*Cashmere sweaters case*). Arts. 62, 78, [translation available]

Award of 22 May 1996 [CISG/1996/25] (*Broadcasting equipment case*). Arts. 7(2), 25, 35, 48, 49, 84(1), [translation available]

Award of 29 May 1996 [CISG/1996/26] (*Handicrafts case*). Arts. 35, 74, [translation available]

Award of 31 May 1996 [CISG/1996/27] (*Children's jackets case*). Arts. 25, 53, 78, [translation available]

Award of 12 July 1996 [CISG/1996/28] (*Chrome-plating machines production-line equipment*). Arts. 74, 75, 77, 78, 87, [translation available]

Award of 12 July 1996 [CISG/1996/29] (*Chromate plating machine case*). Arts. 74, 75, [translation available]

Award of 12 July 1996 [CISG/1996/30] (*Nickel-plating machines production-line equipment case*). Arts. 74, 75, [translation available]

Award of 16 July 1996 [CISG/1996/31] (*Hot-rolled steel plates case*). Arts. 35, 36, 38, 39, 74, 78, [translation available]

Award of 30 July 1996 [CISG/1996/32] (*Molybdenum iron case*). Arts. 47(2), 74, 75, 76, 77, 78, [translation available]

Award of 30 July 1996 [CISG/1996/33] (*Ferro-molybdenum alloy case*). Arts. 25, 47, 74, 75, 76, 78, 79, [translation available]

Award of 31 July 1996 [CISG/1996/34] (*Sport shoes case*). Arts. 38(2), 49(1)(a), 50, 74, 78, [translation available]

Award of 6 August 1996 [CISG/1996/35]. (*Lacquer handicraft case*) Arts. 30, 53, 61, 74, 78, [translation available]

Award of 8 August 1996 [CISG/1996/36] (*Diaper machine case*). Arts. 25, 50, 71, 73, 74, 77, 77, 78, 80, [translation available]

Award of 9 August 1996 [CISG/1996/37] (*Silk shirts case*). Arts. 30, 53, 78, [translation available]

Award of 9 August 1996 [CISG/1996/38] (*China tableware case*). Arts. 30, 53, 78, [translation available]

Award of 16 August 1996 [CISG/1996/39] (*Dioctyl phthalate case*). Arts. 18, 25, 35, 74, 75, 77, 78, 80, [translation available]

Award of 30 August 1996 [CISG/1996/40] (*Brake pads case*). Arts. 62, 74, 78, [translation available]

Award of 4 September 1996 [CISG/1996/41] (*Natural rubber case*). Arts. 45, 74, 75, 76, 77, 78, [translation available]

Award of 6 September 1996 [CISG/1996/42] (*Engines case*). Arts. 8, 12, 35, 38, 52, 67, 85, 96, [translation available]

Award of 18 September 1996 [CISG/1996/43] (*Agricultural products case*). Arts. 8, 35, 38, 39, 50, 74, 75, [translation available]

Award of 18 September 1996 [CISG/1996/01] (*Lanthanide compound case*). Arts. 25, 64, 73, 74, [translation available]

Award of 28 September 1996 [CISG/1996/44] (*Gloves case*). Arts. 38, 39, 74, [translation available]

Award of 10 October 1996 [CISG/1996/45] (*Petroleum coke case*). Arts. 25, 49, 64(1), 74, 75, 78, [translation available]

Award of 15 October 1996 [CISG/1996/46] (*Canned chufa case*). Art. 53, [translation available]

Award of 17 October 1996 [CISG/1996/47] (*Tinplate case*). Arts. 7, 9, 12, 74, 77, 96, [translation available]

Award of 23 October 1996 [CISG/1996/48] (*Channel steel case*). Arts. 35, 36, 77, 78, [translation available]

Award of 26 October 1996 [CISG/1996/49] (*Cotton bath towel case*). Arts. 35(2), 74, 77, 88, [translation available]

Award of 7 November 1996 [CISG/1996/50] (*Stone products case*). Arts. 53, 74, 78, [translation available]

Award of 11 November 1996 [CISG/1996/51] (*Rubber overshoes case*). Arts. 53, 78, [translation available]

Award of 15 November 1996 [CISG/1996/52] (*Oxytetracycline HCL case*). Arts. 47, 75, 77, [translation available]

Award of 18 November 1996 [CISG/1996/53] (*Steel channels case*). Arts. 30, 34, 80, [translation available]

Award of 25 November 1996 [CISG/1996/02] (*Chromium ore case*). Arts. 61(2), 74, 77 [translation available]

Award of 28 November 1996 [CISG/1996/54] (*Moly-oxide case*). Arts. 4, 25, 39, 49, 64, 74, 77, 78, [translation available]

Award of 17 December 1996 [CISG/1996/55] (*Hot-rolled steel plates case*). Arts. 9, 78, [translation available]

Award of 18 December 1996 [CISG/1996/56] (*Lentils case*). Arts. 8, 54, 71, 74, 78, [translation available]

Award of 23 December 1996 [CISG/1996/57] (*Carbazole case*). Arts. 9, 25, 45, 74, 77, [translation available]

Award of 31 December 1996 [CISG/1996/58] (*High carbon tool steel case*). Arts. 72, 75, 79, [translation available]

### **1997 CIETAC awards**

Award of 6 February 1997 [CISG/1997/38] (*Silicon-carbide case*). Arts. 4, 9, 25, [translation available]

Award of 6 March 1997 [CISG/1997/01] (*Men's shirts case*). Arts. 74, 75, 77, 78, [translation available]

Award of 1 April 1997 [CISG/1997/1997/02] (*Fishmeal case*). Art. 68, [translation available]

Award of 2 April 1997 [CISG/1997/03] (*Wakame case*). Art. 53, 62, 78, [translation available]

Award of 4 April 1997 [CISG/1997/04] (*Black melon seeds case*). Arts. 6, 25, 30, 45, 74, 76, 78, [translation available]

Award of 11 April 1997 [CISG/1997/05] (*Silicon metal case*). Arts. 38, 39, 40, 45, 46, 74, 75, 77, 78, 84, [translation available]

Award of 15 April 1997 [CISG/1997/06] (*Germanium case*). Arts. 4, 9, 29(1), [translation available]

Award of 23 April 1997 [CISG/1997/07] (*Peanut case*). Arts. 8, 74, [translation available]

Award of 23 April 1997 [CISG/1997/08] (*Automobiles case*). Arts. 14(1), 35, 65, 81, 84, [translation available]

Award of 24 April 1997 [CISG/1997/09] (*Oxidized aluminum case*). Arts. 74, 75, 76, [translation available]

Award of 30 April 1997 [CISG/1997/10] (*Molybdenum alloy case*). Art. 60, 64, 74, 75, 77, 78, [translation available]

Award of 7 May 1997 [CISG/1997/11] (*Sanguinarine case*). Arts. 7, 77, 79(1), [translation available]

Award of 7 May 1997 [CISG/1997/12] (*Horsebean case*). Arts. 60, 74, 75, 77, 78, [translation available]

Award of 22 May 1997 [CISG/1997/13] (*Soybean oil case*). Arts. 4, 74, 75, 78, [translation available]

Award of 2 June 1997 [CISG/1997/14] (*Graphite electrodes scrap case*). Arts. 65, 74, 77, [translation available]

Award of 16 June 1997 [CISG/1997/15] (*Leather case*). Arts. 18, 30, 53, 54, 78, [translation available]

Award of 25 June 1997 [CISG/1997/16] (*Art paper case*). Arts. 9, 25, 30, 49(1), 53, 60, 67, 74, 78, 79, [translation available]

Award of 26 June 1997 [CISG/1997/17] (*Monohydrate zinc sulfate case*). Arts. 13, 25, 26, 29, 33, 36, 49, 62, 63, 73, 74, 77, 78, [translation available]

Award of 27 June 1997 [CISG/1997/18] (*Kidney beans case*). Arts. 25, 49, 64, 74, [translation available]

Award of 4 July 1997 [CISG/1997/19] (*Gear processing machine case*). Arts. 14, 46, 74, 78, [translation available]

Award of 7 July 1997 [CISG/1997/20] (*Isobutanol case*). Art. 25, 74, [translation available]

Award of 10 July 1997 [CISG/1997/21] (*Carbamide case*). Art. 74, [translation available]

Award of 21 July 1997 [CISG/1997/22] (*Yam-dyed fabric case*). Arts. 25, 64(1), 74, 75, 78, [translation available]

Award of 23 July 1997 [CISG/1997/23] (*Polypropylene case*). Arts. 35, 36, 38, 74, 78, [translation available]

Award of 31 July 1997 [CISG/1997/24] (*Axle sleeves case*). Arts. 9, 38, 39, 84(1), [translation available]

Award of 5 August 1997 [CISG/1997/25] (*Cold rolled coils case*). Arts. 6, 9, 25, 49, 74, 76, 77, [translation available]

Award of 18 August 1997 [CISG/1997/26] (*Vitamin C case*). Arts. 25, 26, 31(a), 45(1), 49, 67(2), 74, 75, 76, 77, 78, [translation available]

Award of 8 September 1997 [CISG/1997/27] (*BOPP film case*). Arts. 25, 35, 74, 88(2) [translation available]

Award of 10 September 1997 [CISG 1997/39] (*Sturgeon caviar and fish case*). Art. 53, [translation available]

Award of 29 September 1997 [CISG/1997/28] (*Aluminum oxide case*). Arts. 18, 29, 73, 75, 76, 77, 79, [translation available]

Award of 8 October 1997 [CISG/1997/29] (*Industrial tallow case*). Arts. 8, 11, 25, 64, 72, 75, 78, [translation available]

Award of 13 October 1997 [CISG/1997/30] (*Printing machine case*). Arts. 8, 38(1), 39(1), 53, [translation available]

Award of 27 October 1997 [CISG/1997/31] (*Hot-rolled coils case*). Arts. 30, 35, 38, [translation available]

Award of 20 November 1997 [CISG/1997/32] (*Rebar coil case*). Arts. 35, 74, 78, [translation available]

Award of 30 November 1997 [CISG/1997/33] (*Canned oranges case*). Arts. 72, 74, 75, 76, 77, 79, [translation available]

Award of 15 December 1997 [CISG/1997/34] (*Hot-rolled coils case*). Arts. 7(2), 12, 18(3), 80, [translation available]

Award of 16 December 1997 [CISG/1997/35] (*Hot dipped galvanized steel coils case*). Arts. 25, 29, 35, 53, 60, 71, 72, 75, 80, [translation available]

Award of 19 December 1997 [CISG/1997/36] (*Steel case*). Arts. 4, 25, 29(1), 47, 49, 51, 72, 81, [translation available]

Award of 31 December 1997 [CISG/1997/37] (*Lindane case*). Arts. 11, 12, 29, 45, 49, 59, 74, 96, [translation available]

### **1998 CIETAC awards**

Award of 20 January 1998 [CISG/1998/01] (*Polyester thread case*). Arts. 45, 74, 77, [translation available]

Award of 22 January 1998 [CISG/1998/02] (*Hot-rolled steel plate case*). Arts. 8, 38, 39, 74, [translation available]

Award of 23 January 1998 [CISG 1998/13] (*Kidney bean case*). Art. 25, [translation available]

Award of 24 March 1998 [CISG/1998/03] (*Hempseed case*). Art. 6, [translation available]

Award of 30 July 1998 [CISG/1998/04] (*Cold rolled steel plates case*). Arts. 50, 74, 77, [translation available]

Award of 25 September 1998 [CISG 1998/12] (*Health supplement case*). Arts. 25, 35, 50, 74, 78, 82, [translation available]

Award of 26 November 1998 [CISG/1998/06] (*Leather gloves case*). Arts. 35, 53, 74, 78, [translation available]

Award of 26 November 1998 [CISG/1998/07] (*Waste paper case*). Arts. 53, 78, [translation available]

Award of 30 November 1998 [CISG/1998/08] (*Glassware case*). Art. 84(1), [translation available]

Award of 15 December 1998 [CISG./1998/09] (*Shirt case*). Arts. 8, 9, 74, 79, [translation available]

Award of 24 December 1998 [CISG/1998/05] (*Diesel generator case*). Art. 39(1), [translation available]

Award of 25 December 1998 [CISG/1998/10] (*Basic pig iron case*). Arts. 74, 75, 76, 78, [translation available]

Award of 25 December 1998 [CISG/1998/11] (*Pig iron case*). Arts. 14(1), 23, 55, 74, 75, 77, [translation available]

### **1999 CIETAC awards**

Award of 1999 [CISG/1999/01] (*Piperonal aldehyde case*). Arts. 30, 35, 38, 39, 66, 74, [translation available]

Award of 6 January 1999 [CISG/1999/04] (*Australian raw wool case*). Arts. 25, 26, 53, 54, 60, 61, 64, 74, 75, 76, 77, 78, [translation available]

Award of 13 January 1999 [CISG/1999/05] (*Latex gloves case*). Arts. 7(2), 8(3), 9, 53, 78, [translation available]

Award of 28 January 1999 [CISG/1999/06] (*Refrigeration equipment case*). Art. 53, [translation available]

Award of 3 February 1999 [CISG/1999/07] (*Men's rayon shirts case*). Art. 53, [translation available]

Award of 12 February 1999 [CISG/1999/08] (*Chrome plating production line equipment case*). Arts. 25, 74, 75, 78, [translation available]

Award of 12 February 1999 [CISG/1999/09] (*Nickle plating production line equipment case*). Arts. 74, 75, 76, [translation available]

Award of 25 February 1999 [CISG/1999/10] (*Cotton vest case*). Arts. 74, 78, [translation available]

Award of 25 February 1999 [CISG/1999/11] (*Women's trousers case*). Arts. 74, 78, [translation available]

Award of 1 March 1999 [CISG/1999/12] (*Canned mandarin oranges case*). Arts. 25, 30, 35, 60, 63, 64, 71, 74, 75, 76, 77, [translation available]

Award of 25 March 1999 [CISG/1999/13] (*Women's pants case*). Arts. 74, 78, [translation available]

Award of 29 March 1999 [CISG/1999/14] (*Flanges case*). Arts. 4, 11, 35, 38, 39, 40, 73, 74, 75, 77, 78, 80, 96, [translation available]



Award of 30 March 1999 [CISG/1999/15] (*Electric heaters case*). Arts. 33, 74, 77, 84(1), [translation available]

Award of 30 March 1999 [CISG/1999/16] (*Flanges case*). Arts. 4, 9, 29, 35, 36, 38, 39, 40, 60, 74, 80, [translation available]

Award of 30 March 1999 [CISG/1999/17] (*Electric heater case*). Arts. 8, 9, 35, 38, 39, 50, 74, 84, [translation available]

Award of 2 April 1999 [CISG/1999/18] (*Gray clothes case*). Art. 49, [translation available]

Award of 5 April 1999 [CISG/1999/19] (*Air conditioner equipment case*). Art. 35, 38, 39, 73, 78, 80, 81, [translation available]

Award of 7 April 1999 [CISG/1999/20] (*PVC suspension resin case*). Arts. 35, 36, 66, 74, 78, [translation available]

Award of 8 April 1999 [CISG/1999/21] (*New Zealand raw wool case*). Arts. 25, 26, 30, 53, 58(1), 63, 64, 74, 75, 76, 77, [translation available]

Award of 12 April 1999 [CISG/1999/22] (*Bud rice dregs case*). Arts. 25, 30, 35, 45, 74, 75, 76, 78, [translation available]

Award of 20 April 1999 [CISG/1999/23] (*Chemical cleaning product equipment case*). Arts. 35, 38(3), 39(1), [translation available]

Award of 20 May 1999 [CISG/1999/24] (*Red tiles case*). Arts. 53, 78, [translation available]

Award of 20 May 1999 [CISG/1999/25] (*Waste aluminum ingots case*). Arts. 8, 74, 78, [translation available]

Award of 21 May 1999 [CISG/1999/26] (*Excavator case*). Arts. 9, 50, 74, 78 [translation available]

Award of 28 May 1999 [CISG/1999/02] (*Veneer import case*). Arts. 74, 76, 77, 78, 84(1) [translation available]

Award of 31 May 1999 [CISG/1999/27] (*Indium ingots case*). Arts. 4, 35, 53, 77, 78, 79, [translation available]

Award of June 1999 [CISG/1999/03] (*Peanut kernel case*). Arts. 8, 9, 74, 76, 77, [translation available]

Award of 4 June 1999 [CISG/1999/28] (*Industrial raw materials case*). Arts. 7, 25, 26, 34, 49, 64, 74, 75, 77, 78 [translation available]

Award of 11 June 1999 [CISG/1999/29] (*Agricultural chemical products case*). Arts. 61, 62, 78, [translation available]

Award of 30 June 1999 [CISG/1999/30] (*Peppermint oil case*). Arts. 9, 18, 19, 74, 78, [translation available]

Award of 30 June 1999 [CISG/1999/31] (*Bearings case*). Arts. 61, 62, 78, [translation available]

Award of 10 August 1999 [CISG 1999/35] (*Raincoat case*). Arts. 25, 50, 73(1), 74, 78, 80, [translation available]

Award of 29 December 1999 [CISG/1999/33] (*Indonesian round logs case*). Arts. 35, 38, 48(2), 86(1), [translation available]

Award of 31 December 1999 [CISG/1999/32] (*Steel coil case*). Arts. 8, 9, 25, 59, 74, 77, 78, [translation available]

### **2000 CIETAC awards**

Award of 2000 [CISG 2000/17] (*Souvenir coins case*). Arts. 2, 4, 6, 25, 35, 38, 49, 46, [translation available]

Award of 7 January 2000 [CISG/2000/06] (*Cysteine case*). Arts. 7, 8, 35, 38, 74, 77, 78, [translation available]

Award of 11 January 2000 [CISG/2000/07] (*Aureomycin case*). Art. 53, 80, [translation available]

Award of 19 January 2000 [CISG/2000/08] (*Steel cylinders case*). Arts. 8, 35, 49(1)(a), 84, [translation available]

Award of 30 January 2000 [CISG 2000/10] (*Ink cartridge case*). Art. 36, [translation available]

Award of 31 January 2000 [CISG/2000/09] (*Clothes case*). Arts. 25, 38, 46, 73, 74, 77, 78, [translation available]

Award of 1 February 2000 [CISG/2000/01] (*Silicon and manganese alloy case*). Arts. 25, 26, 49(1), 63(1), 64(1), 74, 75, 76, [translation available]

Award of 11 February 2000 [CISG/2000/02] (*Silicon metal case*). Arts. 7(1), 25, 74, 75, 76, [translation available]

Award of 31 March 2000 [CISG 2000/16] (*Methyl methacrylate monomer case*). Art. 8, [translation available]

Award of 27 April 2000 [CISG/2000/05] (*Wool case*). Arts. 74, 75, 77, [translation available]

Award of 23 May 2000 [CISG 2000/11] (*Stainless steel case*). Art. 29(1), [translation available]

Award of 27 July 2000 [CISG/2000/03] (*Steel scraps case*). Arts. 25, 49, 74, 84(1), [translation available]

Award of 10 August 2000 [CISG/2000/04] (*Silicon metal case*). Arts. 25, 45, 49, 74, 75, 77, [translation available]

Award of 29 September 2000 [CISG 2000/15] (*Cushion case*). Arts. 6, 25, 60, 65, 77, [translation available]

Award of 6 November 2000 [CISG 2000/12] (*Marble building materials case*). Art. 7, 38, 39, 53, 78, [translation available]

Award of 6 December 2000 [CISG 2000/13] (*Pharmaceutical products case*). Arts. 36, 38, 39, 61, 62, 74, 78, [translation available]

Award of 7 December 2000 [CISG 2000/14] (*Refined white sugar case*). Art. 74, [translation available]

### **2001 CIETAC awards**

Award of February 2001 CIETAC Arbitration Award [CISG/2001/01] (*Equipment, material and services case*). Arts. 26, 33, 54, 71 72, 77, [translation available]

Award of 22 March 2001 [CISG 2001/02] (*Mung bean case*). Arts. 25, 38, 60, 63, 64, 72(1), 74, 75, 77, 78, [translation available]

Award of 12 October 2001 [CISG 2001/03] (*Boots and clothes case*). Arts. 53, 78, [translation available]

Award of 25 December 2001 [CISG 2001/04] (*DVD HiFi case*). Arts. 36(2), 38, 39, 74, 78, 79, [translation available]

- See also award of 23 July 2002

### **2002 CIETAC awards**

Award of 4 February 2002 [CISG 2002/03] (*Styrene monomer case*). Arts. 25, 26, 53, 54, 59, 61, 63(1), 64, 74, 75, 77, 78, [translation available]

Award of 4 February 2002 [CISG 2002/17] (*Steel bar case*). Arts. 25, 52, 74, 75, 77, 79, [translation available]

Award of 7 March 2002 [CISG/2002/01] (*Lube oil case*). Art. 4, [translation available]

Award of 28 May 2002 [CISG/2002/31] (*Headware case*). Arts. 25, 53, 74, 78, [translation available]

- Later instances: US District Court Kansas 28 May 2007 and US District Court Kansas 28 April 2008

Award of 10 June 2002 [CISG/2002/02] (*Rice agricultural products case*). Arts. 19, 26, 74, 75, 78 [translation available]

Award of 12 July 2002 [CISG 2002/18] (*Printing equipment case*). Arts. 38, 49, 82, [translation available]

Award of 15 July 2002 [CISG 2002/19] (*Coating equipment case*). Arts. 4, 25, 35, 36, 38, 74, [translation available]

Award of 16 July 2002 [CISG 2002/06] (*Diesel oil case*). Arts. 53, 78, [translation available]

Award of 18 July 2002 [CISG 2002/20] (*Textile equipment case*). Arts. 8, 35, [translation available]

Award of 23 July 2002 [CISG 2002/04] (*DVD HiFi case*). Arts. 38, 39, 74, [translation available]

- See also award of 25 December 2001

Award of 26 July 2002 [CISG 2002/12] (*Green beans case*). Arts. 74, 78, [translation available]

Award of 9 August 2002 [CISG 2002/21] (*Yellow phosphorus case*). Arts. 25, 74, 75, 77, 79, 80, [translation available]

Award of 9 September 2002 [CISG 2002/22] (*Elevator case*). Arts. 8, 25, 53, 64, 74, [translation available]

Award of 13 September 2002 [CISG 2002/07] (*Velvet clothes case*). Arts. 53, 74, 80, [translation available]

Award of 18 September 2002 [CISG 2002/23] (*Elevator parts case*). Art. 8, [translation available]

Award of 23 September 2002 [CISG 2002/15] (*Beech log case*). Arts. 8, 74, [translation available]

Award of 9 October 2002 [CISG 2002/13] (*Elevator case*). Arts. 9, 25, 74, 75, 77, 78, 86, [translation available]

Award of 10 October 2002 [CISG 2002/10] (*Curtain case*). Arts. 8, 53, 78, [translation available]

Award of 21 October 2002 [CISG 2002/16] (*Engraving machine case*). Arts. 36, 45, 46, 47, 74, 79, [translation available]

Award of 25 October 2002 [CISG 2002/24] (*Medical laser machine case*). Arts. 53, 79, [translation available]

Award of 4 November 2002 [CISG 2002/08] (*Beech log case*). Arts. 9, 25, 35, 38, 74, 77, 88, [translation available]

Award of 6 November 2002 [CISG 2002/25] (*Pipe extrusion case*). Arts. 25, 49, 74, 78, [translation available]

Award of 8 November 2002 [CISG 2002/05] (*Canned asparagus case*). Arts. 7, 8(3), 47, 49, 64(1)(a), 74, 75, [translation available]

Award of 11 November 2002 [CISG 2002/26] (*Platform case*). Arts. 25, 29, 46, 49, 50, 82, [translation available]

Award of 29 November 2002 [CISG 2002/11] (*Toothbrush case*). Art. 53, [translation available]

Award of 17 December 2002 [CISG 2002/27] (*Production line case*). Arts. 46, 74 [translation available]

Award of 18 December 2002 [CISG 2002/14] (*Sausage casing case*). Arts. 8, 29, 30, 38, 39, 45, 50, 74, 85, 88, [translation available]

Award of 23 December 2002 [CISG 2002/28] (*Hydraulic press case*). Arts. 35, 36, 74, 77, [translation available]

Award of 27 December 2002 [CISG 2002/29] (*Medicine manufacturing equipment case*). Arts. 7(2), 8(3), 25, 29(1), 46(1), 48(2), 49, 60, 62, 71, 72, 80, [translation available]

Award of 30 December 2002 [CISG 2002/30] (*Manganese case*). Arts. 53, 61, 64, 74, 75, 77, 78, [translation available]

**2003 CIETAC awards**

Award of 19 January 2003 [CISG 2003/07] (*Ferrochrome case*). Arts. 50, 74, 77, [translation available]

Award of 17 February 2003 [CISG 2003/16] (*Tire case*). Arts. 53, 59, 62, 74, 78, [translation available]

Award of 12 April 2003 [CISG 2003/08] (*Pig iron case*). Art. 77,

Award of 18 April 2003 [CISG 2003/05] (*Desulfurization reagent case*). Arts. 18(1), 19, 29, 53, 74, 78, [English text]

Award of 3 June 2003 [CISG 2003/01] (*Clothes case*). Arts. 8, 30, 35(2)(a), 39, 45, 74, [translation available]

Award of 19 June 2003 [CISG 2003/09] (*PTA case*). Arts. 35, 74, 77, [translation available]

Award of 26 June 2003 [CISG 2003/10] (*Alumina case*). Arts. 25, 61, 64, 74, 75, 76, 77, 78, 79, [translation available]

Award of 7 July 2003 [CISG 2003/18] (*Stroller and diaper case*). Arts. 14, 53, 54, 61, 74, 78, [translation available]

Award of 8 July 2003 [CISG 2003/13] (*Copper case*). Arts. 29, 38, 74, [translation available]

Award of 23 July 2003 [CISG 2003/06] (*Telephone machine case*). Art. 40, [translation available]

Award of 20 August 2003 [CISG 2003/17] (*Polystyrene monomer case*). Arts. [-]

Award of 17 September 2003 [CISG 2003/14] (*Australia cotton case*). Arts. 14, 18, 19, 74, 77, 79, [translation available]

Award of 6 October 2003 [CISG 2003/11] (*Cutting machine case*). Arts. 8, 80, [translation available]

Award of 6 November 2003 [CISG 2003/15] (*Fiber glass mesh case*). Arts. 35, 74, 77, 78, [translation available]

Award of 3 December 2003 [CISG 2003/02] (*False hair case*). Arts. 4, 54, [translation available]

Award of 10 December 2003 [CISG 2003/04] (*Agricultural tools dumped products case*). Arts. 6, 9, 74, [translation available]

Award of 18 December 2003 [CISG 2003/12] (*AOE and PECVD machines case*). Arts. 45, 53, 59, 74, 78, 80, [translation available]

Award of 31 December 2003 [CISG 2003/03] (*Clothes case*). Arts. 74, 81(2), 82, [translation available]

#### **2004 CIETAC awards**

Award of 14 January 2004 [CISG 2004/01] (*Printing press machine case*). Arts. 8, 25, [translation available]

Award of 12 March 2004 CIETAC [CISG 2004/04] (*Fireworks case*). Arts. 4, 35(1), 39, [translation available]

Award of 9 April 2004 [CISG 2004/02] (*Artworks: Italian charms case*). Arts. 53, 62, 78, [translation available]

Award of June 2004 [CISG 2004/08] (*Citric acid case*). Arts. 4, 30, 31, [translation available]

Award of 13 July 2004 [CISG 2004/03] (*Liquid filling production line case*). Art. 25,

Award of September 2004 [CISG 2004/07] (*Steel products case*). Arts. 4, 6, 7, 25, 74, 76, 77, [English text]

Award of 29 September 2004 [CISG 2004/05] (*India rapeseed meal case*). Arts. 47, 49, 74, 76, 77, 78, [translation available]

Award of 24 December 2004 [CISG 2004/06] (*Medical equipment case*). Arts. 1(1)(b), 95, [translation available]

#### **2005 CIETAC awards**

Award of 2005 [CISG 2005/25] (*Engine block case*). Arts. 49, 72, 74, [translation available]

Award of 21 February 2005 [CISG 2005/14] (*Equipment case*). Arts. 4, 9, 53, 54, [translation available]

Award of 24 February 2005 [CISG 2005/07] (*Pork case*). Arts. 25, 26, 61, 64, 71, 74, 77, 80, [translation available]

Award of 24 February 2005 [CISG 2005/08] (*Second pork case*). Arts. 7, 25, 61, 63, 64, 71, 74, 77, 78, [translation available]

Award of 28 February 2005 [CISG 2005/06] (*Wool case*). Arts. 4, 27, 63, 64, 75, 76, [translation available]

Award of April 2005 [CISG 2005/22] (*Caprolactum case*). Arts. 4, 8, [translation available]

Award of 7 April 2005 [CISG 2005/01] (*Cotton gin motes case*). Arts. 25, 58, 73(3), 74, 77, 88, [translation available]

Award of 10 May 2005 [CISG 2005/02] (*Hat case*). Arts. 25, 53, 74 , 78, [translation available]

Award of 25 May 2005 [CISG 2005/09] (*Iron ore case*). Arts. 34, 52, 54, 59, 64, 74, 76, 77, 78, 79, 80, [translation available]

Award of 13 June 2005 [CISG 2005/12] (*Industrial general equipment case*). Arts. 3, 14, 47, 49, 77, 81, [translation available]

Award of 20 July 2005 [CISG 2005/20] (*Elevator material case*). Arts. 59, 78, [translation available]

Award of 12 August 2005 [CISG 2005/11] (*Salted \_\_\_\_ case*). Arts. 53, 78, [translation available]

Award of 18 August 2005 [CISG 2005/16] (*Automatic production line case*). Arts. 8, 53, [translation available]

Award of 22 August 2005 [CISG 2005/13] (*Valve case*). Arts. 25, 30, 53, 64, 74,75, 76, 77, 78, [translation available]

Award of 2 September 2005 [CISG 2005/17] (*Freezing units case*). Arts. 53, 59, 62, 78, [translation available]

Award of 12 September 2005 [CISG 2005/18] (*Hydraulic pressure geologic equipment case*). Arts. 25, 36, 74, 77, 84, 86, [translation available]

Award of 15 September 2005 [CISG 2005/15] (*Wool and Wooltop case*). Arts. 14, 18, 33, 32, 61, 64, 76, 77, 78, [translation available]

Award of October 2005 [CISG 2005/24] (*Filling and sealing machine case*). Arts. 4, 7, 29, 53, 78, 80, [translation available]

Award of 21 October 2005 [CISG 2005/19] (*FFS production line case*). Arts. 53, 78, 80, [translation available]



Award of 21 October 2005 [CISG 2005/03] (*Sheet metal producing system case*). Arts. 4, 39, 78, [translation available]

Award of 31 October 2005 [CISG 2005/10] (*Waste plastic case*). Arts. 49, 51, 74, 81, [translation available]

Award of 9 November 2005 [CISG 2005/04] (*DVD machines case*). Arts. 4, 8(3), 14, 15, 18, 45, 61, 74, 78, [translation available]

Award of December 2005 [CISG 2005/23] (*Heat transfer oil furnace case*). Arts. 25, 30, 35, 36, 49, 74, [translation available]

Award of 7 December 2005 [CISG 2005/05] (*Heaters case*). Arts. 4, 7, 8, 9, 39, 79, 80, [translation available]

Award of 26 December 2005 [CISG 2005/21] (*Heating system device case*). Arts. 25, 30, 49, 74, [translation available]

### **2006 CIETAC awards**

Award of February 2006 [CISG 2006/16] (*Fluorite case*). Arts. 9, 25, 30, 31, 33, 34, 35, 46, 49, 50, 74, 77, [translation available]

Award of 23 February 2006 [CISG 2006/25] (*Microwave defrosting lines case*). Arts. 25, 80, [translation available]

Award of March 2006 [CISG 2006/23] (*Australian barley case*). Arts. 6, 8, 74, 76, [translation available]

Award of May 2006 [CISG 2006/06] (*Canned oranges case*). Arts. 30, 49, 74, 75, 76, 77, 79, [translation available]

Award of April 2006 [CISG 2006/20] (*Water heater production line case*). Arts. 8, 35, 50, 80, [translation available]

Award of April 2006 [CISG 2006/21] (*Mono ethylene glycole case*). Arts. 25, 26, 49, 63, 74, 75, [translation available]

Award of May 2006 [CISG 2006/18] (*LDPE film case*). Arts. 33, 74, 81, 84, [translation available]

Award of May 2006 [CISG 2006/17] (*Chemicals case*). Arts. 6, 25, 74, 77, [translation available]

Award of 21 May 2006 [CISG 2006/01] (*Diesel generator case*). Arts. 4, 45, 46(3), 74, [translation available]

Award of June 2006 [CISG 2006/07] (*Concentrated fruit juice case*). Arts. 53, 62, [translation available]

Award of June 2006 [CISG 2006/26] (*Italian textile machine case*). Arts. 8, 25, 35, [translation available]

Award of July 2006 [CISG 2006/11] (*Marble and granite case*). Arts. 30, 35, 53, 78, [translation available]

Award of 25 July 2006 [CISG 2006/22] (*Bleached softwood Kraft pulp case*). Arts. 74, 75, 77, [translation available]

Award of August 2006 [CISG 2006/13] (*Chilling press case*). Arts. 25, 35, 39, 49, 73, 74, 81, 84, [translation available]

Award of 3 August 2006 [CISG 2006/15] (*Water pump case*). Arts. 25, 35, 49, 74, 77, [translation available]

Award of September 2006 [CISG 2006/08] (*Air purifier case*). Arts. 4, 8, 35, 77, 85, 86, 88, [translation available]

Award of September 2006 [CISG 2006/09] (*Apparel case*). Arts. 30, 33, 45, 74, 81, [translation available]

Award of September 2006 [CISG 2006/10] (*Printing machine case*). Arts. 71, 80, [translation available]

Award of September 2006 [CISG 2006/14] (*Spare parts case*). Arts. 30, 31(a), 34, [translation available]

Award of 18 September 2006 [CISG 2006/24] (*Polyester spinning machine case*). Arts. 25, 51, 81, [translation available]

Award of 20 September 2006 [CISG 2006/02] (*Welding machine case*). Arts. 4, 61, 62, [translation available]

Award of November 2006 [CISG 2006/04] (*Nitrile exam gloves case*). Arts. 53, 78, [translation available]

Award of November 2006 [CISG 2006/12] (*Monkfish case*). Art. 53, [translation available]

Award of December 2006 [CISG 2006/03] (*Automobile case*). Arts. 25, 35, 38, 39, 40, 48, 49, 51, 74, [translation available]

Award of December 2006 [CISG 2006/05] (*Rabbit skin case*). Arts. 25, 30, 49, 74, 81, [translation available]

Award of December 2006 [CISG 2006/19] (*Transformer case*). Arts. 53, 78, [translation available]

### **2007 CIETAC awards**

Award of January 2007 [CISG 2007/05] (*Business & operation support system case*). Arts. 53, 78, [translation available]

Award of 14 February 2007 [CISG 2007/02] (*Bellows forming machine case*). Arts. 35, 80, [translation available]

Award of 23 March 2007 [CISG 2007/08] (*Offset printing machines case*). Art. 8, [translation available]

Award of May 2007 [CISG 2007/06] (*Hammer mill case*). Arts. 25, 34, 35, 45, 46, 74, 79, [translation available]

Award of 30 June 2007 [CISG 2007/04] (*Color concrete block production line case*). Arts. 6, 25, 74, 80, [translation available]

Award of 24 July 2007 [CISG 2007/07] (*Flexo label printing machine case*). Arts. 8, 25, 39, 46, 49, 74, [translation available]

Award of October 2007 [CISG 2007/03] (*CD-R and DVD-R production line systems case*). Arts. 26, 63, 72, 73, 74, 75, 76, 80, 84, 87, [translation available]

Award of 10 December 2007 [CISG 2007/01] (*Packaging equipment case*). Art. 4, [English text]

### **2008 CIETAC awards**

Award of 9 January 2008 [CISG 2008/02] (*Metallic silicon case*). Arts. 8, 9, 13, 18, 23, 29, 51, 74, 75, 76, 80, [translation available]

Award of 18 April 2008 [CISG 2008/01] (*PTA powder case*). Arts. 4, 25, 35, 49, 74, 84, [translation available]

## INTRODUCTION

### 1. THE RISE OF THE PRC AS AN ECONOMIC SUPERPOWER

0.01 Over the course of the past decade, the People's Republic of China ('PRC') has emerged as a true economic superpower. The PRC's GDP growth averaged 9.75% between 1999 and 2008 inclusive. In 2009, the PRC had the third largest GDP of any nation state, behind only the USA and Japan.<sup>1</sup> It is currently projected to overtake Japan by 2020 and the USA by 2050.<sup>2</sup>

0.02 The growth in the PRC's export trade – the engine driving this economic miracle – has been startling. It rocketed from US\$360.6 billion in 1999 to US\$2,561.6 billion in 2008.<sup>3</sup> In 2009, the PRC was ranked second in terms of total export trade among all nations, behind only Germany. Since its entry into the World Trade Organisation in 2001, the PRC has almost quadrupled its exports, while imports have more than trebled. In 2008, its trade surplus reached US\$295.5 billion.<sup>4</sup>

---

<sup>1</sup> <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf>

<sup>2</sup> <https://www.cia.gov/library/publications/the-world-factbook/>

<sup>3</sup> See prior note 1.

<sup>4</sup> Ibid

0.03 Today, the PRC makes 25% of the world's washing machines, 50% of the world's cameras and 70% of the world's toys.<sup>5</sup> The PRC is now at the very centre of international trade and commerce. Its importance as a trading partner is inescapable for the vast majority of economies and its impact on those economies is a matter of increasing debate.

### **1.1. THE REFORM AND OPENING-UP**

0.04 The seeds of this growth were provided by the PRC's policy of 'Reform and Opening-up' (改革开放 *Gaige Kaifang*). Following the death of Mao Zedong in September 1976, there was a power struggle among senior members of the Chinese Communist Party ('CCP'). This concluded with the rise to power of Deng Xiaoping. Deng led a group of pragmatists within the CCP, who emphasised the need for the economic development of the country.

0.05 In order to achieve this development, they promoted the aforementioned policy, which called for the reform of the PRC's internal economy and the opening-up of the country to foreign trade investment and technology. It sowed the seeds for the economic transformation of the PRC that has borne fruit over the past decade. Since 1978, the Reform and Opening-Up policy, as

---

<sup>5</sup> See e.g. China's Socio-Economic Achievements during the past 60 years, by the Embassy of the People's Republic of China in the Syrian Arab Republic (<http://sy.chineseembassy.org/eng/xwfb/t622842.htm> last accessed on 10 January 2011).

implemented by Deng and his successors, has changed the PRC from a planned economy to one in which the market plays a major role.<sup>6</sup>

## 1.2. THE IMPLICATIONS FOR THE PRC LEGAL SYSTEM

0.06 This research is interested in the particular challenges presented to the PRC legal system by the restructuring of the PRC economy in accordance with the policy of Reform and Opening-up. Its focus is the PRC's contract and sales law in particular, which is vitally important both to the successful conduct of international trade by PRC merchants and to the interests of those who trade with them.

0.07 The Reform and Opening-up resulted in major structural changes not only to the PRC's economy but also to the systems and institutions that support that economy, including its legal system. An economy with market elements requires a body of law dealing with contracts and related matters. The pace of reform of this area of law in the PRC has been driven by the country's desire to participate fully in world trade, a desire arising directly from the policies of the late 1970s. International trade has been a key part of the strategy that has enabled the CCP to make good on its pledge to develop the PRC into a modern, progressive, and prosperous economy.<sup>7</sup>

---

<sup>6</sup> See generally Arthur Sweetman and Jun Zhang (ed), *Economic transitions with Chinese characteristics : thirty years of reform and opening up*, McGill-Queens University Press, c2009

<sup>7</sup> See Gu Angran, *Xin Zhongguo gai ge kai fang san shi nian de li fa jian zheng = Witness : thirty years of China's legislation since the reform and opening-up policy*, Beijing: Fa lü chu ban she, 2008

## **2. RESEARCH SUBJECT: THE CISG AND THE PRC SALES CONTRACT LAW**

### **2.1. THE CISG**

0.08 The existence of international trade and commerce is a trans-cultural and trans-national phenomenon that precedes recorded history. The roots of most important early development of the transnational uniform sales law are to be found in the creation in 1926 by the League of Nations of the International Institute for the Unification of Private Law ('UNIDROIT'), a body that exists to this day.<sup>8</sup> At its first meeting, the great German jurist Ernst Rabel submitted to UNIDROIT the proposal that a limited project to produce a uniform law of sale, rather than a unified commercial law, should be instigated.<sup>9</sup> UNIDROIT accepted this proposal. The efforts of UNIDROIT, albeit delayed by the onset of the Second World War (1939–1945), led in time to two Hague Conventions in 1964. One contained a Uniform Law for the International Sale of Goods ('ULIS') and the other a Uniform Law on the Formation of Contracts for the International Sale of Goods ('ULF'). These two Conventions did not come into force until 1972. Despite the small number of accessions to ULIS and ULF, they should not be considered to be failures.<sup>10</sup> They

---

<sup>8</sup> The International Institute for the Unification of Private Law is an inter-governmental agency with its headquarters in Rome, Italy. See its website: [www.unidroit.org](http://www.unidroit.org)

<sup>9</sup> See Rabel, *Rapport sur le droit comparé en matière de vente*, see also the original Report A of the Institute in Rabels *Zeitschrift für ausländisches und internationales Privatrecht* 3 (1929) 402, 406; also Peter Winship 'Private International Law and the UN Sales Convention' (1988) 21 *Cornell International LJ* 489.

<sup>10</sup> See Paul Lansing 'The Change in American Attitude to the International Unification of Sales Law Movement and UNCITRAL' (1980) 18 *American Business LJ* 274; Peter Winship 'International Sales Contracts under the 1980 Vienna Convention' (1984) 17 *Uniform Commercial Code LJ* 58

failed only in the sense that they were unable to gain worldwide acceptance.<sup>11</sup> However, in the countries where they were implemented they functioned well for a number of years.<sup>12</sup>

0.09 The explosion of trade and commerce between nations following the end of the Cold War (1945–1991) and the movement towards globalisation created a renewed need for a uniform international mercantile law, as uniformity helps to bring predictability and stability to the global marketplace. The United Nations Commission on International Trade Law ('UNCITRAL'), launched in 1966, from the outset regarded the unification of the law of international sales as a priority.<sup>13</sup> The two 1964 Hague Conventions were seen as the starting point of UNCITRAL's work on sales contract law.<sup>14</sup> By debating the shortcomings of the ULIS and ULF against the background of the needs, concerns and aims of the different interest groups, UNCITRAL tabled a

---

<sup>11</sup> See Robert G Lee 'The UN Convention on Contracts for the International Sale of Goods: OK for the UK?' (1993) *Journal of Business Law* 131; Kenneth C Sutton 'The Draft Convention on International Sale of Goods (Part I)' (1976) 23 *Business LR* 269

<sup>12</sup> Interestingly, there is a recent Israeli decision on ULIS; see *Pamesa Ceramica v. Yisrael Mendelson Ltd* [2009] Israel LR 27; also at [cisgw3.law.pace.edu/cases/090317i5.html#cabac](http://cisgw3.law.pace.edu/cases/090317i5.html#cabac); see also a commentary, A ULIS Echo in CISG World, [2010] L.M.C.L.Q. 201

<sup>13</sup> The United Nations Commission on International Trade Law was formed to foster the progressive unification of trade law and is headquartered in Vienna, Austria. See its website [www.uncitral.org](http://www.uncitral.org)

<sup>14</sup> See Schwenzer Schlechtriem, *Commentary on the UN Convention on the International Sale of Goods (CISG)*, 3d ed., Oxford University Press 699 (2010), Introduction at pages 1-3; Schlechtriem, Butler, *UN law on international sales: the UN Convention on the International Sale of Goods*, New York : Springer (2009), Introduction at page 1; Honnold, *Uniform Law for International Sales Under the 1980 United Nations Convention*, 4th ed., edited and updated by Harry M. Flechtner, Kluwer Law International (2009), Introduction at pages 3-12.



final draft of the United Nations Convention on Contracts for the International Sale of Goods (1980) ('CISG') for acceptance at the Vienna Conference 1980.<sup>15</sup>

0.10 The agreed version of the CISG came into effect on 1 January 1988; just over one year after the tenth state ratified the Convention. The United States and the PRC, together with Italy, acceded on 11 December 1986. The involvement of the United States and the developing and Socialist countries gave the CISG the impetus that ULIS and ULF lacked. As of 18 November 2010, the United Nations reports that seventy-six States have acceded to the CISG.

0.11 The CISG is one of several sets of international uniform private law rules. It is formally law and a source of law of the PRC sales contract law. In this research, the CISG is considered as an example of the application of transnational uniform sales law in a national law setting.

## **2.2. THE PRC SALES CONTRACT LAW**

0.12 At the start of the Reform and Opening-up in the late 1970s, the PRC did not have any Western-style contract law nor did it have any historical domestic models for such a system. The PRC set out about the creation of a contract law that would meet its needs. Just over thirty years later, the PRC has progressed from a position of extreme weakness in this area to having a modern

---

<sup>15</sup> Ibid.

contract law regime. This is a radically different experience to that of Western developed nations, whose current national contract laws derive from formal legal regimes that have existed for centuries.

- 0.13 The development of PRC contract law is an on-going process. Just as the country's economic transformation is not complete, neither is that of its legal system. The PRC requires a contract law that, firstly, adapts to the particular circumstances and realities of the PRC economy, which may differ greatly from those of other nations. Secondly, it must safeguard the reforms that have already been achieved. Thirdly, it must support future reforms that have the aim of achieving success in the global market. There is a clear political imperative for the continued reform of PRC contract law.

### **2.3. BARRIERS TO THE APPLICATION OF THE CISG IN THE PRC**

- 0.14 In addition to rapidly developing its domestic law, the PRC has acceded to a large number of international treaties and conventions since 1978, including the CISG. Its accession to these treaties has been motivated by a need to remove existing and potential barriers to its participation in world trade, which is critical to the country's continued economic development. As well as acceding to treaties and conventions, the PRC has recognised the so-called 'soft law' for international commercial contracts. In particular, PRC Contract Law 1999 (the current legislation on contract law in the PRC) assimilates the UNIDROIT Principles of International Commercial Contracts ('UPICC'). The recognition of international soft law instruments that

reflect international practice is seen by the CCP as necessary for the PRC's full participation in international trade, as well as its ability to attract foreign investment. International treaties and conventions, foreign models of legal practice, and the modification of PRC law to reflect both of these sources has attracted and continues to attract significant attention both within the PRC and the international community.

0.15 This research is concerned with one particularly important example of an international convention to which the PRC has acceded – the CISG – and its application within the country. Its main objective is to identify what barriers that the application of the CISG has faced and continues to face in the PRC. The research will touch upon political, economic cultural and linguistic barriers, but the focus is on legal barriers. More importantly, the research seeks to examine those barriers arise from traditional understandings of contract law in the PRC and the attitudes of the PRC jurists and legal practitioners towards international uniform sales law instruments.

0.16 The examination of the barriers to the application of the CISG in the PRC requires an understanding of three main bodies of law, the second and third of which have been highly influential in the development of the first: PRC contract law; the CISG; and the UPICC. This study therefore is necessarily built upon the understanding of the interaction of these three bodies of law, all of which are the sources of law for PRC sales contract law.

### **3. RESEARCH METHODOLOGY**

#### **3.1. REVIEW OF LITERATURE**

0.17 Rather than dedicating a separate chapter to a review of the available literature, this thesis incorporates reviews of relevant literature into each chapter. This method has been preferred as each chapter of the thesis deals with a discrete topic and the literature is best explored alongside the discussions of these specific areas. As a whole, the thesis reviews existing literature on three major areas: the PRC sales contract law, the CISG and the UPICC.

0.18 The enormous amount of scholarly writings on each of the three areas has become more readily available and accessible, thanks to international comparative law and uniform law scholars and institutes. In particular, Professor Albert Kritzer has identified and shared with the world CISG community a bibliography of 8,000 citations and 1,100 texts of scholarly writings from all around the world, all of which are freely accessible via the renowned PACE CISG Database<sup>16</sup>.

0.19 Although there is no dearth of literature on each of the three subject areas, there are gaps in the existing literature concerning the interplay between them, especially that which is available in English. This research seeks to fill such gaps. It describes the relationship of each of those three

---

<sup>16</sup> See the Pace database on the CISG and International Commercial Law: [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu)

areas to the others. It identifies new ways to interpret the interplay between those areas, and points the way forward for further research.

### **3.2. LEGISLATION AND CASE STUDIES**

0.20 As already stated, a clear understanding of PRC contract law, the CISG, and UPICC (which along with the CISG was a strong influence on the development of PRC contract law) is critical to this thesis. Understanding of the texts of the CISG and UPICC must cover the Chinese and English versions to enable the identification of translation issues that may have affected or have the potential to effect the interpretation of these documents either within the PRC or externally.

0.21 In addition to studying the CISG and the UPICC, this research studies major items of PRC legislation on sales, contract and civil law areas. These PRC laws include, but are not limited to: (1) the repealed three-pillar contract law, namely, the Economic Contract Law, the Foreign-related Economic Contract Law, and the Technology Contract Law; (2) the current Contract Law 1999; and (3) the General Principles of Civil Law.

0.22 As to cases, the PACE CISG Database currently reports 320 CISG cases from the PRC.<sup>17</sup> 268 of the 320 PRC cases are China International Economic and Trade Arbitration Commission (“CIETAC”) arbitral awards.<sup>18</sup> Although the volume of PRC CISG case law is large but not exhaustive. This research studies all these available cases and critically examines the decisions therein with regard to relevant issues on the subject.

0.23 The main concern of this author is the practicalities of the application of the CISG in the PRC; how this international uniform sales law has actually been understood and applied under the PRC law; and the practice of the People’s Courts and Arbitral Tribunals.

0.24 Given the huge importance of the PRC to international trade and the vast number of contracts involving PRC parties, a study of the application of the CISG in the PRC is long overdue. Given that this thesis is such an early contribution to the literature, it will not be able to be exhaustive in its scope. It will however seek to identify the main issues that practitioners and the academic community should consider, deal with some of them in depth, and identify potentially fruitful directions for future research.

---

<sup>17</sup> See Cases on the CISG by courts and arbitral tribunals of the People's Republic of China available at the PACE CISG Database: <http://cisgw3.law.pace.edu/cisg/text/PRC-anno.html>

<sup>18</sup> For Article-by-Article case law annotations of the CISG by courts and arbitral tribunals of the People’s Republic of China, see <http://cisgw3.law.pace.edu/cisg/text/PRC-anno.html>.

#### **4. THESIS STRUCTURE**

- 0.25 This thesis is divided into five main chapters. Chapter One examines the barriers created by the traditional understanding of contract law within the Chinese political, economic and legal establishments. Chapter Two analyses the problems posed by the two reservations that the PRC made when acceding to the CISG. Chapter Three considers the extent to which harmonisation that has been achieved between the CL1999, the CISG, and the UPICC. It does so by exploring two fundamental principles and contract formation rules. It asks whether or not the harmonisation achieved so far aids the application of the CISG in the PRC.
- 1.01 Chapter Four explores the ways in which the CISG has been integrated into Chinese domestic law at the level of substantive law and investigates whether such integration – if it exists – provides an obstacle to the successful application of the CISG in the PRC. Chapter Five analyses the barriers to the application of the CISG in PRC's different territorial regions. These comprise the Hong Kong Special Administrative Region ('Hong Kong SAR', part of the PRC since 1997) and Macau Special Administrative Region ('Macau SAR', part of the PRC since 1999), and Taiwan, whose political and legal status remains contentious. The Conclusion summarises the findings of Chapters One to Five and puts forward proposals for modifications to the application of the CISG in the PRC. It also provides proposals for future research.

## **1. CHAPTER ONE: BARRIERS TO THE ADOPTION OF THE CISG BY THE PRC AND ITS APPLICATION PRIOR TO 1999**

### **1.0. INTRODUCTION**

1.02 This chapter examines the barriers to the adoption of the CISG by the PRC arising from the traditional understanding of contract law within the Chinese political, economic, and legal establishments. The chapter has two main purposes. The first purpose is to help the reader to understand fully the nature of the barriers to the adoption and application of the CISG in the PRC by providing the historical context for the country's adoption of the convention. It does so by providing a brief introduction to the history of contract law in China both before and after the foundation of the PRC in 1949, up to the PRC's signing of the CISG in 1981.

1.03 In its consideration of the evolution of Chinese contract law prior to 1981, this chapter takes into account three major influences in section 1.1. First, the informal customary contract law of imperial China prior to 1911; second, the republican and continental civil law tradition under the Kuomintang ('KMT') regime between 1912 and 1949; and third, the socialist law influence in Mao's China (1949-1978).



1.04 The second purpose of the chapter is to offer a Chinese perspective on the impact of the adoption of the CISG and the barriers to the application of the CISG within the Chinese legal system prior to 1999. It does so by examining the political and economic barriers in sections 1.2 and 1.3. Section 1.2 examines the extent to which the adoption of the CISG has influenced the creation and development of a modern contract law regime in the PRC. To inform this discussion, it analyses the relationship between the CISG and the PRC Economic Contract Law (1981), the Foreign-Related Economic Contract Law (1985), the General Principles of Civil Law (1986), and the Technology Contract Law (1987). In addition, it investigates why the PRC made two reservations when acceding to the convention. Having done so, section 1.3 then considers the continued influence of the CISG on the evolution of contract law in the PRC up to 1999, the year in which the current contract law legislation was promulgated.

1.05 Section 1.4 examines the barriers to the application of the CISG prior to 1999 and the extent to which the CISG was harmonised or not with the complex three-pillar contract law and the PRC General Principles of the Civil Law ('GPCL'). In addition to the political and economic barriers, the linguistic and cultural barriers to the adoption and application of the CISG are discussed in section 1.5. The final section of the chapter provides the conclusions to be drawn from the preceding analysis.

## **1.1. CONTRACT LAW IN THE PRC PRIOR TO THE ADOPTION OF THE CISG**

### 1.1.1. THE IMPERIAL OR DYNASTIC PERIOD

- 1.06 During the imperial or dynastic period of Chinese history, two legal systems functioned side-by-side. One was formal, the other informal.<sup>1</sup> The formal legal system consisted of a series of codes created by the imperial bureaucracy to protect and further the interests of the Emperor, interests that often had little relevance to or impact upon the day-to-day lives of the general populace.
- 1.07 The codes were primarily concerned with administrative matters and were grouped not by area of law, but by the name of a board or government ministry (i.e. Officials, Revenue, Rites, War, Punishments, and Works) to whose work they were most closely connected.<sup>2</sup> The interests of the Emperor that were protected by and expressed through the formal legal system were for him and him alone to determine. The formal legal system can therefore be seen as part of the apparatus of an authoritarian state.

---

<sup>1</sup> See Kathryn Bernhardt & Philip C.C Huang, *Civil Law in Qing and Republican China* (Stanford: Stanford University Press, 1994); Derk Bodde, & Clarence Morris, *Law in Imperial China* (Cambridge, Mass: Harvard University Press, 1967), 3-51; Jean Escarra, *Chinese Law: Conception and Evolution, Legislative and Judicial Institutions, Science and Teaching*, translated from a 1936 French edition by Gertrude R. Browne (Seattle: University of Washington, 1961); R. P. Peerenboom, *Law and Morality in Ancient China: The Silk Manuscripts of Huang-Lao* (Albany: State University of New York Press, 1993).

<sup>2</sup> See e.g. *Great Qing Code*, translated by William C Jones (Oxford, Clarendon Press, 1994); and Geoffrey MacCormack, *The Spirit of Traditional Chinese Law* (Athens/London: The University of Georgia Press, 1996).

- 1.08 The informal, customary law system dealt with the majority of commercial and civil matters, which fell outside the purview of the Emperor's interests.<sup>3</sup> Both systems were completely devoid of Western influence. Modern Chinese contract law is derived from non-Chinese sources and has no direct link to the informal law that operated in imperial China until the end of the last dynasty – the Qing Dynasty – which was overthrown in 1911.

### 1.1.2. THE REPUBLICAN AND CIVIL LAW INFLUENCE

- 1.09 The republican Kuomintang (KMT) regime was established in 1912 following the overthrow of the Qing Dynasty. It attempted to establish a western-style legal system in China. Six Codes (六法 *Liu Fa*) were drafted in order to establish a civil law system suitable for the Republic of China. These codes comprised the Constitution (宪法 *Xian Fa*), the Civil Code (民法 *Min Fa*), the Code of Civil Procedures (民事诉讼法 *Minshi Susong Fa*), the Criminal Code (刑法 *Xing Fa*), the Code

---

<sup>3</sup> For studies on customary laws in traditional China, see Liang Zhiping, *Customary Law in Qing Dynasty: Society and State (Qingdai Xiguan Fa: Shehui yu Guojiao)* (Beijing: China University of Political Science and Law Press, 1996); Liang Zhiping, *The Pursuit of Harmony in Natural Orders: A Study on Chinese Traditional Legal Culture (Xunqiu Ziran Zhixu Zhong De Hexie: Zhongguo Chuantong Falu Wenhua Yanjiu)* (Beijing: China University of Political Science and Law Press, 1997); Gao Qicai, *On Chinese Customary Law (Zhongguo Xiguan Fa Lun)* (Changsha: Hunan Press, 1995); Li Zhimi, *Ancient Chinese Civil Law (Zhongguo Gudai Minfa)* (Beijing: Publishing House of Law, 1988); Gao Huanyue, 'The Uniqueness of Ancient Chinese Civil Law', (no. 3, 1997) *China Law* 90; Kong Qingming, Hu Liuyuan & Sun Jiping (eds.), *A History of Chinese Civil Law (Zhongguo Minfa Shi)* (Changchun: Jilin People's Press, 1996); Hui-chen Wang Liu, *The Traditional Chinese Clan Rules* (New York: Association for Asian Studies, 1959); Mark Elvin, *The Pattern of the Chinese Past* (Stanford: Stanford University Press, 1973); Francis L.K. Hsu, *Under the Ancestors' Shadow* (New York: Columbia University Press, 1948); Zhao Xudong, *Power and Justice: Dispute Resolution in Rural Societies and Plurality of Authorities (Quanli Yu Gongzheng – Xiangtu Shehui de Jiufen Yu Quanwei Duoyuan)* (Tianjin: Tianjin Ancient Books Publishing House, 2003); Su Li, *Roads to Cities – Rule of Law in Transitional China (Daolu Tongxiang Chengshi – Zhuanxing Zhongguo de Fazhi)* (Beijing: Law Press, 2004); and Tian Chengyou, *Local Customary Law in Rural Societies (Xiangtu Shehui Zhong de Minjianfa)* (Beijing: Law Press, 2005).

of Criminal Procedures (刑事诉讼法 *Xingshi Susong Fa*), and the Administrative laws (行政法 *Xingzheng Fa*). The models for the Six Codes were drawn from the legal systems of Western Europe.<sup>4</sup>

1.10 From this point onwards, Chinese law began to utilise Western forms and terminologies. Like the Japanese and German Civil Codes, the newly drafted Chinese Civil Code placed contract law under the heading of the Law of Obligations, which in turn described the various forms of contracts and other obligations between persons. Since then the continental civil law tradition has been firmly embedded in Chinese legal thought.

1.11 However, this westernisation of the Chinese legal system, did not completely eschew existing Chinese legal practices and customs. For instance, in the case of civil law, the Civil Code generally sought to uphold the validity of customs (so long as they were not contrary to public order and good morals), and expressly preserved some traditional legal institutions, customs and practices.<sup>5</sup> Thus, this westernisation of Chinese law took into account Chinese traditions and customs when adopting Western legal doctrines and institutions.

---

<sup>4</sup> For a historical study of KMT laws in the Chinese language, see Chang Hanchu, *A History of the Modern Chinese Legal System (Zhongguo Jindai Fazhishi)* (Taipei: The Commercial Press, 1973), particularly chapter 7.

<sup>5</sup> See Gui Hongming, *A Study of the Civil Customary Law Survey during the Late Qing and Early KMT (Qingmo Minchu Minshangshi Xiguan Diaocha Zhi Yanjiu)* (Beijing: Law Press, 2005).

1.12 The KMT's guiding ideology, San Min Zhu Yi (三民主義 *Three Principles of the People*), <sup>6</sup> is a good example of this process. On the one hand, the ideology contains elements of the thought championed by Abraham Lincoln and especially Lincoln's Gettysburg Address, 'government of the people, by the people, for the people'.<sup>7</sup> On the other hand, it is heavily influenced by Confucian thought.<sup>8</sup> The KMT continued the authoritarian approach to law and legal reform under the influence of the imperial or dynastic legal system and viewed law as an instrument for the authoritarian state, with its focus on state interests as defined by the state itself.<sup>9</sup>

1.13 This understanding of law as an instrument for the authoritarian state continued to influence the legal reforms that have taken place since then. Despite the fact that Mao Zedong, upon his ascension to power in 1949, ordered the repeal of all of KMT enacted laws, the PRC adopted the traditional Chinese device of a centralized bureaucracy. The consequence of this was that many

---

<sup>6</sup> The Three Principles of the People are the Principles of Minzu 民族 (nationalism), Minquan 民權 (democracy) and Minsheng 民生 (welfare and livelihood). See Sun Wen, Sun, Yat-sen (1866-1925), *San Min Zhu Yi (The Three Principles of the People)*, Taipei : Zhong yang wen wu gong ying she, Minguo 77 [1988]. 三民主義 / 孫文 (孫逸仙 1866-1925) 台北 : 中央文物供應社 , 民國 77 [1988]; see also Guo Bingchang, *San min zhu yi ji Zhonghua Minguo xian fa gai yao (The Three Principles of the People and the Constitution of the Republic of China)*, Taipei Shi : Qian hua chu ban gong si, Minguo 82 [1993] 三民主義及中華民國憲法概要 / 郭炳昌編著 台北市 : 千華出版公司 , 民國 82 [1993]

<sup>7</sup> Sun Yatsen, *Fundamentals of National Reconstruction* (published by China Culture Service and printed by Sino-America Publishing Co. Ltd., Taipei, 1953), at 43.

<sup>8</sup> Chung-ying Cheng, *New Dimensions of Confucian and Neo-Confucian Philosophy* (Albany, State University of New York Press, 1991)

<sup>9</sup> Sun Yatsen, *Fundamentals of National Reconstruction* (published by China Culture Service and printed by Sino-America Publishing Co. Ltd., Taipei, 1953), at 128-129.

characteristics of both the imperial and republican governments and their legal systems remained.<sup>10</sup>

### 1.1.3. THE SOCIALIST LAW INFLUENCE

1.14 What did differ from the KMT's legal regime was the introduction of Chinese Communist Party ('CCP') ideology. This ideology is usually referred to as Marxism – Leninism and/or Mao Zedong Thought. In essence, it, firstly, advocated socialist revolution; secondly, championed the creation of a socialist society; thirdly, promoted the deployment of socialist military force; and, fourthly, highlighted various structures in society to be modified by what it termed 'socialist construction' (社会主义建设 *Shehuizhuyi Jianshe*).<sup>11</sup> The principal technique for achieving and advancing a change in the thinking of the masses was the campaign or movement (运动 *yundong*).

1.15 Authorities used *yundong* to accomplish various policy objectives, including some that involved legal reform. For examples, *yundong* was used during the Korean War to muster support for the Government's opposition to U.S. involvement in the war, just as it was used to enlist the public's aid in eliminating flies. It was also used to deal with what the West would regard as legal

---

<sup>10</sup> See Jianfu Chen, *Chinese law: context and transformation*, Leiden ; Boston : Martinus Nijhoff Publishers, 2008, p38.

<sup>11</sup> See Evgeny B. Pashukanis, *Law and Marxism: a general theory* / translated by Barbara Einhorn; edited and introduced by Chris Arthur. London : Pluto, 1983; see also P.I. Stuchka, *Selected writings on Soviet law and Marxism*; edited, annotated, translated, and introduced by Robert Sharlet, Peter B. Maggs, and Piers Beirne, London & New York 1988, pp.186-99

matters such as land ownership, crime, marriage, party discipline, and tax collection. Thus, these techniques should be considered in any treatment of the Chinese legal system under Mao's premiership.

- 1.16 As illustrated, the legal system in China has always been primarily concerned with the advancement of the interests of the ruling class, whatever form the government took. Social institutions were configured so as to further and protect these interests. Even under Mao, the bulk of policies focused primarily on the directing of the work of governmental units. There was no opportunity for formal contract law to develop.

## **1.2. THE ADOPTION OF THE CISG IN THE PRC**

### **1.2.1. POLITICAL AND ECONOMIC CONTEXT**

- 1.17 The period from 1976 to 1989 was a new phase in the history of the PRC. On 9 September 1976, Mao Zedong died. A power struggle followed, which ended with the rise to power of Deng Xiaoping. Led by Deng, a group of pragmatists within the Communist Party began to emphasise the need for the economic development. This emphasis on economic development resulted in the adoption of the Four Modernisations at the pivotal Third Plenum of the Eleventh CPC Congress in December 1978.

- 1.18 The Four Modernisations called for the modernization of agriculture, industry, science and technology, and the military. In addition to undertaking internal economic reform, Deng wanted China to open itself up for trade with the outside world. This 'Reform and Opening-up' (改革开放 *Gai Ge Kai Fang*) policy meant that China would reform its domestic economic systems and welcome foreign trade, investment, and ideas.
- 1.19 Conduct of the Reform and Opening-up policy required legal reform. To attract foreign trade and investment, a legal framework was needed to govern foreign related dealings and to assure foreign investors of the safety of their investments. Before the Reform and Opening-up, the country operated under a strict state-planned economy. The state plans governed production, supply and the price of materials and labour. State industrial and commercial activities were subject to a vertical control of inputs and outputs.
- 1.20 Funds were provided to producers through budgets and grants and all profits were turned over to the state. Indeed, at the time of the Eleventh CPC Congress, the validity of the private exchange of goods or other commercial activities had only just received limited recognition from the state. Few economic relationships required the use of contracts; therefore, neither contract nor sales law had had the opportunity to take root and flourish in the PRC as it had in market economies.



- 1.21 To a great extent, China was forming, not re-forming, its sales and contract law at the beginning of the 1980s. The Western-style laws that were introduced, particularly in the area of private law such as contract law, commercial law or civil law, simply did not exist before 1980. China's lack of a legal framework for sales and contracts on the eve of economic reform was fully consistent with the primary role of the state in its planned economy.
- 1.22 Prior to Deng's rise to power, the PRC played a very limited and passive role within the United Nations. Deng, who had travelled abroad and had a series of diplomatic meetings with Western leaders, went to the United States to meet with President Jimmy Carter. Carter subsequently recognised the PRC in 1979. This recognition ushered in a new era of PRC Diplomacy, which prompted the Chinese leadership to embrace more pragmatic policies in almost all fields.
- 1.23 In the domestic arena, artists, writers and journalists were encouraged to adopt more critical approaches in cultural, political and social movements. Overseas, PRC diplomats began to participate more actively in the international political and international law arenas. If the PRC were to succeed in developing itself into a modern industrialised country, it needed to attract foreign investment, as well as promote international trade. The 1980 Vienna Diplomatic Conference provided an opportunity for the PRC to participate in the establishment of a New International Economic Order, the development of international trade and the adoption of rules governing contracts for the international sale of goods: the CISG.<sup>12</sup> The PRC participated

---

<sup>12</sup> See Preamble of the CISG: THE STATES PARTIES TO THIS CONVENTION, BEARING IN MIND the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the

enthusiastically in the drafting of the CISG. The country's delegation to the 1980 Diplomatic Conference envisioned the CISG as an equitable and mutually beneficial means to remove barriers and facilitate international trade among participating states.<sup>13</sup>

- 1.24 The PRC signed the CISG on 30 September 1981, but did not accede until 11 December 1986. The CISG came into force in the PRC on 1 January 1988. The timeline of the PRC's adoption of the CISG is summarised below.<sup>14</sup>

Date	Event
30 September 1981	PRC signed the CISG
13 December 1981	PRC promulgated the Economic Contract Law
21 March 1985	PRC promulgated the Foreign-Related Economic Contract Law
12 April 1986	PRC promulgated the General Principles of Civil Law
11 December 1986	PRC acceded to the CISG, with two reservations
23 June 23 1987	PRC promulgated the Technology Contract Law
1 January 1988	CISG came into force in the PRC

---

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, BEING OF THE OPINION that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade, HAVE DECREED as follows:.

<sup>13</sup> See LEGISLATIVE HISTORY 1980 Vienna Diplomatic Conference *Summary Records of Meetings of the First Committee*, 5th meeting, Thursday, 13 March 1980, at 3 p.m. *Chairman*: Mr. LOEWE (Austria): <http://www.cisg.law.pace.edu/cisg/firstcommittee/Meeting5.html>

<sup>14</sup> This table illustrates the PRC contract law framework until the three contract laws were unified and replaced by the current PRC Contract Law 1999, which will be dealt with in detail in the next Chapter.

- 1.25 The above table demonstrates that, during the period from 1981 to 1986, the PRC began to address the needs of its restructured economy and prepare itself for its accession to the CISG by implementing a new legal framework. By the time the CISG came into force in 1988, the PRC had already put in place three contract laws, as well as the General Principles of Civil Law ('GPCL').

### **1.2.2. CHOICE OF MODELS VERSUS CHINESE CHARACTERISTICS**

- 1.26 After signing the CISG in 1981, the PRC enacted its first formal contract law - the Economic Contract Law. The PRC borrowed heavily from the model employed by the Union of Soviet Socialist Republics ('USSR'). Although the drafters considered Western models, such as the German, French and US models, they favoured the Soviet model, which is not all surprising given the close nature of the PRC-USSR relationship at that time.
- 1.27 However, the Soviet model did not (and could not) provide solutions to all of the problems arising from the implementation of the Reform and Opening-up policy. There were conflicts and problems resulting from the inherent divergences between planned and mixed economic systems; socialist and capitalist ideologies; and differing interpretations of the socialist agenda.

To address these issues, the government successfully introduced the concept of ‘Socialism with Chinese Characteristics’ (有中国特色的社会主义 *You Zhongguo Tese de Shehuizhuyi*) .

- 1.28 The notion of ‘Chinese Characteristics’ (中国特色 *Zhongguo Tese*) won wide support among the people. In fact, the emphasis on ‘Chinese Characteristics’ has formed the backbone of the PRC’s political, economic, social, and legal systems since that time. For PRC legislators, in particular, it denotes a comparative and selective approach in drafting legislation, as well as in designing and constructing the legal system as a whole. For legislation to embody Chinese Characteristics, it requires a comparison of the strengths and weaknesses of various existing models in light of the gradualism, experimentation and regional differences in the PRC political, economic, social, cultural and legal realities.

### **1.2.3. THE DOMESTIC AND FOREIGN-RELATED SPLIT**

- 1.29 At the beginning of the Reform and Opening-up, people in the PRC generally had very little knowledge of or experience with contracts. To introduce contract law into the country, two fundamental issues needed to be addressed. First, what was the purpose of a contract law; and, second, who had the legal capacity to enter into a contract, i.e. the parties to a contract.

- 1.30 Article One of the Economic Contract Law (1981) stated that:

*'[T]his Law is formulated to protect the legal rights and interests of the parties to economic contracts, maintain the economic order of the society, increase economic efficiency, ensure the fulfilment of state plans and promote the development of socialist modernization.'*

1.31 Article Two continued:

*'Economic contracts are agreements between legal entities for the purpose of realising certain economic goals and clarifying each other's rights and obligations.'*

1.32 The Economic Contract Law 1981 did not, however, alter the central role played by state plans. The socialist planned economy still operated as before. As spelled out in Article One, the ultimate purpose of the Economic Contract Law 1981 was to further 'socialist' modernization. Article Two limited the purposes of an economic contract to 'realising certain economic goals and clarifying each other's rights and obligations'. This limitation existed because the Soviet model upon which the PRC based the Economic Contract Law 1981, required a distinction between economic contracts and civil contracts - the former governed by economic law and the latter by civil law. What was more important and more sensitive, both politically and legally, for

PRC legislators was who had the right to enter into an economic contract (i.e. the capacity to contract).

1.33 Bearing in mind that individual or private ownership was not constitutionally recognised at that time, nothing could be legally traded between Chinese individuals. Thus, under the 1981 Economic Contract Law, PRC legislators awarded the capacity to contract to Chinese legal entities and state or collective enterprises only. This position was entirely in keeping with the political and economic environment at that time, because no one would expect Chinese individuals to engage in business or so-called economic transactions with each other. Therefore, no need existed at that time to prescribe rules governing contractual relationships between Chinese individuals.

1.34 On the other hand, to promote foreign trade and investment and facilitate exchanges with the outside world, there was a need for a set of rules governing contractual relationships between domestic entities and foreign enterprises and individuals. Therefore, the PRC promulgated the Foreign-Related Economic Contract Law on 21 March 1985. Article Two provided, *inter alia*:

*‘[T]his Law shall apply to economic contracts concluded between enterprises or other economic organizations of the People’s Republic of China and foreign enterprises, other economic organizations or individuals (hereinafter referred to as ‘contracts’)....’*

1.35 There was, however, no definition of ‘Foreign-related’ (涉外 *Shewai*) available under Chinese law. Neither the Foreign-related Economic Contract Law (1985), nor the GPCL promulgated on 12 April 1986, defined the term ‘foreign-related’. This was all the more remarkable given the fact that GPCL included an entire section entitled ‘Application of Law in Foreign-related Civil Relations’. Eventually, the Supreme People’s Court issued an opinion in which it assigned a meaning to the term.<sup>15</sup> Article 178 of the Opinion provides that:

*‘Where either party or both parties in a civil legal relation is an alien, a stateless person or a foreign legal person, and the object of the civil legal relation is within the territory of a foreign country, and the legal facts that produce, alter or annihilate the civil relations of rights and obligations occur in a foreign country, such relation shall be called Foreign-related civil relations.*

*When hearing a foreign civil relation, the people’s court shall apply the substantive law in accordance with the provisions of Chapter VIII of the General Principles of the Civil Law.’*

---

<sup>15</sup> See Supreme People’s Court Opinions on Several Issues concerning the Implementation of the General Principles of the Civil Law of the People’s Republic of China, promulgated on 26 January 1988

1.36 This definition of the term ‘Foreign-related’ is broad and fluid in scope. The so-called ‘Foreign-related’ civil relations clearly encompass not only those ‘involving foreign interests’, but also those involving foreign persons, persons with no nationality, foreign entities, and foreign subject matter. In addition, cases relating to Hong Kong, Macau and Taiwan have been deemed ‘foreign-related cases’ by the judiciary – a position seemingly in conformance with Chinese custom and practice.<sup>16</sup>

1.37 Also of note is that no definition of ‘legal person’ existed under Chinese law until the promulgation of GPCL in 1986. Article Thirty-six of the GPCL provides, *inter alia*:

*‘[A] legal person shall be an organization that has capacity for civil rights and capacity for civil conduct and independently enjoys civil rights and assumes civil obligations in accordance with the law.’*

---

<sup>16</sup> For examples illustrating the treatment of Hong Kong – Macau – Taiwan related cases as ‘foreign-related’, see the Official Reply of the Supreme People's Court on Several Questions in dealing with economic dispute cases involving the Hong Kong-Macau-Taiwan Regions (1987.10.19); the Official Notice of the Supreme People's Court on Several Questions in dealing with foreign-related arbitration and foreign arbitral awards (1995.08.28); similarly, in 2002, the Supreme People's Court issued the Provisions on Some Issues Concerning the Jurisdiction of Civil and Commercial Cases Involving Foreign Elements (《最高人民法院关于涉外民商事案件诉讼管辖若干问题的规定》), adopted at the 1203rd meeting of the Judicial Committee of the Supreme People's Court on December 25, 2001, and came into force on March 1, 2002. Article 5 of the Provisions stipulates: The jurisdiction of cases on civil and commercial disputes involving parties from Hong Kong or Macao Special Administrative Region or Taiwan Region shall be handled by the courts with reference to these Provisions. Article 5 in Chinese texts: 第五条 涉及香港、澳门特别行政区和台湾地区当事人的民商事纠纷案件的管辖, 参照本规定处理。



- 1.38 Shortly after the promulgation of GPCL, the PRC acceded to the CISG (11 December 1986). Following the promulgation of GPCL and the PRC's accession to the CISG, the PRC then promulgated the Technology Contract Law on 23 June 23 1987. This third piece of contract law legislation provided in its Article 2 that:

*'[T]his Law shall apply to contracts concluded between legal persons, between legal persons and citizens, and between citizens for establishing relations of civil rights and obligations with respect to technology development, technology transfers, technical consultancy and technical services, but not to contracts to which a foreign enterprise, organization or individual is a party.'*

- 1.39 Thus, the Technology Contract Law did not apply to foreign related technology contracts. Unless it could be argued that particular Foreign-related technology contracts were governed by the Foreign-related Economic Contract Law, there appeared to be a loophole as to which contract law should govern Foreign-related technology contracts. However, the Technology Contract Law did, for the first time, recognised that a Chinese individual can be a party to a commercial or economic contract, as opposed to a civil contract which was governed by the GPCL.

#### **1.2.4. THE PRC'S RESERVATIONS UNDER THE CISG**

1.40 The PRC made the following reservations under the CISG:

*‘Upon approving the Convention, the People's Republic of China declared that it did not consider itself bound by sub-paragraph (b) of paragraph (1) of article 1 and article 11, nor the provisions in the Convention relating to the content of article 11.’*

#### **1.2.4.1. THE RESERVATION TO ARTICLE 1(1)(B)**

1.41 Article 1(1)(b) of the CISG extends the application of the CISG ‘when the rules of private international law lead to the application of the law of a Contracting State.’ The PRC made a declaration against Article 1(1)(b) pursuant to Article 95 of the CISG.

1.42 The legislative history of the CISG reveals that, as the Czechoslovak representative pointed out:

*‘Article 1(1)(b) raised difficulties in countries like his own or the German Democratic Republic where special legislation had been enacted to govern transactions pertaining to international trade. Similar legislation was under preparation in Poland and Romania. For countries with such a system, Article 1(1)(b) would mean the exclusion of whole areas of the special*

*legislation enacted to govern international trade transactions. The net result was that countries like Czechoslovakia would be unable to ratify the Convention because of the effect which CISG Article 1(1)(b) would have on the application of their special legislation on international trade.*<sup>17</sup>

1.43 The PRC was at that time preparing to implement such a dual contract law framework. With the promulgation of (1) the Economic Contract Law (13 December 1981), which governed domestic economic contracts; and (2) the Foreign-Related Economic Contract Law (21 March 1985), which governed Foreign-related economic contracts, the PRC unsurprisingly declared its reservation on Article 1(1)(b) when it ratified the CISG on 11 December 1986. Arguably, had the PRC wanted to broaden the application of the CISG pursuant to Article 1(1)(b), it certainly could have done so.

1.44 After all, the PRC only promulgated its two domestic contract laws after it signed the CISG in 1981. In the years between signing the CISG and acceding to it, the PRC could have ‘created’ a single contract-law regime. However, it did not. On the contrary, the promulgation of the two PRC economic contract laws prepared and enabled the PRC to exclude Article 1(1)(b), and thereby limit the application of the CISG in the PRC. From this perspective, the CISG had a rather passive influence on PRC domestic contract law legislation in the 1980s.

---

<sup>17</sup> See LEGISLATIVE HISTORY 1980 Vienna Diplomatic Conference *Summary Records of the Plenary Meetings*, 11th meeting: <http://www.cisg.law.pace.edu/cisg/plenarycommittee/summary11.html>

1.45 The fact that the United States made the same reservation on Article 1(1)(b) did not necessarily inform the PRC's decision to do so. The economic, social and political factors in existence at the time were a more important factor. In the early stages of the Reform and Opening-up, PRC legislators wanted to cultivate the new domestic market in a relatively favourable and protective environment. Reform and Opening-up took the form of an experimental and gradual process. Needless to say, the then 'new' CISG was itself something of an experiment at the time. Thus, conditions in the PRC in the 1980s, and the PRC's apprehensions concerning the CISG, necessitated the domestic and Foreign-related contract law split.

1.46 As will be discussed in the next chapter, the PRC brought the domestic and Foreign-related contract laws together when it implemented PRC Contract Law 1999. If the purpose of the exclusion of Article 1(1)(b) was the upholding of the PRC dual contract-laws regime in existence in the 1980s, then the unified PRC Contract Law 1999 seemingly rendered that part of the PRC declaration no longer necessary. The effect of the exclusion of Article 1(1)(b) on the unified PRC contract law, both in theory and practice, will be further discussed in the next Chapter together with a proposed withdrawal of the reservation to Article 1(1)(b).

#### **1.2.4.2. THE RESERVATION TO ARTICLE 11 AND PROVISIONS RELATING TO ARTICLE 11**

1.47 Article 11 of the CISG provides:

*'A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses'.*

1.48 Article 96 then provides:

*'A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with Article 12 that any provision of Article 11, Article 29, or Part II of this 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 of business in that State.'*

1.49 Although the PRC's declaration to exclude Article 11 and provisions relating to Article 11 did not mirror Article 96's authorised reservation, arguably, it should be taken as a reservation within the scope of Article 96.

1.50 Professor Schlechtriem and many experts concur that the Article 96 reservation may be declared only by a state which itself requires the written form for contracts of sale under its domestic law.<sup>18</sup> Interestingly, at the time when the PRC delegation attended the 1980 Diplomatic Conference in Vienna, there was no PRC domestic legislation, at least not in the codified form, on the subject of contract or civil law in general. By the time of the PRC's ratification of the CISG and its declared reservations, however, the PRC had implemented two contract laws both of which required the written form.

<b>Economic Contract Law (1981)</b>	<b>Foreign-related Economic Contract Law (1985)</b>
Article 3:  Economic contracts, except for those in which accounts are settled immediately, shall be in written form.	Article 7:  A contract shall be formed as soon as the parties to it have reached a written agreement on the terms and have signed the contract. ...
第三条  经济合同，除即时清结者外，应当采用书面形式。	第七条  当事人就合同条款以书面形式达成协议并签字，即为合同成立。...

1.51 The above begs the following question: despite attending the 1980 Diplomatic Conference and participating in the debates on all the relevant subjects and issues, why did the PRC fail to adopt

---

<sup>18</sup> See SCHWENZER SCHLECHTRIEM, COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG), 3d ed., Oxford University Press 699 (2010).

the CISG's abandonment of the written form requirement? Once more, it appeared that the CISG's impact or influence on PRC contract law legislation was passive in the 1980s.

- 1.52 Nevertheless, the CISG does concede and authorise the Article 96 reservation. The U.S. delegate, E. Allan Farnsworth, in the Eighth meeting of the First Committee in the 1980 Vienna Diplomatic Conference pointed out that at the tenth session of UNCITRAL at Vienna, it had been decided that the written form would not be compulsory:

*'...The intention was not to allow too many countries to make reservations, either partial or total. The aim was merely to remove the difficulties which might be encountered by the USSR or perhaps by other countries where the State was responsible for international trade.'*<sup>19</sup>

- 1.53 It may be that the USSR prompted the PRC's decision to make the Article 96 reservation. In the 1980s, the PRC's economic, social, political and legal domestic structures were still largely influenced by Soviet models. If the Article 96 reservation was in fact designed for the USSR and those countries in which the State was responsible for international trade, then the PRC was right to follow suit. As stated earlier, when the Reform and Opening-up began, restrictions existed as to who could become a party to an economic contract. The central government

---

<sup>19</sup> See 1980 Vienna Diplomatic Conference Summary Records of Meetings of the First Committee, 8th meeting at para 43, available at <http://www.cisg.law.pace.edu/cisg/firstcommittee/Meeting8.html>.

strictly controlled the right to engage in foreign trade and international commerce (see table below). Naturally, those government officials directly engaging in foreign trade would prefer written forms.

<b>Economic Contract Law (1981)</b>	<b>Foreign-related Economic Contract Law (1985)</b>
<p>Article 2.</p> <p>Economic contracts are agreements <i>between legal entities</i> for the purpose of realizing certain economic goals and clarifying each other's rights and obligations.</p> <p>(emphasis added)</p>	<p>Article 2.</p> <p>This Law shall apply to economic contracts concluded <i>between enterprises or other economic organizations of the People's Republic of China and foreign enterprises, other economic organizations or individuals.</i> (hereinafter referred to as 'contracts' ). However, this provision shall not apply to international transport contracts.</p> <p>(emphasis added)</p>
<p>第二条 经济合同是法人之间为实现一定经济目的，明确相互权利义务关系的协议。</p>	<p>第二条 本法的适用范围是中华人民共和国的企业或者其他经济组织同外国的企业和其他经济组织或者个人之间订立的经济合同（以下简称合同）。但是，国际运输合同除外。</p>

1.54 Perhaps more importantly, Chinese culture favours the written form. It is generally acknowledged that the Chinese culture embraces the idea that anything formal and important should be in written form, so as to avoid evidential issues in the event of a later dispute. As a new player in international trade, the PRC was understandably cautious. Therefore, it naturally favoured the written form.



- 1.55 Yet, the implementation of the Reform and Opening-up policy constituted an evolving process. As will be discussed in the next chapter, the PRC changed its position on the written form requirement when it enacted the PRC Contract Law 1999.

### **1.3. THE DEVELOPMENT OF CONTRACT LAW AFTER THE ADOPTION OF THE CISG AND PRIOR TO 1999**

#### **1.3.1. THE AMENDMENTS TO ECONOMIC CONTRACT LAW (1993)**

- 1.56 Although the 1980s Chinese contract law regime proved problematic in practice, it also proved to be a transitional arrangement. The Reform and Opening-up policy as a whole crossed a legal watershed in 1988, when the Constitution was amended to recognise ‘private economy’ as a supplement to the ‘socialist public ownership economy’.<sup>20</sup> In 1993, the Constitution was amended again to establish a socialist market economy.<sup>21</sup> At this juncture, the 1981 Economic

---

<sup>20</sup> See Amendments to the Constitution of the People's Republic of China (1988) Article 1: Article 11 of the Constitution shall include a new paragraph which reads: ‘The state permits the private sector of the economy to exist and develop within the limits prescribed by law. The private sector of the economy is a complement to the socialist public economy. The state protects the lawful rights and interests of the private sector of the economy, and exercises guidance, supervision and control over the private sector of the economy.’ 中华人民共和国宪法修正案 (1988) 第一条 宪法第十一条增加规定: ‘国家允许私营经济在法律规定的范围内存在和发展。私营经济是社会主义公有制经济的补充。国家保护私营经济的合法的权利和利益, 对私营经济实行引导、监督和管理。’

<sup>21</sup> See Amendments to the Constitution of the People's Republic of China (1993) Article 7: Article 15 of the Constitution is revised to read, ‘The State practises socialist market economy.’ ‘The State strengthens economic legislation, improves macro-regulation and control, and prohibits in accordance with law any organization or individual from disturbing the socio-economic order.’ 中华人民共和国宪法修正案 (1993) 第七条 宪法第十五

Contract Law was amended. The Amendments to the Economic Contract Law (1993) took a step in better reflecting the economic structure of the country and the recognition of the socialist market economy.

1.57 In particular, Article 1 of the Amended Economic Contract Law (1993) stated:

*'[T]his Law is formulated to safeguard the healthy development of the socialist market economy, to protect the legal rights and interests of the parties to economic contracts, maintain the socialist economic order, to promote the development of socialist modernisations.'*<sup>22</sup>

1.58 Article 2 was amended as follows:

*'This law applies to contracts between civil subjects with equal status, i.e. between legal persons, other economic entities, private industrial and commercial households, contracting or leasing enterprises and*

---

条修改为：'国家实行社会主义市场经济。'国家加强经济立法，完善宏观调控。'国家依法禁止任何组织或者个人扰乱社会经济秩序。'

<sup>22</sup> Article 1 (amended) in original Chinese texts: 第一条: 为保障社会主义市场经济的健康发展, 保护经济合同当事人的合法权益, 维护社会主义经济秩序, 促进社会主义现代化建设, 制定本法。

*organizations, for the purpose of realizing certain economic goals and clarifying each other's rights and obligations.*<sup>23</sup>

- 1.59 Compared to the original text, the amended Article 1 removed the reference to state plans and introduced the concept of a 'socialist market economy':

<b>Economic Contract Law (1981)</b>	<b>Amended Economic Contract Law (1993)</b>
<p>Article 1.</p> <p>This Law is formulated to protect the legal rights and interests of the parties to economic contracts, maintain the social economic order, increase economic efficiency, ensure the fulfilment of <i>state plans</i> and promote the development of socialist modernization.</p> <p>(emphasis added)</p>	<p>Article 1.</p> <p>This Law is formulated to safeguard the healthy development of the <i>socialist market economy</i>, to protect the legal rights and interests of parties to economic contracts, to maintain the socialist economic order, to promote the development of the socialist modernisations.</p> <p>(emphasis added)</p>
<p>第一条 为了保护经济合同当事人的合法权益，维护社会经济秩序，提高经济效益，保证<u>国家计划</u>的执行，促进社会主义现代化建设的发展，特制定本法。</p>	<p>第一条 为保障<u>社会主义市场经济</u>的健康发展，保护经济合同当事人的合法权益，维护社会主义经济秩序，促进社会主义现代化建设，制定本法。</p>

---

<sup>23</sup> Article 2 (amended) in original Chinese texts: 第二条: 本法适用于平等民事主体的法人、其他经济组织、个体工商户、农村承包经营户相互之间，为实现一定经济目的，明确相互权利义务关系而订立的合同。

1.60 The amended Article 2 expanded the scope of parties to economic contracts from legal persons to individual industrial and commercial households (个体工商户 ‘Geti Gongshang Hu’) and farm contracting or leasing households (农村承包经营户 ‘Nongcun Chengbao Jingying Hu’), both of which are defined under the GPCL.<sup>24</sup> Although the amended Economic Contract Law reflected the differentiation of ownership specified under the amended Constitution, it still did not apply to individual citizens.

<b>Economic Contract Law</b> <b>(1981)</b>	<b>Amended Economic Contract Law</b> <b>(1993)</b>
<p>Article 2. Economic contracts are agreements <i>between legal entities</i> for the purpose of realizing certain economic goals and clarifying each other’s rights and obligations. (emphasis added)</p>	<p>Article 2 This law applies to contracts <i>between civil subjects with equal status, i.e. between legal persons, other economic entities, private industrial and commercial households, farm contracting or leasing households</i>, for the purpose of realizing certain economic goals and clarifying each other’s rights and obligations. (emphasis added)</p>
<p>第二条 经济合同是法人之间为实现一定经济目的，明确相互权利义务关系的协议。</p>	<p>第二条 本法适用于平等民事主体的法人、其他经济组织、个体工商户、农村承包经营户相互之间，为实现一定经济目的，明确相互权利义务关系而订立的合同。</p>

---

<sup>24</sup> See GPCL Article 26. ‘Individual businesses / private industrial and commercial households’ refers to businesses run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere permitted by law. An individual business may adopt a shop name. 第二十六条 【个体工商户的定义】公民在法律允许的范围内，依法经核准登记，从事工商业经营的，为个体工商户。个体工商户可以起字号。 Article 27. ‘Farm contracting or leasing households’ refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law. 第二十七条 【农村承包经营户的定义】农村集体经济组织的成员，在法律允许的范围内，按照承包合同规定从事商品经营的，为农村承包经营户。

- 1.61 Moreover, the amended Economic Contract Law granted a greater degree of party autonomy in negotiating and settling the terms of a contract outside the purview of state plans. Amendments to Article 17 on Sales contracts, for example, are set out in the table below.

<b>Economic Contract Law (1981)</b>	<b>Amended Economic Contract Law (1993)</b>
<p>Article 17. The terms regarding the quantity, quality, packaging quality and prices of products and the time limit for delivery in purchase and sale contracts (including contracts for supply, procurement, forward purchase, combination and coordination in purchases and sales, and adjustment) shall be implemented in accordance with the following provisions:</p>	<p>Article 17. The terms regarding the quantity, quality, packaging quality and prices of products and the time limit for delivery in purchase and sale contracts (including contracts for supply, procurement, forward purchase, combination and coordination in purchases and sales, and adjustment) shall be implemented in accordance with the following provisions:</p>
<p>第十七条 购销合同（包括供应、采购、预购、购销结合及协作、调剂等合同）中产品数量、产品质量和包装质量、产品价格和交货期限按以下规定执行：</p>	<p>第十七条 购销合同（包括供应、采购、预购、购销结合及协作、调剂等合同）中产品数量、产品质量和包装质量、产品价格和交货期限按以下规定执行：</p>
<p>(1) The product quantity term shall be concluded in accordance with the plans approved by the state or the higher-level department in charge; in the absence of such a plan, it shall be concluded between the supplying and purchasing parties through consultation. The method of measuring product quantity shall be implemented in accordance with regulations by the state or the department in charge; in the</p>	<p>(1) The product quantity term shall be concluded <del>in accordance with the plans approved by the state or the higher-level department in charge;</del> <del>in the absence of such a plan, it shall be concluded</del> between the supplying and purchasing parties through consultation. The method of measuring product quantity shall be implemented in accordance with regulations by the state <del>or the department in charge;</del></p>

<p><b>Economic Contract Law</b></p> <p><b>(1981)</b></p>	<p><b>Amended Economic Contract Law</b></p> <p><b>(1993)</b></p>
<p>absence of such regulations, a method agreed upon by the supplying and purchasing parties shall be used.</p>	<p>in the absence of such regulations, a method agreed upon by the supplying and purchasing parties shall be used.</p>
<p>一、产品数量，按国家和上级主管部门批准的计划签订；没有国家和主管部门批准计划的，由供需双方协商签订。产品数量的计量方法，按国家的规定或主管部门的规定执行；没有国家和主管部门规定的，按供需双方商定的方法执行。</p>	<p>一、产品数量，由供需双方协商签订。产品数量的计量方法，按国家的规定执行；没有国家规定的，按供需双方商定的方法执行。</p>
<p>(2) The product quality and packaging quality terms shall be concluded in conformity with state or specialized standards if such standards exist; in the absence of such standards, the terms shall be concluded in conformity with the standards prescribed by the departments in charge. If either party has special requirements, the terms shall be concluded between the parties through consultation.</p> <p>The supplying party must be responsible for the product quality and packaging quality and provide the technical data or samples necessary for inspection.</p> <p>The methods of ascertaining product quality through inspection and quarantine shall be carried out in accordance with the relevant regulations approved by the State Council; in the absence of such regulations, the parties shall determine the methods</p>	<p>(2) The product quality and packaging quality terms shall be concluded in conformity with state or <del>specialized</del> industrial [mandatory] standards if such standards exist and shall not be concluded lower than those standards; in the absence of such standards, <del>the terms shall be concluded in conformity with the standards prescribed by the departments in charge. If either party has special requirements,</del> the terms shall be concluded between the parties through consultation.</p> <p>The supplying party must be responsible for the product quality and packaging quality and provide the technical data or samples necessary for inspection.</p> <p>The methods of ascertaining product quality through inspection and quarantine shall be carried out in accordance with the relevant regulations approved by the State Council; in the absence of such regulations, the parties shall</p>

<p><b>Economic Contract Law</b></p> <p><b>(1981)</b></p>	<p><b>Amended Economic Contract Law</b></p> <p><b>(1993)</b></p>
<p>through consultation.</p>	<p>determine the methods through consultation.</p>
<p>二、产品质量和包装质量，有国家标准或专业标准的，按国家标准或专业标准签订；无国家标准或专业标准的，按主管部门标准签订；当事人有特殊要求的，由双方协商签订。</p> <p>供方必须对产品的质量和包装质量负责，提供据以验收的必要的技术资料或实样。</p> <p>产品质量的验收、检疫方法，根据国务院批准的有关规定执行，没有规定的由当事人双方协商确定。</p>	<p>二、产品质量要求和包装质量要求，有国家强制性标准或者行业强制性标准的，不得低于国家强制性标准或者行业强制性标准签订；没有国家强制性标准，也没有行业强制性标准的，由双方协商签订。</p> <p>供方必须对产品的质量和包装质量负责，提供据以验收的必要的技术资料或实样。</p> <p>产品质量的验收、检疫方法，根据国务院批准的有关规定执行，没有规定的由当事人双方协商确定。</p>
<p>(3) The product price term shall be concluded in accordance with the prices prescribed by the price administration departments at various levels (including state-fixed prices and floating prices). Where negotiated prices are permitted by government policy, the prices shall be determined by the parties through consultation.</p> <p>In cases where a product is to be supplied on the basis of the state-fixed price, if the said price is adjusted before the time limit for delivery provided in the contract, the payment shall be calculated according to the price at the time of delivery. If the</p>	<p>(3) The product price term shall be <del>concluded in accordance with the prices prescribed by the price administration departments at various levels (including state-fixed prices and floating prices). Where negotiated prices are permitted by government policy, the prices shall be determined by the parties through consultation,</del> [except that according to state regulations a product must be supplied at the state-fixed price.]</p> <p>In cases where a product is to be supplied on the basis of the state-fixed price, if the said price is adjusted before the time limit for delivery provided in the contract, the payment shall be calculated according to the price at the time of delivery. If the delivery is delayed and the price has risen,</p>

<p><b>Economic Contract Law</b></p> <p><b>(1981)</b></p>	<p><b>Amended Economic Contract Law</b></p> <p><b>(1993)</b></p>
<p>delivery is delayed and the price has risen, the original price shall be adopted; if the price has dropped, the new price shall be adopted. In the event of delay in taking delivery of goods or late payment, if the price has risen, the new price shall be adopted; if the price has dropped, the original price shall be adopted. In cases where products are to be supplied according to floating or negotiated prices, the payment shall be calculated according to the price provided in the contract.</p>	<p>the original price shall be adopted; if the price has dropped, the new price shall be adopted. In the event of delay in taking delivery of goods or late payment, if the price has risen, the new price shall be adopted; if the price has dropped, the original price shall be adopted. <del>In cases where products are to be supplied according to floating or negotiated prices, the payment shall be calculated according to the price provided in the contract.</del></p>
<p>三、产品的价格，按照各级物价主管部门规定的价格（包括国家订价、浮动价）签订。政策上允许议价的，价格由当事人协商议定。</p> <p>执行国家订价的，在合同规定的交付期限内国家价格调整时，按交付时的价格计价。逾期交货的，遇价格上涨时，按原价格执行；价格下降时，按新价格执行。逾期提货或者逾期付款的，遇价格上涨时，按新价格执行；价格下降时，按原价格执行。执行浮动价、议价的，按合同规定的价格执行。</p>	<p>三、产品的价格，除国家规定必须执行国家定价的以外，由当事人协商议定。</p> <p>执行国家定价的，在合同规定的交付期限内国家价格调整时，按交付时的价格计价。逾期交货的，遇价格上涨时，按原价格执行；价格下降时，按新价格执行。逾期提货或者逾期付款的，遇价格上涨时，按新价格执行；价格下降时，按原价格执行。</p>
<p>(4) The time limit for delivery (or taking delivery) of the goods shall be carried out in accordance with the stipulations in the contract. If any party requests advancement or extension of the time limit for delivery (or taking delivery) of the goods, it shall reach an agreement with the other party beforehand,</p>	<p>(4) The time limit for delivery (or taking delivery) of the goods shall be carried out in accordance with the stipulations in the contract. If any party requests advancement or extension of the time limit for delivery (or taking delivery) of the goods, it shall reach an agreement with the other party beforehand,</p>



<b>Economic Contract Law (1981)</b>	<b>Amended Economic Contract Law (1993)</b>
and implement it accordingly.	and implement it accordingly.
四、交（提）货期限要按照合同规定履行。任何一方要求提前或延期交（提）货，应在事先达成协议，并按协议执行。	四、交（提）货期限要按照合同规定履行。任何一方要求提前或延期交（提）货，应在事先达成协议，并按协议执行。

1.62 These comparisons show, that drafters once more removed references to ‘state plans’, (see amended Article 17 (1)), but retained references to ‘state-fixed price’, (see amended Article 17 (3)). Although the state or industrial mandatory rules still applied to certain products, the amendments did expand the limits of party autonomy. Within the then-current limits on party autonomy, parties were permitted the rights for production and supply outside the state plan and in accordance with mutual consultation. Within the scope of relevant state regulations or regulations approved by the State Council, rights were granted to supply and purchase goods, negotiate sales, price and terms on quantity, quality, packaging, inspection and delivery of goods.

1.63 The phrase ‘relevant regulations’ (有关规定 ‘Youguan Guiding’) appeared in Article 17 (2), was seen by some as a mechanism used to provide flexibility over time and across provinces and sectors of the vast Chinese economy.<sup>25</sup> Others perceived this as a clear signal of the State’s

---

<sup>25</sup> See Stanley B. Lubman, *Bird in a Cage: Legal Reform in China after Mao*, Stanford, Calif: Stanford University Press, (1999).

reluctance to allow parties to enjoy unfettered economic rights.<sup>26</sup> Still others viewed it as a contract approval system, in which all contracts of importance needed approval by some state organs.<sup>27</sup>

- 1.64 This author is of the view that the constant use of this phrase not only reflects how Chinese legal reform adjusted to key aspects of economic reforms, gradualism, experimentation and regional differences; but also illustrates fluidity in the granting of legal rights as well as in the drafting of legislation. This tolerance for vagueness and fluidity is, on the one hand, an experimentation that suits the evolutionary nature of Chinese economic and legal reform. On the other hand, this vagueness and fluidity means that the legal precision that frequently characterizes contract law in more developed market economies is lacking. Not surprisingly, the CISG had little, if any, influence on the Amended Economic Contract Law (1993), which remained a socialist economic contract law in nature.

### **1.3.2. THE INFLUENCE OF THE UPICC (1994)**

- 1.65 The text of the UNIDROIT Principles of International Commercial Contracts ('UPICC') was promulgated in 1994. Unlike the CISG, which is an international treaty, UPICC is an international

---

<sup>26</sup> Ibid.

<sup>27</sup> See Donald C. Clarke, *Puzzling Observations in Chinese Law: When Is a Riddle Just a Mistake?* in Hsu (ed.), *Understanding China's Legal System* (NYU Press, 2003)

'restatement' of contract law.<sup>28</sup> Many of the persons who worked on the UPICC also participated in the development of the CISG. It is a general consensus that the UPICC and CISG are largely compatible with each other.<sup>29</sup>

1.66 One of the principal architects of the UPICC, Professor Michael Joachim Bonell stated:

*'To the extent that the two instruments address the same issues, the rules laid down in the UNIDROIT Principles are normally taken either literally or at least in substance from the corresponding provisions of the CISG; cases where the former depart from the latter are exceptional'.<sup>30</sup>*

---

<sup>28</sup> See Michael Joachim Bonell, 'The UNIDROIT Principles of International Contracts and CISG: Alternative or Complementary Instrument?', Uniform Law Review 1996, 26-39.

<sup>29</sup> See e.g. Ulrich Magnus pointed out 'the harmony between the Convention and the UNIDROIT Principles comes as no surprise, because the Convention could be considered the 'godfather' of the UNIDROIT Principles', in 'Die allgemeinen Grundsätze im UN-Kaufrecht', 59 Rabels Zeitschrift 492-93 (1995); Pilar Perales Viscasillas commented: 'naturally, to the extent that the UNIDROIT Principles address issues also covered by the CISG, they follow the solutions found in that Convention, with such adaptations as were considered appropriate,' in 'UNIDROIT Principles of International Commercial Contracts: Sphere of Application and General Provisions,' 13 ARIZ. J. INT'L & COMP. L., 385 (1996).

<sup>30</sup> See Michael Joachim Bonell, 'The UNIDROIT Principles of International Contracts and CISG: Alternative or Complementary Instrument?', Uniform Law Review 1996, 26-39

1.67 A stated purpose of the UPICC is: ‘...[to] be used to interpret or supplement international uniform law instruments’.<sup>31</sup> In practice, the UPICC has been used as a means of interpreting and supplementing the CISG.<sup>32</sup> The UPICC has also served as an important source of inspiration, as well as a model for the drafting of national and international legislations.<sup>33</sup> What role, if any, did the UPICC play in the contract law reform that took place in the PRC in the 1990s?

1.68 Compared to the text of the CISG, which was promulgated in 1980, the text of the UPICC promulgated in 1994 was more modern and user-friendly. Also the UPICC is a more comprehensive instrument than the CISG because it provides both black letter rules and Official Comments. The UPICC, like the CISG, aims to establish an international uniform law, but it differs in scope. While the CISG governs contract formation and the rights and obligations of the seller and the buyer arising from an international sale of goods contract, the UPICC applies not only to sales contract but also to other types of contracts. Contrasted with the limited scope of the CISG, the scope of the UPICC provided a more useful model for the contract law reform in the PRC.

---

<sup>31</sup> See Preamble to the UPICC: (*Purpose of the Principles*) These Principles set forth general rules for international commercial contracts. They shall be applied when the parties have agreed that their contract be governed by them. They may be applied when the parties have agreed that their contract be governed by general principles of law, the *lex mercatoria* or the like. They may be applied when the parties have not chosen any law to govern their contract. They may be used to interpret or supplement international uniform law instruments. They may be used to interpret or supplement domestic law. They may serve as a model for national and international legislators.

<sup>32</sup> See Michael Joachim Bonell, ‘*The UNIDROIT Principles in Practice - The Experience of the First Two Years*’, Uniform Law Review 1997, 34-35.

<sup>33</sup> See Michael Joachim Bonell ‘*The UNIDROIT Principles of European Contract Law: Similar Rules for the Same Purposes?*’, Uniform Law Review 1996, 229-246.

## **1.4. THE APPLICATION OF THE CISG PRIOR TO 1999**

### **1.4.1. DISCORDANCE: CISG AND PRC PRE-1999 CONTRACT LAW**

1.69 The domestic and Foreign-related split in Chinese contract law legislation in the 1980s did not directly contradict the CISG, which intends to govern ‘international’ sales contracts only. It is arguable, however, that given the concurrent timing of the PRC’s promulgation of its domestic contract laws and its adoption of the CISG, the PRC could have promulgated one single unified domestic contract law.

1.70 Moreover, unlike the CISG, the pre-1999 PRC contract laws were all silent on the scope of party autonomy. Also unlike the CISG, the Sales provisions of the pre-1999 PRC contract laws did not set out the rights and obligations of the seller or the buyer. Many concepts, including the concept of economic contract itself, were practically new phenomena in the PRC at that point. Without much definition of their content or experience in their role for domestic or Foreign-related contracts or sales, Chinese pre-1999 contract laws could not look much further than the then limited scope for economic contracts under the state plans.

1.71 As the table below demonstrates, none of the PRC's pre-1999 domestic laws follow the CISG's rules on contract formation, such as offer and acceptance. Indeed, the concept of offer and acceptance as outlined in the CISG did not exist in the PRC contract laws before 1999.

<b>Economic Contract Law (1981)</b>	<b>Foreign-related Economic Contract Law (1985)</b>	<b>General Principles of Civil Law (1986)</b>	<b>Technology Contract Law (1987)</b>	<b>CISG (1980)</b>
<p><b>Article 3:</b></p> <p>Economic contracts, except for those in which accounts are settled immediately, shall be in written form.</p> <p><b>Article 9:</b></p> <p>An economic contract is concluded once both parties have, in accordance with law, reached agreement by consultation on the principal clauses of the contract.</p>	<p><b>Article 7:</b></p> <p>A contract shall be formed as soon as the parties to it have reached a written agreement on the terms and have signed the contract. If an agreement is reached by means of letters, telegrams or telex and one party requests a signed letter of confirmation, the contract shall be formed only after the letter of confirmation is signed.</p> <p>Contracts which are subject to the approval of the state, as provided for by the laws or administrative regulations of the People's Republic of China, shall be formed only after until such approval is granted.</p>	<p><b>Article 85:</b></p> <p>A contract shall be an agreement whereby the parties establish, change or terminate their civil relationship. Lawfully concluded contracts shall be protected by law.</p>	<p><b>Article 9:</b></p> <p>The conclusion, modification and rescission of a technology contract shall be conducted in written form.</p> <p><b>Article 10:</b></p> <p>A technology contract shall be formed once the parties have signed their names and put their seals on it.</p> <p>Contracts subject to approval by the relevant authorities pursuant to the provisions of the state shall be formed upon such approval.</p>	<p><b>Article 11:</b></p> <p>A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.</p> <p><b>Article 23:</b></p> <p>A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.</p>

<b>Economic Contract Law (1981)</b>	<b>Foreign-related Economic Contract Law (1985)</b>	<b>General Principles of Civil Law (1986)</b>	<b>Technology Contract Law (1987)</b>	<b>CISG (1980)</b>
<p>第三条</p> <p>经济合同，除即时清结者外，应当采用书面形式。</p> <p>第九条</p> <p>当事人双方依法就经济合同的主要条款经过协商一致，经济合同就成立。</p>	<p>第七条</p> <p>当事人就合同条款以书面形式达成协议并签字，即为合同成立。通过信件、电报、电传达成协议，一方当事人要求签订确认书的，签订确认书时，方为合同成立。</p> <p>中华人民共和国法律、行政法规规定应当由国家批准的合同，获得批准时，方为合同成立。</p>	<p>第八十五条</p> <p>合同是当事人之间设立、变更、终止民事关系的协议。依法成立的合同，受法律保护。</p>	<p>第九条</p> <p>技术合同的订立、变更和解除采用书面形式。</p> <p>第十条</p> <p>技术合同自当事人在合同上签名、盖章后成立；按照国家规定需要经过有关机关批准的，自批准时起成立。</p>	<p>第十一条</p> <p>销售合同无须以书面订立或书面证明，在形式方面也不受任何其它条件的限制。</p> <p>销售合同可以用包括人证在内的任何方法证明。</p> <p>第二十三条</p> <p>合同于按照本公约规定对发价的接受生效时订立。</p>

#### 1.4.2. APPLYING THE CISG UNDER THE PRE-1999 CONTRACT LAW REGIME

1.72 The interplay between the CISG and the pre-1999 PRC three-pillar contract law regime proved problematic, especially when trying to determine whether the CISG or the PRC's three domestic contract laws together with the GPCL applied. The application of these five sets of rules was not straightforward - overlaps and gaps among the regimes existed. The different scopes of the PRC contract law regime and the GPCL can be compared in the table below.

<b>Economic Contract Law (1981)</b>	Article 2. Economic contracts are agreements between legal entities for the purpose of realizing certain economic goals and clarifying each other's rights and obligations.	第二条 经济合同是法人之间为实现一定经济目的，明确相互权利义务关系的协议。
<b>Foreign-related Economic Contract Law (1985)</b>	Article 2. This Law shall apply to economic contracts concluded between enterprises or other economic organizations of the People's Republic of China and foreign enterprises, other economic organizations or individuals. (hereinafter referred to as 'contracts' ). However, this provision shall not apply to international transport contracts.	第二条 本法的适用范围是中华人民共和国的企业或者其他经济组织同外国的企业和其他经济组织或者个人之间订立的经济合同（以下简称合同）。但是，国际运输合同除外。
<b>Technology Contract Law (1987)</b>	Article 2. This Law shall apply to contracts concluded between legal persons, between legal persons and citizens, and between citizens for establishing relations of civil rights and obligations with respect to technology development, technology transfers, technical consultancy and technical services, but not to contracts to which a foreign enterprise, organization or individual is a party.	第二条 本法适用于法人之间，法人和公民之间、公民之间就技术开发、技术转让、技术咨询和技术服务所订立的确立民事权利与义务关系的合同。但是，当事人一方是外国的企业、其他组织或者个人的合同除外。
<b>General Principles of Civil Law (1986)</b>	Article 2. The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.	第二条 中华人民共和国民法调整平等主体的公民之间、法人之间、公民和法人之间的财产关系和人身关系。



1.73 It is the contention of this author that contracts for the international sale of goods should fall within the scope of the CISG, bearing in mind the CISG's limited scope as stipulated in Articles 1 to 6 of the CISG, and the PRC's reservation on Article 1(1)(b). Other contracts for international sales that are not governed by the CISG or those governed by the CISG under Article 1(1)(b), and all other Foreign-related contracts that fall within the scope of the PRC Foreign-related Economic Contract Law should be governed by the Foreign-related Economic Contract Law (1985). Foreign-related contracts not governed by the Foreign-related Economic Contract Law, e.g. foreign-related civil contracts, should be governed by the GPCL. As to purely domestic contracts, they should be governed either by the domestic Economic Contract Law (1981), or the Technology Contract Law (1987) according to the provisions thereof. Otherwise, they should be governed by the GPCL.

1.74 Article 142 of the GPCL stipulates:

*'[General Provisions] This Chapter applies to all foreign-related civil relations.*

*If there are differences between the provisions of the international treaties that are concluded or acceded to by the People's Republic of China and those of the civil laws of the People's Republic of China, the former shall apply, except those reserved by the People's Republic of China;*

*If neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any stipulation, international practice may apply.*<sup>34</sup>

1.75 Therefore, by way of Article 142 of the GPCL, the CISG (as a treaty and an international convention) is brought into the first tier of the formal sources of the PRC law. If there are conflicts between the CISG and the PRC domestic laws, the CISG prevails. The PRC domestic laws then follow as the second tier of the formal sources of the PRC law. International practice<sup>35</sup> supplements as the third tier.<sup>36</sup>

1.76 This author submits that under the pre-1999 PRC contract law regime, if parties to international sales contracts have chosen ‘the law of the PRC’, the courts shall first apply the CISG when applicable. When the CISG does not apply, then the PRC Foreign-related Economic Contract Law

---

<sup>34</sup> Article 142 in Chinese texts: 第一百四十二条 【一般规定】涉外民事关系的法律适用，依照本章的规定确定。中华人民共和国缔结或者参加的国际条约同中华人民共和国的民事法律有不同规定的，适用国际条约的规定，但中华人民共和国声明保留的条款除外。中华人民共和国法律和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

<sup>35</sup> See later a further discussion on the ‘international practice’ in paragraphs 1.38 and 1.39.

<sup>36</sup> For discussions on sources of PRC law, see e.g. Jianfu Chen, *Chinese law: context and transformation*, Leiden ; Boston : Martinus Nijhoff Publishers, 2008, at Chapter Five; also Bing Ling, *Contract Law in China*, Hong Kong : Sweet & Maxwell Asia, 2002, at Chapter 2.

as well as any relevant provisions of the GPCL may apply. Where gaps still exist, the courts should look to international practice.

- 1.77 The three-tier hierarchy prescribed in Article 142 of the GPCL reflects the incomplete domestic contract law framework existing in the PRC before 1999. Thus, adopting international treaties as well as using ‘international practice’ to fill the gaps existing within the PRC domestic laws at that time was not only desirable but also necessary to support the Reform and Opening-up.

#### **1.4.3. APPLYING THE CISG AS ‘INTERNATIONAL PRACTICE’ UNDER PRC LAW**

- 1.78 PRC law does not define the term ‘International practice’, which is a translation of the Chinese phrase ‘Guo Ji Guan Li’ (国际惯例). As pointed out above, Article 142 of GPCL explicitly recognises ‘Guo Ji Guan Li’ as the third tier of formal sources of Chinese civil law. Some Chinese scholars claimed that studies in the PRC on assimilating or harmonising Chinese law with international practice only began in 1992.<sup>37</sup> Some other Chinese scholars observed that transplanting foreign laws and assimilating Chinese law to international practice started immediately with the reconstruction of the legal system in the post-Mao Zedong era.<sup>38</sup>

---

<sup>37</sup>See Li Shuanyuan, Zhang Mao & Du Jian, ‘A Study on the Assimilation of Chinese Law [with International Practice]’, (no. 3, 1994) *Journal of Wuhan University (Wuhan Daxue Xuebao)* (Philosophy & Social Sciences) 3, at 3; and He Hangzhou, ‘On Legal Transplant and the Construction of an Economic Legal System’, (no. 5, 1992) *Legal Science in China (ZhongguoFaxue)* 50, at 53.

<sup>38</sup> Li, Zhang, and Du, *supra* note 41, at 28.

1.79 The majority recognised international practice and customs as a necessity for the PRC to participate in international trade and attract foreign investment and advanced technologies.<sup>39</sup>

Chinese jurists and law-makers argued that to build a legal system for a market economy, legislation had to be foresighted, systematic, and close to international practice.<sup>40</sup> Thus, without defining the exact meaning and ambit of international practice, the official organ for law-making has adopted a pro-international practice legislative policy and admitted the usefulness of international practice in building a Chinese legal system since the 1980s.<sup>41</sup>

1.80 Besides Article 142 of the GPCL, the Foreign-Related Economic Contract Law (1985) stipulates in Article 5: 'International practice may be applied to matters for which the PRC law has no

---

<sup>39</sup> See Gu Angran, *The Socialist Legal System and Legislative Work (Shehui Zhuyi Fazhi He Lifa Gongzuo)* (Beijing: China University of Political Science and Law Press, 1989), at 31; and Guiguo Wang, 'Economic Integration in Quest of Law', 1995 Vol.29, no.2, *Journal of World Trade* 5.

<sup>40</sup> See 'A Perfect Legal System Must Be Established in Order to Build a Socialist Market Economy', *People's Daily (Renmin Ribao)* (overseas edition), 7 November 1992, at 3; 'Market Economy and the Modernisation of a Legal System – speeches Given at the Symposium on a Market Economy and the Modernisation of the Legal System', (no. 6, 1992) *Studies in Law (Faxue Yanjiu)*, at 2-3; 'Further Emancipating Minds and Making Great Efforts for the Prosperity of Legal Research – A Discussion on Deng Xiaoping's Talk during his Southern Tour' (Southern Tour Symposium), 1992 (5) *Studies in Law (Faxue Yanjiu)* 1, at 4-5.

<sup>41</sup> See *supra* note 43, at 31; Tian Jiyan, 'Report of the Work of the Standing Committee of the NPC delivered by to the NPC on 15 March 1994', in *People's Daily (Renmin Ribao)* 26 March 1994, at 3; 'Major Tasks of the Standing Committee of the 8th NPC', *People's Daily (Renmin Ribao)* 3 July 1993, at 4; 'To Boldly Borrow Legislative Experience from Developed Countries in Order to Perfect Chinese Market Legislation', *People's Daily (Renmin Ribao)* 5 December 1992 (overseas edition), at 3; and 'Deputies to the People's Congress on Legislative Work', 1992 (6) *LegalScience in China (Zhongguo Faxue)* 28, at 28-29.

provisions.’ The Maritime Code Article 268<sup>42</sup>, the Civilian Aviation Law Article 184<sup>43</sup>, and the Negotiable Instruments Law Article 96<sup>44</sup>, to name just a few, all similarly provide that international practice may be applied to fill the gaps of PRC laws.

1.81 This author is of the view that the Chinese concept of ‘international practice’ refers to international customs and practices generally accepted in the areas of international private and commercial law. Its meaning and ambit are hard to define. The Chinese phrase ‘Guoji Guanli’ (国际惯例) can be translated into ‘international customary rules’, or ‘international usual practice,

---

<sup>42</sup> The PRC Maritime Code Article 268: If any international treaty concluded or acceded to by the People’s Republic of China contains provisions differing from those contained in this Code, the provisions of the relevant international treaty shall apply, unless the provisions are those on which the People’s Republic of China has announced reservations. International practice may be applied to matters for which neither the relevant laws of the People’s Republic of China nor any international treaty concluded or acceded to by the People’s Republic of China contain any relevant provisions. 第二百六十八条 【国际条约、惯例的适用】中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用国际条约的规定；但是，中华人民共和国声明保留的条款除外。中华人民共和国法律和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

<sup>43</sup> The PRC Civilian Aviation Law Article 184: Where contradiction appears, provisions of international treaties to which PRC is a signatory or party shall prevail over those of this law except those on which PRC has made reservations. Where PRC laws and international treaties to which PRC is a signatory or party make no provisions, international practices can be referred to. 第一百八十四条 中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用国际条约的规定；但是，中华人民共和国声明保留的条款除外。中华人民共和国法律和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

<sup>44</sup> The PRC Negotiable Instrument Law Article 96 (2004 revision Article 95): In the case when the provisions of the international treaties to which the People’s Republic of China is a signatory party or in which the People’s Republic of China has joined differ from the provisions of this law, the provisions of the international treaties apply, except those articles on which the People’s Republic of China has declared to have reservations. For cases where there are no provisions in this law or in the international treaties to which the People’s Republic of China is a signatory party or in which the People’s Republic of China has joined, the common international practice shall apply. 第九十五条 【国际条约和国际惯例的适用】中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用国际条约的规定。但是，中华人民共和国声明保留的条款除外。本法和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

customs and usages'. The fact that this concept is often used together with 'Guoji Tiaoyue' (国际条约: international treaties) in the PRC legislation seemingly suggests that 'Guoji Guanli' may refer to international soft law instruments<sup>45</sup>, while 'Guoji Tiaoyue' refers to hard law-international treaties.

1.82 Returning to the CISG, is it possible to apply it as international practice, i.e. as 'international soft law' under the PRC law? This author is of the opinion that the answer should be in the affirmative. Firstly, although the CISG, an international convention, is a hard law instrument; it is relatively soft in that parties can exclude or derogate from or vary the effect of any of its provisions (Article 6 of the CISG).<sup>46</sup> Secondly, given that the CISG reflected a broad international consensus on the rules governing contracts for international sales, its use as evidence of customary international law can be easily justified. Last but not the least, as explained earlier herein, the PRC long possessed an attitude amenable to the adoption and application of the CISG, it offers a convenient avenue for the People's courts and arbitral tribunals to bridge differences between Chinese domestic law and international rules of law. Therefore, it is

---

<sup>45</sup> See Lars Meyer, *Soft Law for Solid Contracts? A Comparative Analysis of the Value of the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law to the Process of Contract Law Harmonization*, *Denver Journal of International Law and Policy* (Spring 2006) 119-155.

<sup>46</sup> See CISG Article 6: The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

arguable that the CISG 'may be applied' as international practice to fill the gaps of PRC laws according to Chinese domestic law provisions.<sup>47</sup>

1.83 The phrase 'may be applied' suggests that PRC courts and arbitral tribunals possess a great deal of discretion to decide whether or not to employ the more expansive use of the CISG as 'soft law' pursuant to Article 142 of the GPCL. Since there were significant gaps existed in the PRC's laws especially in the 1980s, the CISG provided the authoritative international uniform sales law available to fill any gaps.

1.84 In addition, the UNIDROIT Principles for International Commercial Contracts ('UPICC') is such a set of rules that reflects international practice and can also be readily used to fill existing gaps in PRC contract laws, pursuant to Article 142 of the GPCL. As will be discussed in the next chapter, the PRC Contract Law 1999 evidences the fact that the PRC legislators have consistently employed a comparative and selective approach when drafting legislation, and that international treaties and soft law instruments, such as the CISG and the UPICC have continually played a key role in developing, modernising and updating the PRC contract law.

## 1.5. THE CHINESE TEXT OF THE CISG

---

<sup>47</sup> For a discussion of the use of CISG as 'soft law', see *Larry A. DiMatteo, Lucien Dhooge, Stephanie Greene, Virginia Maurer and Marisa Pagnattaro*, The Interpretive Turn in International Sales Law: An Analysis of Fifteen Years of CISG Jurisprudence, 34 *Northwestern Journal of International Law and Business* (Winter 2004) 299-440 at 312.

1.85 In addition to the political and economic barriers discussed above, linguistic and cultural barriers also existed. The Chinese text of the CISG is not at all satisfactory in terms of its use of Chinese legal language or terminologies, although it is one of the six authentic texts of the Convention.<sup>48</sup>

1.86 For example, one of the very fundamental concepts of contract law ‘offer’ was translated to ‘Fajia’ (发价), a commercial and business term instead of ‘Yaoyue’ (要约), which is understood and acknowledged as the Chinese equivalent of ‘offer’ in the legal profession nowadays. Similarly, ‘acceptance’ was translated to ‘Jieshou Fajia’ (接受发价), a commercial term instead of ‘Chengnuo’ (承诺), the proper Chinese legal term. Was the translation, using business expressions such as ‘Fajia’ and ‘Jieshou Fajia’ due to the lack of professional legal translation skills in the early 1980? Or perhaps the lack of professional Chinese legal vocabularies at that time?

1.87 As discussed in previous sections 1.1 and 1.2 above, in the early 1980s, there was not yet a single piece of PRC domestic legislation on the subject of sales contract law or civil law in general. In fact, there was scarcely a legal profession and certainly not a legal profession equipped with knowledge of international law and relevant second languages. Thus, it was likely that the use of specific Chinese words or terminologies might largely depend on the individual

---

<sup>48</sup> Article 101 of the CISG states, inter alia: ‘...in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.’



translator who might come from a diplomatic background with little or no legal background. Unfortunately, there is very little documentation to either support or counter the above speculation.<sup>49</sup>

1.88 Professor Zhang Yuqing, former Director of the Department of Treaty and Law, Ministry of Commerce of the PRC, explained that although Chinese is one of the six official languages in the United Nations, the Convention and most of its original working documents are in English. Professor Zhang believed that the reason why the Chinese text of the CISG used non-legal terminologies was because it was translated from English by translators working for the United Nations, who might not necessarily come from the PRC or have received any legal education or training. Professor Zhang therefore recommended that readers should work on the English text instead of the Chinese text of the CISG.<sup>50</sup>

1.89 It is worth pointing out, though that traditionally PRC contract law paid very little attention to contract formation rules on 'Offer' and 'Acceptance'. These two concepts appear to be transplanted from foreign laws to China only recently. None of the PRC Economic Contract Law 1981, the PRC Foreign-Related Economic Contract Law 1985, or the PRC Technology Contract Law 1987 dealt with 'Offer' and 'Acceptance'. Under PRC Economic Contract Law 1981, only Article 9 stipulated that an economic contract is formed when parties reach agreements on the

---

<sup>49</sup> The translator of the Chinese text of the CISG is anonymous.

<sup>50</sup> See Zhang Yuqing, *Commentary on The United Nations Convention on Contracts for The International Sale of Goods* (in Chinese), 3<sup>rd</sup> edition, China Commerce and Trade Press (2009) at page 111, footnote 1.

main terms of the contract.<sup>51</sup> The only relevant article under the PRC Foreign-Related Economic Contract Law 1985, Article 7, states in subparagraph (1) that a contract is formed when parties reach agreements on the contract terms in written and signed. When agreement is in the forms of letter, telegraph and facsimile, if one party requires confirmation, the contract is formed when the confirmation is signed. Further, it states in subparagraph (2) that for those requiring state approval under PRC law and administrative rules, the contracts are formed when they are approved.<sup>52</sup> The PRC Technology Contract Law 1987 Article 10 stipulates that a technology contract is formed when parties sign or put a seal on it; for those requiring approval by relevant state organs under the state regulations, the contracts are formed when they are approved.<sup>53</sup> ‘Offer’ and ‘Acceptance’ did not exist in Chinese sales contract law until they first appeared in the PRC Contract Law 1999 (‘CL1999’).<sup>54</sup>

1.90 Has the legal profession accepted the Chinese translations of ‘Offer’ and ‘Acceptance’ as ‘Fajia’ and ‘Jieshou Fajia’ as in the CISG? The CL1999 did not follow the translations of ‘Offer’ and

---

<sup>51</sup> See the PRC Economic Contract Law 1981 Article 9. Chinese text: 第九条: 当事人双方依法就经济合同的主要条款经过协商一致, 经济合同就成立.

<sup>52</sup> See the PRC Foreign-Related Economic Contract Law 1985, Article 7, Chinese text: 第七条: 当事人就合同条款以书面形式达成协议并签字, 即为合同成立。通过信件、电报、电传达成协议, 一方当事人要求签订确认书的, 签订确认书时, 方为合同成立。中华人民共和国法律、行政法规规定应当由国家批准的合同, 获得批准时, 方为合同成立.

<sup>53</sup> See the PRC Technology Contract Law 1987 Articles 9 and 10. Chinese texts: 第九条: 技术合同的订立、变更和解除采用书面形式。第十条: 技术合同自当事人在合同上签名、盖章后成立; 按照国家规定需要经过有关机关批准的, 自批准时起成立。

<sup>54</sup> See the PRC Contract Law 1999 Articles 13 to 31. Article 13: The parties conclude the contract by means of offer and acceptance. Chinese text: 当事人订立合同采取要约 (Yaoyue)、承诺 (Chengnuo) 方式。

‘Acceptance’ as ‘Fajia’ and ‘Jieshou Fajia’ as in the CISG, but adopted ‘Yaoyue’ and ‘Chengnuo’ as the equivalent Chinese legal terms. ‘Yaoyue’ and ‘Chengnuo’ are also the terms used in the Chinese text of the UPICC.<sup>55</sup> Today, ‘Yaoyue’ and ‘Chengnuo’ are widely accepted and used by the legal profession as proper Chinese legal terminologies.

1.91 In the CIETAC Pig Iron case (25 December 1998),<sup>56</sup> the counsel and tribunal all use ‘Yaoyue’ and ‘Chengnuo’ in the proceedings and all documents. The tribunal, in particular, stated: ‘According to Article 14(1) of the CISG, this should be regarded as a ‘sufficiently definite’ ‘proposal’ and constitutes an offer’.<sup>57</sup> The original Chinese text of the award clearly used the term ‘Yaoyue’ (要约), instead of ‘Fajia’ (发价). ‘Fajia’ (发价) and ‘Jieshou Fajia’ (接受发价), albeit appeared in the Chinese text of the CISG, have in fact been disregarded and replaced by ‘Yaoyue’ (要约) and ‘Chengnuo’ (承诺) by the legal profession.<sup>58</sup>

1.92 It is proposed that the Chinese text of the CISG should be revised and updated. Since it involves an amendment to one of the six original versions of the CISG and the CISG does not contain any

---

<sup>55</sup> See Unidroit Principles 1994 Article 2.1, (same in Unidroit Principles 2004 Article 2.1.1.) - Manner of Formation: A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement. Chinese text: 第 2.1.1 条（订立的形式）：合同可通过对要约（‘Yaoyue’）的承诺（‘Chengnuo’）或通过能充分表明当事人各方合意的行为而成立。

<sup>56</sup> See China 25 December 1998 CIETAC Arbitration proceeding (*Pig Iron case*) [translation available] [Cite as: <http://cisgw3.law.pace.edu/cases/981225c1.html>]

<sup>57</sup> See *ibid*, Chinese text: 按照《公约》第 14 条第 1 款的规定，应认为是‘十分确定’的‘建议’，应该构成**要约**。

<sup>58</sup> See Zhang Yuqing, Commentary on The United Nations Convention on Contracts for The International Sale of Goods (in Chinese), 3<sup>rd</sup> edition, China Commerce and Trade Press (2009) at page 111, footnote 1.

built-in amendment procedures; the PRC should make a proposal to amend the Chinese text of the CISG to all the Contracting States pursuant to Article 40 of the Vienna Convention on the Law of Treaties.<sup>59</sup> Alternatively, the PRC should deposit a new version of the Chinese text to the United Nations as the recommended Chinese text. This is a pragmatically useful thing to do because PRC Courts and Arbitral Tribunals can then follow the amended text. After all, outside of the PRC, there will not be many instances where the Chinese text of the CISG will be applied.

## **1.6. CONCLUSION (Chapter 1)**

1.93 This chapter explained the relationship between the adoption of the CISG and the development of Chinese contract law and legal framework pre-1999. It identified the political, economic and legal barriers which led to the two reservations to the CISG made by the PRC. Nevertheless, the adoption of the CISG furthered the development of a modern sales contract law regime in the PRC, even though, the impact of the CISG on the PRC domestic contract and sales law legislation in the 1980s was not as significant as it could have been.

---

<sup>59</sup> Article 40 of the Vienna Convention on the Law of Treaties: 1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs. 2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in: (a) the decision as to the action to be taken in regard to such proposal; (b) the negotiation and conclusion of any agreement for the amendment of the treaty. 3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended. 4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4(b), applies in relation to such State. 5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State: (a) be considered as a party to the treaty as amended; and (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

1.94 As discussed in this chapter, political and economic barriers led to the PRC employing a cautious approach in adopting the CISG. The inability of a Chinese individual to be a party to a Foreign-related economic contract was a politically sensitive issue at that time. The fledgling market economy at the beginning stage of the Reform and Opening-up in the country required a separate legal regime for Foreign-related contracts. This domestic and Foreign-related split also acted as a necessary buffer, which allowed the domestic market economy to further develop before opening itself to the outside world. The PRC's adoption of the CISG was an expression of its willingness to enter into the mainstream of international diplomacy and it was perhaps politically necessary. However, the influence of the CISG on commercial and legal practice was rather limited and lagged behind diplomatic activities and political pronouncements.

1.95 From this perspective, while the CISG provided a timely model for the PRC to modernise its contract and sales law legislation, domestic considerations prevented the PRC from adopting the CISG in its entirety. Unsurprisingly, the PRC declared two reservations. The pre-1999 PRC contract and sales law comprised the Economic Contract Law (1981), the Foreign-related Economic Contract Law (1985) and the Technology Contract Law Technology Contract Law (1987), which largely followed models from the USSR.

1.96 Moreover, the use of the CISG in the PRC pre-1999 was frustrated by the lack of a comprehensive understanding of the western style contract law and conflict law rules. Language and cultural barriers also existed. The Chinese translation of the CISG was unprofessional in

terms of its use of legal language and terminologies. Some fundamental legal concepts, such as 'Offer' and 'Acceptance', were translated into business expressions 'Fajia' (发价) and 'Jieshou Fajia' (接受发价) instead of proper legal terms 'Yaoyue' (要约) and 'Chengnuo' (承诺). The poor quality of the Chinese text of the CISG was likely due to the lack of professional legal vocabularies and the fact that a modern legal profession had yet to emerge.

- 1.97 This chapter has also uncovered that contract law as a formal legal institution did not exist in China until the first PRC Economic Contract Law was promulgated in 1981. 'Offer' and 'Acceptance' did not form any part of the PRC contract law regime in pre-1999. To open up and reform, the PRC needed to build a modern contract law regime from scratch. The CISG was one of the best models available. It is an international treaty that has received the participation and acknowledgement of the PRC, as well as from other socialist and developing countries. It provided a neutral model for the PRC legislators at the time. This chapter has demonstrated that the attitudes towards the adoption and application of the CISG in the PRC were largely positive.

## **2. CHAPTER TWO: BARRIERS TO THE APPLICATION OF THE CISG IN THE PRC AFTER 1999**

### **2.0. INTRODUCTION**

2.01 The previous chapter provided an overview of the adoption of the CISG by the PRC and the concurrent evolution of PRC contract law in pre-1999. It identified the historical, political, economic, cultural and legal barriers to the application of the CISG in the PRC prior to the promulgation of the PRC Contract Law 1999 ('CL1999'). This chapter analyses whether those political, economic and legal barriers identified in previous chapter have been overcome since the promulgation of the CL1999 (Section 2.1.). This chapter also considers whether the CL1999 and the PRC's Article 95 (Section 2.2.) and Article 96 reservations (Section 2.3.) comport. The chapter then concludes with the contention that the PRC should withdraw these two reservations.

### **2.1. CONTRACT LAW IN THE PRC (POST-1999)**

2.02 In 1999, the PRC amended its Constitution once again. The amendments accorded legal legitimacy to private and other diverse forms of ownership supplementing the existing forms of

public and collective ownership.<sup>1</sup> The drafters also added that: '[T]he People's Republic of China shall be governed according to the law and shall be built into a socialist country based on the *rule of law* (emphasis added).<sup>2</sup> These constitutional changes reflected a growing consensus at the highest level in the Chinese Communist Party ('CCP') that the PRC should continue with its transformation to a socialist market economy. This would necessitate the continued development and reform of the country's legal system.

2.03 The Amendments to the Constitution (1999) was promulgated and came into effect on 15 March 1999. The PRC Contract Law 1999 was also promulgated on the same date, 15 March 1999, although it came into force later, on 01 October 1999. As discussed in Chapter 1, individuals in the PRC lacked the legal capacity to enter into economic contracts. This, in turn, necessitated

---

<sup>1</sup> See 1999 Amendments to the Constitution of the People's Republic of China Article 14: Article 6 of the Constitution is revised to read, 'The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people. The system of socialist public ownership supersedes the system of exploitation of man by man; it applies the principle of 'from each according to his ability, to each according to his work'. 'In the primary stage of socialism, the State upholds the basic economic system in which the public ownership is dominant and *other forms of ownership* develop side by side and keeps to the distribution system in which distribution according to work is dominant and diverse modes of distribution coexist.' (emphasis added) Chinese text of the article: 中华人民共和国宪法修正案 1999 第十四条 宪法第六条修改为: '中华人民共和国的社会主义经济制度的基础是生产资料的社会主义公有制, 即全民所有制和劳动群众集体所有制。社会主义公有制消灭人剥削人的制度, 实行各尽所能、按劳分配的原则。' 国家在社会主义初级阶段, 坚持公有制为主体、多种所有制经济共同发展的基本经济制度, 坚持按劳分配为主体、多种分配方式并存的分配制度。'

<sup>2</sup> See 1999 Amendments to the Constitution of the People's Republic of China Article 13: A new paragraph is added to Article 5 of the Constitution as the first paragraph, which reads, 'The People's Republic of China governs the country according to law and makes it a socialist country under *rule of law*.' (emphasis added) Chinese text of the article: 中华人民共和国宪法修正案 1999 第十三条 宪法第五条增加一款, 作为第一款, 规定: '中华人民共和国实行依法治国, 建设社会主义法治国家。'



the creation of ‘three-pillar’<sup>3</sup> contract law regime enacted during the 1980s. The CL1999 changed this when, for the first time, Article 2 granted natural persons the legal capacity to contract. This allowed a natural person to not only enter into a contract with a domestic party, but also a foreign party.

2.04 It was a necessary step for the PRC to be able to unify the previous ‘three-pillar’ contract law regime and in particular to eliminate the split between domestic and foreign-related contracts. As a result, those barriers to the application of the CISG in the PRC created by the domestic and foreign-related split, as discussed in previous chapter, were removed. A comparison of Article 2 of the CL1999 and its comparable Article under the Amended Economic Contract Law (1993) is set out in the table below (emphasis added):

<b>Amended Economic Contract Law (1993)</b>	<b>Contract Law (1999)</b>
Article 2 This law applies to contracts <i>between civil subjects with equal status, i.e. between legal persons, other economic entities, private industrial and commercial households, farm contracting or leasing households</i> , for the purpose of realizing certain economic goals and clarifying each other’s rights and obligations.	Article 2 A contract in this Law refers to an agreement <i>among natural persons, legal persons or other organizations as equal parties</i> for the establishment, modification of a relationship involving the civil rights and obligations of such entities.  Agreements concerning personal relationships such as marriage, adoption, guardianship, etc. shall be governed by other laws.

---

<sup>3</sup> See Liang Huixing, Cong Sanzudingli Zouxian Tongyi De Hetongfa [From the three pillars to a unified contract law], Zhongguo Faxue [Chinese Jurisprudence], No.3, 1995 at page 9.

Amended Economic Contract Law (1993)	Contract Law (1999)
第二条 本法适用于平等民事主体的法人、其他经济组织、个体工商户、农村承包经营户相互之间，为实现一定经济目的，明确相互权利义务关系而订立的合同。	第二条 【合同定义】本法所称合同是平等主体的自然人、法人、其他组织之间设立、变更、终止民事权利义务关系的协议。婚姻、收养、监护等有关身份关系的协议，适用其他法律的规定。

2.05 The CL1999 abandoned the concept of ‘economic contract’ and it no longer prescribed ‘economic goals’ as did its predecessors. Thus, the CL1999 not only unified the previous two economic contract laws and the technology contract law, but also expanded the scope of contract law in the PRC. Contract law now applies to all other types of contracts, both domestic and foreign-related excepting those dealing with personal relationships, such as matrimony, adoption, and guardianship.<sup>4</sup> The creation of a single contract law regime greatly simplified the treatment of contractual matters within the PRC. This reduced the number of contract laws with which the CISG had to interact from three to one making its application in the PRC more straightforward.

2.06 The diverse business and contractual activities that began to emerge as the PRC made its transition to a socialist market economy required a contract law capable of addressing the rapidly changing economic landscape. In addition to the General Provisions<sup>5</sup>, the CL1999 also

---

<sup>4</sup> See the CL1999 Article 2 in the table above.

<sup>5</sup> See the CL1999 Part I – General Provisions.

contains Specific Provisions that address fifteen types of specific contracts<sup>6</sup>. Categories of contracts not included in the Specific Provisions, such as contracts for guarantee or insurance, are governed either by special law<sup>7</sup>, or by the General Provisions. In the case of contracts governed by both special laws and the Specific Provisions, where conflicts between the two exist, the special law controls. Further, where it appears that neither a special law nor the Specific Provisions apply to the contract in question, the provisions of the CL1999 may apply *mutatis mutandis*.<sup>8</sup> Compared to its predecessors, the CL1999's 428 provisions were very comprehensive.<sup>9</sup>

---

<sup>6</sup> See the CL1999 Part II – Specific Provisions. The fifteen types of specific contracts are Contracts of sale (Chapter 9), Contracts for the supply and use of Electricity, Water, Gas and Heating (Chapter 10), Gift Contracts (Chapter 11), Loan Contracts (Chapter 12), Lease Contracts (Chapter 13), Financial Leasing Contracts (Chapter 14), Contracts for work (Chapter 15), Contracts for Construction Projects (Chapter 16), Contracts of Carriage (Chapter 17), Technology Contracts (Chapter 18), Deposit Contracts (Chapter 19), Warehousing Contracts (Chapter 20), Mandate Contracts (Chapter 21), Commission Agency Contracts (Chapter 22) and Brokerage Contracts (Chapter 23). Contracts for carriage (Chapter 17) include contracts for the carriage of passengers, contracts for the carriage of goods and multimodal transport contracts. Technology contracts (Chapter 18) include contracts for technology development, contracts for the transfer of technology, contracts for technical consultancy and contracts for technical service.

<sup>7</sup> E.g. Contracts for Guarantee are governed by the PRC Guarantee Law and Contracts for Insurance are governed by the PRC Insurance Law. See the CL1999 Article 123: Where other laws have special provisions on special contracts, such special provisions shall prevail. 第一百二十三条 【其他规定的适用】其他法律对合同另有规定的，依照其规定。E.g.

<sup>8</sup> See the CL1999 Article 124: Where there are no explicit provisions in the Specific Provisions of this Law or in any other laws governing a certain contract, the provisions in the General Provisions of this Law shall apply, and reference may be made to the provisions in the Specific Provisions of this Law or in any other law that most closely relate to that contract. 第一百二十四条 【无名合同】本法分则或者其他法律没有明文规定的合同，适用本法总则的规定，并可以参照本法分则或者其他法律最相类似的规定。

<sup>9</sup> There were 57 provisions in the Economic Contract Law (1981), 43 in the Foreign-related Economic Contract Law (1985), 55 in the Technology Contract Law (1987) and 47 in the Amended Economic Contract Law (1993).

2.07 The CL1999 also recognised for the first time, the following: (1) freedom of contract (Article 4)<sup>10</sup>; (2) good faith (Article 6)<sup>11</sup>; and (3) oral and other forms of contract (Article 10)<sup>12</sup>. The CL1999 also set forth detailed contract formation rules (Articles 9-43), prohibited negotiations in bad faith (Article 42)<sup>13</sup>, and imposed a duty of confidentiality (Article 43)<sup>14</sup>. All these features were drawn upon from the CISG and the UPICC which are the two most important bodies of international rules of law governing international sales and commercial contracts. A modern, internationalised PRC contract law had finally emerged. As will be discussed in Chapter 3, the CL1999, the unified contract law is harmonised with the CISG and the UPICC.

---

<sup>10</sup> See the CL1999 Article 4: The parties have the right to lawfully enter into a contract of their own free will in accordance with the law, and no unit or individual may illegally interfere therewith. 第四条 【合同自由原则】当事人依法享有自愿订立合同的权利，任何单位和个人不得非法干预。

<sup>11</sup> Article 6 The parties shall observe the principle of honesty and good faith in exercising their rights and performing their obligations. 第六条 【诚实信用原则】当事人行使权利、履行义务应当遵循诚实信用原则。

<sup>12</sup> Article 10 The parties may use written, oral or other forms in entering into a contract. A contract shall be in written form if the laws or administrative regulations so provide. A contract shall be concluded in written form if the parties so agree. 第十条 【合同的形式】当事人订立合同，有书面形式、口头形式和其他形式。法律、行政法规规定采用书面形式的，应当采用书面形式。当事人约定采用书面形式的，应当采用书面形式。

<sup>13</sup> Article 42 The party shall be liable for damage if it is under one of the following circumstances in concluding a contract and thus causing losses to the other party: (1) pretending to conclude a contract, and negotiating in bad faith; (2) deliberately concealing important facts relating to the conclusion of the contract or providing false information; (3) performing other acts which violate the principle of good faith. 第四十二条 【缔约过失】当事人在订立合同过程中有下列情形之一，给对方造成损失的，应当承担损害赔偿责任：（一）假借订立合同，恶意进行磋商；（二）故意隐瞒与订立合同有关的重要事实或者提供虚假情况；（三）有其他违背诚实信用原则的行为。

<sup>14</sup> Article 43 A trade secret the parties learn in concluding a contract shall not be disclosed or improperly used, no matter the contract is concluded or not. If the party discloses or improperly uses such trade secret and thus causing loss to the other party, it shall be liable for damages. 第四十三条 【保密义务】当事人在订立合同过程中知悉的商业秘密，无论合同是否成立，不得泄露或者不正当地使用。泄露或者不正当地使用该商业秘密给对方造成损失的，应当承担损害赔偿责任。

- 2.08 These reforms and developments in the PRC domestic contract law reflect the PRC legislators' confidence in the growing maturity of its re-engineered economy and the ability of parties from the PRC to fully participate in the international market under international rules of law. The form and content of the CL1999 demonstrates the increased openness of the PRC to international models. The changes created a more amenable environment for the application of the CISG within the country. By deepening the scope of party autonomy and streamlining its contract law system, many of the legal impediments to the application of the CISG identified in the previous chapter were either removed or greatly reduced.

## **2.2. THE CL1999 AND PRC'S ARTICLE 95 RESERVATION**

- 2.09 This section investigates the effects, if any, of the PRC's Article 95 reservation on the CL1999 and whether the Article 95 reservation squares with current PRC contract law and practice.

### **2.2.1. PRC'S ARTICLE 95 RESERVATION IN THEORY**

- 2.10 The implementation of the CL1999 resulted in the repeal of the Economic Contract Law (1981), the Foreign-Related Economic Contract Law (1985) and the Technology Contract Law (1987). Thus, the PRC replaced its separate domestic and international contract laws with one single piece of legislation - the CL1999. The socialist market economy of the PRC was entering into a

more mature stage of its development, necessitating further changes to the PRC legislation. If the purpose of the Article 95 reservation was to safeguard the distinction between international and domestic contracts, the enactment of the CL1999 would seem to suggest that PRC legislators no longer found such distinction either necessary or preferable. This, in turn, would seem to render the Article 95 reservation unnecessary.

- 2.11 The effect of excluding the application of the CISG pursuant to Article 1(1)(b) has proven controversial in both theory and practice. Philip De Ly cites three variations in the interpretation of those reservations<sup>15</sup>:

*'The first variation is the mere reservation against the extension of CISG to sales where one of the parties has its place of business in a non-Contracting State but is faced with the application of CISG by virtue of a conflict rule of the court having jurisdiction leading to the application of the law of a Contracting State. For instance, the US, the People's Republic of China, Singapore, the Czech Republic and Slovakia have used this mere reservation variation.'*

---

<sup>15</sup> See Philip De Ly, *'Sources of International Sales Law: An Eclectic Model'*, at UNCITRAL -- SIAC Conference on 25 Years United Nations Convention on Contracts for the International Sale of Goods, Singapore (22 September 2005), available at: <http://www.cisg.law.pace.edu/cisg/text/e-text-95.html>

*A second variation is the German variation where German courts will not apply Article 1(1)(b) CISG in sales where Article 95 reservation states are involved.*

*A third one is the Dutch variation. Article 2 of the Dutch Implementing CISG Act dated December 18, 1991 request foreign judges in Article 95 reservation states not to apply the Dutch Civil Code provisions on sales (Book 7, Title 1 of the Civil Code) but rather CISG, if Dutch law were to be applicable by virtue of the local conflict rule. This suggestion is of course not binding on foreign courts but by enacting this Dutch solution the legislator has indicated that under Dutch law it prefers a solution which enhances uniformity rather than one that relies on local Dutch law'*

- 2.12 The PRC's Article 95 reservation belongs to the first variation identified above by De Ly. Accordingly, if, a seller in the PRC sells to a buyer in a non-Contracting State, Article 95 means that the PRC courts are not bound to apply the CISG where the relevant rules of private international law lead to the application of PRC law (i.e. the law of a CISG Contracting State). Moreover, if, for example, the relevant rules of private international law point to the law of the

PRC, a PRC court should apply PRC domestic laws, i.e. the CL1999 and in some instances, the GPCL as well.<sup>16</sup>

2.13 It is worth pointing out, however, that even within what De Ly called the first variation of the Article 95 reservation, there are two further variations. The majority of the Declaring States, e.g. the US, the PRC, the Czech Republic and Slovakia, in their declarations have used the wording of either ‘does not consider itself to be bound by Article 1(1)(b)’ or ‘will not be bound by Article 1(1)(b)’. As the only exception, the Government of the Republic of Singapore declared:

*‘In accordance with article 95 of the said Convention, the Government of the Republic of Singapore will not be bound by sub-paragraph (1) (b) of article 1 of the Convention and will apply the Convention to the Contracts of Sale of Goods only between those parties whose places of business are in different States when the States are Contracting States.’<sup>17</sup> [emphasis added]*

---

<sup>16</sup> The GPCL could be relevant because it correlates closely with the CL1999. Where there is an ambiguity or a gap in the application and interpretation of the CL1999, the GPCL will come into play. In particular, Chapter VI Civil Liability, Section 2 Civil Liability for Breach of Contract, and Chapter VIII Application of Law in Foreign-related Civil Relations, are pertinent to international sales contracts. Where there are overlaps and conflicts between these two pieces of legislation, the CL1999, as special legislation, prevails over the GPCL, as general legislation.

<sup>17</sup> See United Nations Treaty Collections (UNTC) website: Chapter X 10. available at: [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-10&chapter=10&lang=en#EndDec](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en#EndDec)



2.14 This author is of the view that unlike the declarations made by other Declaring States, Singapore's declaration made clear that Singapore would apply the CISG only between those parties whose places of business are in different Contracting States.<sup>18</sup> The PRC's declaration did not include such an explicit limitation on the application of the CISG. Arguably, the PRC's Article 95 reservation could be construed to mean that while the PRC does not consider itself bound by Article 1(1)(b), it may apply the CISG pursuant to Article 1(1)(b) or in other situations where it deems it appropriate to do so. It is, however, difficult to ascertain whether the PRC intended such a result when it lodged its reservation back in the 1980s. Uncertainties therefore remain.

2.15 The Article 95 reservation also raises questions as to its effects on foreign courts and tribunals, especially on those sitting in Contracting States that have not made the Article 95 reservation. Professor Michael G. Bridge uses the following two examples to illustrate.<sup>19</sup> The first example concerns a dispute brought before a Belgian court involving a New York seller and an Irish buyer where the contract provides that Belgian law governs. In the second example, the parties and venue remain the same, but the contract now states that New York state law governs.

---

<sup>18</sup> For a review of Singapore's Article 95 Reservation, see Gary Bell, 'Why Singapore should withdraw its reservation to the United Nations Convention on Contracts for the International Sale of Goods (CISG)', *Singapore Year Book of International Law*, (2005) 9 SYBIL 55 – 73.

<sup>19</sup> See Michael G. Bridge, *Uniform and Harmonized Sales Law: Choice of Law Issues*, in: James J. Fawcett, Jonathan M. Harris & Michael Bridge, *International Sale of Goods in the Conflict of Laws*, Oxford University Press (2005) 908-988.

2.16 In the first example, if the dispute had been litigated in the New York courts, the CISG could not have been applied because of the Article 95 reservation made by the United States ('US'). The New York court would, on the face of it at least apply Belgian domestic law according to the parties' agreement on choice of the Belgian law. The immediate question then should be what Belgian domestic law is for dealing with international sales of this type.

2.17 According to Professor Bridge's analysis, the attitude of the Belgian court would turn upon how far the US declaration is interpreted as going. Since Belgium has made no reservation under Article 95 and the reservation made by the US merely recites that the US shall not be bound by Article 1(1)(b), Professor Bridge considers as a matter of treaty law that Article 95 reservation 'purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that [*Reserving*] State' (emphasis added).<sup>20</sup> Therefore, Professor Bridge is of the opinion that a Belgian court applying Belgian law in a case involving a US Article 95 declaration would still apply the CISG.<sup>21</sup>

2.18 As for the second example, Professor Bridge opines that for the purposes of Article 1(1)(b) and the Belgian private international law rules, the United States should be regarded as a Contracting State notwithstanding its Article 95 reservation.<sup>22</sup> Thus, the Belgian court has been

---

<sup>20</sup> See Article 2(1)(d) of the UN Convention on the Law of Treaties 1969. Emphasis added.

<sup>21</sup> Super note 19.

<sup>22</sup> This position differs from the German declaration, which states that '*The Government of the Federal Republic of Germany holds the view that Parties to the Convention that have made a declaration under article 95 of the*

led to the law of a Contracting State, i.e. the law of the US. Therefore, the immediate question is whether the Belgian court should apply Article 2 of the Uniform Commercial Code as the law designated by New York law for international sales; or the CISG under Article 1(1)(b) as part of Belgian domestic law. In Professor Bridge's opinion, the latter is the better view. After all, Belgium did not enter an Article 95 reservation and has no cause to turn to Article 2 of the Uniform Commercial Code.<sup>23</sup>

2.19 Both of the above examples seem to suggest that a court sitting in a non-Declaring Contracting State would likely apply the CISG despite the presence of an Article 95 reservation. If all non-Declaring Contracting States took the approach illustrated above, the ability to use the Article 95 reservation as a means to limit the CISG's application would be considerably diminished. Indeed, Professor Bridge contends that the Convention's success has rendered the Article 95 reservation inconsequential.<sup>24</sup>

---

*Convention are not considered Contracting States within the meaning of subparagraph (a) (b) of article 1 of the Convention. Accordingly, there is no obligation to apply - and the Federal Republic of Germany assumes no obligation to apply - this provision when the rules of private international law lead to the application of the law of a Party that has made a declaration to the effect that it will not be bound by subparagraph (1) (b) of article 1 of the Convention. Subject to this observation the Government of the Federal Republic of Germany makes no declaration under article 95 of the Convention.'* [Emphasis added] Available at UN treaty database:

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-10&chapter=10&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en#EndDec) . See discussion in Schlechtriem, P., 'Uniform Sales Law - The Experience with Uniform Sales Laws in the Federal Republic of Germany,' *Juridisk Tidsskrift vid Stockholms Universitet* (1992) pp. 6-7, available at

<http://www.cisg.law.pace.edu/cisg/biblio/schlechtriem.html>

<sup>23</sup> See super note 19.

<sup>24</sup> Ibid.

2.20 Returning to the PRC, it is submitted that the Article 95 reservation is incompatible with the CL1999. As pointed out in section 2.1 above, the drafters of the CL1999 intended to create a single uniform contract law applicable to both domestic and international or the so-called foreign-related contracts. Thus, the split between domestic and foreign-related sales contracts that the Article 95 reservation dictates undercuts the CL1999's *raison d'être*.

2.21 More importantly, the CL1999 does not contain a specific regime for international sales contracts. The drafters of the CL1999 were well aware of the CISG, a convention to which the PRC is a party, and therefore a formal source of law in the PRC. Under the legislative policy to combine both domestic and international contract law regimes in the CL1999, the drafters of the CL1999 perhaps considered it unnecessary to include the CISG's provisions in the CL1999. Indeed, the CL1999's Chapter 9 on Sales Contracts appears to deal with issues pertinent to domestic sales only. Neither the CL1999 nor the GPCL specifically addresses international sales contracts. It is uncertain how PRC and foreign courts will react when face with a domestic contract law that lacks a specific legal regime for international sales contracts. Given the above, the PRC's Article 95 reservation would still appear to prevent the application of the CISG in the PRC.

2.22 The uncertainty in interpretation that still envelopes Article 1(1)(b) of the CISG raises additional concern. Article 95 prevents the application of the CISG pursuant to Article 1(1)(b) when the rules of private international law lead to the application of the law of a Contracting State. But

what constitutes the 'rules of private international law' under Article 1(1)(b)? Would such body of rules include the rule of closest connection? Would it include the rule of party's explicit and/or implicit choice of law? What is the relationship between the principle of party autonomy and the rules of private international law under Article 1(1)(b)? Does Article 1(1)(b) apply (1) when parties explicitly or implicitly choose the law of a Contracting State and/or (2) when in the absence of parties' explicit or implicit choice of applicable law, the court applies the rules of private international law?

2.23 The author argues that the Article 95 reservation only excludes the application of the CISG as the law of the reserving Contracting States when the court applies rules of private international law. It would not, however, exclude the application of the CISG as the law of the Declaring Contracting States when the parties choose the law of the Declaring Contracting States as the governing law. In the context of the PRC, if parties explicitly or implicitly choose the law of the PRC as governing law, the CISG should still apply; if, in the absence of parties' explicit or implicit choice of law, the court of PRC and foreign alike, applying the rules of private international law, most likely the closest connection test, should not apply the CISG as a result of the PRC's Article 95 reservation.<sup>25</sup>

2.24 But how have the PRC courts understood, interpreted and applied the PRC's Article 95 reservation in practice?

---

<sup>25</sup> This proposition is further developed in paragraphs 2.49 and 2.50.

## **2.2.2. ARTICLE 95 RESERVATION IN PRC COURTS' PRACTICE**

2.25 A review of the eighty-two PRC court decisions published on the Pace CISG database<sup>26</sup> reveals the following.

### **2.2.2.1. APPLYING THE CISG WITH LITTLE OR NO DISCUSSION ON APPLICABLE LAW**

2.26 Pre-1999 PRC court cases reveal that PRC courts paid little or no attention to the question of applicable law issue in those cases. They did not normally contain any reason or explanation on the applicable law. Rather, the court simply applied the law or rules it deemed fit.

2.27 In *Skandinaviska v. Hunan Co.*<sup>27</sup>, a case between a Swedish buyer and a PRC seller, the Changsha Intermediate People's Court simply held the CISG applicable to the dispute at hand.<sup>28</sup> No reason or explanation was given for its decision to apply the CISG, nor did it address Sweden's

---

<sup>26</sup> See <http://www.cisg.law.pace.edu/cisg/text/caselit.html#china> (last accessed on 10 January 2011)

<sup>27</sup> See China 18 September 1995 Changsha Intermediate People's Court (*Skandinaviska v. Hunan Co.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/950918c1.html>]

<sup>28</sup> The court held '[A]ccording to the CISG Articles 1, 4, 18, 73, 74 and 77, the Court renders the following rulings...' see id.

reservation under Art 92, which excludes the application of Part II (Articles 14 to 24) of the CISG.

The court simply applied Article 18 of the CISG anyway.

2.28 In *Akefamu v. Sinochem Hainan*<sup>29</sup>, a case between a Dutch buyer and a PRC seller, the Court of the First Instance, Shanghai No. 2 Intermediate People's Court applied Articles 38(1) and (3) of the CISG without giving any reason for its application. Later, the Appellate Court, Shanghai High People's Court did likewise. In addition to Articles 24, 35(1), 78 of the CISG, the Appellate Court applied Articles 106(1) and 112(1) of the GPCL. Because the court did not provide any explanation as to its decision to apply both the CISG and GPCL, the rationale behind its decision cannot be ascertained.

2.29 A review of the CISG and GPCL provisions referred to by the Appellate Court suggests that the GPCL would relate to this case because it provides general principles on liabilities for breach of contract (Article 106 of the GPCL)<sup>30</sup> and damages (Article 112 of the GPCL)<sup>31</sup>. It is also worth noting that the PRC Foreign-related Contract Law in effect at that time did not contain any provisions comparable to the CISG's Articles 24 and 35(1), but its Article 23 did mirror CISG's

---

<sup>29</sup> See China 1997 Shanghai Higher People's Court (*Akefamu v. Sinochem Hainan*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/970000c1.html>]

<sup>30</sup> Article 106 (1) Citizens and legal persons who breach a contract or fail to fulfil other obligations shall bear civil liability. 第一百零六条 【归责原则】公民、法人违反合同或者不履行其他义务的，应当承担民事责任。

<sup>31</sup> Article 112 (1) The party that breaches a contract shall be liable for compensation equal to the losses suffered as a consequence to the beach by the other party. 第一百一十二条 【赔偿责任与违约金】当事人一方违反合同的赔偿责任，应当相当于另一方因此所受到的损失。

Article 78. The Appellate Court's resort to the CISG reflected a need to apply the CISG as primary source of law for the PRC sales law even under the pre-1999 contract law regime.

2.30 In *China Yituo Group Company v. Germany Gerhard Freyso LTD GmbH & Co.*,<sup>32</sup> which involved a German buyer and a PRC seller, the Second Intermediate People's Court of Shanghai applied Article 142 of the GPCL and Articles 53, 74, 78, 85, and 88(1) and (2) of the CISG. The court did not provide an explicit explanation of its reasoning regarding its decision on applicable law. It did, however, cite Article 142 of the GPCL, which provides:

*'(1) The application of law in civil relations with foreigners shall be determined by the provisions in this Chapter 8;*

*(2) If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations; and*

---

<sup>32</sup> See China 22 June 1998 Second Intermediate People's Court of Shanghai (*China Yituo Group Company v. Germany Gerhard Freyso LTD GmbH & Co.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/980622c1.html>]



*(3) International practice may be applied on matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.<sup>33</sup>*

By citing Article 142 of the GPCL, the court in this case provided at least some legal basis for applying the CISG. Nonetheless, the court's rationale for its decision to apply the CISG remains elusive.

2.31 In *Hang Tat v. Rizhao*<sup>34</sup> which involved an American buyer and a PRC seller, the Rizhao Intermediate People's Court of Shandong Province, again without stating any reason, simply ruled:

*'Pursuant to Articles 18, 19, 22, 23 of the Foreign-related Contract Law of the People's Republic of China, Article 6 (1) of the Supreme Court's Reply on Some Problems of Application of the Foreign-related Contract Law of the*

---

<sup>33</sup> Article 142 in Chinese text: 第一百四十二条 【一般规定】涉外民事关系的法律适用，依照本章的规定确定。中华人民共和国缔结或者参加的国际条约同中华人民共和国的民事法律有不同规定的，适用国际条约的规定，但中华人民共和国声明保留的条款除外。中华人民共和国法律和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

<sup>34</sup> See China 17 December 1999 Rizho Intermediate People's Court, Shandong Province (*Hang Tat v. Rizhao*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/991217c1.html>]

*People's Republic of China, and Articles 86(1) and 88 of the CISG, the court*

*hereby decides...*<sup>35</sup>

2.32 The court did not discuss the choice of law issue, nor did it provide any basis for its decision to apply the Foreign-related Contract Law (since repealed) in conjunction with the CISG. The Foreign-related Contract Law provided general rules on mitigation of damages (Articles 18<sup>36</sup> and 22<sup>37</sup>), measuring of damages (Article 19)<sup>38</sup>, and interest (Article 23)<sup>39</sup>, which apply to all

---

<sup>35</sup> Ibid.

<sup>36</sup> See Foreign-related Contract Law (repealed) Article 18: If a party fails to perform the contract or its performance of the contractual obligations does not conform to the agreed terms, which constitutes a breach of contract, the other party is entitled to claim damages or demand other reasonable remedial measures. If the losses suffered by the other party cannot be completely made up after the adoption of such remedial measures, the other party shall still have the right to claim damages. 第十八条 当事人一方不履行合同或者履行合同义务不符合约定条件, 即违反合同的, 另一方有权要求赔偿损失或者采取其他合理的补救措施。采取其他补救措施后, 尚不能完全弥补另一方受到的损失的, 另一方仍然有权要求赔偿损失。

<sup>37</sup> See Foreign-related Contract Law (repealed) Article 22: A party which suffers losses resulting from a breach of contract by the other party shall promptly take appropriate measures to prevent the losses from becoming severer. If the losses are aggravated as a result of its failure to adopt appropriate mitigation measures, it shall not be entitled to claim compensation for the aggravated part of the losses. 第二十二条 当事人一方因另一方违反合同而受到损失的, 应当及时采取适当措施防止损失的扩大; 没有及时采取适当措施致使损失扩大的, 无权就扩大的损失要求赔偿。

<sup>38</sup> See Foreign-related Contract Law (repealed) Article 19: The liability of a party to pay compensation for the breach of a contract shall be equal to the loss suffered by the other party as a consequence of the breach. However, such compensation may not exceed the loss which the party responsible for the breach ought to have foreseen at the time of the conclusion of the contract as a possible consequence of a breach of contract. 第十九条 当事人一方违反合同的赔偿责任, 应当相当于另一方因此所受到的损失, 但是不得超过违反合同一方订立合同时应当预见到的因违反合同可能造成的损失。

<sup>39</sup> See Foreign-related Contract Law (repealed) Article 23: If a party fails to pay on time any amount stipulated as payable in the contract or any other amount related to the contract that is payable, the other party is entitled to interest on the amount in arrears. The method for calculating the interest may be specified in the contract. 第二十三条 当事人一方未按期支付合同规定的应付金额或者与合同有关的其他应付金额的, 另一方有权收取迟延履行金额的利息。计算利息的方法, 可以在合同中约定。

contracts, albeit not specifically tailored for sales contracts. According to the Supreme People's Court's Reply on Some Problems of Application of the Foreign-related Contract Law (since repealed), some categories of damages are recoverable under Article 19 of the Foreign-related Contract Law.<sup>40</sup> However, neither the Foreign-related Contract Law nor the Supreme People's Court's Reply specifically dealt with matters in Articles 86(1) (Buyer's duty to preserve goods) and 88 (Sale of the preserved goods) of the CISG. Hence, there were gaps in the PRC domestic law. By citing Articles 86(1) and 88 of the CISG, the court has effectively applied the CISG to fill the gaps in the PRC pre-1999 contract laws.

- 2.33 Post-1999 PRC court cases reveal that the courts have increasingly paid more attention to the choice of law issue, but that some courts still render their decisions without providing their reasoning for the applicable law issue. Some courts simply applied the CISG without explaining why the Convention is applicable but seemingly applied it spontaneously, and sometimes

---

<sup>40</sup> See The Supreme Court's Reply on Some Problems of Application of the Foreign-related Contract Law of the People's Republic of China (repealed), Article 6 (1) If a party to a contract fails to fulfil the contract or if its performance of the contractual obligations fails to comply with the agreed terms and conditions, besides adopting other remedial measures or other provisions stipulated in the contract, the party in breach of contract shall compensate the other party for any losses suffered as a result of the breach of contract. In general this shall include damage, loss or destruction of property and expenses incurred in trying to reduce or clear up losses, as well as the benefits that could have been received if the contract had been implemented (i.e. interest in the case of an international commodity trade contract), but the amount shall not exceed that stipulated in the contract as the amount that one party to the contract should foresee as compensation for losses that may be suffered due to breach of contract. 最高人民法院关于适用涉外经济合同法若干问题的解答（1987年10月19日）（已失效）六、关于涉外经济合同的违约责任问题（一）一方当事人不履行合同或者履行合同义务不符合约定条件的，除采取其他补救措施或者合同另有规定外，违约一方当事人赔偿另一方当事人因此所受到的损失，一般应包括财产的毁损、减少、灭失和为减少或者消除损失所支出的费用，以及合同如能履行获得的利益（在国际货物买卖合同中，就是指利润），但不得超过违约一方当事人在订立合同时应当预见到的因违反合同可能造成的损失。

erroneously. For example, in two post-1999 court cases, *Shanghai Shen He Import and Export Ltd. v. Japan Itochu Corp.*<sup>41</sup> and *Xinsheng Trade Company v. Shougang Nihong Metallurgic Products*<sup>42</sup>, both courts applied the CISG ‘automatically’ in error without first considering whether the CISG did, in fact, apply to the disputes at hand. Both cases involved Japanese and PRC parties. Japan acceded to the CISG on 1 Jul 2008 and the Convention became effective in Japan on 1 August 2009. At the time of these two judgments, 2000 and 2001 respectively, Japan was not yet a party to the CISG. Yet both courts applied the CISG automatically and erroneously without first considering whether the Convention was applicable at all.

#### **2.2.2.2. PARTIES EXPLICITLY CHOOSE THE CISG TOGETHER WITH PRC LAWS**

2.34 It also appeared that parties advocating their cases in the PRC courts tend to explicitly choose the CISG and the PRC laws as their governing law.

---

<sup>41</sup> See China 28 November 2001 Higher People's Court [Appellate Court] of Jiangsu Province (*Shanghai Shen He Import and Export Ltd. v. Japan Itochu Corp.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/011128c1.html>]

<sup>42</sup> See China 27 November 2002 Higher People's Court of Ningxia Hui Autonomous Region (*Xinsheng Trade Company v. Shougang Nihong Metallurgic Products*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/021127c1.html>]

2.35 For examples, in *Singapore Da Guang Group v. Jiangsu Machines Import & Export Ltd*<sup>43</sup>, the parties explicitly agreed at the hearings in the Court of First Instance that the CISG and relevant laws of the PRC applied to the case. The Jiangsu High People's Court [Court of First Instance] upheld their choice of law, as did the Supreme People's Court [Appellate Court]. Interestingly, the Court of First Instance did not identify which CISG provisions it used in reaching its judgment. Rather, it simply stated:

*'According to Article 29 Clause 1 Item (1) and Item (2) of the Foreign-related Economic Contract Law, Article 39 Clause 1 Item (3) of the General Principles of Civil Law of the PRC, and the relevant provisions of the CISG...'*<sup>44</sup>  
(emphasis added)

2.36 The above approach is problematic. First, both parties are from CISG Contracting States, Singapore and the PRC. Without an explicit exclusion of the Convention by the parties, the CISG shall apply pursuant to Article 1 (1)(a). Second, the domestic PRC Foreign-related Economic Contract and the General Principles of Civil Law of the PRC should only apply where a gap exists in the CISG.<sup>45</sup> Here, in this case the issues concerned termination of the contract and damages.

---

<sup>43</sup> China 11 January 2001 Supreme Court of People's Republic of China (*Singapore Da Guang Group v. Jiangsu Machines Import & Export Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/010111c1.html>]

<sup>44</sup> Ibid

<sup>45</sup> See Article 7(2) of the CISG: Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled 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.

Both issues fell well within the scope of the CISG. Therefore, the Court should apply Articles 74 and 80 of the CISG and should not consider the PRC domestic law at all.

2.37 In *Lianzhong Enterprise Resources (Hong Kong) Ltd. v. Xiamen International Trade & Trust Co.*<sup>46</sup>, a dispute arose between a PRC seller and a Hong Kong buyer. The parties agreed at the court sessions that the PRC Foreign-related Economic Contract Law, the CISG and international customs applied to the case<sup>47</sup>. The Xiamen Intermediate People's Court upheld the parties' choice of law. In its judgment, the Court relied on Articles 16, 18, 19 23, 32 and 34 of the PRC Foreign-related Economic Contract Law, and Articles 74 and 78 of the CISG<sup>48</sup>.

2.38 This case differs from the *Singapore Da Guang Group v. Jiangsu Machines Import & Export Ltd* case<sup>49</sup>. The buyer's place of business was in Hong Kong. At the time of the judgment, 20 April

---

<sup>46</sup> China 20 April 1993 Xiamen Intermediate People's Court [District Court] (*Lianzhong Enterprise Resources (Hong Kong) Ltd. v. Xiamen International Trade & Trust Co.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/930420c1.html>]

<sup>47</sup> Ibid; the judgement on applicable law in original Chinese text: '厦门市中级人民法院审理认为：原、被告双方在庭审中选择适用我国《涉外经济合同法》、1980 年《联合国国际货物销售合同公约》及有关国际惯例准许。

<sup>48</sup> Supra note 34; the law provisions that the Court relied upon in reaching its judgement in their original Chinese texts: 根据《中华人民共和国涉外经济合同法》第十六条、第十八条、第十九条、第二十三条、第三十二条、第三十四条，《联合国国际货物销售合同公约》第七十四条、第七十八条规定，于 1993 年 4 月 20 日判决如下

<sup>49</sup> China 11 January 2001 Supreme Court of People's Republic of China (*Singapore Da Guang Group v. Jiangsu Machines Import & Export Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/010111c1.html>]

1993, the CISG did not apply to Hong Kong<sup>50</sup>. The Court had no treaty obligation to apply the CISG to a Hong Kong party. Thus, it makes sense that the Court applied the PRC domestic Foreign-related Economic Contract Law first, followed by the CISG and other relevant international customs as agreed to by the parties.

2.39 In *San Ming v. Zhanzhou Metallic Minerals*<sup>51</sup>, a dispute arose between a PRC seller and a Japanese buyer. Parties chose the laws of the PRC, international treaties and customs. The court permitted the parties' choice of law. In its judgment, the Fujian Higher People's Court relied upon Articles 7, 8 and 18 of the PRC Foreign-related Economic Contract Law and Article 30 of the CISG. This case is similar to the *Lianzhong Enterprise Resources (Hong Kong) Ltd. v. Xiamen International Trade & Trust Co.* case<sup>52</sup> discussed above. Here, the buyer's place of business was in Japan.

2.40 At the time of the judgment, December 1994, Japan was not a party to the CISG. The Court thus was not under a treaty obligation to apply the CISG to a Japanese party. Again, it is understandable that the Court applied the PRC domestic Foreign-related Economic Contract Law first, followed by the CISG, as so agreed by the parties. It is worth pointing out though, that the

---

<sup>50</sup> The United Kingdom is not a contracting state of the CISG. The CISG did not apply to Hong Kong before the retrocession of this territory to the People's Republic of China by the United Kingdom on 1 July 1997.

<sup>51</sup> China December 1994 Fujian Higher People's Court (*San Ming v. Zhanzhou Metallic Minerals*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/941200c1.html>]

<sup>52</sup> China 20 April 1993 Xiamen Intermediate People's Court [District Court] (*Lianzhong Enterprise Resources (Hong Kong) Ltd. v. Xiamen International Trade & Trust Co.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/930420c1.html>]

application of and reliance on Article 30 of the CISG in this case was almost a necessity, because the PRC Foreign-related Economic Law did not contain a specific mirror provision of Article 30 of the CISG that specifically deals with the seller's obligations. The supplementary role played by the CISG as an important source of law for Chinese domestic law in dealing with international sales contracts was already apparent even under the old pre-1999 three-pillar contract law regime.

2.41 In *WS China Import GmbH v. Longkou Guangyuan Food Company*<sup>53</sup>, a dispute arose between a PRC seller and a German buyer. During the court sessions in the Court of First Instance, parties agreed to apply the law of the PRC and the CISG<sup>54</sup>. The Intermediate People's Court of Qingdao City, Shandong Province [Court of First Instance] cited in its judgment Articles 94(4), 97 and 107 of the CL1999, Article 40 of the CISG, Article 128 of the Civil Procedure Law of the PRC, and Article 156 of the Opinions on Several Issues Regarding the Application of the Civil Procedure Law of the PRC<sup>55</sup>. The High People's Court of Shandong Province [Appellate Court] affirmed the judgment.

---

<sup>53</sup> China 10 September 2004 Higher People's Court [Appellate Court] of Shandong Province (*WS China Import GmbH v. Longkou Guangyuan Food Company*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/040910c1.html>]

<sup>54</sup> Ibid; the judgement on applicable law in original Chinese text: ‘在庭审中，双方就法律适用问题达成一致意见，均选择适用中华人民共和国法律。因此，中华人民共和国法律是处理本案争议的准据法。同时，双方均同意适用《联合国国际货物销售合同公约》，故该公约亦为处理本案纠纷的依据。’

<sup>55</sup> Supra note 40, the law provisions that the Court relied upon in reaching its judgement in their original Chinese texts: ‘依照《中华人民共和国合同法》第九十四条第(四)项、第九十七条、第一百零七条、《联合国国际货物销售合同公约》第四十条、《中华人民共和国民事诉讼法》第一百二十八条、最高人民法院《关于适用〈中华人民共和国民事诉讼法〉若干问题的意见》第156条的规定，判决...’



2.42 The lower Court did not need to resort to and should not have resorted to the PRC domestic law. The parties did not exclude the application of the Convention, but affirmed the application of the CISG instead. Both Germany and PRC are Contracting States of the CISG; therefore, the PRC court had a treaty obligation to apply the CISG pursuant to Article 1(1) (a). Consequently, the Court should not have applied the PRC domestic contract law, the CL1999. If the dispute concerned an issue that fell outside of the scope of the CISG, the CL1999 could then be applied by virtue of the rules of private international law pursuant to Article 7 (2) of the CISG. Here the issues concerned the lack of conformity known to the seller, damages, mitigation of loss and interest, all of which are well within the scope of the CISG. Thus, the Court had no legal basis to resort to the CL1999.

2.43 Moreover, in addition to Article 40 cited in the judgment, the Court should have also applied Articles 74, 77 and 78 of the CISG. The provisions of the CL1999 upon which the Court relied, Articles 94(4) (termination when the purpose of the contract can no longer be achieved)<sup>56</sup>, 97 (effects of termination)<sup>57</sup> and 107 (damages in general)<sup>58</sup> are all from the General Provisions of

---

<sup>56</sup> CL1999 Article 94: The parties to a contract may terminate the contract under any of the following circumstances:... (4) the other party delays performance of its obligations, or breaches the contract in some other manner, rendering it impossible to achieve the purpose of the contract; Original Chinese texts: 第九十四条 【合同的法定解除】有下列情形之一的，当事人可以解除合同：... （四）当事人一方迟延履行债务或者有其他违约行为致使不能实现合同目的；

<sup>57</sup> CL1999 Article 97: After the termination of a contract, performance shall cease if the contract has not been performed; if the contract has been performed, a party may, in accordance with the circumstances of performance or the nature of the contract, demand the other party to restore such party to its original state or adopt other remedial measures, and such party shall have the right to demand compensation for damages. Original Chinese

the CL1999 and are not tailored to international sales contract. They do not deal with specific issues such as the lack of conformity known to a seller. This case illustrates the necessity of using the CISG to supplement the CL1999, particularly in the context of international sale of goods contracts.

### **2.2.2.3. PARTIES EXPLICITLY CHOOSE PRC LAW, THE LAW OF A CONTRACTING STATE OF THE CISG**

2.44 Where parties have explicitly chosen the law of the PRC as the governing law, some PRC courts have applied the CISG as part of the PRC law, while others have applied PRC domestic law excluding the CISG.

2.45 In *Zheng Hong Li Ltd. Hong Kong v. Jill Bert Ltd. Swiss*,<sup>59</sup> the Swiss Seller and Hong Kong Buyer elected to apply the laws of the PRC'. The Court of First Instance applied the CISG. The Supreme

---

texts: 第九十七条 【解除的效力】合同解除后，尚未履行的，终止履行；已经履行的，根据履行情况和合同性质，当事人可以要求恢复原状、采取其他补救措施、并有权要求赔偿损失。

<sup>58</sup> CL1999 Article 107 If a party fails to perform its obligations under a contract, or its performance fails to satisfy the terms of the contract, it shall bear the liabilities for breach of contract such as to continue to perform its obligations, to take remedial measures, or to compensate for losses. Original Chinese texts: 第一百零七条 【违约责任】当事人一方不履行合同义务或者履行合同义务不符合约定的，应当承担继续履行、采取补救措施或者赔偿损失等违约责任。

<sup>59</sup> China 20 July 1999 Supreme Court of the People's Republic of China (*Zheng Hong Li Ltd. Hong Kong v. Jill Bert Ltd. Swiss*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/990720c1.html>]

People's Court held that the lower court had erred, and that it should have applied the Foreign-related Economic Contract Law.<sup>60</sup>

2.46 Conversely, in *China Changzhou Kairui Weaving and Printing Company v. Taiwan Junlong Machinery Company*<sup>61</sup>, the Taiwan seller and PRC buyer agreed to apply the law of the PRC. The Changzhou Intermediate People's Court of Jiangsu Province [Court of First Instance] applied the CISG together with the Foreign-related Economic Contract Law. The High People's Court of Jiangsu Province [Appellate Court] affirmed the decision.

2.47 It should also be noted that PRC courts generally have no problem applying the CISG when both parties are from CISG jurisdictions. For example, in *Minermet S.p.A. Italy v. China Metallurgical Import & Export Dalian Company, China Shipping Development Co., Ltd Tramp Co.*<sup>62</sup>, the Italian buyer and PRC seller agreed to apply the law of the PRC during the court proceedings. The Dalian Maritime Court held that the applicable law is the law of the PRC and relevant

---

<sup>60</sup> Ibid; the judgement by the Supreme People's Court on applicable law in original Chinese text: 本院认为：本案系涉外经济合同纠纷，双方当事人一审中选择适用中国法律，故本案应适用《中华人民共和国涉外经济合同法》，原审判决适用《联合国国际货物销售合同公约》不当。

<sup>61</sup> China 2 December 2004 Higher People's Court [Appellate Court] of Jiangsu Province (*China Changzhou Kairui Weaving and Printing Company v. Taiwan Junlong Machinery Company*)[Cite as: <http://cisgw3.law.pace.edu/cases/041202c1.html>]

<sup>62</sup> China 29 June 2005 Dalian Maritime Court (*Minermet S.p.A. Italy v. China Metallurgical Import & Export Dalian Company, China Shipping Development Co., Ltd Tramp Co.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/050629c1.html>]

international conventions. Further, since both Italy and China are parties to the CISG, the Convention applies under Article 1(1)(a).

- 2.48 It appears that the controversy centres on whether parties' choice of the law of the PRC should include the CISG or not when only one of the parties is from a CISG jurisdiction. Professor Albert Kritzer commenting on the *Zheng Hong Li Ltd. Hong Kong v. Jill Bert Ltd. Swiss*<sup>63</sup> case, said:

*'The CISG is a law of the PRC. The parties were from different States, one of which (Switzerland, the Seller's State) is a CISG Contracting State. The other party, the Buyer, was from Hong Kong. The contract was dated 1996. At that time, the sovereignty of Hong Kong was under the United Kingdom. The UK is not a party to the CISG. Accordingly, the only way the CISG might have been applicable in accordance with its terms would have been pursuant to Article 1(1)(b). However, ...[reference to Article 95]...The People's Republic of China has so declared. Accordingly, although Article 95 was not mentioned in the ruling by the Supreme People's Court of China, it would seem that this provision of the CISG might be regarded as a logical basis for the application by that court of the PRC Law on Economic Contracts rather than the CISG'.*

[emphasis added]

---

<sup>63</sup> China 20 July 1999 Supreme Court of the People's Republic of China (*Zheng Hong Li Ltd. Hong Kong v. Jill Bert Ltd. Swiss*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/990720c1.html>]

2.49 A pertinent question thus arises as to the effects of Article 95 reservation. According to Article 95, the PRC is not bound by Article 1(1)(b). Therefore, even when the rules of private international law lead to the application of the law of the PRC, the PRC court is not bound to apply the CISG. However, the author argued that the actual effects of Article 95 reservation depend on the exact meaning of ‘the rules of private international law’ referred to in Article 1(1)(b). Does Article 1(1)(b) refer to ‘the rules of private international law’ under domestic or international law? What is the relationship between the rule of ‘party autonomy’ and ‘the rules of private international law’? Is the former included in the latter? Do the rules of private international law include the rule of party’s autonomy in choosing the governing law of their contract? Where only one party is from a Contracting State, can the CISG ‘only’ be applied pursuant to Article 1(1)(b)? Yet, if the principle of party autonomy trumps the general rules of private international law, then arguably, in addition to Article 1(1)(a) and Article 1(1)(b), there is a third way that the CISG could apply where the parties have chosen it as the governing law. The question therefore is whether a difference should be drawn between two scenarios: first, parties choose the law of a Contracting State, e.g. the PRC, as the governing law; and second, in the absence of parties’ choice of law, a national court or arbitral tribunal apply the rules of private international law, which leads to the law of a Contracting State, e.g. the PRC as the applicable law.

2.50 The author argues that Article 1(1)(b) simply refers to a national court or arbitral tribunal's obligation to apply the rules of private international law.<sup>64</sup> The principle of 'party autonomy', however, should prevail over the rules of private international law under Article 1(1)(b). Therefore, a distinction should exist between those cases where parties have explicitly chosen the law of the PRC, and those where the court applies rules of private international law to determine that the law of the PRC governs. In the former case, the CISG should apply as part of the law of the PRC. In the latter, the court is not bound to apply the CISG, because of the PRC's Article 95 reservation. This distinction proves necessary given that the CISG is a primary source of law of the PRC domestic law pursuant to Article 142 of the GPCL, as explained in Chapter 1 paragraphs 1.74 and 1.75. A further argument in support of the application of the CISG even in the latter case is that while the PRC court is not bound to apply the CISG, it still has the discretion to apply the CISG as it deems fit.

2.51 But why should such a distinction exist? Why would the 'law of the PRC' in one context mandate the application of the CISG and in another preclude its application? This inconsistency demonstrates the unexpected effects of the PRC's Article 95 reservation. As a result, the court has to decide whether it should narrowly interpret parties' choice of the law of the PRC to preclude the CISG. If it does so, it is left with a domestic law that lacks any specific provisions dealing with international sales contracts. Thus, it will have to resort to general rules of contract law which are not necessarily suited for cross-border sales transactions. This is precisely what

---

<sup>64</sup> E.g. the tests of the closest connection and characteristic performance.

happened in the *Zheng Hong Li Ltd. Hong Kong v. Jill Bert Ltd. Swiss* case.<sup>65</sup> Having rejected the application of the CISG, the Supreme People's Court then applied Articles 18 and 19 of the Foreign-related Economic Contract Law (FECL) (since repealed) and reached the same conclusion as applying the CISG. However, neither Article 18 nor Article 19 of the FECL actually dealt with international sales contract specifically; rather they are general rules on contract law.

2.52 Article 18<sup>66</sup> provides for the entitlement to damages and remedies in general and Article 19<sup>67</sup> provides for a general rule of foreseeability for measuring damages. In contrast, the CISG provisions applied by the Court of First Instance are more pertinent to the issues in the case. Article 53 deals with Buyer's principal obligations to pay price and take delivery; Article 85 deals with Seller's duty to preserve goods; Article 86 deals with Buyer's duty to preserve goods and Article 87 deals with the deposit of goods in warehouse. Neither the former repealed FECL nor the current CL1999 has mirror provisions that deal with these issues either specifically or in

---

<sup>65</sup> China 20 July 1999 Supreme Court of the People's Republic of China (*Zheng Hong Li Ltd. Hong Kong v. Jill Bert Ltd. Swiss*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/990720c1.html>]

<sup>66</sup> FECL Article 18: If a party fails to perform the contract or its performance of the contractual obligations does not conform to the agreed terms, which constitutes a breach of contract, the other party is entitled to claim damages or demand other reasonable remedial measures. If the losses suffered by the other party cannot be completely made up after the adoption of such remedial measures, the other party shall still have the right to claim damages. Chinese original text: 第十八条 当事人一方不履行合同或者履行合同义务不符合约定条件, 即违反合同的, 另一方有权要求赔偿损失或者采取其他合理的补救措施。采取其他补救措施后, 尚不能完全弥补另一方受到的损失的, 另一方仍然有权要求赔偿损失。

<sup>67</sup> FECL Article 19: The liability of a party to pay compensation for the breach of a contract shall be equal to the loss suffered by the other party as a consequence of the breach. However, such compensation may not exceed the loss which the party responsible for the breach ought to have foreseen at the time of the conclusion of the contract as a possible consequence of a breach of contract. Chinese original text: 第十九条 当事人一方违反合同的赔偿责任, 应当相当于另一方因此所受到的损失, 但是不得超过违反合同一方订立合同时应当预见到的因违反合同可能造成的损失。

detail. Although the outcome of the case was the same, the judgment of the Court of First Instance was better supported by the provisions of the CISG than that of the Supreme People's Court applying the general contract rules under the FECL.

#### **2.2.2.4. COURT APPLIES RULES OF PRIVATE INTERNATIONAL LAW, WHICH DIRECTS TO THE APPLICATION OF PRC LAW**

2.53 In the absence of parties' choice of law, when PRC courts apply rules of private international law, which leads to the application of the laws of the PRC, inconsistencies exist as to whether the PRC courts apply the CISG as an integrated part of the PRC law or not.

2.54 For example, in *Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resources Ltd.*<sup>68</sup>, the Singaporean buyer and Hong Kong seller did not choose the governing law. The Guangxi Beihai Maritime Court applied the closest connection test pursuant to Article 269 of the Maritime Law of the PRC<sup>69</sup> and determined that the law applicable to the dispute included the Maritime Law of the

---

<sup>68</sup> China 5 March 2002 Guangxi Beihai Maritime Court (*Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resources Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/020305c1.html>]

<sup>69</sup> The PRC Maritime Law Article 269: The parties to a contract may choose the law applicable to such contract, unless the law provides otherwise. Where the parties to a contract have not made a choice, the law of the country having the closest connection with the contract shall apply. 第二百六十九条 【法律适用的约定】合同当事人可以选择合同适用的法律，法律另有规定的除外。合同当事人没有选择的，适用与合同有最密切联系的国家的法律。



PRC, the Contract Law of the PRC and the relevant international conventions.<sup>70</sup> In dealing with the underlying sales contract, in particular, the seller's obligations to deliver goods free from any third-party right or claim, the court applied Article 41 of the CISG<sup>71</sup>. The court did not consider Article 1(1)(b) of the CISG or the PRC's Article 95 reservation. Had it done so, its opinion would have included a discussion concerning CISG's applicability to a Hong Kong party. As at the time of the judgment, 5 March 2002, Hong Kong had already become a Special Administrative Region of the PRC, the Court therefore made a pragmatic decision to apply the CISG to a Hong Kong SAR party. In choosing to apply Article 41 of the CISG, which addressed the issue that the CL1999 did not, the Court in this case clearly viewed the CISG as the relevant international convention that has been integrated into the law of the PRC governing contracts for international sale of goods.

2.55 In *Nanjing Resources Group v. Tian An Insurance Co. Ltd., Nanjing Branch*,<sup>72</sup> an insurance dispute arose between a PRC insurer and a PRC company. The underlying sales contract, however, involved a Japanese seller and a PRC buyer. In determining the law applicable to the dispute, the Wuhan Maritime Court held:

---

<sup>70</sup> China 5 March 2002 Guangxi Beihai Maritime Court (*Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resources Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/020305c1.html>], in particular: 'The two parties did not choose the applicable law and the destination of the transportation contract is located in the jurisdiction of the court. Therefore, pursuant to Article 269 of the Maritime Law of the People's republic of China, which stipulates that 'where the parties do not choose the applicable law, the law of the nation holding the closest connection with the contract shall be applied', the Maritime Law of the People's Republic of China, the Contract Law of the People's Republic of China and the relevant international conventions shall be applied to this case.'

<sup>71</sup> The CISG Article 41: The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

<sup>72</sup> China 10 September 2002 Wuhan Maritime Court (*Nanjing Resources Group v. Tian An Insurance Co. Ltd., Nanjing Branch*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/020910c1.html>]

*'...although the insured goods were shipped from Port-Gentil and Owendo in Gabon to Zhang Jia Gang in China, and the risk occurred abroad, the insurance contract was signed by the [Buyer] and the [Insurer], both of which are Chinese legal persons, the place of execution and the place of indemnity stipulated in the insurance policy was in Nanjing, China, and the terms and conditions in the insurance policy are those of China People's Insurance Corporation's Insurance of Maritime Transportation of Goods (amended in 1 January 1981).'*

2.56 The court then referred to Article 2(1) of the CL1999<sup>73</sup> and Articles 3<sup>74</sup> and 147<sup>75</sup> of the Insurance Law of the PRC and it concluded that the Contract Law of the PRC, the Insurance Law of the PRC and the Maritime Law of the PRC applied. In determining whether the Chinese buyer had an insurable interest, the court held that, the international maritime transportation insurance contract is related to the contract for international sale of goods. Therefore, it decided that the

---

<sup>73</sup> The CL1999 Article 2(1): A contract in this Law refers to an agreement among natural persons, legal persons or other organizations as equal parties for the establishment, modification of a relationship involving the civil rights and obligations of such entities. 第二条 【合同定义】本法所称合同是平等主体的自然人、法人、其他组织之间设立、变更、终止民事权利义务关系的协议。

<sup>74</sup> The PRC Insurance Law Article 3: All insurance activities within the territory of the People's Republic of China shall be governed by this law. 第三条 在中华人民共和国境内从事保险活动，适用本法。

<sup>75</sup> The PRC Insurance Law Article 147: For marine insurance the relevant provisions of the commercial maritime law shall be abided by. This law shall apply to matters not covered by the commercial maritime law. 第一百四十七条 海上保险适用海商法的有关规定；海商法未作规定的，适用本法的有关规定。

relevant law or convention governing international sales of goods, i.e., the CISG and INCOTERMS 1990 applied.

2.57 The court then explicitly relied upon Articles 30<sup>76</sup> and 34<sup>77</sup> of the CISG in its judgment. The Court never considered whether the CISG applied to the underlying sales contract and it did not consider the PRC's Article 95 reservation either. As Japan was not yet a party to the CISG at that time,<sup>78</sup> the PRC's Article 95 reservation should have precluded the application of the CISG in the case. However, the Court in this case appeared to have applied the CISG as the relevant law and convention governing international sale of goods contracts in the PRC.

2.58 In *Shanghai Weijie Electronic Devices Ltd v. Superpower Supply Inc*<sup>79</sup>, the contract between the US buyer and PRC seller did not include a choice of law clause. The Shanghai No. 1 Intermediate People's Court adopted a four-step approach in deciding the applicable law issue. First, using the closest connection test, it determined that the law of the PRC applied. Second, it also found the

---

<sup>76</sup> The CISG Article 30: The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

<sup>77</sup> The CISG Article 34: If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

<sup>78</sup> Japan acceded to the CISG on 1 Jul 2008 and the CISG became effective in Japan on 1 August 2009.

<sup>79</sup> China 2003 [assigned date] Shanghai No. 1 Intermediate People's Court [District Court] (*Shanghai Weijie Electronic Devices Ltd v. Superpower Supply Inc*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/030000c1.html>]

CISG applicable citing Article 1(1)(a) of the CISG. Third, relying upon Article 142 of the GPCL<sup>80</sup>, the Court then held that where an inconsistency existed between the CISG and PRC law, the former should prevail. Fourth, the Court found that ‘there is no difference’ between the CL1999 and the CISG on (1) the principle of good faith, (2) seller’s obligation to deliver conforming goods, (3) buyer’s obligation to pay the price, and (4) damages resulted from buyer’s breach of contract. Thus, the Court concluded that the case should be decided according to the CL1999<sup>81</sup>.

2.59 The above ‘four-step approach’ was again adopted by the Shanghai No. 1 Intermediate People's Court in *Shanghai Wangruixiang Fashion Co. Ltd. v. U.S. Trend Co. Ltd., Shanghai Silk (Group) Co. Ltd.*<sup>82</sup>, a case involving a US buyer and a PRC seller. As was the case with *Shanghai Weijie*<sup>83</sup>, the ‘four-step approach’ resulted in the application of the CL1999 instead of the CISG, although the

---

<sup>80</sup> See paragraph 2.30 above.

<sup>81</sup> Ibid; the judgement on applicable law in original Chinese text: 因双方对于发生争议时适用何种法律未进行协议选择, 因此, 应按照最密切联系原则确定适用本案合同争议的法律。本案合同的卖方系中华人民共和国国内企业, 且合同确定交易条件系 FOB 上海, 即卖方履行交付货物的地点在中华人民共和国上海市, 因此, 中华人民共和国系与本案合同有最密切联系的国家, 本案的合同争议应适用中华人民共和国法律。同时, 由于原、被告双方营业地所在国均系《联合国国际货物销售合同公约》的缔约国, 按照《中华人民共和国民事诉讼法》第一百四十二条第二款的规定, 如果《联合国国际货物销售合同公约》与我国法律有不同规定时, 应适用《联合国国际货物销售合同公约》的有关规定。按照本案合同成立及争议发生时实施的《中华人民共和国合同法》的有关规定, 合同当事人应当按照诚实信用的原则履行有效成立的合同, 在卖方按照买卖合同履行交货义务的情况下, 买方应当支付价款并赔偿卖方因买方违约而发生的损失; 对此, 《联合国国际货物销售合同公约》的规定并无不同。因此, 本案应按《中华人民共和国合同法》进行处理。(emphasis added)

<sup>82</sup> China 23 June 2003 Shanghai No. 1 Intermediate People's Court [District Court] (*Shanghai Wangruixiang Fashion Co. Ltd. v. U.S. Trend Co. Ltd., Shanghai Silk (Group) Co. Ltd (Cashmere sweater case)*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/030623c1.html>]

<sup>83</sup> China 2003 [assigned date] Shanghai No. 1 Intermediate People's Court [District Court] (*Shanghai Weijie Electronic Devices Ltd v. Superpower Supply Inc*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/030000c1.html>]

condition of applying the CISG under Article 1(1)(a) was apparently fulfilled. The author is of the opinion that this approach is erroneous and contravenes the PRC's international law obligation to apply the CISG. In the absence of parties' explicit exclusion of the application of the CISG under Article 6, the court should have applied the CISG pursuant to Article 1(1)(a). The PRC court's obligation to apply the CISG pursuant to Article 1(1)(a) of the CISG should not be subject to any PRC's rules of private international law.

2.60 Moreover, the position taken by the two courts in the above two cases, the *Shanghai Weijie*<sup>84</sup> and *Shanghai Wangruixiang*<sup>85</sup>, that no difference exists between those portions of the CISG and the CL1999 relevant to the disputes seemingly represent an oversimplification of the matter. In *Shanghai Weijie*<sup>86</sup>, the court simply jumped to the conclusion that no differences existed without providing any evidence or its reasoning or analysis. Whether differences exist between the relevant portions of both legal regimes requires a thorough understanding and analysis of both. Upon closer inspection, one of the major issues in this case concerned buyer's obligation to pay the price and damages. While the CL1999 Article 113 (1)<sup>87</sup> and the CISG Article 74<sup>88</sup> treat the

---

<sup>84</sup> China 2003 [assigned date] Shanghai No. 1 Intermediate People's Court [District Court] (*Shanghai Weijie Electronic Devices Ltd v. Superpower Supply Inc*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/030000c1.html>]

<sup>85</sup> China 23 June 2003 Shanghai No. 1 Intermediate People's Court [District Court] (*Shanghai Wangruixiang Fashion Co. Ltd. v. U.S. Trend Co. Ltd., Shanghai Silk (Group) Co. Ltd (Cashmere sweater case)*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/030623c1.html>]

<sup>86</sup> China 2003 [assigned date] Shanghai No. 1 Intermediate People's Court [District Court] (*Shanghai Weijie Electronic Devices Ltd v. Superpower Supply Inc*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/030000c1.html>]

<sup>87</sup> The CL1999 Article 113(1): Where a party fails to perform its obligations under the contract or its performance fails to conform to the agreement and cause losses to the other party, the amount of compensation for losses shall

general rule for measuring damages similarly, the CL1999 lacks a provision addressing the amount of interest awarded on an unpaid price; the CISG, however, does in Article 78<sup>89</sup>. The Court's reliance on Article 107<sup>90</sup> of the CL1999 was not convincing. The court should have applied Article 78 of the CISG instead.

2.61 Similarly, the Court in *Shanghai Wangruixiang*<sup>91</sup>, without giving its reasoning or any analysis, simply decided that both the CL1999 and the CISG addressed the issues in dispute in the same

---

be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract, provided not exceeding the probable losses caused by the breach of contract which has been foreseen or ought to be foreseen when the party in breach concludes the contract. 第一百一十三条 【损害赔偿的范围】当事人一方不履行合同义务或者履行合同义务不符合约定，给对方造成损失的，损失赔偿额应当相当于因违约所造成的损失，包括合同履行后可以获得的利益，但不得超过违反合同一方订立合同时预见到或者应当预见到的因违反合同可能造成的损失。

<sup>88</sup> The CISG Article 74: Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

<sup>89</sup> The CISG Article 78: If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

<sup>90</sup> The CL1999 Article 107: If a party fails to perform its obligations under a contract, or its performance fails to satisfy the terms of the contract, it shall bear the liabilities for breach of contract such as to continue to perform its obligations, to take remedial measures, or to compensate for losses. 第一百零七条 【违约责任】当事人一方不履行合同义务或者履行合同义务不符合约定的，应当承担继续履行、采取补救措施或者赔偿损失等违约责任。

<sup>91</sup> China 23 June 2003 Shanghai No. 1 Intermediate People's Court [District Court] (*Shanghai Wangruixiang Fashion Co. Ltd. v. U.S. Trend Co. Ltd., Shanghai Silk (Group) Co. Ltd (Cashmere sweater case)*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/030623c1.html>]

way<sup>92</sup>. While that was the case when dealing with the issue of a modification of an agreement, it did not hold true when addressing the issues of a party's right of set-off and agency. Article 77(1) of the CL1999 is consistent with Article 29(1) of the CISG in addressing the issue of modification, but the CISG, in fact, does not contain any provisions dealing with a party's right to set-off or agency.

2.62 The courts in the above two cases suggest that the CISG and CL1999 are one in the same. The misperception that there is no difference between these two regimes, in turn, operates as a significant barrier to the application and uniform interpretation of the CISG in the PRC. To what extent these two regimes have actually been harmonised will be examined further in the next Chapter.<sup>93</sup>

2.63 In some cases, the PRC courts have applied the laws of the PRC excluding the CISG as a result of rules of private international law. For example, in *CITIC International Co., Ltd. v. Hokusan Co.*,

---

<sup>92</sup> Ibid; the judgement on applicable law in original Chinese text: 因当事人各方对于发生争议时适用何种法律未进行协议选择, 因此, 应按照最密切联系原则确定适用本案合同争议的法律。本案合同的卖方系中华人民共和国国内企业, 且合同履行地在中华人民共和国上海市, 因此, 中华人民共和国系与本案合同有最密切联系的国家, 本案的合同争议应适用中华人民共和国法律。同时, 由于本案国际货物买卖合同双方营业地所在国均系《联合国国际货物销售合同公约》的缔约国, 按照《中华人民共和国民法通则》第一百四十二条第二款的规定, 如果《联合国国际货物销售合同公约》与我国法律有不同规定时, 应适用《联合国国际货物销售合同公约》的有关规定。就本案的争议问题而言, 《联合国国际货物销售合同公约》与《中华人民共和国合同法》的规定并无不同。因此, 本案应按《中华人民共和国合同法》进行处理。

<sup>93</sup> See Chapter Three: The Harmonisation of the PRC Contract Law 1999, the CISG and the UPICC

*Ltd*<sup>94</sup>, the Japanese seller requested the PRC court to apply the CISG, but the court rejected the request on the ground that Japan was not a Contracting State of the CISG at that time. The PRC court then applied rules of private international law and held that because the sales contract was signed in Shanghai, according to the closest connection test, the law of the PRC governs the contract<sup>95</sup>. As a result, the court applied the CL1999 and GPCL1986 for the substantive issues in the case, without explaining why it did not consider the CISG as part of the law of the PRC.

2.64 In *Possehl (HK) Limited v. China Metals & Minerals Import & Export (Shenshen) Corporation*<sup>96</sup>, the Hong Kong buyer and PRC seller did not choose the governing law. The Guangdong Intermediate People's Court [Court of the First Instance] held that the PRC law applied. In doing so, it stated:

---

<sup>94</sup> China 30 May 2006 Shanghai No. 2 Intermediate People's Court [District Court]

[Cite as: <http://cisgw3.law.pace.edu/cases/060530c1.html>]

<sup>95</sup> China 30 May 2006 Shanghai No. 2 Intermediate People's Court [District Court] [Cite as: <http://cisgw3.law.pace.edu/cases/060530c1.html>]; See also original language (Chinese): CISG-China Case [IPC/24]: [http://aff.whu.edu.cn/cisgchina/en/news\\_view.asp?newsid=54](http://aff.whu.edu.cn/cisgchina/en/news_view.asp?newsid=54); in particular, the judgement on applicable law in original Chinese text: 关于本案处理适用法律。本案审理中，被告北酸株式会社要求本案适用《联合国国际货物销售合同公约》，因日本国并非该公约的缔约国，因此，处理本案不适用该公约。根据本案所涉《销售合同》的签订地在中华人民共和国上海市的事实，依照最密切联系原则，本案处理应当适用中华人民共和国法律。

<sup>96</sup> China 2005 Guangdong Higher People's Court [Appellate Court] (*Possehl (HK) Limited v. China Metals & Minerals Import & Export (Shenshen) Corporation*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/050000c2.html>]



*'Article 1 of the CISG provides that '[CISG] applies to contracts of sale of goods between parties whose places of business are in different States.'*

*Therefore, CISG did not apply to the present case. Both parties agreed on the application of PRC law. Consequently, PRC law shall be applicable.<sup>97</sup>*

2.65 Although the Guangdong High People's Court [Appellate Court] affirmed the lower court's decision, it did so on different grounds. It held, inter alia, that:

*'The place of business of the [Buyer] is Hong Kong SAR, and the Defendant [Seller]'s place of business is in the City of Shenzhen, PRC. Since the parties did not agree on the applicable law of the Contracts, according to Article 145 of the General Principles and Article 126(1) of the Contract Law 1999, PRC law shall be applied to the current case.<sup>98</sup>*

2.66 Thus, the Court of the First Instance relied on the fact that Hong Kong SAR was not a different 'State' but part of the PRC after the reunification in 1997. Article 1 of the CISG explicitly

---

<sup>97</sup> Ibid, in particular, the judgement in the Court of the First Instance on the applicable law issue in its original Chinese text: 合同没有约定合同的准据法, 《联合国国际货物销售合同公约》第一条规定: '本公约适用于营业地在不同国家的当事人之间所订立的货物销售合同', 因此本案不适用该公约的规定。双方当事人均同意适用中国法律, 应以中国法律为本案准据法。

<sup>98</sup> China 2005 Guangdong Higher People's Court [Appellate Court] (*Possehl (HK) Limited v. China Metals & Minerals Import & Export (Shenzhen) Corporation*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/050000c2.html>]

stipulates that the Convention applies to contracts of sale of goods between parties whose places of business are in *different States* (emphasis added). In reaching its conclusion, the Appellate Court employed the well-established practice of treating Hong Kong related cases as foreign-related, and therefore, it applied the rules of private international law pursuant to Article 145<sup>99</sup> of the GPCL and Article 126(1)<sup>100</sup> of the CL1999, concluding that the law of the PRC had the closest connection. The Appellate Court, however, did not provide any explanation as to why it did not consider the CISG as part of the law of the PRC.

2.67 In *Bao De Li Ltd. v. China Electronic Import and Export Guangdong Corp (Ginger case)*<sup>101</sup>, the contract between the US buyer and the PRC seller did not contain a choice of law clause. To determine the law applicable to the case, the Guangzhou Intermediate People's Court first applied rules of private international law, which led to the law of the PRC as the law that had the closest connection. The Court, however, then pointed out that both the US and the PRC are parties to the CISG and that the inapplicability of the Convention under Articles 2 and 3 of the

---

<sup>99</sup> GPCL Article 145: The parties to a foreign-related contract may choose the law applicable to their contract, except as otherwise stipulated by law. If the parties to a foreign-related contract did not make a choice, the law of the country to which the contract is most closely connected shall be applied.第一百四十五条 【涉外合同的法律适用】涉外合同的当事人可以选择处理合同争议所适用的法律，法律另有规定的除外。涉外合同的当事人没有选择的，适用与合同有最密切联系的国家的法律。

<sup>100</sup> CL1999 Article 126(1): Parties to a foreign-related contract may choose the applicable law for resolution of their contractual disputes, except as otherwise provided by law. Where parties to the foreign-related contract fail to choose the applicable law, the contract shall be governed by the law of the country with the closest connection thereto. 第一百二十六条 【涉外合同】涉外合同的当事人可以选择处理合同争议所适用的法律，但法律另有规定的除外。涉外合同的当事人没有选择的，适用与合同有最密切联系的国家的法律。

<sup>101</sup> China 19 November 2005 Guangzhou Intermediate People's Court (Ginger case) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/051119c1.html>]

CISG did not apply to the current dispute. Finally, the Court held that PRC domestic law does not address contracts for international sales of goods, therefore, pursuant to Article 142 (2)<sup>102</sup> of the GPCL, the CISG applied<sup>103</sup>.

2.68 Thus far, it appears that only one court has actually acknowledged the fact that PRC domestic law has no specific provisions addressing contracts for international sales of goods. This acknowledgement supports the contention that the CISG is, in fact, the most important source of law in this area of PRC law.

### **2.2.3. THE PRC SHOULD WITHDRAW ITS ARTICLE 95 RESERVATION**

---

<sup>102</sup> GPCL Article 142(2): If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations. 第一百四十二条 第二款 中华人民共和国缔结或者参加的国际条约同中华人民共和国的民事法律有不同规定的, 适用国际条约的规定, 但中华人民共和国声明保留的条款除外。

<sup>103</sup> See China 19 November 2005 Guangzhou Intermediate People's Court (Ginger case) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/051119c1.html>], in particular, the judgement on the applicable law issue in original Chinese text: 因原告和被告对处理合同争议所适用的法律未作选择, 依照最密切联系原则, 本院确认被告住所地和合同履行地的中华人民共和国内地法律作为解决本案争议的准据法。鉴于原告营业所所在地美国和被告营业所所在地中国均是《联合国国际货物销售合同公约》的缔约国, 原被告双方建立的货物销售合同关系不属于《联合国国际货物销售合同公约》第二条、第三条排除适用的范围, 而我国国内法对国际货物买卖合同没有明确的规定, 根据《中华人民共和国民事诉讼法》第一百四十二条第二款规定'中华人民共和国缔结或者参加的国际条约同中华人民共和国的民事法律有不同规定的适用国际条约的规定'的精神, 故本案应考虑适用《联合国国际货物销售合同公约》的有关规定。

- 2.69 As the previous section has demonstrated, the PRC's Article 95 reservation has resulted in confusion and uncertainty as to the CISG's scope of application in the PRC.
- 2.70 On the one hand, PRC courts generally seem inclined to view the CISG as a formal source of law for the PRC law. This was especially true in pre-1999 court decisions, in which the courts did not always deal with applicable law issues but simply applied the CISG. It still happens on occasion that PRC courts will simply apply the CISG without providing any explanation or rationale for doing so, even where the CISG appears to be inapplicable.
- 2.71 On the other hand, the Article 95 reservation was supposed to limit the application of the CISG in the PRC. Of the more than three hundred PRC cases and CIETAC ('China International Economic and Trade Arbitration Commission') arbitral awards made available on the PACE CISG Database, none specifically addressed or cited the PRC's Article 95 reservation. This raises a serious question as to the actual awareness of the PRC's Article 95 reservation among PRC jurists, practitioners and the legal and trade communities. Even if some degrees of awareness exist, there appears to be a state of confusion and uncertainty as to the actual effects of the Article 95 reservation in the PRC. This is not altogether surprising, especially when considering the fact that the Article 95 reservation has proven controversial both in theory and in practice, among all Contracting States of the CISG<sup>104</sup>.

---

<sup>104</sup> See discussion above at section 2.2.1.:PRC'S ARTICLE 95 RESERVATION IN THEORY

2.72 As pointed out in the previous Chapter at section 1.2.4., the original rationale for the PRC to make the Article 95 reservation upon adopting the CISG in the 1980s was to limit the application of the CISG in the PRC at that time. The reservation was supposed to support the domestic and foreign-related contract law split that was presumably desired at that time. Yet, a question exists as to whether this rationale was ever truly necessary. Whilst it might have made sense from a policy perspective, it did not really serve as a useful tool in maintaining the split between domestic and foreign-related contract law. Indeed, as evidenced by some of the pre-1999 PRC court cases discussed above, PRC courts readily relied upon the CISG as a primary source of law for the PRC law when filling gaps existing within PRC domestic law. Now, the CL1999 has obviated the need for the Article 95 reservation. Thus, the Article 95 reservation directly contradicts the unification of both domestic and foreign-related contract laws, and significantly hinders the application of the CISG in the PRC.

2.73 More importantly, the Article 95 reservation has resulted in confusion when it comes to choice of law issues. In some cases, parties have had to explicitly choose both 'the CISG and the law of the PRC' for the CISG to apply. However, even where the parties had the foresight to make such a choice, the court then had to consider whether to apply both the CISG and PRC domestic law in parallel. If not, the court had to decide which of the two should prevail. Although Article 142 of the GPCL provides that an international convention (such as the CISG) should prevail where discrepancy exists, some courts have still resorted to domestic law under the misperception that there is no difference between these two regimes. Where parties have chosen the law of the PRC as applicable law, an uncertainty exists as to whether the PRC court would recognize the CISG as part of the law of the PRC or not. Similarly, where PRC courts have resorted to the rules

of private international law, some have found the CISG applicable, others have not. These uncertainties not only create difficult conflict of law issues but also discourage contractual parties from choosing PRC law as the governing law.

2.74 To conclude this section, the rationale for the PRC's Article 95 reservation no longer exists. Given the fact that the CISG has been widely adopted by more than seventy States,<sup>105</sup> which collectively account for over three-quarters of all world trade today, the use of the Article 95 reservation to limit the CISG's scope of application has been minimal. In particular, arguably, PRC courts' decision to apply the CISG as a primary source of law when parties choose the law of the PRC renders the Article 95 reservation a dead letter in the PRC. Further, in view of the uncertainties and impracticalities the Article 95 reservation brings both in theory and practice, the PRC should withdraw its reservation without further delay.

### **2.3. THE CL1999 AND THE PRC'S ARTICLE 96 RESERVATION**

2.75 The other reservation that the PRC made upon the adoption of the CISG in the 1980s was the Article 96 reservation. The PRC does not consider itself to be bound by Article 11 and the provisions relating thereto.<sup>106</sup> This section investigates the effect of the Article 96 reservation on

---

<sup>105</sup> As of 7 July 2010, UNCITRAL reports that 76 States have adopted the CISG.

<sup>106</sup> See United Nations Treaty Collections (UNTC) website: Chapter X 10. available at: [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-10&chapter=10&lang=en#EndDec](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en#EndDec)

the current CL1999 and whether the Article 96 reservation remains compatible with current law and practice in the PRC.

### **2.3.1. ISSUES PERTINENT TO THE PRC'S ARTICLE 96 RESERVATION**

2.76 The first issue concerns the exact meaning and scope of the PRC's Article 96 reservation. All other Declaring States, except the PRC, have adopted the 'standard' declaration, which states that:

*'in accordance with Articles 12 and 96 of the Convention, 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 mutual agreement or any offer, acceptance or other indication of intention to be made in any other form than in writing, does not apply where any party has its place of business in [the Declaring State].'*<sup>107</sup>

2.77 The PRC, however, used a different wording in its declaration, stating that:

---

<sup>107</sup> See the UN Treaty Database ([http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-10&chapter=10&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en#EndDec))

*'[T]he People's Republic of China does not consider itself to be bound by ...  
Article 11 as well as the provisions in the Convention relating to the content  
of Article 11.'*<sup>108</sup>

2.78 Does the variation in the PRC's declaration mean that the PRC's reservation only applies to Article 11<sup>109</sup>, which dispenses with the need for writing or written evidence in the formation of contracts? But what about Article 29 of the CISG, which allows for contracts to be modified or terminated informally?<sup>110</sup> Or the whole of Part II of the Convention, which deals with the process of contractual formation? Further, what constitutes those provisions 'relating to the content of Article 11'?

2.79 According to Schlechtriem, the complete or standard form of the Article 96 declaration, and more specifically, the wording 'its modification or termination by agreement' contained in Articles 12, 29 and 96 makes it clear that at least the following situations do not fall within the scope of the reservation: (1) a one-sided declaration to terminate a contract; (2) a declaration to reduce the price according to Article 50 sentence 1; and (3) the notification of defects, the fixing

---

<sup>108</sup> Ibid.

<sup>109</sup> Article 11 of the CISG: A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

<sup>110</sup> Article 29 of the CISG: (1) A contract may be modified or terminated by the mere agreement of the parties. (2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.



of time limits and other communications. Schlechtriem was of the view that these are not subject to form requirements, even when, on the basis of the Article 96 reservation, the contract, in principle, is subject to domestic form regulations which require that such communications adhere to formal writing requirements<sup>111</sup>.

2.80 Concerning the PRC's reservation, Reiley & Fu commented that the special wording could mean either only provisions relating to contract formation or all provisions relating to a writing requirement<sup>112</sup>. Logan stated that:

*'The end result of the Chinese reservation to Article 11 rather than Article 96 is to narrow the restrictions on contract formation. Instead of requiring all elements of contract formation to be in writing as is the case under Articles 96 and 12 . . . China's reservation appears to only require that contracts 'be concluded in or evidenced by writing' . . . This would mean that all aspects of*

---

<sup>111</sup> See Peter Schlechtriem, 'Uniform Sales Law - The Experience with Uniform Sales Laws in the Federal Republic of Germany' in 'Särtryck', Juridisk Tidskrift vid Stockholm Universitet, Årgång 3NR 1/1991-92, p. 45; see also Albert H. Kritzer, Guide to Practical Applications of the United Nations Convention on Contracts for the International Sale of Goods (Kluwer Law International), Suppl. 10, July 1994, Detailed Analysis 118-119.

<sup>112</sup> See Reiley & Fu, 'Doing Business in China after Tiananmen Square: The Impact of Chinese Contract Law and the UN Convention on Sale of Goods in Sino-American Business Transactions', 24 U. San Francisco L. Rev. 54 n. 88 (1989)

*a transaction may be oral to the extent allowed under the Convention*

*except the resultant contract of sale . . .*<sup>113</sup>

2.81 Given that the PRC's reservation was made in 1986, before the enactment of the CL1999, the author is of the view that the scope of the PRC's Article 96 reservation should be interpreted broadly enough to cover not only the formation of contracts, but also the modification and termination of contracts. According to Article 3 of the Economic Contract Law (1981) ("ECL") (repealed), except for those in which accounts are settled immediately, economic contracts should be in written form.<sup>114</sup> Further, Article 28 of the ECL provided that notice of or agreement on the modification or termination of an economic contract shall be in written form.<sup>115</sup>

2.82 Similarly, Article 7 of the Foreign-related Economic Contract Law (1985) ("FECL") (repealed) provided that a contract shall be formed when the parties reach a written agreement and sign on it.<sup>116</sup> Further, the FECL Article 32 provided that notices or agreements on the modification or termination of contracts shall be made in writing.<sup>117</sup> Similar requirements were found in the Technology Contract Law (1987) ("TCL") (repealed). Article 9 of the TCL stipulated that the formation, modification and termination of a technology contract should be conducted in

---

<sup>113</sup> See LOGAN, Tim N. [U.S.], 'The People's Republic of China and the United Nations Convention on Contracts for the International Sale of Goods: Formation Questions', 5 China L. Rep. 63 (1988)

<sup>114</sup> ECL Article 3 in Chinese texts: 第三条 经济合同, 除即时清结者外, 应当采用书面形式。

<sup>115</sup> ECL Article 28 in Chinese texts: 第二十八条 变更或解除经济合同的通知或协议, 应当采取书面形式。

<sup>116</sup> FECL Article 7 in Chinese texts: 第七条 当事人就合同条款以书面形式达成协议并签字, 即为合同成立。

<sup>117</sup> FECL Article 32 in Chinese texts: 第三十二条 变更或者解除合同的通知或者协议, 应当采用书面形式。

written form<sup>118</sup>. Thus, it is reasonable to believe that the intention of the PRC's reservation was to preserve the written form requirements as to formation, modification and termination of contract under the old (repealed) pre-1999 three-pillar contract law regime.

2.83 The PRC's Article 96 reservation raises another issue when read together with the current CL1999. On one hand, the CL1999 has embraced the principle of informality espoused by the CISG.<sup>119</sup> On the other hand, the PRC's Article 96 reservation continues to require for writing or written evidence with respect to the formation, modification and termination of contracts, where any party has its place of business in the PRC, a Declaring State.<sup>120</sup> A direct conflict appears to exist between the CL1999 and the PRC's Article 96 reservation.

2.84 The CL1999's position concerning the writing requirement constituted a radical change from the position taken by all previous contract laws in the PRC. Article 10 of the CL1999 prescribes:

*[Writing Requirement] A contract may be made in a writing, in an oral conversation, as well as in any other form. A contract shall be in writing if a*

---

<sup>118</sup> TCL Article 9 in Chinese texts: 第二十八条 变更或解除经济合同的通知或协议, 应当采取书面形式。

<sup>119</sup> Jerzy Rajski, Comments on Article 11 CISG [Form of Contract], in: Bianca/Bonell Commentary on the International Sales Law (Giuffrè: Milan 1987) 121-124

<sup>120</sup> As of 22 Aug 2010, according to the UN Treaty Database ([http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-10&chapter=10&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en#EndDec)), Article 96 declaration has been made by Argentina, Armenia, Belarus, Chile, China, Estonia (withdrew its Article 96 reservation in 2004), Hungary, Latvia, Lithuania, Paraguay, Russia and Ukraine.

*relevant law or administrative regulation so requires. A contract shall be in writing if the parties have so agreed.*<sup>121</sup>

2.85 Article 11 continues:

*‘[Definition of Writing] A writing means a memorandum of contract, letter or electronic message (including telegram, telex, facsimile, electronic data exchange and electronic mail), etc. which is capable of expressing its contents in a tangible form.’*<sup>122</sup>

2.86 These two provisions clearly embrace the freedom of parties to determine the form that their contracts will take. Thus the CL1999 has adopted the position of Article 11 of the CISG. Moreover, the CL1999 went a step further than the CISG and embraced not only the conventional forms, e.g. letter, telegram, telex, but also modern electronic data exchange and electronic communications. This development showed the PRC’s need for legislation to support its rapid economic, technological and social development, but also demonstrated a willingness of PRC legislators to have PRC legislation reflect international legal practice.

---

<sup>121</sup> Article 10 of the CL1999 in Chinese: 第十条 【合同的形式】当事人订立合同，有书面形式、口头形式和其他形式。 法律、行政法规规定采用书面形式的，应当采用书面形式。当事人约定采用书面形式的，应当采用书面形式。

<sup>122</sup> Article 11 of the CL1999 in Chinese: 第十一条 【书面形式】书面形式是指合同书、信件和数据电文（包括电报、电传、传真、电子数据交换和电子邮件）等可以有形地表现所载内容的形式。

2.87 To date, the PRC has not filed a withdrawal of its Article 96 declaration. Only those Contracting States with domestic legislation requiring the written form may avail itself of the Article 96 reservation<sup>123</sup>. Because the current PRC domestic contract law, the CL1999, no longer requires the written forms, is the PRC prohibited from invoking the Article 96 reservation? Has this change in its domestic law rendered the PRC's Article 96 reservation moot? Unfortunately, the CISG does not provide a direct answer to these questions. Although Article 97 (4) of the CISG states that a declaration may be withdrawn, it does not seem to impose an obligation on Contracting States to file a withdrawal when circumstances would seemingly warrant it.

2.88 In the absence of withdrawal, the PRC's Article 96 reservation is perhaps still valid. As was the case with the Article 95 reservation, the Article 96 reservation leads to confusion. Assuming the following: two parties, one of which has its place of business in the PRC, a reservation state, and the other of which has its place of business in the United States, a non-reservation state, enter into an oral contract. A dispute between the parties give rise to litigation in the US. Should the judge consider whether the PRC's Article 96 is still applicable? Could the judge even do so? Should the PRC's Article 96 reservation cease to be valid automatically or as a default upon the change in the PRC's domestic law? These questions do leave uncertainties in law and legal practice.

---

<sup>123</sup> Article 96 of the CISG: A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this 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 of business in that State.

2.89 A third issue concerns the effects and consequences wrought by the PRC's Article 96 reservation. As Professor Albert Kritzer pointed out that:

*'[W]hen a Contracting State has made an Article 96 declaration; some commentators believe that its requirements as to form will always be preserved. Others are of the opinion that the answer turns on principles of conflict of laws of the forum: if they point to the law of a non-writing State, no writing will be necessary despite the existence of an Article 96 declaration.'*<sup>124</sup>

2.90 Schlechtriem states that:

*'Take, for example, a sales contract between a German seller and a Russian buyer. [Russia] has made the Article 96 reservation. Under the first opinion, the contract has to conform to the requirements of Russian law. Under the second opinion, the rules of private international law of the forum state have to be consulted concerning which domestic law is applicable. If, for*

---

<sup>124</sup> See Albert H. Kritzer, Guide to Practical Applications of the United Nations Convention on Contracts for the International Sale of Goods (Kluwer Law International), Suppl. 10, July 1994, Detailed Analysis 118-119.

*example, in a German court the conflict of law rules lead to German law, the contract would be valid regardless of the Russian form requirements.*<sup>125</sup>

2.91 To illustrate the possibly unexpected consequences of the Article 96 reservation, Joseph Lookofsky remarked that:

*'The effect of an Article 96 reservation has been well-illustrated by Professor Flechtner in 17 Journal of Law and Commerce (1998) 187-212: 'Assume a party located in the United States and a party located in Argentina orally agreed to a sales contract. Because Argentina has made the Article 96 reservation, the provisions of Articles 11 and 29 dispensing with any writing requirement are called off by Article 12. That does not, however, mean that the transaction is subject to a writing requirement. The resolution of that issue will depend on a choice of law analysis. If private international law principles lead to the application of Argentinean law, the writing requirements of Argentinean domestic sales law will apply. If the rules of private international law designate U.S. law, then the writing requirements of U.S. domestic sales law will apply. The result in the latter situation is rather ironic. Because one party to the sale is from Argentina and Argentina has made an Article 96 reservation, the transaction becomes subject to the*

---

<sup>125</sup> See Peter Schlechtriem, 'Uniform Sales Law - The Experience with Uniform Sales Laws in the Federal Republic of Germany' in 'Särtryck', Juridisk Tidskrift vid Stockholm Universitet, Årgång 3NR 1/1991-92, p. 17.

*domestic U.S. Statute of Frauds requirements [see UCC § 2-201 which require certain sales transactions to be in writing]. And this is the case, even though the United States, by failing to make an Article 96 declaration, in effect declared its willingness to forego its Statute of Frauds rules and accept oral international sales contracts'.<sup>126</sup>*

2.92 Winship also states that:

*'The proposed revision of the 1955 Hague conflicts convention ...allows a State to declare it will not be bound by the rules of private international law with respect to issues of form, which suggests that proponents [of the Article 96 reservation (the USSR was the principal supporter of this reservation)] believe that the formal rules of a Declaring State determine whether an agreement with a trade organization in that State is enforceable. . . .'<sup>127</sup>*

2.93 Schlechtriem further elaborates that:

---

<sup>126</sup> See Joseph Lookofsky, *Understanding the CISG in Scandinavia*, 2<sup>nd</sup> edition, 2002

<sup>127</sup> See Peter Winship, *The Scope of the Vienna Convention on International Sales Contracts*, in: Galston/Smit eds., *International Sales* (Matthew Bender: NY 1984) 1-47/48



*'Since Article 565 of the Civil Code of the USSR mandates application of USSR law on form requirements in all foreign trade transactions, it can be assumed that Russian courts will always require contracts to be in writing.'*<sup>128</sup>

2.94 John O. Honnold, was initially supportive of Schlechtriem's opinion<sup>129</sup>, but later stated that<sup>130</sup>:

*'Even though conflicts rules point to State S, which does not require a writing, this writer now (contrary to his earlier opinion) suggests that State S should dismiss S's suit . . . This about-face results from this combination: (1) 'any party' could refer to the application of Article 12 to both parties to the transaction, and (2) the acceptance by the Convention of the need, felt by some States, for protection against claims unsupported by a written agreement.'*<sup>131</sup>

---

<sup>128</sup> Schlechtriem Commentary available at: <http://www.cisg.law.pace.edu/cisg/biblio/schlechtriem-96.html>

<sup>129</sup> See John O. Honnold, Uniform Law for International Sales Under the 1980 United Nations Convention, 2d. ed. (Kluwer Law International 1991) 129.

<sup>130</sup> Noted that Honnold's book now in 4th ed (though now by Flechtner, not Honnold).

<sup>131</sup> See John O. Honnold, Uniform Law for International Sales, 3rd ed. (Kluwer 1999) 139-140

2.95 Professor Bridge gives the following two interesting examples. In the first, the contracting parties are before a forum in a state that has made an Article 96 declaration. Neither party, however, has its place of business in that state. In the second, a party that has a place of business in a Declaring State contracts with another party, which does not have a place of business in a Contracting State. The terms of the contracts provide that the applicable law is the law of the non-Declaring Contracting State.

2.96 Assume now that the two examples take place in the PRC. Turning to the first example, the PRC as a Declaring State is treaty-bound to enforce an informal contract of sale, or an informal modification or termination of the parties' contract. The unease of PRC courts in handling informal contracts is not a relevant consideration, since the Article 96 declaration does not apply to parties, whose places of business are not located in the PRC or any other Declaring States. As for the second example, in which a party that has a place of business in the PRC, a Declaring State, contracts with another party, which does not have a place of business in a Contracting State, on terms providing that the applicable law is the law of the United States, for example, a Contracting State that is not the Declaring State, Professor Bridge is of the view that although the parties are commercial entities and may by their choice have clearly evinced an intention to avoid formal requirements imposed by the law of the PRC, a Declaring State, the PRC as the forum state will not enforce the contract or the modification of the contract if the form requirements are not met.<sup>132</sup>

---

<sup>132</sup> See Michael G. Bridge [United Kingdom], Uniform and Harmonized Sales Law: Choice of Law Issues, in: James J. Fawcett, Jonathan M. Harris & Michael Bridge, *International Sale of Goods in the Conflict of Laws*, Oxford University Press (2005) 908-988.

2.97 Furthermore, Professor Bridge advocates that the Article 96 reservation should apply only when the action is brought in a Declaring State's forum.<sup>133</sup> Thus, if a non-Declaring State is the forum state, then the non-Declaring State would be at liberty to disregard the declaration of another Contracting State. Given the fact that Article 96 merely disposes of a substantive rule (or rules) in the CISG without supplying any others or the means of discovering others, Professor Bridge argues that, even if the forum state had to obey the Article 96 reservation of another state, it would be under no obligation to apply any domestic writing requirement of the Declaring State to the contract. The way is open for the application of a private international law rule of the forum to determine the requirements of form. Thus, the effect of the Article 96 reservation on states that have not made the reservation is minimal.

### **2.3.2. THE PRC'S ARTICLE 96 RESERVATION IN PRACTICE**

2.98 Published cases involving the PRC's Article 96 reservation are few in number. The PACE CISG Database<sup>134</sup> contained only one pre-1999 CIETAC arbitral award and two post-1999 PRC court cases that are relevant to the Article 96 reservation in the PRC. This section examines the understanding and interpretation of the effect of Article 96 reservation in the PRC as reflected in those one arbitral award and two court cases.

---

<sup>133</sup> Ibid.

<sup>134</sup> See <http://www.cisg.law.pace.edu/cisg/text/casecit.html#china> (last accessed on 10 January 2011)

2.99 In the 6 September 1996 CIETAC Arbitration proceeding (Engines case)<sup>135</sup>, a dispute arose between the US seller and PRC buyer over the contents of their contract for the sale of engines. The PRC buyer asserted that a list included in an attachment to the contract formed the basis of the contract. The US seller, however, argued that that list was only for reference. The Arbitration Tribunal, relying on the PRC's Article 96 reservation, found that nothing in the wording of the attachment or contract evidenced an intention by the parties to use the list as a reference point only. Thus, the Tribunal held that the list did form the basis of the contract.

2.100 Two additional points deserve mention. First, this is the only case, so far available, in which the tribunal explicitly cited and relied upon the PRC's Article 96 reservation on written forms. Second, this is a case decided before the CL1999 and under the influence of the repealed pre-1999 three-pillar contract law regime, which did require written form for all contracts. The enactment of the current CL1999 negated the written form requirement.

2.101 In *Carl Hill v. Cixi Old Furniture Trade Co., Ltd.*<sup>136</sup>, a post-CL1999 case, the US buyer and PRC seller entered into an oral contract for the sale of antique furniture. The Zhejiang Cixi People's Court applied the laws of the PRC pursuant to the closest connection test. The court found that

---

<sup>135</sup> See China 6 September 1996 CIETAC Arbitration proceeding (Engines case) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/960906c1.html>]

<sup>136</sup> 25 China 18 July 2001 Zhejiang Cixi People's Court [District Court] (*Carl Hill v. Cixi Old Furniture Trade Co., Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/010718c1.html>]

where international treaties concluded or acceded to by the PRC contain provisions differing from those found in the PRC law, the former will apply. Thus, the court held that the oral sales contract was validly concluded.<sup>137</sup>

2.102 The court's decision to uphold the oral sales contract complied with the dictates set forth in Article 11 of the CISG. Regrettably, the court did not provide an explanation as to why it found the CISG applicable to the matter; nor did it address whether its decision to uphold the oral sales contract stood in contravention to the PRC's Article 96 reservation. Did the court in this case *sua sponte* a reservation made by the state, as suggested by one commentator?<sup>138</sup>

2.103 Concerning the CISG's applicability to this case, it is not entirely clear whether the buyer, a US citizen, bought the antique furniture for personal, family or household use. Article 2 of the CISG excludes the application of the Convention to goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use. If the facts supported that the CISG should not apply because of Article 2, then the PRC domestic contract law, the CL1999 would apply, which does recognise the validity of contract concluded in forms other than written form. If, however, the CISG did apply to the above case, the court should explain why it

---

<sup>137</sup> Ibid, see also original Chinese version of the decision: '原告在被告处选购旧家具, 被告亦愿意交付, 应确认双方的口头买卖合同成立且有效。' [http://aff.whu.edu.cn/cisgchina/en/news\\_view.asp?newsid=47](http://aff.whu.edu.cn/cisgchina/en/news_view.asp?newsid=47)

<sup>138</sup> See Jie Huang, 'Direct Application of International Commercial Law in Chinese Courts: Intellectual Property, Trade, and International Transportation,' 5 Manchester Journal of International Economic Law (3/2008) 105 at 110-113.

upheld the oral sales contract despite the PRC's Article 96 reservation. If the PRC court could simply ignore the PRC's Article 96 reservation, should and could courts of other CISG Contracting States consider whether Article 96 is still applicable to the PRC?

2.104 Alternatively, the PRC court could take the position that although the PRC has made a reservation under Article 96, it retains the right to exercise its discretion in determining whether the Article 96 reservation applies to the cases brought before it. After all, the language of the PRC's reservation is not as all-encompassing as the language used by other Declaring States. Moreover, the wording 'does not consider itself bound by' found in the PRC's declaration has yet to be tested.

2.105 In another post-CL1999 PRC court case, *Zhuhai Zhongyue New Communication Technology Ltd. et al. v. Theaterlight Electronic Control & Audio System Ltd.*<sup>139</sup>, the New Zealand buyer disputed the existence of a written contract of sale. The Zhuhai Intermediate People's Court [Court of the First Instance] applying the law of the PRC pursuant to the closest connection test found that a valid sales contract between the parties did exist as evidenced by transaction-related documents, including but not limited to customs declaration statements.

---

<sup>139</sup> 45 China 11 January 2005 Guangdong Province Higher Court [Appellate Court] (*Zhuhai Zhongyue New Communication Technology Ltd. et al. v. Theaterlight Electronic Control & Audio System Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/050111c1.html>]

2.106 The Guangdong Province High Court [Appellate Court] upheld the lower court's finding of a valid contract between the parties. In doing so, the Appellate Court found that the CISG applicable, subject to the PRC's reservations, because both New Zealand and the PRC are Contracting States of the CISG. Unfortunately, the Appellate Court did not discuss how it reconciled the apparent conflict between the CL1999's informal requirements and the PRC's Article 96 reservation on formal requirement of written forms. Instead, the Appellate Court simply affirmed the finding of a valid sales contract by the Court of the First Instance. Thus, it is unclear whether the court simply ignored the PRC's Article 96 reservation and upheld a valid sales contract according to the common spirit of both the CISG and the CL1999 anyway.

2.107 Notably, Article 3 of the Supreme People's Court Interpretation I on the CL1999, has instructed that the People's court shall apply the CL1999 to uphold the validity of a contract even if the contract in question was formed before the implementation of the CL1999. Thus, a contract that would be void under pre-CL1999 law, but valid under the CL1999 would be upheld.<sup>140</sup> This interpretation clearly indicates the PRC's intention to disregard the formal written form requirements found in its previous domestic contract laws, and to apply the no form requirement under its current CL1999 to as many situations as possible.<sup>141</sup>

---

<sup>140</sup> Article 3 of the Supreme People's Court Interpretation I in Chinese: 《最高人民法院关于适用〈中华人民共和国合同法〉若干问题的解释(一)》第三条的规定: '人民法院确认合同效力时, 对合同法实施以前成立的合同, 适用当时的法律合同无效而适用合同法合同有效的, 则适用合同法。'

<sup>141</sup> See 33 China 25 December 2002 Higher People's Court [Appellate Court] of Jiangsu Province (*Zhuguang Oil Company v. Wuxi Zhongrui Group Corporation*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/021225c1.html>]

### **2.3.3. THE PRC SHOULD WITHDRAW ITS ARTICLE 96 RESERVATION**

2.108 There is no longer any reason or justification for the PRC's Article 96 reservation. As demonstrated above, first, without adopting the authorised declaration pursuant to Articles 2 and 96 of the CISG, the exact meaning and scope of PRC's Article 96 reservation is ambiguous and open to controversy; second, the apparent and direct contradiction between the CL1999 and the PRC's Article 96 reservation cannot be resolved; third, in any event, the effects and consequences of the PRC's Article 96 reservation on non-Declaring States is minimal. As a result, it is the PRC courts which are forced to reconcile the apparent conflict between the CL1999 and the PRC's Article 96 reservation.

2.109 From the PRC courts and arbitration tribunals' practices, the Article 96 reservation leads to confusions and uncertainties without providing any benefits in return. As the two post-CL1999 cases demonstrate, PRC courts have chosen to ignore the PRC's Article 96 reservation. Thus, the continued existence of the PRC's Article 96 reservation makes no sense.

## **2.4. CONCLUSION (Chapter 2)**

2.110 This chapter has examined the reduction of the political, economic and legal barriers to the CISG's application in the PRC brought about during the post CL1999 era. The growingly diverse contractual and commercial activities taking place in the establishment and development of a



social market economy in the PRC required a comprehensive and modern contract law. The CL1999 recognised the freedom of contract for the very first time in the history of Chinese contract law.

2.111 More importantly, this chapter has demonstrated that the two reservations declared by the PRC upon its adoption of the CISG in the 1980s have become out-dated. In fact, the two reservations now serve as major barriers to the application of the CISG in the PRC. These two reservations no longer comport with current PRC contract law or PRC court and arbitration practices. Therefore, as no basis exists for their continued existence, the PRC should withdraw these two reservations.

### **3. CHAPTER THREE: THE HARMONISATION OF THE PRC CONTRACT LAW 1999, THE CISG AND THE UPICC**

#### **3.0. INTRODUCTION**

- 3.01 The previous chapter, Chapter 2 investigated the compatibility between the CL1999 and the two reservations made by the PRC under Articles 95 and 96 of the CISG. It highlighted the impending effects of these two reservations on the application of the CISG in the PRC, and proposed that the PRC should make an unambiguous declaration to withdraw these two reservations.
- 3.02 This chapter investigates whether, and to what extent, harmonisation has been achieved between the CL1999, the CISG and the UPICC. It considers the influence that the CISG and the UPICC had, firstly, on the process of the drafting of the CL1999 and, secondly, on the outcomes created by the text of the CL1999 (Section 3.1). It posits that harmonisation has been achieved with respect to the contract formation rules (Section 3.2) and two fundamental principles, i.e. party autonomy and good faith (Section 3.3). In addition, it examines whether or not the harmonisation achieved between the PRC sales contract law and the international sales contract law facilitates the application of the CISG in the PRC (Section 3.4).

### **3.1. THE INFLUENCE OF THE CISG AND THE UPICC ON THE DRAFTING OF THE CL1999**

3.03 The CL1999 was a milestone in the development of contract law in the PRC, but what were the origins of this 'new' PRC contract law? In addition to drawing up on domestic practice and experience, the drafters used many foreign contract laws and international uniform laws and instruments as references and inspirations. In particular, the CISG and the UPICC were followed closely, and in some places copied article by article<sup>1</sup>. Professors Jiang Ping, Liang Huixing and Wang Liming are among those who saw the CL1999 as an opportunity not only to reconcile problems and eliminate inconsistencies in previous PRC contract laws but also, perhaps more importantly, to modernise the PRC contract law bringing it more in line with international developments<sup>2</sup>. Thus, an extensive range of comparative and selective techniques was adopted by the CL1999 drafters when modernising the PRC contract law system – a quintessentially Chinese methodology, or the so-called Chinese characteristics<sup>3</sup>.

---

<sup>1</sup> See Liang Huixing, On the Third Draft of the Uniform Contract Law of China, (No.1, 1997) *Jurisprudence Frontiers* (Faxue Qianyan) 186, at 186.

<sup>2</sup> See Jiang Ping, Drafting the Uniform Contract Law in China, (1996) 10 *Columbia Journal of Asian Law* 245, at 245; Liang Huixing, On the Third Draft of the Uniform Contract Law of China, (No.1, 1997) *Jurisprudence Frontiers* (Faxue Qianyan) 186, at 186; Wang Liming, An Inquiry into Several Difficult Problems in Enacting China's Uniform Contract Law, (1999) 8 *Pacific Rim Law and Policy Journal* 351, at 352; Wang Liming and Xu Chuanxi, Fundamental Principles of China's Contract Law, 13 *Columbia Journal of Asian Law* (1999) 1-34 at page 8; and Ding Ding, China and CISG, in: *Michael R. Will ed., CISG and China: Theory and Practice, Faculté de droit, Université de Genève* (1999) 25-37 at page 34.

<sup>3</sup> The socialist market economy with Chinese characteristics is used to refer to the economic system of the People's Republic of China after the reforms of Deng Xiaoping. Accordingly, the socialist legal system with Chinese characteristics is used to refer to the corresponding legal system. See paragraph 7 of the Preamble of PRC Constitution (2004 amendments).

3.04 As has been discussed in Chapter One, in the 1980s, the most noticeable impact that the CISG had was on the political and diplomatic policies relating to the Reform and Opening-up. Conversely, it had relatively little impact upon the PRC domestic legislation and legal reforms. With the continuation and deepening of the reform and opening-up process, however, contract law reforms implemented in the 1990s were far more market-oriented than those put in place in the 1980s. The passage of the CL1999 heralded the adoption of a ‘new’ contract law framework, which had pronounced similarities with modern Western contract laws. In some fundamental principles and many key provisions, the CL1999 represents an attempt to harmonize PRC contract law with transnational uniform laws and instruments like the CISG and the UPICC.

3.05 Evidence of the influence of the CISG and the UPICC had on the CL1999 first appeared in the drafting process. Professor Liang Huixing, one of the primary drafters of the CL1999, commented that:

*‘the drafters of the CL have consulted and absorbed rules of the CISG on offer and acceptance, avoidance (termination) with a Nachfrist, liabilities for breach of contract, interpretation of a contract and sales contract.’<sup>4</sup>*

---

<sup>4</sup> See Liang Huixing, *Cong Sanzudingli Zouxian Tongyi De Hetongfa* [From the Three Pillars to a Unified Contract Law], 3 *Zhongguo Faxue* [CHINESE JURISPRUDENCE], at 9 (1995).

- 3.06 Shiyuan Han concurred, adding that contract law legislators used the CISG as a set of guiding concepts<sup>5</sup>. According to Shiyuan Han, the State Legislative Plan for the contract law states that:

*‘Considering the real needs of the reform and opening-up of China and the development of socialist market economy, the set-up of a nationally unified market and an access to the international market, we shall sum up the experiences of legislators and judges and the results of theoretical researches concerning contracts in China, draw broadly on the successful experiences of other countries and regions on laws and cases, adopt to the best of our abilities common rules reflecting objective laws of modern market economy, and harmonize rules of Chinese law with those of international conventions and international customs.’<sup>6</sup>*

- 3.07 Han identified the CISG as the key international convention referred to in the above statement. The UPICC is among the international customs alluded to in the foregoing extract. Indeed, one of the guiding principles adopted by the drafters of the CL1999 was to ‘benefit from the experience

---

<sup>5</sup> See Shiyuan Han, Chapter: China, in: Franco Ferrari (ed), *The CISG and its Impact on National Systems*, Sellier, 2008 at page 71.

<sup>6</sup> Ibid; see also Huixing Liang, *Minfaxue shuopan liyu lifa yanjiu* [Studies on Civil Law Theories, Cases and Legislation], Vol. 2, 1999 at 121.

of foreign countries and international practice and standards'<sup>7</sup>. Both the CISG and the UPICC were examined and referred to in the drafting of the CL1999.

3.08 Moreover, the role played by the CISG and the UPICC in the drafting of the CL1999 is evidenced in the content of the black letter text of the CL1999. Regarded as the prevailing international standards and rules governing international contracts, both the CISG and the UPICC were used as direct sources for some of the provisions that appear in the CL1999. While some CL1999 provisions do not correspond to the CISG or the UPICC word for word, they do reflect the principles set forth within the CISG and the UPICC. Other CL1999 provisions, however, resulted from PRC practice and experience.

3.09 It would be too ambitious to exhaustively study and compare every article of the CL1999, (a substantial statute comprising twenty-three chapters and four hundred and twenty-eight articles), to the CISG and the UPICC. However, the purpose of this thesis is not just to examine the impact of the CISG and the UPICC on the PRC contract law solely for the sake of comparison, but, more importantly, to identify and help remove barriers to the application of the CISG in the PRC. It will, therefore, compare articles dealing with: (1) contract formation rules; and (2) two fundamental principles, namely party autonomy and good faith. The comparative studies of

---

<sup>7</sup> See Hu Kangsheng, 'Explanations on the PRC Contract Law (Draft)' (9 March 1999 at the 2<sup>nd</sup> Session of the 9<sup>th</sup> National People's Congress (NPC)), Legislative Materials: *Civil Law Section of the Legislative Affairs Commission of the National People's Congress Standing Committee (NPCSC)*, *Zhonghua Renmin Gongheguo Hetongfa Lifa Ziliaoxuan [Selected Legislative Materials on the PRC Contract Law]*, 1999 at page 21.

these articles will serve as examples to illustrate how these three regimes (the CL1999, the CISG and the UPICC) resemble each other, albeit superficially, in their black letter rules.

3.10 One might question the use of something as basic as contract formation rules to analyse the influence of the CISG and the UPICC had on the text of the CL1999. Nonetheless, despite the basic, and perhaps uncontroversial, nature of contract formation nowadays across different legal traditions, it still serves as a fundamental component of contract and sales law. Both the CISG and the UPICC provide detailed rules on contract formation, as does the CL1999. More importantly, the adoption of the CL1999 represents the first time in the history of Chinese contract law that detailed Western-style contract formation rules were incorporated. For the first time, terms such as ‘offer’ and ‘acceptance’, which originated in the outside world were transplanted and became part of the PRC’s legal framework. Therefore, contract formation rules will mark the beginning of this comparative study, much as they mark the beginning of any international sales contract.

3.11 A series of article-by-article tables will be used to illustrate the comparative study of provisions that speak for themselves and about which the author will set out her arguments and conclusions. To reduce discrepancies due to any inconsistency or difficulty in the English-Chinese translation (or vice versa), the comparison tables are produced in both languages. These tables are contained in the Appendices for ease of reference.

### **3.2. EVIDENCE OF HARMONISATION IN CONTRACT FORMATION RULES**

3.12 Evidence of whether, and to what extent, the CL1999 draws on the CISG and the UPICC can be found in the operation of the CL1999's rules and provisions. Among all its provisions, contract formation rules provide the best example for illustrating how these three regimes resemble one another. This section further explores and investigates to what extent harmonisation has been achieved among these three regimes.

3.13 Part II of the CISG contains eleven articles on formation of contract. The CISG Articles 14–17 deal with offers; their CL1999 counterparts are Articles 14–20. The CISG Articles 18–22 deal with acceptance; the CL1999's corresponding provisions are Articles 21–27. The CISG Article 23 addresses the time at which a contract is concluded; the CL1999's counterpart is Article 25. The two regimes begin to diverge, however, when determining whether an offer has 'reached' an 'addressee'. The CISG Article 24 addresses the time at which any offer, declaration of acceptance or other indication of intention is deemed to 'reach' the addressee under Part II of the Convention.<sup>8</sup> Although Article 16 of the CL1999 stipulates that an offer becomes effective when it reaches the offeree, it does not clarify when the offer is deemed to 'reach' the

---

<sup>8</sup> Several commentators including Professor Honnold have observed that Art. 24 may be applied more broadly and by analogy to other communications between the parties outside the context of Part II, such as in Part III of the Convention. See Honnold J.O., *Uniform Law for International Sales*, Kluwer Law International, 3rd ed. (1999) at page 202; see also Kritzer A.H., *Guide to Practical Applications of the United Nations Convention on Contracts for the International Sale of Goods*, Kluwer (1988) at page 196.



addressee as the CISG does.<sup>9</sup> What Article 16 of the CL1999 does define is when an electronically communicated offer is deemed to ‘reach’ its recipient. Nonetheless, Article 26 of the CL1999 provides rules on acceptance similar to the CISG.<sup>10</sup> The table in Appendix 1A shows that the contract formation rules under the CL1999 closely resemble their CISG counterparts.

3.14 Like the CISG, the UPICC adopts the offer and acceptance model of contract formation. In particular, Chapter 2 of the UPICC deals with the rules of contract formation.<sup>11</sup> It is understood that the UPICC articles are to be read in conjunction with the Official Comments on them as ‘the comments on the articles are to be seen as an integral part of the Principles’<sup>12</sup>. Nonetheless, the focus here is simply to compare the black letter laws to demonstrate generally the apparent

---

<sup>9</sup> See CL1999 Article 16: An offer becomes effective when it reaches the offeree. If a contract is concluded through data-telex, and a recipient designates a specific system to receive the date-telex, the time when the data-telex enters such specific system shall be the time of arrival; if no specific system is appointed, the time when the data-telex first enters any of the recipient’s systems shall be regarded as the time of arrival. CL1999 Article 16 in Chinese text: 第十六条 【要约的生效】要约到达受要约人时生效。采用数据电文形式订立合同，收件人指定特定系统接收数据电文的，该数据电文进入该特定系统的时间，视为到达时间；未指定特定系统的，该数据电文进入收件人的任何系统的首次时间，视为到达时间。

<sup>10</sup> See CL1999 Article 26: An acceptance becomes effective when its notice reaches the offeror. If notice of acceptance is not required, the acceptance shall become effective when an act of acceptance is performed in accordance with transaction practices or as required in the offer. Where a contract is concluded in the form of date-telex, the time of arrival of an acceptance shall be governed by the provisions of Paragraph 2, Article 16 of this Law. CL1999 Article 26 in Chinese text: 第二十六条 【承诺的生效】承诺通知到达要约人时生效。承诺不需要通知的，根据交易习惯或者要约的要求作出承诺的行为时生效。采用数据电文形式订立合同的，承诺到达的时间适用本法第十六条第二款的规定。

<sup>11</sup> See UPICC Articles 2.1–2.22.

<sup>12</sup> See UNIDROIT, UPICC 2004 Annex (\*) *While recalling that the comments on the articles are to be seen as an integral part of the Principles, the text of the articles is reproduced separately in this annex for the convenience of the reader.*

similarities between the UPICC and the CL1999. The table provided in Appendix 1B illustrates the overlaps and gaps between the UPICC and the CL1999.

3.15 The CL1999 is the first statute in the history of Chinese contract law legislation to adopt the offer and acceptance model of contract formation. In particular, Chapter Two of the General Provisions, which applies to all contracts, provides detailed contract formation rules.<sup>13</sup> Apart from the provisions discussed above, other provisions of the CL1999 with so-called Chinese characteristics raise some unique issues. Further, such provisions do not have any equivalent in either the CISG or the UPICC. These provisions are Articles 9, 12, and 32–38.<sup>14</sup>

3.16 Article 9 of the CL1999 deals with the legal capacity to enter into a contract. It requires that the parties seeking to enter into a contract have the appropriate capacity for civil rights and civil acts, and that any party may appoint an agent to enter into a contract on its behalf in accordance with the law.<sup>15</sup> To some extent, this article can be seen as a remnant of the traditional concern over the capacity of parties to enter into an economic, commercial or civil contract. One must bear in mind, however, that not everyone had the right to enter into

---

<sup>13</sup> See CL1999 Articles 9–43.

<sup>14</sup> See Appendix 1C.

<sup>15</sup> See CL1999 Article 9: In entering into a contract, the parties shall have appropriate capacities for civil rights and civil acts. A party may appoint an agent to enter into a contract on its behalf in accordance with the law. CL1999 Article 9 in Chinese text: 第九条 【订立合同的能力】当事人订立合同，应当具有相应的民事权利能力和民事行为能力。当事人依法可以委托代理人订立合同。

economic contracts as discussed in previous chapters<sup>16</sup> under the previous three-pillar economic contract law regime. Regardless, nothing in this article contravenes the CISG.

3.17 Article 12 of the CL1999 does not resemble any particular provision of the CISG. It recommends that contracts contain at least the following in keeping with common practice: (1) the titles or names and domiciles of the parties; (2) subject matter; (3) quantity; (4) quality; (5) price or remuneration; (6) time limit, place and method of performance; (7) liability for breach of contract; and (8) methods for resolving disputes.<sup>17</sup> Although recommended, these elements are not mandatory. A review of the CL1999's predecessors in the table below illustrates the history and evolution of this particular article over time. (emphasis added)

<b>Economic Contract Law (1981)</b>	<b>Foreign-related Economic Contract Law (1985)</b>	<b>Technology Contract Law (1987)</b>	<b>Contract Law (1999)</b>
Article 12 An economic contract <i>shall</i> contain the	Article 12 A contract <i>shall</i> generally contain the	Article 15 The provisions of a technology contract	Article 12 <i>The contents of a contract are agreed upon by the</i>

<sup>16</sup> See in particular, Chapter 1 paragraphs 1.37 and 1.53 and Chapter 2 paragraph 2.03.

<sup>17</sup> See CL1999 Article 12: The contents of a contract shall be agreed upon by the parties, and shall generally contain the following clauses: (1) titles or names and domiciles of the parties; (2) subject matter; (3) quantity; (4) quality; (5) price or remuneration; (6) time limit, place and method of performance; (7) liability for breach of contract; and (8) method to settle disputes. The parties may conclude a contract by reference to a model text of each kind of contract. CL1999 Article 12 in Chinese text: 第十二条 【合同内容】合同的内容由当事人约定，一般包括以下条款：（一）当事人的名称或者姓名和住所；（二）标的；（三）数量；（四）质量；（五）价款或者报酬；（六）履行期限、地点和方式；（七）违约责任；（八）解决争议的方法。当事人可以参照各类合同的示范文本订立合同。

<b>Economic Contract Law</b> <b>(1981)</b>	<b>Foreign-related Economic Contract Law</b> <b>(1985)</b>	<b>Technology Contract Law</b> <b>(1987)</b>	<b>Contract Law</b> <b>(1999)</b>
<p>following principal clauses:</p> <p>(1) the object (referring to goods, labour services, construction projects, etc.);</p> <p>(2) the quantity and quality;</p> <p>(3) the price or remuneration;</p> <p>(4) the time limit, place and method of performance; and</p> <p>(5) the liability for breach of contract.</p> <p>An economic contract shall also include as its principal clauses those whose inclusion is stipulated by law or by virtue of the nature of the economic contract, or whose inclusion is considered indispensable by either party to the contract.</p>	<p>following terms:</p> <p>(1) the corporate or personal names of the contracting parties and their nationalities and principal places of business or domicile;</p> <p>(2) the date and place of the signing of the contract;</p> <p>(3) the type of contract and the kind and scope of the object of the contract;</p> <p>(4) the technical conditions, quality, standard, specifications and quantity of the object of the contract;</p> <p>(5) the time limit, place and method of performance;</p> <p>(6) the terms of price, amount and method of payment, and various incidental charges;</p> <p>(7) whether the contract is assignable and if it is, the conditions for its assignment;</p> <p>(8) liability to pay compensation and other liabilities for breach of the contract;</p> <p>(9) the methods for settling contractual</p>	<p>are agreed upon by the parties and shall generally contain the following:</p> <p>(1) title of the project;</p> <p>(2) contents, scope and requirements of the object;</p> <p>(3) plan, schedule, time limits, place and manner of performance;</p> <p>(4) maintenance of confidentiality of technological information and materials;</p> <p>(5) liability for risks;</p> <p>(6) ownership and sharing of technological achievements;</p> <p>(7) standards and methods of inspection and acceptance;</p> <p>(8) price or remuneration and means of payment;</p> <p>(9) breach of contract damages or methods for computing the amount of compensation for losses;</p> <p>(10) methods for settling disputes; and</p> <p>(11) interpretation of terms and technical expressions.</p> <p>Background materials on the technology,</p>	<p><i>parties and generally contain the following clauses:</i></p> <p>(1) titles or names and domiciles of the parties;</p> <p>(2) subject matter;</p> <p>(3) quantity;</p> <p>(4) quality;</p> <p>(5) price or remuneration;</p> <p>(6) time limit, place and method of performance;</p> <p>(7) liability for breach of contract; and</p> <p>(8) methods for settling disputes.</p> <p>The parties may conclude a contract by reference to a model text of each kind of contract.</p>

<b>Economic Contract Law</b> <b>(1981)</b>	<b>Foreign-related Economic Contract Law</b> <b>(1985)</b>	<b>Technology Contract Law</b> <b>(1987)</b>	<b>Contract Law</b> <b>(1999)</b>
	disputes; and (10) the language(s) in which the contract is written and its validity.	reports on feasibility studies and technological appraisal, project descriptions and plans, technological standards, technological norms, original designs and documents on technological processes, as well as blueprints, charts, data and photographs, etc. , that are pertinent to the performance of the contract may, by agreement between the parties, become an integral part of the contract.	
<p>第十二条</p> <p>经济合同应具备以下主要条款：</p> <p>一、标的（指货物、劳务、工程项目等）；</p> <p>二、数量和质量；</p> <p>三、价款或者酬金；</p> <p>四、履行的期限、地点和方式；</p> <p>五、违约责任。</p> <p>根据法律规定的或按经济合同性质必须具备的条款，以及当事人一方要求必须</p>	<p>第十二条</p> <p>合同一般应当具备以下条款：</p> <p>一、合同当事人的名称或者姓名、国籍、主营业所或者住所；</p> <p>二、合同签订日期、地点；</p> <p>三、合同的类型和合同标准的种类、范围；</p> <p>四、合同标准的技术条件、质量、标准、规格、数量；</p> <p>五、履行的期限、地点和方式；</p>	<p>第十五条</p> <p>技术合同的条款由当事人约定。一般应当包括：</p> <p>（一）项目名称；</p> <p>（二）标的的内容、范围和要求；</p> <p>（三）履行的计划、进度、期限、地点和方式；</p> <p>（四）技术情报和资料的保密；</p> <p>（五）风险责任的承担；</p> <p>（六）技术成果的归属和分享；</p>	<p>第十二条</p> <p>【合同内容】合同的内容由当事人约定，一般包括以下条款：</p> <p>（一）当事人的名称或者姓名和住所；</p> <p>（二）标的；</p> <p>（三）数量；</p> <p>（四）质量；</p> <p>（五）价款或者报酬；</p> <p>（六）履行期限、地点和方式；</p> <p>（七）违约责任；</p> <p>（八）解决争议的方法。</p> <p>当事人可以参照各类</p>

<b>Economic Contract Law</b> <b>(1981)</b>	<b>Foreign-related Economic Contract Law</b> <b>(1985)</b>	<b>Technology Contract Law</b> <b>(1987)</b>	<b>Contract Law</b> <b>(1999)</b>
<p>规定的条款，也是经济合同的主要条款。</p>	<p>六、 价格条件、支付金额、支付方式和各种附带的费用； 七、 合同能否转让或者合同转让的条件； 八、 违反合同的赔偿和其他责任； 九、 合同发生争议时的解决方法； 十、 合同使用的文字及其效力。</p>	<p>（七）验收标准和方 法； （八）价款或者报酬及其支付方式； （九）违约金或者损失赔偿额的计算方法； （十）争议的解决办法；  （十一）名词和术语的解释。 与履行合同有关的技术背景资料、可行性论证和技术评价报告、项目任务书和计划书、技术标准、技术规范、原始设计和工艺文件，以及图纸、表格、数据和照片等，可以根据当事人的协议作为合同的组成部分。</p>	<p>合同的示范文本订立合同。</p>

3.18 In comparison with its predecessors, one significant change introduced by Article 12 of the CL1999 was the deletion of the word ‘shall’ (应当 *Yingdang*). All three predecessor provisions stipulated that a contract ‘shall’ contain certain principal clauses, although none of them specified the consequences of omitting any of these mandatory clauses. For the first time, the CL1999 allowed parties to agree upon the contents of their contract (由当事人约定 *You Dangshiren Yueding*), while at the same time providing some guidance or recommendations as to a contract’s contents as found in general practice (一般包括 *Yiban Baokuo*).

3.19 According to Donald C. Clarke, the use of the words 'shall' and 'generally' in the PRC contract law legislation in the 1980s is best understood not as an oversight or an example of bad drafting, but instead as a perfectly understandable and even necessary part of the Chinese disciplinary legal system, as opposed to the 'Ideal Western Legal Order' ('IWLO')<sup>18</sup>. This understanding is both interesting and insightful. The CL1999 did not break away from its predecessors entirely; instead, the CL1999 appeared as a not quite updated version (adding paragraph (8) on dispute resolution) of Article 12 of the Economic Contract Law of 1981. Paragraphs (1)-(7) of the updated version are similar to the corresponding paragraphs of the 1981 statute, the exception being that they are no longer mandatory but instead merely recommended.

3.20 The history and evolution of the CL1999 Article 12 demonstrate not only how contract law reforms reflected adjustments made in the economic and political realms - gradualism, experimentation, and regional differences - but also how such reforms reflected the unique Chinese characteristics in the reform and opening-up process that have persevered as well as adapted to the changing reality of Chinese economic and law reforms.

3.21 Article 32 of the CL1999 appears to diverge from both the CISG and the UPICC. According to Article 32 of the CL1999, for parties who conclude a contract in writing, the contract is formed

---

<sup>18</sup> See Donald C. Clarke, *Puzzling Observations in Chinese Law - When Is a Riddle Just a Mistake?* in C. Stephen Hsu (ed), *Understanding China's legal system: essays in honor of Jerome A. Cohen*, New York : New York University, c2003 page 102.

when it is signed or sealed by the parties.<sup>19</sup> Conversely, Article 25 of the CL1999, which is the equivalent to Article 23 of the CISG, provides that a contract is formed when the acceptance becomes effective.<sup>20</sup> The rules on when the acceptance becomes effective are largely consistent across the three regimes.<sup>21</sup> The CL1999 Article 32, however, appears to contradict the ‘receipt’ principle prescribed under the CL1999 Article 25 and the CISG Article 23. By way of example, suppose the offeror sends a signed contract to the offeree by post and that the offeree then accepts the offer by countersigning the contract and returning it by post. According to Article 25, the contract is formed when the acceptance becomes effective, i.e. when the countersigned contract reaches the offeror. According to Article 32, however, the contract is formed when it is signed by the offeree, i.e. before the contract is dispatched to or reaches the offeror.

3.22 Similarly, Article 33 of the CL1999 provides that if the parties conclude the contract by way of letters or electronic communications and a letter of confirmation is requested, the contract is formed when the letter of confirmation is signed<sup>22</sup>. Unlike Article 2.12 of the UPICC, which deals

---

<sup>19</sup> See CL1999 Article 32: Where the parties conclude a contract in written form, the contract is formed when it is signed or sealed by the parties. See also CL1999 Article 32 in Chinese text: 第三十二条 【合同成立时间】当事人采用合同书形式订立合同的，自双方当事人签字或者盖章时合同成立。

<sup>20</sup> See CL1999 Article 25: A contract is formed when the acceptance becomes effective. See also CL1999 Article 25 in Chinese text: 第二十五条 【合同成立时间】承诺生效时合同成立。

<sup>21</sup> See CL1999 Article 26, CISG Article 18, and UPICC Articles 2.6 and 2.7, set out in Appendixes 1A and 1B.

<sup>22</sup> See CL1999 Article 33: Where the parties conclude the contract in the form of letters or data-telex, etc., one party may request to sign a letter of confirmation before the conclusion of the contract. The contract shall be formed at the time when the letter of confirmation is signed. See also CL1999 Article 33 in Chinese text: 第三十三条 【确认书与合同成立】当事人采用信件、数据电文等形式订立合同的，可以在合同成立之前要求签订确认书。签订确认书时合同成立。



with the situation where a contract has already been concluded either orally or by the exchange of written communications, Article 33 of the CL1999 deals with the situation before the contract has been concluded where one party requests that the other sign a letter of confirmation. The time at which the contract is formed is when the letter of confirmation is signed, regardless of whether and when the acceptance reaches the offeror. Again, this appears to deviate from the receipt principle as applied to acceptance under Article 25 of the CL1999 and the CISG Article 23.

3.23 Articles 34 and 35 of the CL1999 deal with the place where the contract is formed. Article 34 sets out the general rule that the place where the acceptance is deemed to become effective is the place where the contract is formed. The second sentence of Article 34 then provides that if a contract is concluded by way of electronic communications, the recipient's main place of business is deemed to be the place where the contract is concluded. If the recipient does not have a main place of business, its habitual residence is the place where the contract is concluded. Where the parties agree otherwise, their agreement prevails.<sup>23</sup> Article 35 then provides that where the parties conclude a contract in writing, the place where both parties sign or affix their seals to the contract is deemed to be the place of conclusion.<sup>24</sup>

---

<sup>23</sup> See CL1999 Article 34: The place of effectiveness of an acceptance shall be the place of conclusion of the contract. If the contract is concluded in the form of data-telex, the main place of business of the recipient shall be the place of conclusion. If the recipient does not have a main place of business, its habitual residence shall be considered to be the place of conclusion. Where the parties agree otherwise, such agreement shall apply. CL1999 Article 34 in Chinese text: 第三十四条 【合同成立地点】承诺生效的地点为合同成立的地点。采用数据电文形式订立合同的，收件人的主营业地为合同成立的地点；没有主营业地的，其经常居住地为合同成立的地点。当事人另有约定的，按照其约定。

<sup>24</sup> See CL1999 Article 35: Where the parties conclude a contract in written form, the place where both parties sign or affix their seals on the contract shall be the place of conclusion. CL1999 Article 35 in Chinese text: 第三十五条

3.24 Neither the CISG nor the UPICC specifically deals with the place of conclusion or formation of a contract, although Article 24 of the CISG provides that an offer, a declaration of acceptance or any other indication of intention is deemed to reach the addressee when it is made orally or delivered personally by any other means to his 'place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence'<sup>25</sup>. Arguably, the place of conclusion of a contract under Article 34 of the CL1999 is not dissimilar from the place where communication 'reaches' addressee under Article 24 of the CISG and the two provisions are convergent in principle.

3.25 Interestingly, Article 35 of the CL1999 again stresses that the place where the parties sign or affix their seals to the contract is where the contract is deemed to be concluded. Article 35 seems to be an exception to the general acceptance rule prescribed in Article 34, which provides that the place of conclusion of the contract is where the acceptance becomes effective. Suppose again that the offeror sends a signed contract to the offeree by post and the offeree then accepts the offer by countersigning the contract and returning it by post. According to Article 35, the contract is formed where the offeree signs or affixes its seal to the contract rather than

---

【书面合同成立地点】当事人采用合同书形式订立合同的，双方当事人签字或者盖章的地点为合同成立的地点。

<sup>25</sup> See CISG Article 24: For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention 'reaches' the addressee when it is made orally to him or delivered by any other means to him personally, to his *place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence*. (*emphasis added*)

where the acceptance becomes effective, i.e. when the countersigned contract reaches the offeror.

3.26 Articles 36 and 37 of the CL1999 deal with the situation where a contract is to be concluded in writing as required by relevant laws and administrative regulations or pursuant to the parties' agreement, but the parties fail to conclude it in writing (Article 36)<sup>26</sup> or fail to sign or seal the contract (Article 37)<sup>27</sup>. If one party has performed its principal obligation and the other party has accepted the other party's performance of the same obligation, the contract is deemed to have been formed. Although neither the CISG nor the UPICC provides similar rules, it is argued that Articles 36 and 37 of the CL1999 are in line with the CISG and the UPICC in principle in that they all uphold the principle of informality. In particular, Article 29 of the CISG in a similar way precludes a party from asserting a requirement that the contract be in writing to the extent the other party has relied on the conduct of the former.

---

<sup>26</sup> See CL1999 Article 36: Where a contract is to be concluded in written form as required by relevant laws and administrative regulations or as agreed by the parties, and the parties failed to conclude the contract in written form, but one party has performed the principal obligation and the other party has accepted it, the contract is formed. See also CL1999 Article 36 in Chinese text: 第三十六条 【书面合同与合同成立】法律、行政法规规定或者当事人约定采用书面形式订立合同，当事人未采用书面形式但一方已经履行主要义务，对方接受的，该合同成立。第三十七条 【合同书与合同成立】采用合同书形式订立合同，在签字或者盖章之前，当事人一方已经履行主要义务，对方接受的，该合同成立。

<sup>27</sup> See CL1999 Article 37: Where a contract is to be concluded in written form, if one party has performed its principal obligation and the other party has accepted it before signing or sealing of the contract, the contract is formed. See also CL1999 Article 37 in Chinese text: 第三十七条 【合同书与合同成立】采用合同书形式订立合同，在签字或者盖章之前，当事人一方已经履行主要义务，对方接受的，该合同成立。

3.27 Article 38 deals with the situation where the State has issued a mandatory plan or state purchasing order based on necessity. It provides that the relevant legal persons and other organizations shall conclude a contract in accordance with the rights and obligations required by relevant laws and administrative regulations.<sup>28</sup> This is apparently a remnant provision under the state-plan economy. It can be categorised as one of those provisions with Chinese characteristics that do not bear any resemblance to either the CISG or the UPICC. These provisions are alien to the mandates outlined in the CISG and the UPICC and will likely serve as barriers to the application of the CISG in the PRC.

### **3.3. EVIDENCE OF HARMONISATION IN TWO FUNDAMENTAL PRINCIPLES: PARTY AUTONOMY AND GOOD FAITH**

3.28 According to PRC civil law theory, fundamental principles of law reflect the legislative policies underlying specific legal provisions and are applied throughout the entirety of the legislation in question. Professor Wang Liming stated that the fundamental principles of the CL1999 represent the essence and spirit of the PRC contract law.<sup>29</sup> As the CL1999's guiding principles, they are the starting point for drafting, interpreting, implementing, and studying the CL1999. Yu Liang

---

<sup>28</sup> See CL1999 Article 38: Where the State has issued a mandatory plan or a State purchasing order based on necessity, the relevant legal persons and the other organizations shall conclude a contract between them in accordance with the rights and obligations as stipulated by the relevant laws and administrative regulations. See also CL1999 Article 38 in Chinese text: 第三十八条 【依国家计划订立合同】国家根据需要下达指令性任务或者国家订货任务的, 有关法人、其他组织之间应当依照有关法律、行政法规规定的权利和义务订立合同。

<sup>29</sup> See Wang Liming & Xu Chuanxi, *Fundamental Principles of China's Contract Law*, 13 COLUM. J. ASIAN L. 1-34 (1999).

pointed out that in practice, such principles may often be employed to guide or inform, or even to serve as the legal basis for the resolution of various contractual disputes.<sup>30</sup> Professor Wang Liming and Xu Chuanxi believed that three fundamental principles influenced the drafting of the CL1999: (1) freedom of contract (or party autonomy), (2) good faith, and (3) the fostering of transactions.<sup>31</sup> This section will use party autonomy and good faith as examples to illustrate that the harmonisation can be discerned between the CL1999, the CISG and the UPICC.

### **3.3.1. PARTY AUTONOMY**

3.29 The principle of party autonomy is enshrined in Article 6 of the CISG, which provides that the parties may exclude the application of the CISG or, subject to Article 12, derogate from or vary the effect of any of the provisions of the CISG. The effect of the principle of party autonomy under the CISG is thus twofold: first, parties may exclude, i.e. 'opt out' from, the application of the CISG entirely; and second, parties may derogate from any provision of the CISG subject to the written requirements under Article 12.

---

<sup>30</sup> See Yu Liang, *Hetong Xiaoli De Buchong* [Supplementing the Effectiveness of a Contract], 4 ZHENGFA LUNTAN [POLITICAL SCIENCE AND LAW FORUM], at 75-79 (1998).

<sup>31</sup> See Wang Liming & Xu Chuanxi, *Fundamental Principles of China's Contract Law*, 13 COLUM. J. ASIAN L. 1-34 (1999).

- 3.30 Does the CL1999 adhere to the same principle of party autonomy as the CISG? In comparison with the previous contract law in the PRC, the CL1999 adopts an approach novel to the PRC. Article 4 of the CL1999 provides that:

*'[T]he parties have the right to enter into a contract of their own free will in accordance with the law, and no one may illegally interfere therewith.'*<sup>32</sup>

- 3.31 Thus, Article 4 signified that the PRC had made a tremendous amount of progress in recognising a party's right to freedom of contract. Professor Jiang Ping made the following observation:

*'[T]o accord parties' freedom of action to the greatest extent possible is the common demand by the market economy and the autonomy of the parties' free will.'*<sup>33</sup>

- 3.32 Professor Wang Liming concurred:

---

<sup>32</sup> See Article 4 of CL1999 in Chinese text: 第四条【合同自由原则】当事人依法享有自愿订立合同的权利，任何单位和个人不得非法干预。

<sup>33</sup> See Jiang Ping et al., *Shichang Jingji He Yisi Zizhi* [Market Economy and Party Autonomy], 6 FAXUE YANJIU [LEGAL STUDIES], at 20 (1993).

*'[T]he more developed and widespread the various contractual relationships, the livelier the transaction and the more dynamic the market economy... Under the current circumstances, China's contract law must thus embrace freedom of contract as its most fundamental principle.'*<sup>34</sup>

3.33 Liu Hainian added that the principle of party autonomy would not only substantially improve contract law in the PRC, but would also enhance the PRC's legal system in general as it lays down a new rule-of-law precept that fully respects the freedom and rights of parties, enterprises, organisations, and citizens.<sup>35</sup>

3.34 Thus, according to the prevailing view, the CL1999, and Article 4 in particular, adopts the principle of party autonomy as a fundamental legal doctrine in that it recognizes a contracting party's freedom to choose the other contracting party; form a contract; determine the terms and conditions of the contract; modify or terminate the contract; stipulate the remedies for breach; and so forth. The prevailing view recognises that the principle of party autonomy is a fundamental precept that governs every stage of the contracting process and is in many ways the most crucial of all contract law principles.<sup>36</sup>

---

<sup>34</sup> See Wang Liming & Xu Chuanxi, *supra* note 29, at 10.

<sup>35</sup> See Liu Hainian et al. (eds), *Yifa Zhiguo, Jianshe Shehui Zhuyi Fazhi Guojia* [Administering The Country According To Law, Establishing A Socialist Country Under The Rule Of Law], ZHONGGUO FAZHI CHUBANSHE, (1996) at 25.

<sup>36</sup> For a general discussion on freedom of contract in the PRC, see MO ZHANG, CHINESE CONTRACT LAW THEORY AND PRACTICE, Martinus Nijhoff Publishers (2006) at 51-67.

3.35 Arguably, however, the most critical issue to be addressed in examining the principle of party autonomy is whether parties have the freedom to exclude the application of the CL1999 in its entirety. The right to opt out of the legislation represents the pinnacle of adherence to the principle of party autonomy. Does the CL1999, and in particular Article 4 include the right to opt out?

3.36 Although the CL1999 does not explicitly prescribe that parties to domestic contracts have the right to opt out of the CL1999, Article 126 does allow parties to foreign contracts to choose the governing law applicable to their contract except as otherwise provided for by mandatory laws. The autonomy of the parties to a purely domestic contract under the CL1999 is seemingly more restricted than that of their counterparts in foreign-related contracts.<sup>37</sup> Although the CL1999 does not explicitly prohibit the right to opt out, it does not explicitly provide parties to purely domestic contracts with the autonomy to opt out the CL1999 in its entirety. Even for parties to foreign-related contracts, Article 126 of the CL1999 specifies that the parties' choice of governing law applicable to the contract remains subject to mandatory PRC laws.

---

<sup>37</sup> For arguments in support of the right of parties to PRC domestic contracts/sales to choose the applicable law, see Fan Yang, 中国对《联合国国际货物销售合同公约》的两个保留以及该公约在中国国际经济贸易仲裁委员会仲裁中的实际应用 [*PRC's Two Reservations and the Application of the CISG in CIETAC Arbitration*], 8 Wuhan Univ. Int'l L. Rev. (2008) at 307-329.



3.37 The second issue is whether the CL1999 allows parties to derogate from its provisions. The CL1999 does appear to entitle parties to derogate from some of its provisions. Therefore the scope of party autonomy is seemingly more restricted than that found in the CISG, which allows derogation from any of its provisions, subject to the written form requirement under Article 12 of the CISG.

3.38 Among the 129 articles in the General Provisions of the CL1999, the following two articles explicitly allow parties to derogate from the provisions of the legislation (emphasis added):

<p><b>PRC Contract Law 1999</b></p> <p><b>English</b></p>	<p><b>PRC Contract Law 1999</b></p> <p><b>Chinese</b></p>
<p>Article 23</p> <p>(1) if the offer is made in dialogues, the acceptance shall be made immediately, <i>except as otherwise agreed by the parties</i>;</p>	<p>第二十三条 【承诺的期限】</p> <p>（一）要约以对话方式作出的，应当即时作出承诺，<i>但当事人另有约定的除外</i>；</p>
<p>Article 34 The place of formation of the contract is the place of acceptance.</p> <p>If the contract is concluded by data-telex, the main place of business of the recipient is the place of formation; if the recipient does not have a main place of business, its habitual residence is the place of formation. <i>Where the parties agree otherwise, their agreement applies.</i></p>	<p>第三十四条 【合同成立地点】</p> <p>承诺生效的地点为合同成立的地点。</p> <p>采用数据电文形式订立合同的，收件人的主营业地为合同成立的地点；没有主营业地的，其经常居住地为合同成立的地点。<i>当事人另有约定的，按照其约定。</i></p>

3.39 In Chapter 9 on Sales Contracts (Articles 130–175), only Article 133 explicitly allows the parties to derogate from the provisions of the CL1999. (emphasis added)

PRC Contract Law 1999 English	PRC Contract Law 1999 Chinese
Article 133 The ownership of a subject matter is transferred upon delivery, <i>except as otherwise stipulated by law or agreed upon by the parties.</i>	第一百三十三条 【标的物所有权转移时间】 标的物的所有权自标的物交付时起转移，但法律另有规定或者当事人另有约定的除外。

3.40 The CL1999 Articles 137, 142, 144, 208, 220, 225, 243, 253, 264, 267, 293, 315, 339, 340, 353, 359, 363, 367, 371, 372, 380, 405, 411, 415, and 422 all explicitly provide that their application is subject to the parties' agreement.<sup>38</sup> In addition to these articles explicitly providing that the parties may derogate from their application, many articles implicitly allow the parties to do so by using the word may (可以 Keyi) instead of shall (应当 Yingdang), see e.g. Article 12 of the CL1999 set out in the table below. (emphasis added)

PRC Contract Law 1999 English	PRC Contract Law 1999 Chinese
Article 12 The contents of a contract are <i>agreed upon by the parties</i> , and generally contain the following clauses:  (1) titles or names and domiciles of the parties;	第十二条 【合同内容】合同的内容由当事人约定，一般包括以下条款：  (一) 当事人的名称或者姓名和住所；  (二) 标的；

---

<sup>38</sup> See Appendix 2 for a table in both English and Chinese setting out these provisions that explicitly allow the parties to derogate from their application.

<p><b>PRC Contract Law 1999</b></p> <p><b>English</b></p>	<p><b>PRC Contract Law 1999</b></p> <p><b>Chinese</b></p>
<p>(2) subject matter;</p> <p>(3) quantity;</p> <p>(4) quality;</p> <p>(5) price or remuneration;</p> <p>(6) time limit, place and method of performance;</p> <p>(7) liability for breach of contract; and</p> <p>(8) method for settling disputes.</p> <p>The parties <i>may</i> conclude a contract by reference to a standard form of contract.</p>	<p>(三) 数量；</p> <p>(四) 质量；</p> <p>(五) 价款或者报酬；</p> <p>(六) 履行期限、地点和方式；</p> <p>(七) 违约责任；</p> <p>(八) 解决争议的方法。</p> <p>当事人 可以参照各类合同的示范文本订立合同。</p>

3.41 Compared with the CISG, the CL1999 does not contain many mandatory rules on matters within the substantive scope of the CISG. The freedom of parties to make their own arrangements in forming the contract of sale; and the rights and obligations of sellers and buyers arising from such a contract are by and large preserved. Most of the provisions of the CL1999 apply only as default rules. Transactions subject to mandatory restrictions in the PRC are essentially excluded from the scope of the CISG (Articles 2 and 4 of the CISG in particular). Therefore, it is safe to conclude that in terms of the principle of party autonomy harmonisation has been achieved to a large extent between the CL1999 and the CISG.

### 3.3.2. GOOD FAITH

3.42 The axiom of good faith (诚信 *chengxin*, or 诚实信用 *chengshi xinyong*), one of the fundamental principles governing the modern PRC contract law, is enshrined in Article 6 of the CL1999, which provides: *‘The parties shall observe the principle of good faith in the exercise of their rights and performance of their obligations.’*<sup>39</sup> Chinese scholars generally consider that the principle of good faith governs not only contracts, but all civil relations. Hence, it is generally well recognized as the imperial principle of both contract and civil law.

3.43 The principle of fairness and reasonableness (公平合理 *gongping heli*), as prescribed in Article 5 of the CL1999 is derived from the principle of good faith and can be seen as an instance of applying the principle of good faith to the determination of parties’ contractual rights and obligations.<sup>40</sup> In practice, PRC courts tend to apply these two principles together when addressing the following two major issues: (1) whether a standard of conduct (moral, social or commercial) is so well-established in the community in which the transaction takes place that a member of the community would reasonably expect others to observe it and be expected to observe it himself; and (2) whether it would be fair and reasonable to apply the standard to the case before the court.<sup>41</sup>

---

<sup>39</sup> See CL1999 Article 6 in Chinese text: 第六条【诚实信用原则】当事人行使权利、履行义务应当遵循诚实信用原则。

<sup>40</sup> See CL1999 Article 5: The parties shall adhere to the principle of fairness in deciding their respective rights and obligations. 第五条【公平原则】当事人应当遵循公平原则确定各方的权利和义务。

<sup>41</sup> See e.g. *Beijing Zhongrui Cultural Dissemination Ltd. v. Beijing Lingdian Market Investigation and Analysis Co.* (Beijing Second Intermediate People’s Court, 1998), SPC Gazette, 1999, No.3, p.100.

3.44 Articles 60 and 92 of the CL1999 are good examples of provisions reflecting the above approach.

Article 60 stipulates:

*'[E]ach party shall fully perform its own obligations as agreed upon. The parties shall abide by the principle of good faith, and perform obligations of notification, assistance, and confidentiality, etc. in accordance with the nature and purpose of the contract and the transaction practices.'*<sup>42</sup>

Article 92 provides:

*'[A]fter the termination of the rights and obligations under the contract, the parties shall observe the principal of honesty and good faith and perform the obligations of notification, assistance and confidentiality, etc. in accordance with relevant transaction practices.'*<sup>43</sup>

---

<sup>42</sup> See Article 60 of CL1999 in Chinese text: 第六十条 【严格履行与诚实信用】当事人应当按照约定全面履行自己的义务。当事人应当遵循诚实信用原则，根据合同的性质、目的和交易习惯履行通知、协助、保密等义务。

<sup>43</sup> See Article 92 of CL1999 in Chinese text: 第九十二条 【合同终止后的义务】合同的权利义务终止后，当事人应当遵循诚实信用原则，根据交易习惯履行通知、协助、保密等义务。

Both Articles of 60 and 92 of the CL1999 expressly require that the principle of good faith be observed in accordance with the nature and purpose of the contract, the relevant transaction practices during the performance of the contract, and after the contract has come to an end.

- 3.45 In *Beijing Zhongrui Cultural Dissemination Ltd. v. Beijing Lingdian Market Investigation and Analysis Co.*<sup>44</sup>, the parties entered into an agreement whereby Lingdian was to investigate the market for home video products on behalf of Zhongrui. Lingdian agreed to keep confidential all the results of the investigation and all information supplied by Zhongrui in the course of the investigation. After the investigation was completed, Lingdian published the information gathered in the course of the investigation. Zhongrui sued Lingdian for infringing its trade secrets. Lingdian argued that the information concerned was published in the course of two separate investigations and that Zhongrui did not, under the contract, buy out Lingdian's work to preclude Lingdian from engaging in separate investigations on the same subject. The Court held that Lingdian had breached the principle of good faith by not informing Zhongrui of its buy-out option. Furthermore, the principle of fairness and reasonableness and the established pattern of trade usage and commercial ethics required that Lingdian refrain from conduct that would conflict with the interests of its clients.

- 3.46 Similar to the CL1999, the UPICC also cites good faith as a principle governing the conduct of parties to international contracts. The UPICC Article 1.7 (Good faith and fair dealing) provides:

---

<sup>44</sup> See *Beijing Zhongrui Cultural Dissemination Ltd. v. Beijing Lingdian Market Investigation and Analysis Co.* (Beijing Second Intermediate People's Court, 1998), SPC Gazette, 1999, No.3, p.100.

*'(1) [E]ach party must act in accordance with good faith and fair dealing in international trade.*

*(2) The parties may not exclude or limit this duty.'*

In addition, the UPICC Article 4.8 (Supplying an omitted term) provides:

*'(1) Where the parties to a contract have not agreed with respect to a term which is important for a determination of their rights and duties, a term which is appropriate in the circumstances shall be supplied.*

*(2) In determining what is an appropriate term regard shall be had, among other factors, to*

*(a) the intention of the parties;*

*(b) the nature and purpose of the contract;*

*(c) good faith and fair dealing;*

*(d) reasonableness.'*

In particular, the UPICC Article 4.8 (2)(c) specifies good faith and fair dealing as a determining element when considering which omitted contractual terms must be implied.

3.47 Compared with the UPICC Article 4.8, the CL1999 Article 125 provides:

*'[I]f any disputes arise between the parties over the understanding of any clause of the contract, the true meaning thereof shall be determined according to the words and sentences used in the contract, the relevant provisions in the contract, the purpose of the contract, the transaction practices and the principle of good faith.'*<sup>45</sup>

Similar to the UPICC, the CL1999 Article 125 explicitly requires the observance of the principle of good faith in interpreting contracts.

3.48 The CISG, on the other hand, does not contain an express provision that the parties to individual contracts must obey the maxim of good faith throughout the performance of the contract or specifically in interpreting the contract. However, the CISG does refer to the principle of good faith in Article 7 (1), which states:

---

<sup>45</sup> See CL1999 Article 125 in Chinese text: 第一百二十五条 【合同解释】当事人对合同条款的理解有争议的，应当按照合同所使用的词句、合同的有关条款、合同的目的、交易习惯以及诚实信用原则，确定该条款的真实意思。



*'(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.'*

3.49 This article seemingly requires the observance of good faith in international trade in interpreting the Convention, in contrast to the observance of good faith in interpreting parties' contracts. Thus, the CISG is to be interpreted and applied in a way that promotes 'the observance of good faith in international trade', but the principle of good faith may or may not necessarily be required when interpreting parties' sales contracts.

3.50 Some commentators reconcile the obvious difference in wording between the CISG and the UPICC by arguing that the texts are essentially in accordance with one another.<sup>46</sup> It is commonly accepted that under the CISG, the principle of good faith applies to the interpretation of individual contracts and to the parties' contractual relationship. On the other hand, the UPICC commentary acknowledges that the good faith principle 'may also be seen as an expression of the underlying purpose of the UPICC' and may be used in interpreting the UPICC.<sup>47</sup>

---

<sup>46</sup> See Ulrich Magnus commentary on Article 7 in: John Felemegas ed., *An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law*, Cambridge University Press (2006) 45-48

<sup>47</sup> See Official Comment 1 to UPICC Article 1.7.

3.51 Regardless, it is clear that both the CISG and the UPICC stress that an ‘international’ conception of the principle of good faith will be applied in preference to a specific, national conception.<sup>48</sup>

The UPICC contains more provisions and details on what constitutes good and/or bad faith than the CISG.

3.52 In contrast to the CISG, the UPICC establishes a duty to refrain from continuing with or to break off pre-contractual negotiations conducted in bad faith. The UPICC Article 2.1.15 (Negotiations in bad faith) provides:

*‘(1) A party is free to negotiate and is not liable for failure to reach an agreement.*

*(2) However, a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party.*

*(3) It is bad faith, in particular, for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.’*

---

<sup>48</sup> See Michael Joachim Bonell, An international restatement of contract law: the UNIDROIT principles of international commercial contracts, Irvington, N.Y.: Transnational Juris Publications, c1994 at page 81; Note this book is now in its 3<sup>rd</sup> edition, see Michael Joachim Bonell, An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts (Third Edition), Ardsley, N.Y.: Transnational Publishers Inc., 2005.

3.53 Thus, according to Article 2.1.15 (3) of the UPICC, any party who starts or continues negotiations while ‘intending not to reach an agreement with the other party’ will be deemed to be acting in bad faith. The principle of good faith thus demands fair negotiations with a clear view to reaching an agreement. Misuse of the negotiation process to the detriment of the other party offends the principle of good faith in the UPICC. Although the CISG does not govern the pre-contractual phase, the principle of good faith reflected in the UPICC Article 2.1.15 can be helpful for cases in which the parties negotiate on the modification or termination of an existing the CISG contract.

3.54 As a provision comparable to Article 2.1.15 of the UPICC, Article 42 of the CL1999 provides:

*‘In the course of negotiations to reach an agreement, a party shall be liable for losses caused to the other party if it:*

*(1) negotiates in bad faith under the pretext of intending to reach an agreement;*

*(2) intentionally conceals a material fact relevant to the reaching of an agreement or provides false information;*

*(3) otherwise acts in violation of the principle of good faith.’<sup>49</sup>*

---

<sup>49</sup> See CL1999 Article 42 in Chinese text: 第四十二条 【缔约过失】当事人在订立合同过程中有下列情形之一，给对方造成损失的，应当承担损害赔偿责任：（一）假借订立合同，恶意进行磋商；（二）故意隐瞒与订立合同有关的重要事实或者提供虚假情况；（三）有其他违背诚实信用原则的行为。

3.55 Article 42(1) of the CL1999 is in line with Article 2.1.15 (3) of the UPICC in that they both expressly state that a party who starts or continues negotiations while ‘intending not to reach an agreement with the other party’, or in other words, ‘negotiates under the pretext of intending to reach an agreement’, will be deemed to have acted in bad faith. The principle of good faith under both the CL1999 and the UPICC demand fair negotiations with a clear view to reaching an agreement.

3.56 Article 42(2) of the CL1999 then goes a step further by addressing both the intentional non-disclosure of information and the provision of false information in pre-contractual negotiations. Although the circumstances covered by Article 42(2) arguably constitute fraudulent conduct rather than mere bad faith, in essence, Article 42(2) remains consistent with Article 3.8 of the UPICC, which deals specifically with fraud.<sup>50</sup> Article 42(3) then sets out to cover all other acts and forms of conducts constituting bad faith in the course of pre-formation negotiations. Again, the approach taken here is in line with Article 2.1.15(2) of the UPICC, which aims to define the general circumstances constituting negotiation in bad faith.

---

<sup>50</sup> See UPICC Article 3.8 (Fraud): A party may avoid the contract when it has been led to conclude the contract by the other party’s fraudulent representation, including language or practices, or fraudulent non-disclosure of circumstances which, according to reasonable commercial standards of fair dealing, the latter party should have disclosed.

- 3.57 With regard to implied obligations, the UPICC expressly states that contractual obligations may be implied under the maxim of good faith. The UPICC Article 5.1.1 (Express and implied obligations) provides: *'The contractual obligations of the parties may be express or implied.'* The UPICC Article 5.1.2 (Implied obligations) continues:

*'[I]mplied obligations stem from*

*(a) the nature and purpose of the contract;*

*(b) practices established between the parties and usages;*

*(c) good faith and fair dealing;*

*(d) reasonableness.'*

- 3.58 The CISG does not contain a comparable rule, and neither does the CL1999 under this heading. Article 60 of the CL1999 does stipulate, however, that:

*'[P]arties shall fully perform their obligations according to their agreement.*

*Parties shall observe the principle of good faith and perform duties of notice, assistance and confidentiality in accordance with the nature and the*

*purpose of the contract, practices established between the parties and usages.*<sup>51</sup>

There is a striking resemblance between the key elements of the CL1999 Article 60 and the UPICC Article 5.1.2 set out above.

3.59 In addition, the duty of good faith in assisting the other party to perform its obligations as expressed in the second paragraph of Article 60 of the CL1999 is comparable to the UPICC Article 5.1.3 (Co-operation between the parties), which provides: *'Each party shall cooperate with the other party when such co-operation may reasonably be expected for the performance of that party's obligations.'*

3.60 Under Article 60 of the CL1999, the principle of good faith requires that in performing their obligations, the parties shall, regardless of their express or implied obligations, meet the standards of conduct generally expected of a reasonable, cooperative person in the community concerned. Paragraph one of Article 60 sets out in absolute and unqualified terms the duty of the parties to perform their contractual obligations in full. Paragraph two specifies three duties that arise in the context of observing the principle of good faith relating to notices, assistance,

---

<sup>51</sup> See CL1999 Article 60 in Chinese text: 第六十条 【严格履行与诚实信用】当事人应当按照约定全面履行自己的义务。当事人应当遵循诚实信用原则，根据合同的性质、目的和交易习惯履行通知、协助、保密等义务。

and confidentiality. Unlike implied or statutory obligations, which are perhaps more familiar to common law lawyers, the three specific duties of good faith under the CL1999 Article 60 are so-called context-specific duties and do not apply to all contracts. They arise only on a case-by-case basis according to the nature and purpose of the contract and the usages and practices of the parties.<sup>52</sup>

3.61 Nonetheless, in PRC judicial practice, the principle of good faith has been broadly construed and can also be used to support an implied contract between two parties. In *Yang Erte v. Liqun County Bureau of Education*<sup>53</sup>, Liqun organised a campaign to raise funds to cover the medical expenses incurred by the indigent Yang in obtaining treatment for leukaemia. Having received a large sum of donations, all of which named Yang as the beneficiary, Liqun allocated most of the donations to the treatment of other leukaemia patients. The Court held that Liqun, having been entrusted with the donations, had an obligation to use the funds in accordance with the will of the donors, and that Liqun's use of the donations for other patients violated the principle of good faith. Similarly, in a case concerning advertisement for reward, *Li Min v. Zhu Jinhua*<sup>54</sup>, the Court held that reneging on a promise for a reward violated the principle of good faith.

---

<sup>52</sup> Ibid.

<sup>53</sup> See *Yang Erte v. Liqun County Bureau of Education and Another* (Shanxi Liqun County People's Court, 1997) SPC Gazette, 1998, No.1, p. 31.

<sup>54</sup> See *Li Min v. Zhu Jinhua and Another* (Tianjin Heping District People's Court and Tianjin Intermediate People's Court, 1994), SPC Gazette, 1995, No.2, p.68.

3.62 The duties prescribed in the second paragraph of Article 60 of the CL1999 are generally known as ‘ancillary duties’ (付随义务 *fusui yiwu*). They arise out of the principle that the parties to a contract should act in good faith in performing their principal obligations. Ancillary duties exist to facilitate the performance of the parties’ principal obligations. They are not expressed in the contract and they cannot exist unless the principal obligations arise in the first place. Likewise, they cannot contradict express or implied contractual terms. On the other hand, if a term is either expressly agreed upon by the parties or deemed to form part of the contract by virtue of Article 61 or 62, that term becomes part of the contract and must therefore be observed in accordance with the first paragraph of Article 60.

3.63 Commentators generally agree that ancillary duties of good faith are not limited to the three duties specified in Article 60. Depending on the circumstances of each case, the principle of good faith may give rise to other ancillary duties that bind the parties to perform their contractual obligations in full. The principle of good faith may require, for example, that a party refrain from hindering the other party in the performance of its contractual obligations. In a sales contract, having rejected the goods, the buyer has a duty to act in good faith by taking reasonable steps to preserve the goods. This duty to act in good faith by preserving goods is consistent with Article 86 of the CISG.<sup>55</sup>

---

<sup>55</sup> CISG Article 86: 1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller. (2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the



3.64 Commentators, however, are divided on the legal consequences of breaching these ancillary duties of good faith. Xiao argued that the defaulting party should be liable for damages, but the aggrieved party should not be entitled to terminate the contract.<sup>56</sup> Xiao also argued in favour of liability for reliance loss only.<sup>57</sup> Bing expressed the view that a breach of any ancillary duty of good faith should have the same effect as a breach of a term of the contract.<sup>58</sup> The Supreme People's Court supports the position that a breach of any ancillary duty of good faith will result in contractual liability.<sup>59</sup>

3.65 Although the UPICC enshrines the principle of good faith, it does not require the observance of good faith as an ancillary duty. Nor does the UPICC explicitly deal with the legal consequences in the event of a breach of the principle of good faith. It does, however, stress that the parties: (1) must act in accordance with the spirit of good faith and fair dealing in international trade and (2) may not exclude or limit this duty.<sup>60</sup>

---

seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

<sup>56</sup> See Xiao Xun et al., *Zhonghua Renmin Gongheguo Hetongfa Shilun* [Commentary on the PRC Contract Law], 1999 at pages 231 – 232.

<sup>57</sup> See *ibid.*

<sup>58</sup> See Bing Ling, *Contract Law in China*, Hong Kong : Sweet & Maxwell Asia, 2002, at pages 56, 231-232.

<sup>59</sup> See Economic Division of the Supreme People's Court, *Hetongfa Shijie yu Shiyong* [Interpretation and Application of Contract Law], 2 vols., 1999 at page 268

<sup>60</sup> See the UPICC Article 1.7.

3.66 Another area of comparison concerns the relationship between modification of contract and the principle of good faith. Under both the CISG and the UPICC, a contract and any alteration thereof need not take any particular form to be valid. An exception exists where a written contract contains a no oral modification clause. In both the CISG and the UPICC, this exception is subject to the following proviso based on the good faith principle: 'a party may be precluded by its conduct from asserting such a clause to the extent that the other party has acted in reliance on that conduct.'<sup>61</sup>

3.67 The answer to whether the principle of good faith can be applied to modify contractual terms under the CL1999 is not straightforward. Some Chinese scholars seem to suggest that the principle of good faith serves as a limitation on the freedom of contract; therefore, contractual rights and obligations can be created, varied or extinguished by the operation of the principle of good faith.<sup>62</sup> Some have argued that it is correct to say that the principle of good faith can vary the terms of a contract insofar as they can be varied by the principle of fairness - a specific

---

<sup>61</sup> See UPICC Article 2.1.18 (Modification in a particular form): A contract in writing which contains a clause requiring any modification or termination by agreement to be in a particular form may not be otherwise modified or terminated. However, *a party may be precluded by its conduct from asserting such a clause to the extent that the other party has reasonably acted in reliance on that conduct. (Emphasis added)* See also CISG Article 29: 1. A contract may be modified or terminated by the mere agreement of the parties. 2. A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, *a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct. (Emphasis added)*

<sup>62</sup> See Bing Ling, *Contract Law in China*, Hong Kong : Sweet & Maxwell Asia, 2002, p. 56

manifestation of the principle of good faith.<sup>63</sup> Bing considered that the principle of good faith as expressed in Article 60 creates incidental or ancillary duties, and that the incidental nature of those duties is subject to, and cannot be divorced from, the contract and relevant usages and practices.<sup>64</sup> In the opinion of Bing, the principle of good faith may create and vary incidental or ancillary rights and duties, but it should not affect the primary rights and duties to which the parties have expressly agreed.<sup>65</sup>

3.68 It is worth noting, however, that the principle of good faith does not operate exclusively in the context of performance as specified in Article 60 of the CL1999. More importantly, the principle of good faith is a fundamental principle that governs all aspects of a commercial transaction. Thus, a broad construction of the principle of good faith, as outlined in the CL1999 does not conflict with the position taken by the CISG or the UPICC. Furthermore, such construction reflects PRC judicial practice. It is therefore submitted that the scope of the principle of good faith under the CL1999 should be construed broadly enough to cover every aspect and every stage of a contractual relationship, including but not limited to, modification of the contract.

3.69 On balance, the CL1999 possesses more similarities to the CISG and the UPICC than it does differences, especially when comparing with those pre-1999 PRC contract laws. With that said,

---

<sup>63</sup> See Hu Kangsheng (ed.), *Zhonghua Renmin Gongheguo Hetongfa Shiyi* [Commentary on the PRC Contract Law], 1999, at page 8.

<sup>64</sup> See Bing Ling, *Contract Law in China*, Hong Kong : Sweet & Maxwell Asia, 2002, p. 56

<sup>65</sup> *Ibid*

differences and discrepancies do still exist, as after all, the CL1999 is not a mirror image of either the CISG or the UPICC.

### **3.4. HARMONISATION AND THE UNIFORM APPLICATION OF THE CISG IN THE PRC**

3.70 To the extent that harmonisation has been achieved between the current CL1999, the CISG and the UPICC, has this harmonization facilitated the application of the CISG in the PRC? There is no easy answer to this question.

3.71 Harmonisation and unification are two closely connected but distinguishable concepts. Professor Loukas Mistelis pointed out that: *'[Harmonization] is by no means synonymous with unification; Harmonization is a process which may result in unification of law subject to a number of (often utopian) conditions...'*<sup>66</sup> Stephen Zamora also commented that: *'[H]armonization does not entail the adoption of a single, model set of rules, but instead implies a wide range of ways in which differences in legal concepts in different jurisdictions are accommodated...'*<sup>67</sup>

---

<sup>66</sup> See LOUKAS MISTELIS, FOUNDATIONS & PERSPECTIVES OF INTERNATIONAL TRADE LAW, 4 (Ian F. Fletcher et al. eds., 2001).

<sup>67</sup> See Stephen Zamora, *NAFTA and the Harmonization of Domestic Legal Systems: The Side Effects of Free Trade*, 12 Ariz. J. Int'l & Comp. L. 401, 403 (1995).

3.72 Unification, on the other hand, reflects an aspiration for identical rules and their uniform application and interpretation across the globe. Lord Mansfield expressed the hope for a uniform mercantile law 250 years ago: *'[M]ercantile law...is the same all over the world. For from the same premises, the sound conclusions of reason and justice must universally be the same.'*<sup>68</sup> Cicero also commented as follows: *'[T]here shall not be one law at Rome, another at Athens, one now, another hereafter, but one everlasting and unalterable law shall govern all nations for all time ...'*<sup>69</sup>

3.73 In contrast, De Cruz commented that:

*'[I]n a world which is beginning to demonstrate a remarkable similarity of economic needs, values and interests, convergence will continue to occur, but true assimilation and wholesale integration of judicial styles appear, at the present time, to be an extremely remote possibility.'*<sup>70</sup>

3.74 Textual uniformity bears no guarantee of actual uniformity in the application and interpretation of any uniform law, especially when states maintain non-uniform bodies of private and

---

<sup>68</sup> See *Pelly v. Royal Exch. Assurance Co.* (1757), 97 E.R. 342 at 346

<sup>69</sup> See Cicero, *De Republica*, 3.22.33; quoted in: Roy Goode, *Contract and Commercial Law: The Logic and Limits of Harmonisation*, vol 7.4 *Electronic Journal of Comparative Law*, (November 2003), <<http://www.ejcl.org/ejcl/74/art74-1.html>>.

<sup>70</sup> See Peter de Cruz, *A Modern Approach to Comparative Law*, 257, (EDITORS, 1993).

procedural law upon which the uniform law must sit. Uniform legal rules do not mean uniform legal systems. The lack of common legal theory and practice upon which judges and practitioners can rely tends to result in a homeward-trend<sup>71</sup> toward *lex fori*<sup>72</sup> in applying and interpreting uniform law. As pointed out by some commentators that it is difficult for a court to ‘transcend its domestic perspective and become a different court that is no longer influenced by the law of its own nation state.’<sup>73</sup> The forces of local precedent, practice, and procedure may be too great to overcome in interpreting uniform rules.

3.75 Maren Heidemann identified three levels of uniformity: (1) uniformity of results (the desire for certainty and predictability); (2) uniformity of sources; and (3) uniformity of application and interpretation methods<sup>74</sup>. She concluded that uniformity of results cannot be expected from uniform contract law applied in diverse national legal systems and that uniformity of results is

---

<sup>71</sup> See Harry M. Flechtner, *The Several Texts of the CISG in a Decentralized System: Observations on Translations, Reservations and Other Challenges to the Uniformity Principle in Article 7(1)*, 17 J.L. & Com. 187, 200 (1998); see James E. Bailey, *Facing the Truth: Seeing the Convention on Contracts for the International Sale of Goods as an Obstacle to a Uniform Law on International Sales*, 32 CORNELL INT’L L.J. 273 (1999); see also J H Merryman, *On the Convergence and Divergence of the Civil Law and the Common Law*, 17 STAN. J. INT’L L. 367, 365 (1981).

<sup>72</sup> Lex fori refers to ‘the law of the forum or court; that is, the positive law of the state, country, or jurisdiction of whose judicial system the court where the suit is brought or remedy sought is an integral part.’ See BLACK’S LAW DICTIONARY 910 (6th ed. 1990).

<sup>73</sup> See John E. Murray, Jr., *The Neglect of CISG: A Workable Solution*, 17 J.L. & Com. 365, 367 (1998); see also, V. Susanne Cook, *The U.N. Convention on Contracts for the International Sale of Goods: A Mandate to Abandon Legal Ethnocentricity*, 16 J.L. & Com. 257 (1997).

<sup>74</sup> See MAREN HEIDEMANN, *METHODOLOGY OF UNIFORM CONTRACT LAW – THE UNIDROIT PRINCIPLES IN INTERNATIONAL LEGAL DOCTRINE AND PRACTICE*, 35 (Springer ed. 2007).

not the aim of uniform law on either a domestic or an international level<sup>75</sup>. Absolute uniformity at all levels is simply an impracticable ideal.

3.76 Professor Schwenzer argued that criticism of the broad and open-textured provisions of the CISG (e.g. Article 49) as uniform law texts is unfounded; moreover, the CISG provisions reflect the reality of international sales practice and case law, and give enough room to decision-makers to make them workable in diverse situations<sup>76</sup>. From this perspective, harmonization is realistic and therefore desirable when compared with the unachievable goal of absolute uniformity.

3.77 In addressing the harmonisation and unification of national laws, some degree of prominence should be given to the EU, which is almost unique in terms of its positive statutory remit to introduce and enforce both. In the consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Article 288 provides:

*‘[A] regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it*

---

<sup>75</sup> *Ibid.*

<sup>76</sup> See Ingeborg Schwenzer, *The Danger of Domestic Pre-Conceived Views with Respect to the Uniform Interpretation of the CISG: The Question of Avoidance in the Case of Non-Conforming Goods and Documents*, 4 Victoria Univ. Wellington L. Rev. (2005) 795-807.

*is addressed, but shall leave to the national authorities the choice of form and methods.*<sup>77</sup>

Therefore, EU regulations create uniform rules throughout the EU and apply in full in all member states, whereas EU directives are aimed at harmonising national laws to achieve common objectives among all member states.

3.78 Although uniformity and harmonisation can be distinguished from each other, they are so closely connected that they can also be seen as two sides of the same coin. Some commentators argue that the expression harmonisation serves to disguise the process of uniformisation, reference to which is avoided due to its political relevance<sup>78</sup>. Maren Heidemann attaches to harmonisation the same meaning as the euphemism of uniformisation.<sup>79</sup>

3.79 According to the Oxford Dictionary of Law:

---

<sup>77</sup> See formerly Article 249 of the TEC, replacing Article 189 of the Treaty of Rome; EN 30.3.2010 Official Journal of the European Union C 83/171, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:FULL:EN:PDF>.

<sup>78</sup> See MAREN HEIDEMANN, *METHODOLOGY OF UNIFORM CONTRACT LAW – THE UNIDROIT PRINCIPLES IN INTERNATIONAL LEGAL DOCTRINE AND PRACTICE*, 6 (Springer ed. 2007).

<sup>79</sup> Ibid.



*'[H]armonisation of law is the process by which member states of the EU make changes in their national laws, in accordance with Community legislation, to produce uniformity, particularly relating to commercial matters of common interest.'*<sup>80</sup>

3.80 Osborn's Concise Law Dictionary provides a similar definition of harmonisation:

*'[T]he policy of the European Community to achieve uniformity in the laws of member states in order to facilitate the free movement of goods, workers, services and capital.'*<sup>81</sup>

Both harmonisation and unification can be used to achieve the common goal of removing barriers created by divergent national laws and facilitating international trade and commerce.

3.81 The overlaps between harmonisation and uniformity are naturally found in the CISG - a uniform sales law. What constitutes uniformity as envisaged by the CISG? The preamble of the CISG states that:

---

<sup>80</sup> See A dictionary of law [electronic resource] / edited by Jonathan Law, Elizabeth A. Martin. Oxford ; New York : Oxford University Press, 2009. 7th ed

<sup>81</sup> See Osborn's Concise Law Dictionary by Sheila Bone and P.G. Osborn, Sweet & Maxwell; 9th Revised edition (2001)

*'...the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade...'*

3.82 Three important messages are conveyed: (1) the CISG is a body of uniform rules governing contracts for the international sale of goods; (2) the uniform rules in the CISG take into account the different social, economic and legal systems in place around the world; (3) the goal of uniformity under the CISG is to contribute to the removal of legal barriers to the development of international trade. Thus, as the preamble suggests, taking into account a diverse set of social, economic and legal systems, the goal of the CISG is not to achieve uniformity for its own sake, but for the sake of removing legal barriers to the promotion and development of international trade. To do this, the CISG is subject to a unification process, seeking harmonisation while also embracing diversity to an extent. This is necessarily the case because the Convention is to be applied by courts and arbitral tribunals around the world and in a wide variety of situations.

3.83 The development and use of terms such as harmonisation and uniformisation in legal science and practice is perhaps rather vague, but they play a decisive role in the development of a modern branch of international commercial law. As Sir Roy Goode put it:

*“[T]ransnational commercial law’ is conceived as law which is not particular to or the product of any one legal system but represents a convergence of rules drawn from several legal systems or even, in the view of its more expansive exponents, a collection of rules which are entirely anational [sic] and have their force by virtue of international usage and its observance by the merchant community. In other words, it is the rules, not merely the actions or events that cross national boundaries.”<sup>82</sup>*

Sandeep Gopalan then used the term harmonisation as a surrogate to discuss the creation of international commercial law, as it is the primary means by which international commercial law is created.<sup>83</sup>

3.84 Returning to the context of the CISG in the PRC, the effects of harmonisation between the CL1999, the CISG and the UPICC are at least two-fold: first, harmonisation via the introduction of international rules of law governing sales contracts in the PRC is a process of creating modern Chinese contract law, as evidenced by the CL1999;<sup>84</sup> and second, harmonisation via the international sales law reflected by the CISG and the UPICC continues to inspire and influence further development and interpretation of PRC contract and sales law. The first effect has been

---

<sup>82</sup> See Sir Roy Goode, *Usage and its Reception in Transnational Commercial Law*, 46 Int’l & Comp. L.Q. 1, 2 (1997)

<sup>83</sup> See Sandeep Gopalan, *New Trends in the Making of International Commercial Law*, 23 J.L. & Com. 117 (Spring 2004)

<sup>84</sup> See the discussion at section 3.1 above.

discussed earlier in this chapter. The second effect will be further explored and discussed in the next chapter.

### **3.5. CONCLUSION (Chapter 3)**

3.85 This chapter provides evidence that international rules of law governing contracts, and sales contracts in particular, as reflected in the CISG and the UPICC, were among the major references and inspirations for the drafting of the CL1999. In harmony with the spirit of Chinese characteristics, an extensive range of comparative and selective techniques was adopted in modernising Chinese contract law. The CL1999 introduced a new framework differing dramatically from its predecessors but converging with modern, Western-style contract laws and especially with transnational uniform law instruments such as the CISG and the UPICC. Taking contract formation rules as an example, this chapter gives a general overview of how these three regimes (the CL1999, the CISG and the UPICC) bear a superficial resemblance to each other in their black letter rules.

3.86 This chapter further demonstrates that harmonisation has been achieved between the CL1999 and, the CISG and the UPICC in two fundamental principles: party autonomy and good faith. Compared with the CISG, the CL1999 does not contain many mandatory rules on matters within the substantive scope of the CISG. The freedom of parties to make their own arrangements in forming the contract of sale; and the rights and obligations of sellers and buyers arising from such a contract are by and large preserved. Most of the provisions of the CL1999 apply only as

default rules. Transactions subject to mandatory restrictions in the PRC are essentially excluded from the scope of the CISG (Articles 2 and 4 of the CISG in particular). Therefore, this chapter concludes that in terms of the principle of party autonomy harmonisation has been achieved to a large extent between the CL1999 and the CISG.

3.87 This chapter points out that the principle of good faith under the CL1999 is a fundamental principle that governs all aspects of a commercial transaction and should be construed broadly enough to cover every aspect and every stage of a contractual relationship, including but not limited to, modification of the contract. A broad construction of the principle of good faith under the CL1999 does not necessarily conflict with the position taken by the CISG or the UPICC. Furthermore, such construction reflects PRC judicial practice. It therefore concludes that on balance, the CL1999 possesses more similarities to the CISG and the UPICC than it does differences, especially when comparing with pre-1999 PRC contract laws. With that said, differences and discrepancies do still exist, as after all, the CL1999 is not a mirror image of either the CISG or the UPICC.

3.88 As also explained in this chapter, harmonisation is not the same as uniformity, and uniform rules do not guarantee uniform application or interpretation across a diverse range of legal systems. The harmonisation of the PRC contract law legislation with international uniform contract law instruments has had a positive influence on the creation and development of the modern PRC contract law. However, if harmonisation is perceived superficially, the more highly assimilated the rules in the CL1999, the CISG and the UPICC appear to be, the more likely that their textual

similarities disguise their more subtle differences.<sup>85</sup> Hence, there is a real concern that PRC courts, jurists, and practitioners will misapply or misinterpret the CISG in the PRC as a result of views influenced primarily by domestic considerations.

---

<sup>85</sup> As demonstrated in the cases and discussions in Chapter 2 at paragraphs 2.58 – 2.62.

## **4. CHAPTER FOUR: USING THE CISG AND THE UPICC TO FILL GAPS WITHIN THE CL1999 – THE ISSUE OF INTEREST**

### **4.0. INTRODUCTION**

- 4.01 The previous chapter considered the extent to which PRC sales and contract law has been harmonised with international uniform sales and contract law, as exemplified by the CISG and the UPICC. This chapter explores the ways in which the CISG has been integrated into PRC domestic law on the level of substantive law and examines some concrete practical applications of individual rules. It asks how the CISG as international uniform sales law blends with the standards of the substantive law of the PRC and investigates the use of the CISG to supplement and aid interpretation of the PRC Contract Law 1999 ('CL1999').
- 4.02 The issue selected as an example for analysis is that of 'interest'. Under the CL1999's Specific Provisions Chapter 9 on Sales Contracts, no explicit rule exists for the awarding of interest on the price or any other sum in arrears for either domestic or international sales contracts. Similarly, the CL1999's General Provisions lack a provision addressing the awarding of interest. Not until recently, when the Supreme People's Court issued the Interpretation II on the CL1999, was the oversight finally explicitly addressed by PRC legislators.

4.03 This chapter asks how Article 78 of the CISG is used to supplement and to assist in the interpretation of the CL1999. The understanding of ‘interest’ under the PRC law in general, and the lack of explicit authority for awarding interest independently of damages or penalties under the CL1999 is discussed in section 4.1. The use of Article 78 of the CISG to supplement the CL1999, and therefore, provide for the awarding of interest is analysed in section 4.2. Section 4.3 introduces and examines the proposed use of Article 7.4.9 (2) of the UPICC to supplement the CL1999 when addressing the issue of the rate of interest that should be applied in the calculation of interest. At the end, a conclusion of this chapter will be drawn.

## **4.1. INTEREST UNDER PRC LAW AND PRACTICE**

### **4.1.1. INTEREST ON LOANS**

4.04 Unlike the Islamic prohibition on interest of any type or form<sup>1</sup>, the Chinese have long recognised and utilised the concept of interest. References to interest were recorded as early as in the ‘Han Shu’ (BC 206 – AD 23)<sup>2</sup>. The Chinese character for interest ‘息’ (‘Xi’ in Chinese Pin Yin) stands for

---

<sup>1</sup> See Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic law: Riba, Gharar and Islamic Banking* (1986)

<sup>2</sup> See elaborations on some Chinese understandings of Interest found in ‘Han Shu’ (B.C. 206 – A.D. 23): 《汉书·谷永传》‘为人起债分利受谢’ 唐 颜师古 注：‘言富贾有钱，假託其名，代之为主，放与它人，以取利息而共分之。’ 明 陆深 《＜停驂录＞摘抄》：‘司马温公《救荒疏》谓富室有蓄积者，官给印历，听其举贷，量出利息，候丰熟日，官为收索。’ 茅盾 《林家铺子》二：‘她有三百元的‘老本’存在 林先生 的铺里，按月来取三块钱的利息。’



‘money received from the use of the principal lent’<sup>3</sup>. This understanding of interest as a charge for the use of borrowed money expressed as a percentage per time unit of the sum borrowed or used does not differ from the understanding of interest elsewhere<sup>4</sup>. In summary, interest has long been recognised in China as a charge made in return for a loan, usually expressed as a percentage of the amount loaned.

4.05 The PRC’s adoption and practice of the Marxist theory modified the traditional understanding of interest. According to Marxist economics, in particular, the Theory of Surplus Value, interest was regarded as a secondary form of ‘Surplus-Value’.<sup>5</sup> Like the main forms of Surplus-Value, such as profit and rent, it was seen as a part of the value of labour appropriated by the owners of the material conditions of labour in the exchange with living labour<sup>6</sup>. Therefore, in the PRC, interest was associated with Capitalism and was forbidden, a position enforced most strongly during the Cultural Revolution. Since the creation and development of a Socialist Market Economy with Chinese characteristics,<sup>7</sup> interest has once again been permitted. The prevailing view among PRC

---

<sup>3</sup> See definition of Interest in Xinhua Chinese dictionary: 利息：因存款、放款而得到的本金以外的钱（区别于‘本金’）。

<sup>4</sup> See e.g. definition of Interest in Osborn’s Concise Law Dictionary by Sheila Bone and P.G. Osborn, Sweet & Maxwell; 9th Revised edition (2001): Interest signifies a sum payable in respect of the use of another sum of money, called the principal. For the power to award interest on debts and damages, see Supreme Court Act 1981, ss.35A and 97A.

<sup>5</sup> See Samuel Hollander, *The economics of Karl Marx : analysis and application*, Cambridge; New York : Cambridge University Press, 2008.

<sup>6</sup> Ibid, see also Yan Zhijie, *Jing ji sheng yu lun = Theory of economic surplus 经济剩余论 = Theory of economic surplus* / 晏智杰著. Beijing : Beijing da xue chu ban she, 2009. 北京 : 北京大学出版社, 2009

<sup>7</sup> See discussions in Chapter 3 at paragraph 3.03 in particular.

scholars is that interest represents the surplus of national income or social wealth. Since it is not the purpose of this thesis to enter too deeply into debates about socialist and capitalist definitions of interest, a commercial rather than a theoretical understanding of interest is adopted.

4.06 Legal recognition of the concept of interest in the PRC occurred relatively recently. After the Reform and Opening-up started in 1978, PRC law gradually began to address loan-related interest. Article 69 of the Supreme People's Court's Opinions on the Implementation and Enforcement of Some Civil Policies and Laws, dated 30 August 1984, states that:

*'Parties can agree on interest-free loan. However, if the debtor intentionally delays repayment over a long period of time and the creditor requests for interest, the applicable interest rate can refer to the national bank's interest rate for loans. For loans with interest, parties may agree on an interest rate suitably higher than national bank's interest rate for loans. However, if the creditor takes advantage of the debtor's perilous state or reaps exorbitant profits from extremely high interest rate loan, that loan is not protected.'*<sup>8</sup>

---

<sup>8</sup> See the provision in original Chinese text: 最高人民法院关于贯彻执行民事政策法律若干问题的意见（1984年8月30日）（69）双方约定不计利息的借贷关系，按双方约定处理。如债务人故意长期拖欠，债权人要求补偿利息的，处理时可参照国家银行借贷率计算利息。有息借贷，其利率可以适当高于国家银行贷款利率。但对于乘人之危、牟取暴利的借贷关系，不予保护。

4.07 When the above Opinion was issued in 1984, mainstream attitudes towards interest, like any other concepts typically associated with Capitalism, remained highly sceptical, if not hostile. As the last sentence of the above excerpt demonstrates, a high interest loan would be considered to be a forbidden form of capitalist exploitation. What the above Opinion left unclear, however, was the level of interest that the PRC judiciary considered to be 'suitably higher' than the national bank's interest rate for loans, and therefore protected by law, or what was considered to be an 'extremely high' rate of interest, and therefore forbidden and unenforceable. The above Opinion reflects the concern about capitalist concepts that the PRC judiciary had at that time and their conservative but pragmatic approach recognising the application of interest on loans. Since then, the understanding and perception of interest under PRC law has evolved considerably. Today, interest is a common subject for PRC law and legal practice.

#### **4.1.2. DOUBLE-INTEREST ON JUDGMENT DEBTS**

4.08 Interest is one of the measures that PRC courts adopt to enhance the enforcement of judgment debts, including those arising from court rulings, as well as other enforceable legal documents. According to Article 229 of the PRC Civil Procedure Law (amended 2007) double interest shall accrue upon any delay in fulfilling any monetary obligations arising from any judgments, court rulings, and other enforceable legal documents.<sup>9</sup> For any delay in performing any non-monetary

---

<sup>9</sup> See Article 229 of the PRC Civil Procedure Law: If a person to be enforced fails to fulfil his obligations of paying money within the time limit specified by a judgment, ruling, or any other legal documents, he shall pay a double interest for the debt based on the default time. If the person subject to the enforcement fails to fulfil his other obligations within the time limit specified by a judgment, ruling, or any other legal documents, he shall pay a

obligations arising from the same, a late performance charge shall be paid.<sup>10</sup> Interest is therefore imposed by the PRC judiciary as a normal part of court enforcement proceedings.

4.09 According to the Supreme People's Court's Interpretation on Civil Procedural Law, the 'double interest' charged for the delay payment of judgment debt should be calculated on the basis of the national bank's highest interest rate for loans for the corresponding period.<sup>11</sup> The People's Court that enforces the judgment is required to give notice to the judgment debtor of both the judgment itself and the provision of Article 229 of the Civil Procedural law, which stipulates that double interest or late performance charge will accrue from the day following the expiry of the time limit for performance specified in the judgment<sup>12</sup>.

---

surcharge for the deferred performance. 中华人民共和国民事诉讼法 第二百二十九条【迟延履行】被执行人未按判决、裁定和其他法律文书指定的期间履行给付金钱义务的，应当加倍支付迟延履行期间的债务利息。被执行人未按判决、裁定和其他法律文书指定的期间履行其他义务的，应当支付迟延履行金。

<sup>10</sup> Ibid.

<sup>11</sup> See Supreme People's Court Opinion on Civil Procedure Law (No. 22 /1992) Article 294: The double interest under Article 294 is based on bank's highest interest rate on loan for the corresponding period; See the Article in its original Chinese text: 最高人民法院《关于适用〈中华人民共和国民事诉讼法〉若干问题的意见》（法发〔1992〕22号）第294条调整为：'民事诉讼法第二百二十九条规定的加倍支付迟延履行期间的债务利息，是指在按银行同期贷款最高利率计付的债务利息上增加一倍。'

<sup>12</sup> See Supreme People's Court Opinion on Civil Procedure Law (Judicial Interpretation No.22 [1992] of the Supreme People's Court) Article 279 (revised): The notice of enforcement as prescribed in paragraph 1 of Article 216 of the Civil Procedure Law shall be issued within 10 days after receipt of a written application for enforcement. In addition to ordering the enforcee to fulfil the obligation as set out in the legal document, the notice of enforcement shall also inform him of the interest or surcharge he may have to pay for deferred performance according to Article 229 of the Civil Procedure Law. See this Article in Chinese: 最高人民法院《关于适用〈中华人民共和国民事诉讼法〉若干问题的意见》（法发〔1992〕22号）第279条调整为：'民事诉讼法第一百六十六条第一款规定的执行通知，人民法院应在收到申请执行书后的十日内发出。执行通知中除应责令被执行人履行法律文书确定的义务外，并应通知其承担民事诉讼法第二百二十九条规定的迟延履行利息或者迟延履行金。' See also the Provisions of the Supreme People's Court on Several Issues Concerning the Enforcement

4.10 The requirement to give notice to the judgment debtor of the obligation to pay double interest or a late performance charge pursuant to Article 229 was added in the last amendment to the Civil Procedural Law in 2007.<sup>13</sup> The purpose of that amendment was to provide for a system of notifying the parties of their rights and obligations, in order to ensure that the winner enjoys the fruits of litigation and to urge the loser to fulfil his or her obligations under the judgment in a timely manner.<sup>14</sup> As a result, a written notification to the parties under Article 229 of the Civil Procedural Law should be added specifically to all civil rulings involving the performance of monetary obligations. The amendment requires that the following sentence shall be included in a separate paragraph at the end of such a judgment:

*'If any party fails to fulfil the payment obligation within the period specified  
in this judgment, a double interest on the delay of payment shall be charged*

---

Work of the People's Court (for Trial Implementation) (Judicial Interpretation No. 15 [1998] of the Supreme People's Court) Article 24 (revised): After deciding to accept an enforcement case, the people's court shall issue an enforcement notice to the enforcee within three days, ordering it (him) to perform the obligations specified in the effective legal document and pay the debt interest for the default time or surcharge for the deferred performance according to Article 229 of the Civil Procedure Law. See this Article in Chinese: 最高人民法院《关于人民法院执行工作若干问题的规定（试行）》（法释〔1998〕15号）第24条调整为：'人民法院决定受理执行案件后，应当在三日内向被执行人发出执行通知书，责令其在指定的期间内履行生效法律文书确定的义务，并承担民事诉讼法第二百二十九条规定的迟延履行期间的债务利息或迟延履行金。'

<sup>13</sup> See the Notice of the Supreme People's Court on Including in Written Civil Rulings the Contents to Be Notified to the Parties under Provisions of Article 229 of the Civil Procedural Law.

<sup>14</sup> See the Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning the Building of a Socialist Harmonious Society.

*in accordance with Article 229 of the Civil Procedure Law of the People's Republic of China.*<sup>15</sup>

4.11 The above double-interest rule under Article 229 of the Civil Procedural Law applies not only to the enforcement of court judgments, but also to court mediation settlement agreements and, arguably, to arbitral awards. Judicial interpretations have found that the phrase 'other enforceable legal documents' as prescribed in Article 229 of the Civil Procedural Law does include court mediation settlement agreements.<sup>16</sup> Arbitral awards should fall into that category

---

<sup>15</sup> See Notice of the Supreme People's Court on Adding the Content of Notifying the Parties Concerned of the Provisions of Article 229 of the Civil Procedural Law in Written Civil Rulings (revised): 'As required by the Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning the Building of a Socialist Harmonious Society for 'implementing the system of notifying the parties concerned of their rights and obligations', in order to ensure that the winner enjoy the litigation achievements in a timely manner and urge the loser to fulfill its obligations in a timely manner, we decide, upon research, to add the content of notifying the parties concerned of the provisions of Article 229 of the Civil Procedural Law in written civil rulings involving the payment of money. We hereby notify the specific requirements for expression in written civil rulings as follows: 1. As for a judgment of the first instance which involves a pecuniary payment obligation, the following sentences shall be stated as a separate paragraph after all items of the judgment: If any party fails to fulfill the payment obligation within the period determined in this judgment, he/it shall double pay a debt interest for the period of deferred fulfillment in accordance with Article 229 of the Civil Procedure Law of the People's Republic of China.' 《最高人民法院关于在民事判决书中增加向当事人告知民事诉讼法第二百二十九条规定内容的通知》', 内容调整为: '根据《中共中央关于构建社会主义和谐社会若干重大问题的决定》有关 '落实当事人权利义务告知制度' 的要求, 为使胜诉的当事人及时获得诉讼成果, 促使败诉的当事人及时履行义务, 经研究决定, 在具有金钱给付内容的民事判决书中增加向当事人告知民事诉讼法第二百二十九条规定的内容。现在在民事判决书中具体表述方式通知如下: 一、一审判决中具有金钱给付义务的, 应当在所有判项之后另起一行写明: 如果未按本判决指定的期间履行给付金钱义务, 应当依照《中华人民共和国民事诉讼法》第二百二十九条之规定, 加倍支付迟延履行期间的债务利息。'

<sup>16</sup> See Supreme People's Court's Reply on the question of whether double-interest shall be charged on the delay in fulfilling payment obligations arising out of People's Court's mediation settlement agreements (No. 58 /1992): 最高人民法院关于被执行人未按民事调解书指定期间履行给付金钱的义务是否应当支付延期履行的债务利息问题的复函 (1992年5月4日 法函 (1992) 58号)

of other enforceable legal documents, but to date, no judicial interpretation or clarification has been issued on this particular point.

#### **4.1.3. INTEREST AS A PENALTY**

4.12 In the PRC, interest as a form of penalty can be traced back to the previous pre-1999 three-pillar contract law regime. Under the repealed Economic Contract Law (1993 amendments) ('ECL1993'), which applied to domestic economic contracts, the basic assumption was that late payment is a form of breach of obligation similar to late performance of any other obligations. Therefore, late payment was treated similarly to late delivery in one paragraph in Article 17 of the ECL1993.<sup>17</sup> According to this article, the price of goods could be agreed upon by the parties, except that those prices that must be fixed by the state. For those prices that must be fixed by the state, the state could adjust them from time to time and the prices paid should be the prices fixed by the state at the time of delivery. However, if delivery was late and prices were rising, then the prices paid should be those current at the originally scheduled time of delivery. However, if delivery was late and prices were falling, then the prices paid should be the current, lower prices.

---

<sup>17</sup> See the repealed Economic Contract Law (1993 amendments) Article 17: 中华人民共和国合同法(1993 修正)[失效] 第十七条 购销合同 三、产品的价格，除国家规定必须执行国家定价的以外，由当事人协商议定。执行国家定价的，在合同规定的交付期限内国家价格调整时，按交付时的价格计价。逾期交货的，遇价格上涨时，按原价格执行；价格下降时，按新价格执行。逾期提货或者逾期付款的，遇价格上涨时，按新价格执行；价格下降时，按原价格执行。

4.13 Also under Article 17 of the ECL1993, for late taking of delivery or late payment of price, if prices were rising, then the prices should be paid according to the higher prices now prevailing; if prices were falling, then payment should be made according to the prices current at the originally scheduled time of delivery or payment<sup>18</sup>. This article did not deal with the issue of late payment when prices were voluntarily agreed to by the parties rather than mandated by the state. Nor did this article mention 'late payment penalties' or 'interest' of any sort. The stipulation that late payment for transactions where prices were fixed by the state would potentially result in a higher price being paid suggested that the late payor should bear the consequence of a delay, in the form of a punishment or penalty for his actions.

4.14 Article 33 of the ECL1993 stipulated the sellers' obligation to pay a late delivery penalty and the buyers' obligation to pay late taking delivery or late payment penalties<sup>19</sup>. Similar stipulations on 'late payment penalty' ('逾期付款违约金' 'Yuqi Fukuan Weiyuejin') or other types of 'late performance penalty' ('逾期履行违约金' 'Yuqi Lvxing Weiyuejin') were provided in Article 34 for construction contracts; in Article 35 for processing/manufacture and hire of work contracts; in Article 36 for carriage of goods contracts; in Article 38 for storage contracts; and in Article 39 for leasing contracts.

---

<sup>18</sup> Ibid.

<sup>19</sup> See the repealed Economic Contract Law (1993 amendments) Article 33: 中华人民共和国合同法(1993 修正)[失效] 第三十三条 违反购销合同的责任 一、供方的责任: ...如果造成逾期交货, 偿付逾期交货的违约金。二、需方的责任: ...未按合同规定日期付款或提货, 应偿付违约金。...



4.15 As to how to calculate the ‘late payment penalty’, according to the Supreme People’s Court’s Reply<sup>20</sup>, in the absence of the parties’ agreement, the People’s Court may refer to the interest rate for the late repayment of loans charged by financing institutions, as fixed by the People’s Bank of China. The People’s Court may adjust that interest rate in accordance with any adjustments made by the People’s Bank of China from time to time<sup>21</sup>. This Reply was issued in response to the Guangdong High People’s Court’s Query on how to calculate late payment penalties, but was announced to all People’s Courts. The Reply has the same effect as the Supreme People’s Court’s Interpretation which binds all courts throughout the PRC. Although it was issued before the current Contract Law 1999 came into effect<sup>22</sup>, it remains valid. Accordingly, the term ‘逾期付款违约金’ (‘Yuqi Fukuan Weiyuejin’) (which literally means ‘late payment breach contract fee’) persists. As such, the concept of a late payment penalty has been linked to that of interest incurred due to the late payment of a loan. Thus, late payment will result in a penalty measured at the national bank’s set interest rate for the late repayment of loans.

4.16 Article 17 of the repealed ECL1993 has been retained in Article 63 of the current CL1999, which states that:

---

<sup>20</sup> See the Supreme People’s Court’s Reply on how to calculate late repayment penalty issued in 1999 and revised in 2000: 最高人民法院关于修改《最高人民法院关于逾期付款违约金应当按照何种标准计算问题的批复》的批复; 最高人民法院关于逾期付款违约金应当按照何种标准计算问题的批复 (1999年1月29日最高人民法院审判委员会第1042次会议通过 法释(1999)8号)

<sup>21</sup> Ibid.

<sup>22</sup> The CL1999 came into effect on 1 Oct 1999, but the Reply was issued on 29 January 1999.

*'For those prices that must be fixed or directed by the government, the government can adjust them from time to time and the prices to be paid shall be the prices fixed or directed by the government at the time of delivery. However, for late delivery, if the prices are rising, then the prices shall be paid according to the original ones; if the prices are falling, then the prices shall be paid according to the lower prices. For late taking of delivery or late payment of price, if prices are rising, then the prices shall be paid according to the higher prices; if prices are falling, then prices shall be paid according to the original prices.'*<sup>23</sup>

Because this article is found within the General Provision of the current CL1999, it automatically applies to all types of contracts, including sales contracts.

4.17 Article 33 of the ECL1993, however, did not survive in the CL1999, which therefore does not stipulate whether the seller should pay a late delivery penalty or whether the buyer shall pay late taking delivery or late payment penalties. Instead, the current CL1999 provides in Article 114 that parties may agree on a 'late performance penalty' ('迟延履行违约金' 'Chiyan Lvxing

---

<sup>23</sup> See the CL1999 Article 63 in Chinese: 第六十三条 【交付期限与价格执行】执行政府定价或者政府指导价的，在合同约定的交付期限内政府价格调整时，按照交付时的价格计价。逾期交付标的物的，遇价格上涨时，按照原价格执行；价格下降时，按照新价格执行。逾期提取标的物或者逾期付款的，遇价格上涨时，按照新价格执行；价格下降时，按照原价格执行。

Wei Yuejin')<sup>24</sup>. This article, also found within the General Provisions of the CL1999, automatically applies to all types of contract, including sales contracts.

4.18 In contrast to the ECL1993, the CL1999 clarified for the first time the differences between a 'penalty' and 'damages'. According to Article 114 of the CL1999, parties may agree on a specific amount of penalty or on the methodology for the calculation of damages in the event of a breach. If the agreed penalty is below the actual loss, parties may request that the court or arbitral tribunal increase the penalty; if the agreed penalty greatly exceeds the actual loss, parties may request that the court or arbitral tribunal reduce the agreed penalty. Thus, the meaning of 'late payment penalty' is at least two-fold: first, it is up to the parties to decide whether to agree on a late payment penalty and the amount of such penalty or the method used to calculate any such penalty; second, in the event that the agreed-upon penalty either exceeds or falls below the actual loss, the amount awarded becomes subject to a court or arbitral tribunal's discretion.

---

<sup>24</sup> See the CL1999 Article 114: The parties may agree that if one party breaches the contract, it shall pay a certain sum of liquidated damages to the other party in light of the circumstances of the breach, and may also agree on a method for the calculation of the amount of compensation for the damages incurred as a result of the breach. Where the amount of liquidated damages agreed upon is lower than the damages incurred, a party may petition the People's Court or an arbitration institution to make an increase; where the amount of liquidated damages agreed upon are significantly higher than the damages incurred, a party may petition the People's Court or an arbitration institution to make an appropriate reduction. Where the parties agree upon breach of contract damages in respect to the delay in performance, the party in breach shall perform the obligations after paying the breach of contract damages. 第一百一十四条 【违约金】当事人可以约定一方违约时应当根据违约情况向对方支付一定数额的违约金，也可以约定因违约产生的损失赔偿额的计算方法。约定的违约金低于造成的损失的，当事人可以请求人民法院或者仲裁机构予以增加；约定的违约金过分高于造成的损失的，当事人可以请求人民法院或者仲裁机构予以适当减少。当事人就迟延履行约定违约金的，违约方支付违约金后，还应当履行债务。

4.19 Notwithstanding the foregoing, a loophole appears to exist. In the absence of a parties' agreement, can the court or arbitral tribunal impose a 'late payment penalty'? If the answer is no, then the above mentioned Supreme People's Court's Interpretation on measuring the late payment penalty at the national bank's fixed interest rate for late repayment of loans is effectively nullified. This is because the word 'penalty' suggests that parties are free to agree to the amount of a penalty<sup>25</sup>. Conversely, if a court or arbitral tribunal can impose a 'late payment penalty' in the absence of a parties' agreement, should the court or arbitral tribunal measure the penalty against the interest rate fixed by People's Bank of China or against the actual loss as required by Article 114, or both?

4.20 The linking of the concept of the late payment 'penalty' to 'interest' on a late payment proves problematic. These two concepts should be addressed separately. Late payment interest should be ascertained and enforced as a matter of right or entitlement, but late payment penalties should be subject to evidence and proof of the parties' agreement. Unfortunately, neither the repealed ECL1993 nor the current CL1999 address interest on late payments independent of penalties and damages. Interestingly, however, the repealed Foreign-related Economic Contract Law ('FECL') did adopt a provision very similar to Article 78 of the CISG. The repealed FECL Article 23 stated:

---

<sup>25</sup> Ibid.

*'If a party fails to pay on time the price that is due as stipulated in the contract or any other sum related to the contract that is due, the other party is entitled to interest on the late payment. The method for calculating the interest may be agreed in the contract.'*<sup>26</sup>

Regrettably, the CL1999 did not retain the above provision.

#### **4.1.4. INTEREST UNDER THE CURRENT CONTRACT LAW 1999**

4.21 Although the CL1999 contains provisions on loan-related interest, none address either the availability of interest on non-loan related payment in arrears or, the rate of interest.

4.22 Interest on loans is recognised and dealt with in Chapter 12 on Contracts for Loan of Money. In particular, Article 207 specifies that interest on the repayment of loans in arrears shall be charged according to the parties' agreement or relevant state provisions.<sup>27</sup> Article 211 stipulates that if the loan agreement between natural persons was silent or ambiguous on the payment of

---

<sup>26</sup> See the Foreign-related Economic Contract Law (repealed) Article 23 in Chinese: 第二十三条 当事人一方未按期支付合同规定的应付金额或者与合同有关的其他应付金额的, 另一方有权收取迟延支付金额的利息。计算利息的方法, 可以在合同中约定。

<sup>27</sup> See the CL1999 Article 207: Where the borrower fails to repay the loan at the agreed time, it shall pay delayed repayment interest in accordance with the contract or the relevant provisions of the State. 第二百零七条 【逾期利息】 借款人未按照约定的期限返还借款的, 应当按照约定或者国家有关规定支付逾期利息。

interest, it shall be treated as an interest-free loan. Furthermore, the interest rate agreed between natural persons shall not violate the State's relevant provisions on the limits to the level of interest to be charged.<sup>28</sup>

4.23 In addition, Article 398 in Chapter 21 on Agency Agreement provides that the principal shall pay in advance the agent expenses to conduct the mandate of the principal. If the agent pays necessary expenses for the principal, the principal shall pay these expenses back to the agent together with interest<sup>29</sup>. The provision is silent, however, on how to calculate the interest rate.

4.24 Furthermore, it is worth noting that the English translation of the CL1999's main provision on damages, Article 113 could cause confusion on whether interest is recoverable. The English translation of the CL1999 available on the China-law-info database (Chinalawinfo.com) and the CIETAC's website (cietac.org) translates the Chinese characters '利益' (meaning profit, benefit and gain) into 'interests'. This translation is obscure. Does it refer to 'interest' in the sense of

---

<sup>28</sup> See the CL1999 Article 211: Under a contract for loan of money between natural persons, if payment of interest is not agreed or the agreement is not clear, the loan is deemed interest free. Under a contract for loan of money between natural persons, the interest rate on the loan may not contravene the relevant provisions of the State concerning limit on loan interest rate 第二百一十一条 【自然人间借款合同的利率】自然人之间的借款合同对支付利息没有约定或者约定不明确的, 视为不支付利息。自然人之间的借款合同约定支付利息的, 借款的利率不得违反国家有关限制借款利率的规定。

<sup>29</sup> See the CL1999 Article 398: The principal shall prepay the expenses for handling the commissioned affair. Any expense necessary for handling the commissioned affair advanced by the agent shall be repaid with interest by the principal. 第三百九十八条 【委托费用】委托人应当预付处理委托事务的费用。受托人为处理委托事务垫付的必要费用, 委托人应当偿还该费用及其利息。

money paid for the use of money lent (‘利息’ ‘li xi’ in Pinyin)? The accurate translation should be ‘profit’ as opposed to ‘interests’.

4.25 Article 113 of the CL1999 stipulates that:

*‘[W]here a party fails to perform its obligations under the contract or its performance fails to conform to the agreement and cause losses to the other party, the amount of compensation for losses shall be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract, provided not exceeding the probable losses caused by the breach of contract which has been foreseen or ought to be foreseen when the party in breach concludes the contract.’<sup>30</sup> (emphasis added)*

4.26 This article appears to mirror Article 74 of the CISG, which provides that:

---

<sup>30</sup> See Article 113 of the CL1999 in Chinese: 第一百一十三条 【损害赔偿的范围】当事人一方不履行合同义务或者履行合同义务不符合约定，给对方造成损失的，损失赔偿额应当相当于因违约所造成的损失，包括合同履行后可以获得的利益，但不得超过违反合同一方订立合同时预见到或者应当预见到的因违反合同可能造成的损失。

*'[D]amages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract'.*

(emphasis added)

4.27 The use of the word 'interests' instead of 'profit' in the above English translation of the CL1999 Article 113 could conveniently suggest that 'interest' in the sense of money paid for the use of money lent may be recoverable as damages. Unfortunately, to confuse the precise meaning of the term 'interest' further, the English word 'interest' can also be translated into Chinese as either '利益' (meaning advantage and profit) or '利息' (meaning money paid for the use of money lent).

4.28 It can be argued, however, that the Chinese term '利益' (profit) in its broadest sense may well encompass the meaning of '利息' (interest in the sense of money paid for the use of money lent). Thus, in defining the term 'interest' to include both profit and interest, as per the terms of the CL1999 Article 113, interest could be recovered as a category of damages. This position,



however, would still differ from that of the CISG Article 78, which treats interest as a category independent of damages.<sup>31</sup>

4.29 If Article 113 of the CL1999 does, in fact, define damages to include interest, then the immediate next question is how to determine the amount of interest awarded as the payee's loss. At present, the CL1999 does not provide any guidance as to how to calculate interest as an independent category of damages. Should the calculation of interest awarded as damages relate to (1) the cost of having to borrow money on a short-term basis, (2) the loss of opportunity to place money on deposit and earn interest, or (3) the loss of the opportunity to put money to a profitable use in some other way?

4.30 Based on the practice of measuring interest against the mandatorily fixed national bank's interest rate for late repayment of loans, it is arguable that the payee's loss should be determined on the above ground (2). Yet, some circumstances would justify the use of grounds (1) and (3) as a proper measure. Regardless of the method used, the recovery of interest as loss of profit should be subject to evidence and proof, as well as the test of foreseeability that applies to all categories of damages under Article 113 of the CL1999.

#### **4.1.5. INTEREST AS RESTITUTION OF BENEFITS UNDER THE CONSUMER PROTECTION LAW**

---

<sup>31</sup> See the CISG Section II Damages, Articles 74 to 77; Section III Interest, Article 78.

- 4.31 Article 47 of the PRC Consumer Protection Law provides that consumers can recover interest from a business supplier of goods or service who is obliged to refund the price paid in advance.<sup>32</sup> This article treats interest as restitution of benefits for the protection of consumers. It reads similarly to Article 84 (1) of the CISG, which provides: *'If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.'* But unlike Article 84(1) of the CISG,<sup>33</sup> Article 47 of the PRC Consumer Protection Law does not provide the commencement of interest accrual.
- 4.32 Although Article 47 of the PRC Consumer Protection Law seems to recognise that interest can be recovered as restitution of benefits, it is not entirely clear whether the same can also apply to contracts in general. For example, Article 115 of the CL1999, which addresses restitution of payment in advance, provides that parties can agree to a payment of a deposit as a guarantee.<sup>34</sup>

---

<sup>32</sup> See the PRC Consumer Protection Law Article 47: Business operators who supply commodities or services in the form of advance payment shall provide their commodities or services according to the agreements. Business operators who fail to provide their commodities or services according to the agreements shall fulfil the agreements or return the advance payment on the demand of the consumers, and shall also bear the interests of the advance payment and other necessary expenses that the consumers must bear. 消费者权益保护法 第四十七条 经营者以预收款方式提供商品或者服务的，应当按照约定提供。未按照约定提供的，应当按照消费者的要求履行约定或者退回预付款；并应当承担预付款的利息、消费者必须支付的合理费用。

<sup>33</sup> For a comprehensive analysis of the basis of interest in Article 84 of the CISG, see the CISG Advisory Council Opinion No 9, available at: <http://www.cisg.law.pace.edu/cisg/CISG-AC-op9.html>

<sup>34</sup> See the CL1999 Article 115: The parties may agree that a party pay a deposit to the other party as a guaranty for the obligation in accordance with the Guarantee Law of the People's Republic of China. Upon the obligor has performed its obligation, the deposit shall be offset against the price or refunded to the obligor. If the party paying the deposit fails to perform its obligations under the contract, such party has no right to demand for the return of the deposit; where the party accepting the deposit fails to perform its obligations under the contract, such party

Under Article 89 of the PRC Guarantee Law, if the party who accepts the deposit as a guarantee fails to perform his or her obligations, he or she should refund double the deposit paid.<sup>35</sup> Thus, the Guarantee Law, treats the deposit (定金 Dingjin) as a guarantee of performance, and requires double payment where performance obligations are not met.

- 4.33 Should the above double payment rule be classified as a type of interest or as a penalty? Do Article 89 of the Guarantee Law and Article 47 of the Consumer Protection Law conflict with each other? The Guarantee Law applies to all types of guarantee or security contracts, and treats deposits as one form of guarantee.<sup>36</sup> The Consumer Protection Law applies to all contracts involving consumers. Clearly, overlaps and inconsistencies exist between the two pieces of legislation. Should consumers be restricted to the amount of interest awarded under Article 47 of the Consumer Protection Law, even where this would result in the consumer receiving less

---

shall refund twice the value of the deposit. 合同法 第一百一十五条 【定金】当事人可以依照《中华人民共和国担保法》约定一方向对方给付定金作为债权的担保。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行约定的债务的，无权要求返还定金；收受定金的一方不履行约定的债务的，应当双倍返还定金。

<sup>35</sup> See the PRC Guarantee Law Article 89: The parties can agree to the arrangements that one party provide the other party deposits as the creditor's guarantee. After the debtor repaid the debts, the deposits shall become the purchase fund of be returned. If the party that provides the deposit fails to pay off the contracted debts, the deposit shall not be returned; if the party that receives the deposit fails to pay off the contracted debts, the doubled sum of the deposits shall be returned. 担保法 第八十九条 【定金及其法律效力】当事人可以约定一方向对方给付定金作为债权的担保。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行约定的债务的，无权要求返还定金；收受定金的一方不履行约定的债务的，应当双倍返还定金。

<sup>36</sup> See the PRC Guarantee Law Article 2: Act of guarantee can be established in accordance with this law whenever creditors require to safeguard the realization of their rights in such economic activities as debit and credit, selling and purchasing, commodities transport and contracted processing. The means of guarantee stipulated by this law are guarantee, mortgage, hypothecation, lien and deposits. 担保法 第二条 【适用范围及担保方式】在借贷、买卖、货物运输、加工承揽等经济活动中，债权人需要以担保方式保障其债权实现的，可以依照本法规定设定担保。 本法规定的担保方式为保证、抵押、质押、留置和定金。

than the double payment provided under Article 89 of the Guarantee Law? Would consumers have an option to choose between Article 47 of the Consumer Protection Law and Article 89 of the Guarantee Law? It is worth noting that Article 91 of the Guarantee Law does restrict the amount of deposit that can be agreed upon by parties as a guarantee: any such deposit should not exceed 20% of the total value of the main contract.<sup>37</sup> Arguably, where a consumer has paid more than 20% of the total value as a deposit, the consumer could still receive a refund with interest of the deposit paid as provided for under the Consumer Protection Law.

#### **4.1.6. INTEREST UNDER THE GUARANTEE LAW AND THE LAW OF RIGHTS IN REM**

4.34 According to Article 21 of the PRC Guarantee Law, if the parties' agreement was silent or ambiguous on the scope of the guarantee the guarantor should be liable for the entire debts including the principal, interest, penalty, damages and expense to realise the debts.<sup>38</sup> The same

---

<sup>37</sup> See the PRC Guarantee Law Article 91: The sum of deposit shall be decided by the parties and shall not exceed 20 percent of the sum of subject matter of the principal contract. 担保法 第九十一条 【定金的数额】定金的数额由当事人约定, 但不得超过主合同标的额的百分之二十。

<sup>38</sup> See the PRC Guarantee Law Article 21: The range of guarantee includes the principal debts and their interest, default fine, damage awards and expense for the realization of the creditors' rights. Should there be other arrangements in the guarantee contract, those arrangements shall be followed instead. If there is no arrangement or there is unclear arrangement on the range of guarantee, the guarantor shall assume full responsibility over the total debts. 担保法 第二十一条 【保证范围】保证担保的范围包括主债权及利息、违约金、损害赔偿金和实现债权的费用。保证合同另有约定的, 按照约定。 当事人对保证担保的范围没有约定或者约定不明确的, 保证人应当对全部债务承担责任。

rule applies to mortgages<sup>39</sup>, pledges<sup>40</sup>, and liens<sup>41</sup>. Thus, the PRC Guarantee Law does not seem to treat interest as either a penalty or a category of damages, but rather as a separate right or entitlement. The latest Law of Rights *in Rem* retains this principle in Article 173.<sup>42</sup> Yet, neither the Guarantee Law nor the Law of Rights *in Rem* provides any rules or guidance on how to calculate the interest to be awarded under those provisions.

#### 4.1.7. CALCULATION OF INTEREST IN PRC LAW AND PRACTICE

---

<sup>39</sup> See the PRC Guarantee Law Article 46: The range of mortgage guarantee includes the principal creditor's rights and interest, default fines, damage awards and the expense for the realization of the mortgage rights. Should there be other arrangements in the mortgage contract, those arrangements shall be followed instead. 担保法 第四十六条 【抵押担保的范围】抵押担保的范围包括主债权及利息、违约金、损害赔偿金和实现抵押权的费用。抵押合同另有约定的，按照约定。

<sup>40</sup> See the PRC Guarantee Law Article 67: The range guaranteed by hypothecation includes the principal creditor's rights and its interest, default fines, damage awards, hypothecated assets storage expense and expense for the realization of hypothecation rights. Should there be other arrangements in the hypothecation contract, those arrangements shall be followed instead. 担保法 第六十七条 【质押担保的范围】质押担保的范围包括主债权及利息、违约金、损害赔偿金、质物保管费用和实现质权的费用。质押合同另有约定的，按照约定。

<sup>41</sup> See the PRC Guarantee Law Article 83: The range of lien guarantee includes the principal debts and their interest, default fines, damage awards, storage expense of the lined property and the expense for the realization of the lien rights. 担保法 第八十三条 【留置担保的范围】留置担保的范围包括主债权及利息、违约金、损害赔偿金，留置物保管费用和实现留置权的费用。

<sup>42</sup> See the PRC Law of Rights *in Rem* Article 173: The security range of the real rights for security shall include principal obligee's rights and their interests, default fines, damages and expenses for keeping the property for security and for realizing the real rights for security. Where there are separate stipulations between the parties concerned, such stipulations shall prevail. 物权法 第一百七十三条 【担保物权的担保范围】担保物权的担保范围包括主债权及其利息、违约金、损害赔偿金、保管担保财产和实现担保物权的费用。当事人另有约定的，按照约定。

4.35 Notwithstanding the fact that none of the aforementioned pieces of PRC legislation have addressed how to calculate the interest to be awarded, the Supreme People's Court has provided some guidance.<sup>43</sup> As a general rule, if the parties' agreement was silent or ambiguous as to how to calculate the interest, the interest should be calculated in accordance with the relevant or comparable interest rates fixed and adjusted by the People's Bank of China.<sup>44</sup> But does this practice take into account the payee's actual loss? Is the People's Bank of China rate appropriate in all cases? What is the rationale for applying the People's Bank of China rate? Which rate of the People's Bank of China exactly? Should it be the liquidity loans interest rate? Or perhaps one of the short term, middle term or long term loan interest rates?

4.36 A review of fifteen PRC court cases that addressed the awarding of interest reveals the following: first, there appeared to be different practices by PRC courts in calculating interest rate prior to 1999; and second, the practice of PRC courts in calculating interest rates has become more consistent after 1999.

#### **4.1.7.1. CALCULATION OF INTEREST PRIOR TO 1999**

---

<sup>43</sup> See supra note 20 and discussions at paragraph 4.15 above.

<sup>44</sup> Ibid.

- 4.37 In *Lianzhong Enterprise Resources (Hong Kong) Ltd. v. Xiamen International Trade & Trust Co.*,<sup>45</sup> the Xiamen Intermediate People's Court [District Court] of Fujian applied both the Foreign-related Economic Contract Law and the CISG and adopted two different interest rates. First, it used the outward documentary bill interest rate of Po Sang Bank (Hong Kong) [Payee's Bank] on the outstanding 20% of the contract price paid in US\$. Then it used the US\$ annual deposit interest rate of 10.4375% on the Seller's loss of anticipated profits. The Court did not provide a rationale for using these two different interest rates.
- 4.38 Presumably, the first interest rate was adopted to compensate the Seller/Payee's cost of export financing, because the Seller in this case contracted with a third party in order to supply the goods to the Buyer and issued a Letter of Credit through its own bank. As to the second interest rate, although it was not explicitly provided in the ruling, the Court seems to have used the US\$ annual deposit interest rate of the People's Bank of China at that time. While this case suggests that interest on damages, (i.e. the loss of anticipated profits) is also recoverable, the Court did not provide its basis for the award or its calculation of the interest.
- 4.39 In *Skandinaviska v. Hunan Co.*<sup>46</sup>, the Changsha Intermediate People's Court of Hunan Province citing Articles 1, 4, 18, 73, 74, 77 of the CISG but not Article 78 of the CISG, held that: 1) [Seller] shall compensate the price difference suffered by the [Buyer], which was US\$15,660; 2) [Buyer]

---

<sup>45</sup> See China 20 April 1993 Xiamen Intermediate People's Court [District Court] of Fujian (*Lianzhong Enterprise Resources (Hong Kong) Ltd. v. Xiamen International Trade & Trust Co.*) [translation available] [Cite as: <http://cisgw3.law.pace.edu/cases/930420c1.html>]

<sup>46</sup> See China 18 September 1995 Changsha Intermediate People's Court of Hunan (*Skandinaviska v. Hunan Co.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/950918c1.html>]

shall pay the outstanding 10% price of the first installment to [Seller], which was US\$6,027.42; and 3) After set-off of items 1) and 2), [Seller] shall pay [Buyer] US\$9,632.58 with interest at the rate of the lowest US\$ Liquidity Loan interest rate. Other than citing the above CISG articles, the Court did not otherwise provide its reasoning for its ruling. The Court's award of interest on the post set-off amount would again support the conclusion that interest on damages, i.e. the price difference, was recoverable. But unlike the *Lianzhong case*,<sup>47</sup> the Court did not adopt two different interest rates, but rather one and applied it to both the price in arrears and the amount awarded in damages. Also, unlike in the *Lianzhong case*<sup>48</sup>, the Court adopted the lowest US\$ Liquidity Loan interest rate as opposed to either the outward documentary bill interest rate or the US\$ annual deposit interest rate.

4.40 In *Youli v. Gold Star*<sup>49</sup>, the Fujian High People's Court [Appellate Court] rejected Articles 16 and 23 of the Foreign-related Economic Contract Law (FECL) (since repealed) that were relied upon by the lower court, the Xiamen Intermediate People's Court [Court of First Instance]. Instead, it relied upon Articles 1(1)(a), 53, 62 and 78 of the CISG and held that [Buyer] should pay [Seller] US\$91,800 (the price in arrears) together with interest at the US dollar loan rate of the People's

---

<sup>47</sup> See China 20 April 1993 Xiamen Intermediate People's Court [District Court] of Fujian (*Lianzhong Enterprise Resources (Hong Kong) Ltd. v. Xiamen International Trade & Trust Co.*) [translation available] [Cite as: <http://cisgw3.law.pace.edu/cases/930420c1.html>]

<sup>48</sup> See China 20 April 1993 Xiamen Intermediate People's Court [District Court] of Fujian (*Lianzhong Enterprise Resources (Hong Kong) Ltd. v. Xiamen International Trade & Trust Co.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/930420c1.html>]

<sup>49</sup> See China 31 December 1996 Fujian High People's Court (*Youli v. Gold Star*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/961231c1.html>]



Bank of China. From the facts available, the Appellate Court seemingly used the interest rate of the seller/payee's place of business, which was in the PRC.

4.41 In *Akefamu v. Sinochem Hainan*<sup>50</sup>, the Shanghai High People's Court [Appellate Court] cited Articles 35(1), 24 and 78 of the CISG in awarding interest for the buyer at the rate of 0.5% per month. The Court did not, however, award interest for the buyer's loss of anticipated profits of US\$23,000. No reasoning was given for either on the awarding of interest or the calculation of interest.

4.42 In *China Yituo Group Company v. Germany Gerhard Freyso LTD GmbH & Co.*<sup>51</sup>, the Second Intermediate People's Court [District Court] of Shanghai cited Articles 53, 74, 78, 85, and 88(1) and (2) of the CISG and held that the buyer should pay the seller the price for the goods of 83,934.10 Deutsche Mark (DM) representing the price of the goods with 10,072 DM in interest. The Court did not otherwise explain its calculation of the interest.

4.43 The above five pre-1999 PRC court cases demonstrate that the PRC courts did not adopt a consistent formula in the calculation of interest. Six different interest rates were used in the five

---

<sup>50</sup> See China 1997 Shanghai High People's Court (*Akefamu v. Sinochem Hainan*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/970000c1.html>]

<sup>51</sup> See China 22 June 1998 Second Intermediate People's Court [District Court] of Shanghai (*China Yituo Group Company v. Germany Gerhard Freyso LTD GmbH & Co.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/980622c1.html>]

cases. In fact, all types of interest rates were used with no basis were given. In particular, the Court in the *Lianzhong case*<sup>52</sup> applied two different interest rates, one to the price in arrears and the other to the loss of anticipated profits. Although those PRC courts cited articles that were relied upon but they did not provide any reasoning or justification for their methods of calculating interest.

#### 4.1.7.2. CALCULATION OF INTEREST AFTER 1999

4.44 The calculation of interest by PRC courts appears to become more consistent after 1999. In nine out of the ten post-1999 PRC court cases available on the PACE CISG Database<sup>53</sup>, the courts

---

<sup>52</sup> See China 20 April 1993 Xiamen Intermediate People's Court [District Court] of Fujian (*Lianzhong Enterprise Resources (Hong Kong) Ltd. v. Xiamen International Trade & Trust Co.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/930420c1.html>]

<sup>53</sup> These nine cases are: 1. China 23 September 2005 New Pudong District People's Court [District Court] of Shanghai (*Xi'an Yun Chang Trade Ltd. v. An Tai International (USA)*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/050923c1.html>]; 2. China 21 September 2005 Supreme Court of the People's Republic of China (*Panda S.r.l. v. Shunde Westband Furniture Co., Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/050921c1.html>]; 3. China 30 August 2005 Shanghai High People's Court [Appellate Court] (*Shanghai Nuo Bo Metal Products Ltd. v. Tevel International Trading*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/050830c1.html>]; 4. China 29 June 2005 Shanghai No. 1 Intermediate People's Court [District Court] (*Yiwu Ma Jia Li Import & Export Co. Ltd. v. Y&Q International Group*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/050629c2.html>]; 5. China 10 September 2004 High People's Court [Appellate Court] of Shandong Province (*WS China Import GmbH v. Longkou Guangyuan Food Company*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/040910c1.html>]; 6. China 11 May 2004 Wuhan Intermediate People's Court [District Court] of Hubei Province (*Wuhan Zhongou Clothes Factory v. Hungary Wanlong International Tradet Company*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/040511c1.html>]; 7. China 23 March 2004 Shanghai No. 1 Intermediate People's Court [District Court] (*Singapore \_\_\_\_ Company v. Dongling Trade Company, Shanghai Xuyang Trade Company, Yingfang Xi & Yunli, Luo*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/040323c1.html>]; 8. China 5 March 2002 Guangxi Beihai Maritime Court (*Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resources Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/020305c1.html>]; 9. China 4 April 2001 Wuhan Intermediate People's Court [District Court] of Hubei Province (*Korea Hendai General Trade Company v. China*

adopted the lending rate of the People's Bank of China. The one court that chose not to use that rate instead chose to use the deposit interest rate of the People's Bank of China<sup>54</sup>. It is unclear why the lending rate appeared to be more popular and readily adopted than the deposit rate. Regrettably, none of the courts provided any justification or discussion on their calculation of interest.

4.45 Further, since the PRC courts did not provide any reasoning for the interest rates they adopted, it is difficult, if possible, to ascertain whether the courts applied the interest rate of the place of business of the payees or payors or whether they applied any rules of private international law at all. From the facts available, however, it does appear that inconsistencies still exist as to the calculation of interest as well as to the applicable law under which the interest rate should apply. Four out of the ten cases applied the interest rate of the payees' place of business, i.e. the interest rate of the People's Bank of China. Another four applied the interest rate of the payors' place of business, (once more the interest rate of the People's Bank of China). Even where neither party had a place of business in the PRC, one court still used the interest rate of the People's Bank of China.<sup>55</sup> In another case, *WS China Import GmbH v. Longkou Guangyuan Food*

---

*Hubei Province Metal Import & Export Company*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/010404c1.html>]

<sup>54</sup> See China 17 July 2000 High People's Court [Appellate Court] of Henan Province (*Minternet S.A. v. Henan Local Product Import and Export Company*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/000717c1.html>]

<sup>55</sup> See China 5 March 2002 Guangxi Beihai Maritime Court (*Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resources Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/020305c1.html>] In this case, although neither party has its place of business in the PRC (the seller has its place of business in Hong Kong and the buyer has its place of business in Singapore), the Court used the interest rate of the People's Bank of China anyway.

*Company*<sup>56</sup>, the court applied the interest rate of the People's Bank of China to both the price that should be refunded by the PRC seller and the price that should be paid by the German buyer. These cases clearly demonstrate that PRC courts do not consider rules of private international law when choosing the applicable interest rate, but rather choose to or naturally apply the interest rate of the People's Bank of China.

- 4.46 The People's Bank of China rate is unlikely to be appropriate in all cases. Given the fundamental socialist nature of the PRC law, however, the practice of applying the People's Bank of China rate as the default interest rate for payment in arrears seems unlikely to change in the near future.

## **4.2. USING ARTICLE 78 OF THE CISG TO SUPPLEMENT THE CL1999 ON THE AWARDING OF INTEREST**

- 4.47 The previous section 4.1 demonstrates the problems of awarding interest and the calculation of said interest under the CL1999. This section examines the use of Article 78 of the CISG to supplement the CL1999 with respect to the awarding of interest, and also the role of the

---

<sup>56</sup> See China 10 September 2004 High People's Court [Appellate Court] of Shandong Province (*WS China Import GmbH v. Longkou Guangyuan Food Company*) [translation available] [Cite as: <http://cisgw3.law.pace.edu/cases/040910c1.html>]

Supreme People's Court's Interpretation II of the CL1999<sup>57</sup> played in bringing about this convergence.

#### 4.2.1. AWARDING INTEREST NATURALLY?

4.48 In *Guangxi Beihai Maritime Court Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resources Ltd.*<sup>58</sup>, a case between a Hong Kong seller and a Singaporean buyer, the parties concluded a sales contract for 60,000 tons of Indian iron ore. The dispute concerned the underlying voyage charter for shipping the goods. The parties did not choose the applicable law and the destination of the carriage of goods contract was in mainland China. The Guangxi Beihai Maritime Court accepted jurisdiction and applied the PRC Maritime Law, the CL1999 and relevant international conventions to this case<sup>59</sup>. The buyer claimed for the loss of hire under the voyage charter in the amount of US\$550,000, plus interest at the London Interbank Offered Rate (LIBOR). The Court supported the awarding of interest, but it rejected the claimed interest rate. Instead, the court held that 'to be fair, the interest shall be counted at the contemporary lending rate promulgated by the People's Bank of China'<sup>60</sup>.

---

<sup>57</sup> This interpretation was promulgated on 1 December 2009 and became effective on 29 December 2009.

<sup>58</sup> See China 5 March 2002 *Guangxi Beihai Maritime Court (Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resources Ltd.)* [translation available] [Cite as: <http://cisgw3.law.pace.edu/cases/020305c1.html>]

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

4.49 The Court's decision to award the interest rate at the contemporary lending rate promulgated by the People's Bank of China seemingly confirms the observation that PRC courts tend to automatically use an interest rate fixed by the People's Bank of China<sup>61</sup>. A more intriguing question, however, remains. On what authority did the Court rely in determining that it could award interest? As the Court did not address this point, two possible rationales for the Court's actions are examined below.

4.50 One such rationale is that the court in its reference to Article 107 of the CL1999 simply treated interest as either a category of damages or as a penalty. Article 107 of the CL1999 stipulates:

*'If a party fails to perform its obligations under a contract, or its performance fails to satisfy the terms of the contract, it shall bear the liabilities for breach of contract such as to continue to perform its obligations, to take remedial measures, or to compensate for losses.'*<sup>62</sup>

4.51 Thus, where a party fails to perform its obligations under a contract, or the performance does not conform to the contract, it should bear the liabilities for breach of contract including to continue to perform the contract, or adopt measures to cure the non-conforming performance

---

<sup>61</sup> See discussion in section 4.1.7.2 above.

<sup>62</sup> See Article 107 of the CL1999 in Chinese: 第一百零七条 【违约责任】当事人一方不履行合同义务或者履行合同义务不符合约定的，应当承担继续履行、采取补救措施或者赔偿损失等违约责任。

or payment of damages or penalty<sup>63</sup>. But Article 107 of the CL1999 simply does not provide any direct reference or support to the authority to award interest, unless the court meant to treat interest as either a category of damages or a penalty. However, the Court did not explain whether it awarded the interest as a category of damages or a penalty or give any other basis for awarding the interest.

4.52 The second possible rationale is that the court used Article 78 of the CISG as a ‘relevant international convention’<sup>64</sup> to fill the gap found in the CL1999 concerning the awarding of interest. Similar to Article 74 of the CISG, Article 113 of the CL1999 stipulates that the amount of damages shall be equal to the loss caused by the breach, including loss of profit, but shall not exceed the loss which the party in breach foresaw or ought to have foreseen, as a possible consequence of the breach of contract. But, unlike Article 78 of the CISG, which provides that interest is recoverable independently from damages, the CL1999 is silent on the issue of interest. The Guangxi Beihai Maritime Court in the above *Sino-Add (Singapore) PTE. Ltd. case*<sup>65</sup> did not refer to any specific provision of the CISG, but it did make a reference to applying ‘relevant international conventions’<sup>66</sup>. This approach is, in fact, a feasible approach. The PRC is a party to the CISG, and the CISG will trump domestic law if the latter contradicts the former. The

---

<sup>63</sup> Ibid.

<sup>64</sup> See China 5 March 2002 Guangxi Beihai Maritime Court (*Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resources Ltd.*) [translation available] [Cite as: <http://cisgw3.law.pace.edu/cases/020305c1.html>]

<sup>65</sup> See China 5 March 2002 Guangxi Beihai Maritime Court (*Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resources Ltd.*) [translation available] [Cite as: <http://cisgw3.law.pace.edu/cases/020305c1.html>]

<sup>66</sup> Ibid.

CISG also serves as source of law for the PRC law. Hence, the CISG may be applied to supplement and fill gaps within existing PRC laws, even in those cases seemingly falling outside the scope of the CISG's application as stipulated in Article 1 of the CISG.

#### **4.2.2. AWARDING INTEREST ON ARTICLE 23 OF THE REPEALED FOREIGN-RELATED ECONOMIC CONTRACT LAW**

4.53 In *Gammatex International S.r.l v. Shanghai Eastern Crocodile Apparels Co. Ltd*<sup>67</sup>, a dispute arose between an Italian seller and a PRC buyer under an international sale of goods contract. Although the prerequisites of Article 1(1)(a) of the CISG were satisfied, and there was no evidence of intent on the part of the parties to exclude the CISG, the Shanghai First Intermediate People's Court did not apply the CISG<sup>68</sup>. Instead, the Court applied the Foreign-related Economic Contract Law ('FECL')<sup>69</sup>. In deciding the Italian seller's claim for price and interest, the Court relied on Article 23 of the FECL, which did provide for recovery of interest in the same way as

---

<sup>67</sup> China 21 August 2002 Shanghai First Intermediate People's Court [District Court] (*Gammatex International S.r.l v. Shanghai Eastern Crocodile Apparels Co. Ltd.*)[Cite as: <http://cisgw3.law.pace.edu/cases/020821c1.html>]

<sup>68</sup> See Yongping Xiao & Weidi Long, Selected Topics on the Application of the CISG in China, 20 Pace International Law Review (Spring 2008) 61-103 (n.40 and accompanying text)

<sup>69</sup> Although the FECL was repealed at the time when the case was brought to the court, the contract was formed before the FECL was repealed. According to the Supreme People's Court's Interpretation I on the CL1999, the FECL should apply in this case. See the Supreme People's Court's Interpretation I on the CL1999 Article 1: Where a case is brought before the people's court for disputes over a contract formed after the implementation of the Contract Law, the provisions of the Contract Law shall apply to such a case. Where a case is brought before the people's court for disputes over a contract formed before the implementation of the Contract Law, unless it is otherwise provided for by this Interpretation, the legal provisions at that time shall apply to such a case, and if the legal provisions at that time are silent, the relevant provisions of the Contract Law may apply.



Article 78 of the CISG, as discussed above in paragraph 4.20. However, as also pointed out, Article 23 of the repealed FECL has not been retained in the current CL1999.

#### **4.2.3. AWARDING INTEREST UNDER ARTICLE 112 OF THE CL1999 AS ‘OTHER ADDITIONAL’ DAMAGES**

4.54 In *Vishaybe Components Beyschlag GmbH v. Shanghai Yong Xu Electronic Ltd*<sup>70</sup>, a dispute arose between a German seller and a PRC buyer. The parties did not stipulate as to the applicable law. The Shanghai No. 1 Intermediate People’s Court decided that the CISG applied by virtue of Article 1 (1) (a). In reaching its decision, however, the Court also held that the laws of the PRC apply as well.<sup>71</sup> In the end, the Court relied on Article 112 of the CL1999 rather than Article 78 of the CISG when it came to the awarding of interest.<sup>72</sup> This decision is plainly wrong. Once it found the CISG is applicable, the Court should not have resorted to domestic law, unless it had to do so to decide an issue not addressed by the CISG. The awarding of interest, if not the rate of interest, clearly falls within the scope of Article 78 of the CISG. In this case, no valid basis existed

---

<sup>70</sup> China 28 November 2005 Shanghai No. 1 Intermediate People’s Court [District Court] (*Vishaybe Components Beyschlag GmbH v. Shanghai Yong Xu Electronic Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/051128c1.html>]

<sup>71</sup> Ibid, in particular, ‘This Court held that the disputes in this case arose out of a contract involving foreign interest, and the parties did not stipulate the applicable law. Because China and Germany are Contracting States of the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the [Buyer] received the goods in China, the CISG and the laws of the PRC should apply to this case.’

<sup>72</sup> Ibid, in particular, ‘According to Article 130 of the Law of Civil Procedure of the PRC, Articles 109, 112 and 159 of the Contract Law of the PRC, and Article 53 of CISG, this Court handed down the following judgment:...’

for the Court's use of Article 112 of the CL1999. Moreover, it is irrelevant whether the end result of applying Article 112 of the CL1999 is the same as that of applying Article 78 of the CISG.

4.55 Further, relying on Article 112 of the CL1999 to award interest appears questionable at best.

Article 112 stipulates:

*'[W]here a party fails to perform its obligations under the contract or its performance fails to conform to the agreement, and the other party still suffers from other damages after the performance of the obligations or adoption of remedial measures, such party shall compensate the other party for such damages.'*<sup>73</sup>

4.56 This article provides for recovery of damages in addition to those recoverable through actual or specific performance of the contract and other remedial measures. According to the *Vishaybe* case above<sup>74</sup>, 'additional' damages would include interest. The question then is whether the party who claimed the interest would need to meet the same standards of proof required for

---

<sup>73</sup> See Article 112 of CL1999 in Chinese: 第一百一十二条 【履行、补救措施后的损失赔偿】当事人一方不履行合同义务或者履行合同义务不符合约定的，在履行义务或者采取补救措施后，对方还有其他损失的，应当赔偿损失。

<sup>74</sup> China 28 November 2005 Shanghai No. 1 Intermediate People's Court [District Court] (*Vishaybe Components Beyschlag GmbH v. Shanghai Yong Xu Electronic Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/051128c1.html>]

other types of damages. If interest is treated as ‘other additional’ damages, rules that apply to damages in general, such as foreseeability and causation should also apply to a claim for interest. The Court in the *Vishaybe case*,<sup>75</sup> however, did not seem to require any such proof. The Court simply held that ‘...the buyer did not pay the contract price on time, so it should pay the contract price plus interest.’<sup>76</sup> The Court, in essence, treated interest as a matter of right, actually the same position as that adopted by the CISG in Article 78.

#### 4.2.4. AWARDING INTEREST UNDER ARTICLE 78 OF THE CISG

4.57 In *Singapore \_\_\_\_ Company v. Dongling Trade Company, Shanghai Xuyang Trade Company, Yingfang Xi & Yunli, Luo*<sup>77</sup>, a Singaporean seller sued a PRC buyer for the price of goods plus interest. The Shanghai No. 1 Intermediate People's Court correctly applied Article 78 of the CISG in this case. Similarly, in *Wuhan Zhongou Clothes Factory v. Hungary Wanlong International*

---

<sup>75</sup> Ibid.

<sup>76</sup> China 28 November 2005 Shanghai No. 1 Intermediate People's Court [District Court] (*Vishaybe Components Beyschlag GmbH v. Shanghai Yong Xu Electronic Ltd.*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/051128c1.html>]

<sup>77</sup> 37 China 23 March 2004 Shanghai No. 1 Intermediate People's Court [District Court] (*Singapore \_\_\_\_ Company v. Dongling Trade Company, Shanghai Xuyang Trade Company, Yingfang Xi & Yunli, Luo*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/040323c1.html>]

*Tradet Company*<sup>78</sup>, a PRC seller sued a Hungarian buyer for the price of goods plus interest. The Wuhan Intermediate People's Court of Hubei Province correctly applied Article 78 of the CISG.

#### **4.2.5. BRINGING THE CL1999 IN LINE WITH THE CISG: AWARDING INTEREST UNDER THE INTERPRETATION II OF THE CL1999**

4.58 In February 2009, the Supreme People's Court issued the Interpretation II of the CL1999, which came into force on 13 May 2009<sup>79</sup>, Article 21 of the Interpretation II provides that in addition to the primary debts (主债务 Zhu Zhaiwu), the obligator/debtor shall bear the interest and the expenses to realise the obligee's/creditors' rights<sup>80</sup>, For the first time, Article 21 of the Interpretation II has explicitly provided PRC courts with the authority to award interest on pre-judgment debts. Influenced by civil law traditions, the Chinese characters '债务' (Zhaiwu) (debts) in Article 21 of the Interpretation II shall be understood in a broad and general sense as obligations and liabilities in general. This interpretation explicitly provides an obligation to pay

---

<sup>78</sup> China 11 May 2004 Wuhan Intermediate People's Court [District Court] of Hubei Province (*Wuhan Zhongou Clothes Factory v. Hungary Wanlong International Tradet Company*) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/040511c1.html>]

<sup>79</sup> See the Supreme People's Court Interpretation II on CL1999: 最高人民法院《关于适用〈中华人民共和国合同法〉若干问题的解释（二）》已于 2009 年 2 月 9 日由最高人民法院审判委员会第 1462 次会议通过，现予公布，自 2009 年 5 月 13 日起施行。

<sup>80</sup> See Article 21 of the Supreme People's Court Interpretation II on CL1999 in Chinese: 最高人民法院《关于适用〈中华人民共和国合同法〉若干问题的解释（二）》第二十一条 债务人除主债务之外还应当支付利息和费用，当其给付不足以清偿全部债务时，并且当事人没有约定的，人民法院应当按照下列顺序抵充：（一）实现债权的有关费用；（二）利息；（三）主债务。

interest independently from penalties or damages, without regard to fault or proof of loss. Thus far, by way of interpretation, the awarding of interest under current PRC law and legal practice has been brought in line with the position adopted by the CISG in Article 78. Moreover, given the broad and general scope of Article 21 of the Interpretation II, it could be argued that interest on damages for non-performance of non-monetary obligations can now be recovered too.

4.59 Although the above interpretation does not specifically target the payment of interest on price or any other sum that is in arrears in the context of sales contracts, it does impose an obligation to pay interest on any debt, be it the price or any other sum in arrears. Also, because this interpretation falls under the heading of ‘Performance of Contract’ (合同的履行 Hetong de Lvxing) in the General Provisions of the CL1999, it automatically applies to all types of contracts including those governed by Chapter 9 on Sales Contracts. Therefore, if a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages or penalties recoverable under the CL1999. Yet, the Interpretation II still fails to address the method to be used when calculating the interest to be awarded<sup>81</sup>.

### **4.3. EXEMPLARY USE OF THE UPICC TO SUPPLEMENT THE CL1999 WITH RESPECT TO THE CALCULATION OF INTEREST**

---

<sup>81</sup> Article 78 of the CISG does not address the calculation of interest either.

4.60 The previous section 4.2 demonstrated the use of Article 78 of the CISG to supplement the CL1999 with regard to the awarding of interest; in particular, how the Supreme People's Court's Interpretation II of the CL1999 brought the CL1999 in line with the CISG on the issue of awarding interest. This section examines the use of the UPICC to supplement the CL1999 with respect to the calculation of interest. The solutions offered by the UPICC are discussed in 4.3.1. Section 4.3.2 then discusses whether the PRC domestic system could accommodate or tolerate these suggested practices.

#### **4.3.1. THE UPICC'S SOLUTIONS ON CALCULATING INTEREST**

4.61 Article 142 of the General Principles of Civil Law (GPCL) provides the legal basis for using the UPICC to supplement the CL1999. Article 142 subparagraph 3 stipulates:

*'International practice may be applied on matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.'*

As discussed in Chapter 1, the UPICC, as a set of rules reflecting international practice, can be used to fill gaps found within PRC legislation<sup>82</sup>.

---

<sup>82</sup> See discussions in section 1.4.3 in Chapter 1.

4.62 With respect to the interest rate that should be used when calculating the interest to be awarded, Article 7.4.9 (2) of the UPICC provides that it should be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place of payment.<sup>83</sup> According to the official comment to Article 7.4.9 (2), this solution seems best suited to accommodate the needs of international trade and to ensure an adequate compensation for the harm sustained, because the bank short-term lending rate is likely to be the rate at which the aggrieved party would normally borrow the money that it has not received from the non-performing party.

4.63 In the event that no such rate for the currency of payment exists at the place for payment, Article 7.4.9 (2) of the UPICC then refers to the average prime rate in the State of the currency of payment. According to the example given in the official comment to the Article 7.4.9 (2), if a loan is made in pounds sterling payable at Tunis and there is no rate for loans in pounds on the Tunis financial market, reference will be made to the rate in the United Kingdom.

4.64 Where neither the first nor the second rate discussed above is available, Article 7.4.9 (2) resorts to the ‘appropriate’ rate fixed by the law of the State of the currency of payment. The official

---

<sup>83</sup> UPICC Article 7.4.9 - Interest for Failure to Pay Money (2) The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

comment to the Article 7.4.9 (2) further explains that in most cases this will be the legal rate of interest and, as there may be more than one, then it will be the one that is most appropriate for international transactions. If there is no legal rate of interest, the rate will be the most appropriate bank rate.

4.65 As such, the rate of interest under Article 7.4.9 of the UPICC is first linked to the rate of interest to the place of payment, and then to the State of the currency of payment. It is not, however, directly linked to the place of business of either party as payment is not necessarily always made at the place of business of the seller<sup>84</sup>.

4.66 In addition, Article 7.4.10 of the UPICC specifically deals with the payment of interest on damages that are due. Under this article, a party is entitled to claim interest on damages that are due for the non-performance of non-monetary obligations as from the time of the non-performance<sup>85</sup>.

#### **4.3.2. COMPATIBILITY OF THE SOLUTION PROVIDED BY THE UPICC WITH PRC LAW AND PRACTICE**

---

<sup>84</sup> See Sieg Eiselen, Remarks on the Manner in which the UNIDROIT Principles of International Commercial Contracts May Be Used to Interpret or Supplement Article 78 of the CISG, available at: <http://www.cisg.law.pace.edu/cisg/principles/uni78.html>

<sup>85</sup> UPICC Article 7.4.10 - Interest on Damages: Unless otherwise agreed, interest on damages for non-performance of non-monetary obligations accrues as from the time of non-performance.



4.67 As observed in section 4.1.7.2 above, current PRC courts practice is to award the lending rate of the People's Bank of China as the default interest rate. To make PRC courts practice compatible with the solution provided by the UPICC, this author proposes a two-step approach. First, the court should always identify which law governs the calculation of interest. According to the solution provided by the UPICC Article 7.4.9 (2), the first point of reference should be the place for payment. Only if no such rate exists, should the court then refer to the rate in the State of the currency of payment. Neither the place of business of the payee nor that of the payor should make a difference in deciding which law governs the interest rate. Second, once the applicable law is identified, the court should then move on to ascertain the most appropriate interest rate for the transactions. If the court identifies that the PRC law does govern the interest rate, the court could award interest at the short-term lending rate fixed by the People's Bank of China, provided the court finds that that is the most 'appropriate' interest rate for the relevant transactions.

4.68 It is submitted that what really needs to be enhanced in the current PRC courts' practice is to take steps to identify both the applicable law that governs the interest rate and the appropriate interest rate for the relevant transactions. The current PRC courts' practice as reflected in the cases so far available at the PACE CISG Database reveals that PRC courts pay very little attention to the identification of the applicable law governing the calculation of interest. Little or no rationale has been given to support the adoption of the lending rate or any other particular interest rate of the People's Bank of China. Because it is not always appropriate to award

interest at that rate, it is necessary to first identify the law that governs the calculation of interest and second ascertain the interest rate that is the most appropriate for the relevant transactions. Once the court identifies PRC law as the appropriate law to govern the calculation of interest, the use of the lending rate of the People's Bank of China is both supportable and justifiable. By taking this two-step approach, the PRC courts' practice would fall in line with international practice as reflected in the UPICC.

#### **4.4. CONCLUSION (Chapter 4)**

4.69 On the one hand, real obstacles exist to the application of the CISG in the PRC, because some PRC courts either refuse to apply the CISG where it should or some apply the CISG on the incorrect or superficial understanding of the uniform law instrument, or worse yet, some don't even realise that it exists. On the other hand, no genuine obstacle exists to the integration of the CISG into the current PRC sales contract law in terms of specific substantive rules and provisions. Because of the relative youth of the current PRC contract law regime, which by and large has only been constructed in the last decade, the application and interpretation of the CL1999 often seeks to accommodate international rules of law and practice in comparable areas. Contrary to the common notion of using domestic laws to fill the CISG's gaps, the CISG has served as 'the' international sales contract law to fill the gaps within the current PRC domestic contract law. The lack of a special regime to deal with international sales contracts under the CL1999 further supports the use of the CISG in this manner.

- 4.70 The analysis in this chapter has demonstrated that PRC domestic law lacked a consistent approach when it came to the awarding of interest until the Supreme People's Court issued its Interpretation II of the CL1999, which espoused a position in keeping in line with the CISG's Article 78.
- 4.71 The discussion in this chapter has also revealed that there is no clash in the substantive law between the UPICC and the PRC law on the calculation of interest. The analysis of Article 7.4.9 (2) of the UPICC demonstrates that PRC contract law can accommodate and use the UPICC's methods for the calculation of pre- and post-judgment interest.
- 4.72 The current PRC courts' practice of adopting the interest rate of the People's Bank of China regardless of the facts needs correction. It is suggested that a two-step approach should be taken: (1) identify the applicable law; and (2) identify the appropriate interest rate applicable to the transaction in issues. The use of the UPICC's provision concerning interest rate would only further the reforms set forth in the Supreme People's Court's Interpretation II of the CL1999.
- 4.73 Overall, the outcome, in terms of the awarding of interest and the actual interest rate to be applied under the various factual circumstances, may well prove identical regardless of whether the courts use PRC domestic law, the CISG or the UPICC. Thus, Article 78 of the CISG and Article 7.4.9 (2) of the UPICC comport with PRC domestic law. In particular, the UPICC offers an

excellent model for further legal reform, as it incorporates a considered, uniform and international method of calculating interest.

- 4.74 Due to both the evolving nature of the current PRC law and the merits and limitations of the CL1999, the integration of the CISG and the UPICC into PRC sales and contract law will depend on the willingness of PRC courts to take actions consistent with any such integration. Given the long-term strategic legislative policy to progressively develop the PRC contract law, it is expected that the PRC courts will continue to favour the integration of international uniform law rules into PRC law to the degree that a need for uniform transnational law manifests.

## **5. CHAPTER FIVE: THE APPLICATION OF THE CISG IN HONG KONG, MACAO AND TAIWAN**

### **5.0. INTRODUCTION**

5.01 As the previous chapter demonstrated, no genuine obstacles exist that would prevent the incorporation of the CISG's substantive rules and provisions into current PRC sales contract law. This chapter seeks to identify and analyse the obstacles to the application of the CISG in the PRC's different territorial units outside of mainland China, namely Hong Kong, Macao and Taiwan.

5.02 Therefore, this chapter examines (1) the applicability of the CISG in Hong Kong, Macao and Taiwan; (2) the PRC courts' practice when dealing with cases involving parties from these territorial units; and (3) the clarification needed with respect to these territorial units' status under the CISG. The application of the CISG in Hong Kong is discussed in section 5.1; Macao in 5.2 and Taiwan in 5.3. At the end of the chapter, conclusions will be drawn.

### **5.1. THE APPLICATION OF THE CISG IN HONG KONG**

5.03 In 2008, the Hong Kong Special Administrative Region (“HKSAR”) ranked 13th among leading world traders, accounting for 2.3% of total world trade<sup>1</sup>. Among the top thirteen world traders, only Hong Kong and the United Kingdom have not ‘joined’ the CISG. Hong Kong's major trading partners, including the Mainland of China, the United States of America, Singapore, Japan, the Netherlands, Germany and the Republic of Korea (South Korea) are all signatory states of the CISG. Hong Kong’s trade with the CISG jurisdictions accounts for 69.5% of Hong Kong’s total domestic exports, 70.9% of Hong Kong’s total outbound re-exports, 77.1% of Hong Kong’s total inbound re-exports and 71.7% of Hong Kong’s total imports<sup>2</sup>.

5.04 Hong Kong traders have long been exposed to the CISG<sup>3</sup>, but much to their detriment, the status of the HKSAR under the CISG is not at all settled. This section examines the status of the HKSAR under the CISG after the handover of Hong Kong from Britain to the PRC on 1 July 1997. For reasons that will be demonstrated herein, the PRC should extend the application of the CISG to the HKSAR.

---

<sup>1</sup> According to World Trade Organization, total world trade is US\$ 32,492 billion in 2008. Also in 2008, Hong Kong Special Administrative Region (HKSAR) ranked 13<sup>th</sup> among leading world importers, accounting for 2.4% of world total imports, and 13<sup>th</sup> among leading world exporters, accounting for 2.3% of world total exports. See trade statistics published by the Trade and Industry Department of HKSAR, available at <<http://www.tid.gov.hk/english/aboutus/publications/tradestat/wmt08tt.html>>, last accessed on 10 January 2011.

<sup>2</sup> *Ibid.*

<sup>3</sup> F. Yang, *CISG in China and Beyond*, 40 NO 3 UCCLJ ART 5 (2008) 376

### **5.1.1. DID THE HKSAR'S REUNIFICATION WITH THE PRC RESULT IN THE HKSAR BECOMING A 'PARTY' TO THE CISG?**

5.05 On 20 June 1997, shortly before Hong Kong's reunification with the Mainland of China, the PRC deposited a diplomatic note ('PRC Diplomatic Note') with the Secretary General of the United Nations announcing that the treaties in Annex I to the note 'will be applied' to the HKSAR<sup>4</sup>. Annex I, however, did not include any reference to the CISG despite the fact that the PRC was a party to the convention. Further, prior to the reunification, the CISG had not been applied in Hong Kong, as the United Kingdom was not a party to the Convention<sup>5</sup>. As a result, courts seated throughout the world have taken inconsistent positions with respect to the CISG's applicability to the HKSAR. For example, the Supreme Court of France (*Cour de cassation*) has decided that the CISG does not apply to the HKSAR<sup>6</sup>. On the other hand, some courts in the United States have found that the CISG is applicable to the HKSAR, while still others have found it inapplicable.<sup>7</sup>

---

<sup>4</sup> See Letter of Notification of Treaties Applicable to Hong Kong After 1 July 1997, deposited by the Government of the People's Republic of China with the Secretary-General of the United Nations on 20 June 1997, Annex I, 36 International Legal Materials, vol XXXVI, No. 6, November 1997, para 1675 et seq., available at <<http://www.hku.hk/ccpl/database/annex1.html>>, last accessed on 10 January 2011.

<sup>5</sup> See the List of Treaties in Force and Applicable to the Hong Kong Special Administrative Region, available at <<http://www.legislation.gov.hk/interlaw.htm>>, last accessed on 10 January 2011.

<sup>6</sup> The Supreme Court of France, 2 April 2008, CISG-online 1651, translation available at <<http://cisgw3.law.pace.edu/cases/080402f1.html>>, last accessed on 10 January 2011 (cited as: *Telecommunications products case*).

<sup>7</sup> *Innotex Precision Limited v. Horei, Inc., et al.*, 2009 U.S. Dist. LEXIS 117992 (N.D. Ga.) 17 December 2009, CISG-online 2044, available at <<http://cisgw3.law.pace.edu/cases/091217u1.html>>, last accessed on 10 January 2011 (cited as: *Innotex case*). For a contrary conclusion, see *Electrocraft Arkansas, Inc. v. Electric Motors, Ltd., et al.*,

#### 5.1.1.1. THE TELECOMMUNICATIONS PRODUCTS CASE AND THE INNOTEX CASE

5.06 In the Telecommunications Products case, the Supreme Court of France paid special attention to the 1997 PRC Diplomatic Note, and more specifically, Annex I. The Court found that the failure of Annex I to include the CISG served as a declaration by the PRC that the CISG would not apply to the HKSAR after the handover in 1997.<sup>8</sup> The Court further found that such a declaration by the PRC was in keeping with Article 93 of the CISG. Thus the Court held that ‘the People’s Republic of China has effectuated with the depositary of the Convention a formality equivalent to what is provided for in Article 93 of the CISG’<sup>9</sup>.

5.07 More recently, the United States District Court for the Northern District of Georgia also found that the CISG is inapplicable to the HKSAR. In *Innotex Precision Limited v. Horei, Inc., et al*<sup>10</sup>, the Court based its decision on the fact that the HKSAR is not a ‘Contracting State’. In further support of its conclusion, the Court highlighted the fact that its position was consistent with the

---

2009 U.S. Dist. LEXIS 120183 (E.D. Ark.), 23 December 2009, CISG-online 2045, available at <<http://cisgw3.law.pace.edu/cases/091223u1.html>>, last accessed on 10 January 2011. See also *CNA International, Inc. v. Guangdong Kelon Electronical Holdings, et al.*, 05 C 5734 (N.D. Ill.), available at <<http://cisgw3.law.pace.edu/cases/080903u1.html>>, last accessed on 10 January 2011 (cited as: *CNA case*).

<sup>8</sup> *Telecommunications products case*, *supra* note 6, at para. B.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Innotex case*, *supra* note 7



position taken by the PRC government, the Hong Kong Department of Justice, the Supreme Court of France, and numerous commentators.<sup>11</sup>

5.08 As reflected above, the two main arguments against the applicability of the CISG to the HKSAR appear to be as follows: (1) the 1997 PRC Diplomatic Note, and more specifically Annex I, constitutes the equivalent of a CISG Article 93 declaration; and (2) the PRC Central Government and the HKSAR Government have taken the position that the CISG does not apply to the HKSAR.

#### **5.1.1.2. DID THE 1997 PRC DIPLOMATIC NOTE SATISFY THE REQUIREMENTS OF ARTICLE 93 OF THE CISG?**

5.09 Without question, the PRC did not ‘at the time of signature, ratification, acceptance, approval or accession’ declare that the CISG is to extend to all of its territorial units or to only one or more of them<sup>12</sup>. The issue then is whether the 1997 PRC Diplomatic Note, and in particular Annex I, can be seen as a new declaration made by the PRC after the PRC’s adoption of the CISG. More specifically, did Annex I satisfy the requirements set forth by Article 93(2) of the CISG that any such declaration ‘state[s] expressly the territorial units to which the Convention extends’? Rather than adopting a textual interpretative approach, both the Supreme Court of France and

---

<sup>11</sup> *Innotex case*, *supra* note 7.

<sup>12</sup> See Article 93 (1) of the CISG.

the Innotex court focused on the “fact”<sup>13</sup> that both the PRC Central Government and the HKSAR Government had taken the position that the CISG did not apply to the HKSAR.

5.10 Conversely, in *CNA International, Inc. v. Guangdong Kelon Electronical Holdings, et al.*<sup>14</sup>, the United States District Court for the Northern District of Illinois relied upon the plain language of Article 93 of the CISG in reaching its conclusion that the CISG did, in fact, apply to the HKSAR<sup>15</sup>. The Court first found that, pursuant to the language set forth in Article 93(1), the PRC had the right, when it resumed sovereignty over Hong Kong, to declare that the CISG did not apply to the HKSAR<sup>16</sup>. Next, it found that Article 93(2) required a signatory state to do the following when making a declaration pursuant to this provision: first, the declaration must be notified to the Secretary-General of the United Nations who is the depositary for the CISG; and second, the declaration must expressly identify the territorial units to which the CISG extends. Although the Court held that the Diplomatic Note satisfied the first requirement, it found that the Diplomatic

---

<sup>13</sup> The author questions whether it is a “fact” that both the PRC Central Government and the HKSAR Government had taken the position that the CISG did not apply to the HKSAR. As will be discussed in section 5.1.1.3, the fact that Annex I did not include the CISG does not necessarily suggest that the PRC Central Government had decided against the application of the CISG to the HKSAR. Furthermore, cases discussed in section 5.1.2.2 show that some PRC courts and many CIETAC arbitral tribunals have actually applied the CISG to HKSAR parties.

<sup>14</sup> *CNA case*, *supra* note 7.

<sup>15</sup> The court cited *Chicago Prime Packers, Inc. v. Northam Food Trading Co.*, 408 F. 3d 894 (7th Cir. 2005), CISG-online 1026, available at <<http://cisgw3.law.pace.edu/cases/050523u1.html>>, last accessed on 10 January 2011, citing Art. 7(2) CISG.

<sup>16</sup> See generally U. Schroeter, *The Status of Hong Kong and Macao Under the United Nations Convention on Contracts for the International Sale of Goods*, 16 Pace Int’l L. Rev. 307, at 323 et seq., available at: <[http://www.schroeter.li/pdf/Schroeter\\_16\\_Pace\\_Intl\\_L\\_Rev\\_2004\\_307.pdf](http://www.schroeter.li/pdf/Schroeter_16_Pace_Intl_L_Rev_2004_307.pdf)>, last accessed on 10 January 2011.

Note failed the second requirement, because Annex I was silent as to the CISG, and more importantly, it did not 'state expressly the territorial units to which the Convention extends'.

- 5.11 The author submits that Article 93 has two main implications for any Contracting State whose territory increases to include territory not formerly subject to the CISG. First, Article 93(1) should be interpreted to allow a Contracting State to make a declaration as well as amend its declaration at any time instead of only making the declaration 'at the time of signature, ratification, acceptance, approval or accession'. Second, Article 93(4) suggests that in the absence of a declaration under Article 93(1), the Convention is to extend to 'all' territorial units of that State including any new territory that is not formerly subject to the CISG. Thus, unless the Diplomatic Note constituted a declaration pursuant to Article 93(1), the CISG should apply to the HKSAR after the handover in 1997.

#### **5.1.1.3. WHAT WERE THE INTENTIONS OF THE PRC CENTRAL GOVERNMENT AND THE HKSAR GOVERNMENT?**

- 5.12 Following the above analysis, in deciding whether the Diplomatic Note constituted a declaration pursuant to Article 93 of the CISG, the Supreme Court of France and the Innotex Court took the view that it was the intention of the PRC Central Government and the HKSAR Government to exclude the CISG's application in the HKSAR. The author submits that (1) the intentions of the PRC Central Government and the HKSAR Government are not directly relevant to the analysis and interpretation of Article 93 of the CISG; and (2) even if the intentions of the PRC Central

Government and the HKSAR Government are relevant in deciding whether the Diplomatic Note constituted a declaration pursuant to Article 93 of the CISG, it is still subject to debate. The author is of the opinion that the Diplomatic Note did not deal with the application of the CISG in the HKSAR at all and was not a declaration pursuant to Article 93 of the CISG.

- 5.13 Since the application of the CISG in the HKSAR is a matter that has not been specifically dealt with by the PRC Central Government and the HKSAR Government, according to Section XI of Annex I to the Sino-British Joint Declaration (1984)<sup>17</sup>, and its mirror provision, Article 153 of the Basic Law of the HKSAR<sup>18</sup>, the application of international agreements to which the PRC is or becomes a party to the HKSAR shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region.

---

<sup>17</sup> See the Section available on the website of the Constitutional and Mainland Affairs Bureau of the Government of the HKSAR: <http://www.cmab.gov.hk/en/issues/jd3b.htm#foreign>.

<sup>18</sup> Article 153 of The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, 4 April 1990, available at <[http://www.basiclaw.gov.hk/en/basiclawtext/images/Basic\\_Law.pdf](http://www.basiclaw.gov.hk/en/basiclawtext/images/Basic_Law.pdf)>, last accessed on 10 January 2011 states: 'The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region. International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorize or assist the government of the Region to make appropriate arrangements for the application to the Region of other relevant international agreements.'

- 5.14 A plain reading of Article 153 of the Hong Kong Basic Law<sup>19</sup> suggests that the question of the CISG's applicability to the HKSAR must be decided by the Central Government, in accordance with the circumstances and needs of the HKSAR, and after seeking the views of the HKSAR government. Therefore, the following two questions arise: (1) whether the application of the CISG to the HKSAR is in accord with the circumstances and needs of the HKSAR and (2) would the current HKSAR government support the application of the CISG in the HKSAR?

#### **5.1.2. IS THE APPLICATION OF THE CISG IN THE HKSAR IN ACCORD WITH THE CIRCUMSTANCES AND NEEDS OF THE HKSAR?**

- 5.15 As we know, the United Kingdom (U.K.) is not a party to the CISG<sup>20</sup>. Given the long standing tradition of following English law in Hong Kong, it may be argued that if the U.K. does not want the CISG, then the HKSAR should not want it either. The circumstances and needs between the two, however, differ dramatically.

- 5.16 Located in the centre of East Asia, the HKSAR is an international business, trade and financial hub in its own right. In accordance with the Basic Law of the HKSAR, Hong Kong operates as a

---

<sup>19</sup> *Ibid.*

<sup>20</sup> For a discussion about the reasons why the U.K. has not adopted CISG, see M. Bridge, *A Law for International Sales*, 37 Hong Kong Law Journal 17 (2007), available at <<http://www.cisg.law.pace.edu/cisg/biblio/bridge3.html>>, last accessed on 10 January 2011.

separate customs territory<sup>21</sup>. An import/export declaration is required for all items traded between Hong Kong and the Mainland of China. Statistics relating to this are included in Hong Kong's external trade statistics<sup>22</sup>.

- 5.17 Have Hong Kong traders really felt the need for the CISG and are they particularly enthusiastic about it now? What about the costs of learning the CISG? Can Hong Kong traders simply opt out the CISG anyway? These concerns should be answered once the benefits of adopting the CISG in Hong Kong are fully understood.

#### **5.1.2.1. BENEFITS OF APPLYING THE CISG TO THE HKSAR**

- 5.18 First, the phenomenal success of the CISG is evidenced by its widespread acceptance in currently 76 Contracting States.<sup>23</sup> In particular, the HKSAR's major trading partners in the region, Singapore, Japan and South Korea are now all parties to the Convention. The CISG has gained worldwide acceptance, and has proven to be one of the most successful international conventions in the field of private law. It is estimated that the CISG covers 80% of the world's

---

<sup>21</sup> Article 116 of The Basic Law of HKSAR, available at the HK Basic law website: <[http://www.basiclaw.gov.hk/en/basiclawtext/images/Basic\\_Law.pdf](http://www.basiclaw.gov.hk/en/basiclawtext/images/Basic_Law.pdf)>, last accessed on 10 January 2011: 'The Hong Kong Special Administrative Region shall be a separate customs territory.'

<sup>22</sup> Census and Statistics Department's website, *available at* [http://www.censtatd.gov.hk/hong\\_kong\\_statistics/statistics\\_by\\_subject/concept/external\\_trade/index.jsp](http://www.censtatd.gov.hk/hong_kong_statistics/statistics_by_subject/concept/external_trade/index.jsp) [last visited on 10 January 2011].

<sup>23</sup> As of 7 July 2010, UNCITRAL reports that 76 States have adopted the CISG.

international trade<sup>24</sup>. Over 2,500 published court decisions and arbitral awards, an abundant number of scholarly writings, numerous conferences, and last but not least, the Annual Willem C. Vis International Commercial Arbitration Moot<sup>25</sup> all demonstrate the enormity of the CISG's contributions to legal practice and legal education. The author submits that the HKSAR has long needed to make the CISG available to its own traders, thereby showing its trading partners and the world trade community at large that it is committed to continuing its traditional free market economic policy and the further expansion and facilitation of trade both within the region and across the globe.

5.19 Second, for the Hong Kong business and trade community, the benefit of using the CISG is readily apparent. Against the backdrop of globalization, international trade is a daily occurrence. Small and medium-size enterprises are particularly vulnerable when facing the legal technicalities involved in international trade. Small and medium-size enterprises would become the largest beneficiaries of the CISG, should it be applied to the HKSAR. Once traders discover that the majority of the world has adopted the CISG, their attitudes would change, which would make them more comfortable when choosing the CISG as governing law. Adopting the CISG as the common international sales law would help prevent the incurring of costs associated with

---

<sup>24</sup> See Ingeborg / Hachem Pascal, *The CISG - Successes and Pitfalls*, 57 *American Journal of Comparative Law* (2009) 457-478. It should be pointed out though that it may cover 80% of the countries, but this statistic takes no account of the number of times that in practice the CISG is excluded between contracting parties.

<sup>25</sup> For further information about the *Annual Willem C. Vis International Commercial Arbitration Moot* that takes place in Vienna or its sister moot, the *Willem C. Vis (East) International Commercial Arbitration Moot* that is conducted in Hong Kong, see <<http://www.cisg.law.pace.edu/vis.html>>, last accessed on 10 January 2011.

having to deal with diverse domestic laws, as well as the transaction costs related to negotiating choice-of-law clauses.

5.20 Third, the fact that the PRC is a signatory state should also provide the HKSAR with a strong incentive to join the CISG. As pointed out by some experts, the HKSAR's longer-term economic prospects will be determined primarily by whether it can strengthen its competitive edge in Greater China, and by its role in China's market liberalisation.<sup>26</sup> Currently, many new opportunities are opening up for the HKSAR enterprises in the mainland Chinese market, including closer economic integration with the Guangdong and Pearl River Delta ('PRD'), financial cooperation and capital market development, market deregulation under the Closer Economic Partnership Agreement ('CEPA'), and cross-border infrastructure links. The Pan-PRD Regional Cooperation enlarges the HKSAR's market<sup>27</sup>. Given the role the CISG has played and continues to play in the development of PRC contract law, 'joining' the CISG would significantly enhance the confidence of its trading partners in the Mainland of China and further strengthen its collaborations with the Mainland Chinese trading partners, as well as traders from all other CISG jurisdictions.

---

<sup>26</sup> See Nomura Global Economics, *The Ascent of Asia*, February 2010 <<http://www.nomura.com/research>>, last accessed on 10 January 2011.

<sup>27</sup> The Pan-PRD Regional Cooperation ('9+2' model) was promoted by Guangdong Province and supported by Fujian, Jiangxi, Hunan, Guangxi, Hainan, Sichuan, Guizhou, Yunnan, Hong Kong and Macao governments. It is the largest regional cooperation project nationwide. According to research statistics, the whole area of the Pan-PRD region is 2,005,000 square kilometers. Its GDP is 3,884.6 billion RMB, which takes up 33.3% of the nation's GDP (excluding Hong Kong and Macao). See Xin Hua Net report on December 31st 2005, '*The integrated and open real estate market facilitated by Pan Pearl River '9 plus 2' model in 2005*'.



- 5.21 These same benefits would also apply to the HKSAR's trade with other East Asian countries. The HKSAR can serve as a bridge between the Pan-PRD and ASEAN countries. Given the diversity of legal systems among these countries, and the fact that many of these countries are either transition economies or economies in the process of developing their own legal infrastructures, the advantage of having one common sales contract law has become more attractive than ever.

#### **5.1.2.2. CISG CASES INVOLVING HONG KONG PARTIES**

- 5.22 As will be shown in this section, in addition to the Supreme Court of France, the American courts, the PRC courts and many CIETAC arbitral tribunals have already had to decide upon the applicability of the CISG to the HKSAR parties.

- 5.23 The Pace CISG database<sup>28</sup> has published 56 cases in which the CISG has been applied to international sales involving a Hong Kong seller, buyer or both. Among them, twenty-nine cases were decided in the CIETAC arbitration, twelve in the People's Court in the Mainland of China, five in the United States, four in Austria, two in Belgium, and one each in France, Italy, Australia and Germany. Among these cases, the Hong Kong party was the plaintiff in twenty-nine cases, the respondent in twenty-five cases, and in two cases both the respondent and plaintiff. In addition, there are about another fifty cases where Hong Kong was connected to the

---

<sup>28</sup> PACE University CISG Database, available at <<http://www.cisg.law.pace.edu/cisg/text/case-annotations.html>>, last accessed on 10 January 2011. See also CISG-online Database, available at <<http://www.cisg-online.ch>>, last accessed on 10 January 2011.

international sales contract in issue, either as the port of delivery, the place of payment, negotiation or conclusion of the sales contract to which the CISG applied. These identified and published cases probably represent only a small fraction of the cases involving Hong Kong parties in one way or another. The importance of the CISG for the HKSAR can no longer be ignored.

5.24 As discussed below, there have been at least four types of fact patterns that have resulted in the application of the CISG to Hong Kong parties. First, the CISG can apply to Hong Kong parties pursuant to Article 1(1)(b) of the CISG, ‘when the rules of private international law lead to the application of the law of a Contracting State.’ The following case between a Hong Kong seller and a German buyer illustrates this point<sup>29</sup>.

5.25 In a 1996 German arbitration proceeding (*Chinese goods case*)<sup>30</sup>, a dispute arose under a sales agreement. The German buyer terminated the contract, whereupon the Hong Kong seller commenced arbitration proceedings under the Arbitration Rules of the Hamburg Chamber of Commerce. Concerning the applicable law issue, the Tribunal decided that:

---

<sup>29</sup> See similarly Austrian Supreme Court, 31 August 2005, CISG-online 1093, 2006 Internationales Handelsrecht 31, translation available at <<http://cisgw3.law.pace.edu/cases/050831a3.html>>, last accessed on 10 January 2011 (cited as: *Tantalum case*), in which the Austrian Supreme Court applied CISG to a dispute between a Hong Kong seller and Austrian buyer.

<sup>30</sup> See Court of Arbitration of the Hamburg Chamber of Commerce, 21 March 1996, CISG-online 187, 1996 Neue Juristische Wochenschrift 3329, translation available <<http://cisgw3.law.pace.edu/cases/960321g1.html>>, last accessed on 10 January 2011 (cited as: *Chinese goods case*).

*'[t]he applicable law must be determined according to German private international law. A choice of German law can be inferred, according to Art. 27 of the Introductory Law to the Civil Code (EGBGB),<sup>31</sup> from the agreement to refer disputes to a German arbitral tribunal.'*<sup>32</sup>

5.26 The Tribunal continued:

*[u]ndoubtedly, where the rules of private international law lead, as here, to German law, the [...] CISG [...], in force in Germany in 1990/1991, applies to sales contracts between parties in different States, by virtue of its Art. 1(1)(b) [CISG]. According to this provision, it suffices that the rules of private international law lead to the application of the law of one Contracting State*

---

<sup>31</sup> Introductory Law to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch (EGBGB)*), 18 August 1896, official German version available at <<http://www.gesetze-im-internet.de/bgbeg/BJNR006049896.html>>, last accessed on 10 January 2011.

<sup>32</sup> See *Chinese goods case*, *supra* note 30, citing Palandt-Heldrich, BGB, 55th ed., no. 6 to Art. 27 Introductory Law to the Civil Code, *supra* note 31. In relation to German private international law, the tribunal cited German Federal Supreme Court, 21 September 1995, VII ZR 248/94, BB 1995, 2472. With regard to the Introductory Law to the Civil Code, the Tribunal cited Art. 27 of the Introductory Law to the Civil Code, *supra* note 31, which reads in its translation in the relevant part: '1. The contract is subject to the law chosen by the parties. The choice of law must be explicit or must be determined with sufficient certainty from the provisions of the contract or the circumstances of the case.' See the English translation of the *Chinese goods case*, *supra* note 31, at note 3.

– here: Germany. It is irrelevant whether the State where the other party has his seat is also a Contracting State to the CISG.<sup>33</sup>

5.27 As a result, the arbitral tribunal applied the CISG as the relevant German law pursuant to Article 1(1)(b) of the CISG to this dispute, to which the Hong Kong seller was a party.<sup>34</sup>

5.28 The second way in which the CISG can apply to Hong Kong parties is when the CISG is used to fill existing gaps within PRC contract law. An example of this scenario is the 2002 Guangxi Beihai Maritime Court case *Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resources Ltd*<sup>35</sup>, which involved a Hong Kong seller and a Singaporean buyer. The parties concluded a sales contract for 60,000 tons of Indian iron ore. The dispute concerned the underlying voyage charter for shipping the goods. The parties did not choose the applicable law and the destination of the carriage of goods contract was located in the Mainland of China. The Guangxi Beihai Maritime Court accepted jurisdiction and in deciding the applicable law issue, the court held:

---

<sup>33</sup> See *Chinese goods case*, *supra* note 31, citing OLG Koblenz 17 September 1993, 2 U 1230/91 RIW 1993, 934; Herber in von Caemmerer/Schlechtriem, CISG 2nd ed., Art. 1 nos. 37-40; Martiny in Münchener Kommentar BGB, 2nd ed., Art. 28 EGBGB App. II no. 27; references in Will, CISG International Bibliography, The First 150 or So Decisions, 1995).

<sup>34</sup> Unlike Germany, the PRC made a reservation on Art. 1(1)(b) CISG pursuant to Art. 95 CISG, therefore, CISG shall not apply to PRC and Hong Kong parties according to Art. 1(1)(b) CISG. For a discussion about the PRC's two reservations, see F. Yang, *PRC's Two Reservations and the Application of CISG in CIETAC Arbitration Practice*, 8 International Law Review of Wuhan University 307 (2008) [*in Chinese*], English version available at <<http://www.cisg.law.pace.edu/cisg/biblio/yang2.html>>, last accessed on 10 January 2011.

<sup>35</sup> *Sino-Add (Singapore) PTE. Ltd. v. Karawasha Resources Ltd.*, Guangxi Beihai Maritime Court, 5 March 2002, CISG-online 1383, translation available at, <<http://cisgw3.law.pace.edu/cases/020305c1.html>>, last accessed on 10 January 2011 (cited as: *Sino-Add case*)

*'[...] pursuant to Article 269 of the Maritime Law of the People's Republic of China, which stipulates that where the parties do not choose the applicable law, the law of the country having the closest connection with the contract shall be applied', the Maritime Law of the People's Republic of China, the Contract Law of the People's Republic of China and the relevant international conventions shall be applied to this case.'*<sup>36</sup>

5.29 In deciding the buyer's claim for interest, the Court rejected the claimed interest calculated at the London Interbank Offered Rate, but held that to be fair, the interest should be calculated at the contemporary lending rate of liquid capital issued by the People's Bank of China<sup>37</sup>. Although the court did not refer to any specific provision of the CISG, it is submitted that the court in fact applied the Article 78 of the CISG to fill a gap in the PRC's Contract Law 1999, which did not provide any specific rules on parties' entitlement to interest.<sup>38</sup>

---

<sup>36</sup> *Sino-Add case, supra* note 35. Article 269 PRC Maritime Law: The parties to a contract may choose the law applicable to their contract, unless the law provides otherwise. Where the parties to a contract have not made a choice, the law of the country having the closest connection with the contract shall apply.

<sup>37</sup> *Sino-Add case, supra* note 35. For a discussion on the interest rate under CISG, see F. Mazzotta, *Endless Disagreement Among Commentators, Much Less Among Courts*, in *Pace International Law Review* (Ed.), *Pace Review of the Convention on Contracts for the International Sale of Goods* 123 (2003-2004), available at <<http://cisgw3.law.pace.edu/cisg/biblio/mazzotta78.html>>, last accessed on 10 January 2011, citing this case and 275 other court and arbitral rulings,

<sup>38</sup> See discussions in Chapter 4, particularly sections 4.1.4. and 4.2.5. at paragraphs The Supreme People's Court's Interpretation II of Contract Law has seemingly filled this gap. Article 21 of the Interpretation states: 'The debtor shall pay interest and expenses in addition to the primary debt.' See also this article in Chinese: '...第二十一条 债务人除主债务之外还应当支付利息和费用.'

5.30 Similar to Article 74 of the CISG, Article 113 of the CL1999 stipulates that the amount of damages shall be equal to the loss caused by the breach, including loss of profit, but shall not exceed the loss which the party in breach foresaw or ought to have foreseen, as a possible consequence of the breach of contract.<sup>39</sup> Unlike Article 78 of the CISG, however, which provides that interest is recoverable; the CL1999 was silent on this issue. Although the Supreme People's Court's Interpretation II of the CL1999, issued in February 2009, officially filled this gap of awarding interest, the Guangxi Beihai Maritime Court, sitting in May 2002, could not at that time have applied the domestic PRC contract law, the CL1999, in its decision to award interest, but must have relied upon the 'relevant international convention', i.e. the CISG to grant interest.<sup>40</sup>

5.31 The similarities between the CISG and the CL1999 cannot be overemphasised in this context. Many commentators have pointed out that the CL1999 has closely followed the CISG and the UPICC<sup>41</sup> and, in some areas, the CISG and the UPICC have been reproduced in the CL1999 article

---

<sup>39</sup> Although some may argue that Article 113 of PRC Contract Law 1999 provides for the recovery of interest, the Chinese word '利益' (profit) in Article 113 was in fact misinterpreted in some English translations to 'interest' ('利息'). Article 113 of PRC Contract Law 1999 in its original Chinese language: 第一百一十三条 【损害赔偿的范围】当事人一方不履行合同义务或者履行合同义务不符合约定,给对方造成损失的,损失赔偿额应当相当于因违约所造成的损失,包括合同履行后可以获得的利益,但不得超过违反合同一方订立合同时预见到或者应当预见到的因违反合同可能造成的损失。

<sup>40</sup> For detailed discussions on this point, see Chapter 4, in particular, section 4.2.

<sup>41</sup> UNIDROIT International Institute for the Unification of Private Law, UNIDROIT Principles of International Commercial Contracts (2004), Rome, April 2004, available at <<http://www.unidroit.org/english/principles/contracts/principles2004/integralversionprinciples2004-e.pdf>>, last accessed on 10 January 2011.

by article.<sup>42</sup> The CISG, a treaty to which the PRC is a party, is a formal source of law for PRC domestic law.<sup>43</sup> The CISG has often been applied to fill in the gaps in or between the PRC domestic laws, even when it does not apply according to its own provisions under Article 1 of the CISG. Sales with Hong Kong parties have long been treated as foreign-related transactions under current PRC law and practice.<sup>44</sup> Therefore, it is only natural that the CISG would come into play. Even though it may not be the governing law, the CISG would still be highly relevant and persuasive.<sup>45</sup>

---

<sup>42</sup> See L. Huixing, *On the Third Draft of the Uniform Contract Law of China*, 13 Columbia Journal of Asian Law 1 (1999), available at: <<http://www.cisg.law.pace.edu/cisg/biblio/liming-chuanxi.html>>, last accessed on 10 January 2011. See also J. Chen, *Chinese Law: Context and Transformation* 450 (2008); Z. Yuejiao, *Harmonization of Contract Law and its Impacts on China's Contract Law*, presentation at the Modern Law for Global Commerce: Congress to Celebrate the Fortieth Annual Session of UNCITRAL (9-12 July 2007), available at <<http://www.uncitral.org/pdf/english/congress/Zhang.pdf>>, last accessed on 10 January 2011; M. Zhang, *Chinese Contract Law, Theory and Practice* (2006); B. Ling, *Contract Law in China* (2002).

<sup>43</sup> Article 142 PRC General Principles of Civil Law: 'If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations. International practice may be applied on matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.'

<sup>44</sup> According to the Official Reply of the Supreme People's Court on Several Questions in Dealing with Economic Dispute Cases Involving the Hong Kong-Macao-Taiwan Regions 19 October 1987, and more recently, in 2002, the Supreme People's Court issued the Provisions on Some Issues Concerning the Jurisdiction of Civil and Commercial Cases Involving Foreign Elements (《最高人民法院关于涉外民商事案件诉讼管辖若干问题的规定》), effective on 1 March 2002. Art. 5 of the Provisions stipulates: 'The jurisdiction of cases on civil and commercial disputes involving parties from Hong Kong or Macao Special Administrative Region or Taiwan Region shall be handled by the courts with reference to these Provisions [...]' (第五条 涉及香港、澳门特别行政区和台湾地区当事人的民商事纠纷案件的管辖, 参照本规定处理).

<sup>45</sup> But see *Hong Kong Topway Trading Co. Ltd. v. Dongying Hongyu Import & Export Co. Ltd.*, Dongyang Intermediate People's Court of Shandong, 12 May 2008, CISG-online 2108 translation available at <<http://cisgw3.law.pace.edu/cases/080512c1.html>>, last accessed on 10 January 2011, in which although the Hong Kong seller (plaintiff) pleaded on the basis of CISG as a standard for performance of international sales contracts, the Court applied PRC Contract Law on the ground that the parties selected Mainland Chinese law as governing law. The Court did not discuss the applicability of CISG in the case.

5.32 Third, the CISG can be applied to Hong Kong parties by the parties' explicit agreement on the choice of PRC laws as governing law<sup>46</sup>. In the 1999 CIETAC Gray cloths case between a Mainland seller and a Hong Kong buyer, the parties explicitly agreed in their sales contract that the PRC law and the CISG should apply to any disputes arising between them<sup>47</sup>. Arbitration tribunals respect the parties' mutual agreement in such cases<sup>48</sup>.

5.33 Fourth, the CISG can be applied to Hong Kong parties by the parties' implicit agreement. In the *Kidney beans* case<sup>49</sup>, the Mainland seller and Hong Kong buyer did not stipulate the applicable law in the contract. However, in the course of the arbitral proceedings, the parties referred to PRC law and the CISG to support their arguments.<sup>50</sup> Therefore, the tribunal deemed that the two

---

<sup>46</sup> Note that some courts have taken a different view due to the PRC Art. 95 declaration regarding application of Art. 1(1)(b).

<sup>47</sup> China International Economic & Trade Arbitration Commission (CIETAC), 2 April 1999, CISG-online 1282, translation available at <<http://cisgw3.law.pace.edu/cases/990402c1.html>>, last accessed on 10 January 2011 (cited as: *Gray cloths case*).

<sup>48</sup> See also China International Economic & Trade Arbitration Commission (CIETAC), 4 April 1996, CISG-online 2106, translation available at <<http://cisgw3.law.pace.edu/cases/960404c1.html>>, last accessed on 10 January 2011 (cited as: *Three-ply board case*); China International Economic & Trade Arbitration Commission (CIETAC), 28 January 1999, CISG-online 1206, translation available at <<http://cisgw3.law.pace.edu/cases/990128c1.html>>, last accessed on 10 January 2011 (cited as: *Refrigeration equipment case*).

<sup>49</sup> China International Economic & Trade Arbitration Commission (CIETAC), 27 June 1997, CISG-online 1069, translation available at <<http://cisgw3.law.pace.edu/cases/970627c1.html>>, last accessed on 10 January 2011 (cited as: *Kidney beans case*).

<sup>50</sup> Although this case did not touch upon the question of whether parties can choose non-state based instruments, such as the UPICC, as alternatives to state-law as governing law, the PRC Law of the Application of Law for Foreign-related Civil Relations (which will come into force in April 2011) uses the term "law" throughout. Thus, it seems to suggest that the PRC Courts will only recognise state-law as governing law. As to arbitration, the CIETAC Rules do,



parties had implicitly agreed that PRC law and the CISG should apply<sup>51</sup>. In particular, the Tribunal decided that 'the [Seller] has fundamentally breached the Contract and caused the non-performance of the Contract [...].' The concept of 'fundamental breach' is not contained in any provision of the CL1999. Thus, the Tribunal was, in fact, applying Article 25 of the CISG.<sup>52</sup> Alternatively, the Tribunal assimilated Article 94(4) of the CL1999 to Article 25 of the CISG, using the approach of 'applying the CL1999 with reference to the CISG'<sup>53</sup>.

5.34 Nonetheless, in *Zheng Hong Li Ltd. Hong Kong v. Jill Bert Ltd. Swiss*<sup>54</sup>, the PRC Supreme Court decided that because the parties elected to apply the 'laws of the PRC' during the proceedings in

---

however, recognise "rules of law" as governing law. Therefore, it can be argued that in CIETAC arbitration, the parties can choose instruments other than state-laws as governing law.

<sup>51</sup> China International Economic & Trade Arbitration Commission (CIETAC), 15 November 1996, CISG-online 1148, translation available at <<http://cisgw3.law.pace.edu/cases/961115c1.html>>, last accessed on 10 January 2011 (cited as: *Oxytetracycline case*). See also China International Economic & Trade Arbitration Commission (CIETAC), 4 April 1997, CISG-online 1660, translation available at <<http://cisgw3.law.pace.edu/cases/970404c1.html>>, last accessed on 10 January 2011 (cited as: *Black melon seeds case*).

<sup>52</sup> Art. 94 of the PRC Contract Law 1999 stipulates in its translation that the parties to a contract may terminate the contract under any of the following circumstances: ' (4) the other party delays performance of its obligations, or breaches the contract in such a manner that renders it impossible to achieve the purpose of the contract.' The author is of the view that Art 94 of PRC Contract Law 1999 is the provision which most closely resembles fundamental breach in Article 25 of CISG. See Art 94(4) of the PRC Contract Law 1999 in its original Chinese language: '第九十四条 【合同的法定解除】有下列情形之一的，当事人可以解除合同：（四）当事人一方迟延履行债务或者有其他违约行为致使不能实现合同目的。'

<sup>53</sup> *Kidney beans case*, *supra* note 49; *Lianzhong Enterprise Resources (Hong Kong) Ltd. v. Xiamen International Trade & Trust Co.*, Xiamen Intermediate People's Court, 20 April 1993, CISG-online 1604, translation available at <<http://cisgw3.law.pace.edu/cases/930420c1.html>>, last accessed on 10 January 2011 (cited as: *Fish powder case*).

<sup>54</sup> *Zheng Hong Li Ltd. Hong Kong v. Jill Bert Ltd. Swiss*, Supreme Court of the People's Republic of China, 20 July 1999, CISG-online 1605, translation available at <<http://cisgw3.law.pace.edu/cases/990720c1.html>>, last accessed on 10 January 2011.

the first instance, the Foreign-related Economic Contract Law (FECL) (since repealed)<sup>55</sup> should apply. Thus, the Court of First Instance erred when it inappropriately applied the CISG to the dispute. It is submitted that this is a case decided under the old pre-1999 ‘three-pillar’ contract law regime.<sup>56</sup> It is not clear whether the outcome would still be the same under the current CL1999 regime.<sup>57</sup> Given the fact that the pre-1999 separate ‘foreign-related’ regime no longer exists, there would be problems in applying the CL1999 without reference to the CISG in dealing with international/foreign-related sales contracts. This further reinforces the fact that the CL1999 and the CISG are supplementary and complimentary to each other. Hence, it is predictable that the application of the CISG through PRC laws to Hong Kong parties cannot be underestimated and is likely to continue to increase.

### **5.1.3. WHAT VIEWS SHOULD THE HKSAR GOVERNMENT HAVE ON THE APPLICATION OF THE CISG IN THE HKSAR?**

---

<sup>55</sup> It was repealed and replaced by the current PRC Contract Law 1999.

<sup>56</sup> See similarly *Hong Kong [...] Co. Ltd. v. Shanxi Yanquan Import & Export Corp*, Shanghai New Pudong District People’s Court, 24 November 1997, CISG-online 2109, <<http://cisgw3.law.pace.edu/cases/971124c1.html>>, last accessed on 10 January 2011; *Fish powder case*, *supra* note 53, in which the Xiamen Intermediate People’s Court permitted the Law of the People’s Republic of China on Contracts Involving Foreign Interest to apply, and therefore allowed CISG and international customs to apply to this case, as the parties agreed during the court proceedings.

<sup>57</sup> Shanghai Huangpu District People’s Court, 30 August 2000, CISG-online 2107, available at <<http://cisgw3.law.pace.edu/cases/000830c1.html>>, last accessed on 10 January 2011, in which the court applied the General Principles of Civil Law without deciding whether CISG applies in this case between the Mainland seller and Hong Kong buyer.

- 5.35 Again, unlike the U.K., there is no evidence that suggests that the HKSAR is opposed to the adoption of the CISG. Nor has there ever been any decision to reject the adoption of the CISG in Hong Kong. Is it a mere lack of awareness or manpower to attend to this important matter? Perhaps the legislative agenda has always been tight and full of other more pressing or controversial items. However, the HKSAR Government can no longer afford to ignore the CISG.
- 5.36 As some of the cases discussed above show, Hong Kong traders have already started to appreciate the merits of the CISG, either by opting into the CISG, or by arguing on the basis of the CISG, especially in the context of trading with the Mainland of China.
- 5.37 If the HKSAR Government were to take the position that the HKSAR should remain outside of the CISG, there would be costs to business not faced by competitors that have already implemented the CISG, including those in the Mainland of China, Japan, Korea and Singapore. The absence of the CISG actually imposes costs on Hong Kong business. First, not every Hong Kong trader can always convince their Mainland Chinese partner to agree on Hong Kong law or English law as the governing law. In fact, the rebalance of bargaining power and market change may well ensure that more sales contracts will be governed by the laws of the PRC. Uncertainty in the application of the CISG in the HKSAR will prolong parties' negotiations on choice-of-law clauses which in turn will likely delay the closure of commercial deals. This may even mean that parties run the risk of failing to reach an eventual agreement, especially if a deadlock on the choice-of-law issue occurs.

5.38 On the other hand, if the HKSAR Government were to implement the CISG in Hong Kong, while there would be costs associated with its implementation, the advantages would easily outweigh any disadvantages. Bearing in mind that Article 6 of the CISG permits parties to exclude the application of the Convention or, subject to Article 12 of the CISG, derogate from or vary the effect of any of its provisions, the adoption of the CISG would not pose any threat to domestic law. Parties can always select the HKSAR law to govern their contract. The CISG does not take away the parties' freedom in this respect. It is not the CISG's intention (nor does it have the ability) to eradicate national or regional laws or any particular legal system.<sup>58</sup> What the CISG does provide are some general principles and ground rules to facilitate international or cross-regional trade and commerce. The CISG provides an alternative body of rules outside of any national or regional laws for merchants to select. The 'rootless' or 'less rooted' character of the CISG offers a unique 'neutrality' which is valuable and in some circumstances essential for merchants to engage and thrive in cross-border or cross-regional trade.

5.39 Moreover, the CISG offers an opportunity for inspiration and further development of domestic laws. Over the course of its history, Hong Kong has cited English jurists when relevant. Because the U.K. is not yet a party to the Convention, however, the world CISG communities have not yet had the benefit of the British jurisprudence in this important development of global sales law. If Hong Kong were to adopt the CISG, Hong Kong jurists would be able to contribute to the further

---

<sup>58</sup> As pointed out by Potter, the principles of CISG drew heavily from the Uniform Commercial Code (U.C.C.) in the United States, which is based on a common law system. Hence, the adoption of CISG does not exclude common law influence at all. See P. Potter, *Law-making in the PRC: The Case of Contracts*, in J. Otto, et al. (Eds.), *Law-Making in the People's Republic of China*, 191 (2000).

development of this area of law by sharing its CISG-related jurisprudence with the global CISG community – with the jurisprudence of other countries – to help the world community benefit from the reasoning of Hong Kong jurists on the evolution of international uniform sales law as participants in the global jurisconsultorium on the CISG<sup>59</sup>.

#### **5.1.4. CONCLUSION TO THE APPLICATION OF THE CISG IN THE HKSAR**

5.40 There can be no doubt that Hong Kong lawyers and businessmen are already well exposed to the CISG. When they leave their shores to do business it is not always as possible as it once was to take with them all the trappings of Hong Kong or even English Law. With the growth of new economies and trading blocks, bargaining power has changed, and Hong Kong parties cannot always guarantee that they will be able to contract for their own law, let alone their own jurisdiction. Hong Kong lawyers and businessmen are increasingly involved in cases to which the CISG applies. Inevitably, much business is being done with the PRC to which the CISG applies. The influence of the CISG on the laws of the PRC and the cases applying the CISG to Hong Kong

---

<sup>59</sup> See V. Rogers & A. Kritzer, *A Uniform International Sales Law Terminology*, in I. Schwenzer & G. Hager (Eds.), *Festschrift für Peter Schlechtriem zum 70. Geburtstag*, 223 (2003), available at <<http://cisgw3.law.pace.edu/cisg/biblio/rogers2.html>>, last accessed on 10 January 2011. See also C. Andersen, *Uniform Application of the International Sales Law: Understanding Uniformity, the Global Jurisconsultorium and Examination and Notification Provisions* (2007); F. Yang, *CISG, CIETAC Arbitration and the Rule of Law in the P.R. of China: A Global Jurisconsultorium Perspective*, in C. Andersen & U. Schroeter (Eds.), *Sharing International Commercial Law Across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday*, 600 (2008).

parties unveiled in this chapter<sup>60</sup>, when considered against the HKSAR's continuing growth in trade with the Mainland of China and Asia at large, should not deter the HKSAR from 'joining' the CISG. Moreover, the adoption of the CISG by the HKSAR would not lead to the disappearance of Hong Kong or English law, or any national or regional law. An international uniform sales law, as reflected in the CISG, both embraces and nurtures the continued development of national or regional laws. The question is not how long can Hong Kong wait to 'join' the CISG, but how long can it afford not to? In any event, as the above analysis of Article 93 of the CISG has shown, without a declaration by the PRC to the contrary, the CISG shall apply to the HKSAR after the handover pursuant to Article 93(4) of the CISG in particular.

- 5.41 As Hong Kong courts will eventually be confronted with situations where application of the CISG appears likely, these courts will realize there is no clear Hong Kong or English authority on the topic, forcing them to consider decisions from other countries. By respecting and following, where possible, decisions in the CISG cases, non-CISG jurisdictions will be assisting informally in the continuing process of harmonisation of international commercial law to which the CISG has made such a significant contribution. This is especially so, given how increasingly easy it is to access the CISG cases<sup>61</sup>. Were the HKSAR officially to join the family of the CISG, Hong Kong law

---

<sup>60</sup> See also F. Yang, *supra* note 3; F. Yang, *The Application of CISG in the Current PRC Law and CIETAC Arbitration Practice*, 2006 Nordic Journal of Commercial Law, Issue 2, 1, available at <[http://www.njcl.fi/2\\_2006/article4.pdf](http://www.njcl.fi/2_2006/article4.pdf)>, last accessed on 10 January 2011.

<sup>61</sup> Thanks to international comparative law and uniform law scholars and institutes, such as the PACE University CISG Database, *supra* note 28. See also CISG-online Database, available at <<http://www.cisg-online.ch>>, last accessed on 10 January 2011 and the webpage of the Global Sales Law Project, available at <<http://www.globalsaleslaw.com/index.cfm?pageID=2>>, last accessed on 10 January 2011.

may well assume greater influence over the development of national laws of other Contracting States including the PRC. Perhaps one day, a Hong Kong case will be cited in the People's courts or PRC arbitration tribunals and vice versa. International or inter-regional exchange should be a two-way street, not only in trade but also in the law.

5.42 Last but not the least, it is hoped that the HKSAR Government will request that the Central Government of the PRC make the requisite communication to the United Nations for the CISG to apply to the HKSAR. As shown in the discussion above, there is no real reason why the CISG should not be made available to Hong Kong parties. If the HKSAR Government wants the CISG to apply, there is no reason why the Central Government would not make the requisite communication to the United Nations to clarify the situation. Right now there is confusion as to the CISG's applicability to Hong Kong parties as illustrated by the discussion above and elsewhere<sup>62</sup>, and in particular the conflicting decisions among U.S. courts. The Government of the HKSAR should not continue to be silent or do nothing on this important issue. Even if the Government of the HKSAR decided not to make the CISG available to Hong Kong parties, the HKSAR Government should still request that the Central Government of the PRC file a declaration according to Article 93 of the CISG to eliminate the confusion. Either way, it is time for the HKSAR Government to act responsibly for the long term interest of Hong Kong without further delay.

---

<sup>62</sup> Schroeter, *supra* note 16.

## **5.2. THE APPLICATION OF THE CISG IN THE MACAO SAR**

### **5.2.1. STATUS OF THE MACAO SAR**

5.43 In accordance with the Joint Declaration of the Government of the PRC and the Government of the Republic of Portugal on the Question of Macao signed on 13 April 1987 ('the Joint Declaration'), the Government of the PRC has resumed the exercise of sovereignty over Macao with effect from 20 December 1999. Macao has from that date, become a Special Administrative Region ('SAR') of the PRC.<sup>63</sup>

5.44 Annex 1 to the Joint Declaration provides for the Basic Policies of the PRC regarding Macao. On 31 March 1993 the PRC National People's Congress adopted the Basic Law of the Macao Special Administrative Region ('Macao SAR') ('the Basic Law'). Section 1 of the Annex 1 to the Joint Declaration as well as Articles 12, 13 and 14 of the Basic Law provide that the Macao SAR will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government of the PRC.

---

<sup>63</sup> For the full text of the Joint Declaration of the Government of the Portuguese Republic and the Government of the People's Republic of China on the Question of Macao, 13 April 1987, see United Nation Treaty Series volume No. 1498, p. 229 (registration number I-25805).



5.45 By a notification dated 13 December 1999 ('the Note'), the PRC Government informed the Secretary-General of the status of Macao in relation to treaties deposited with the Secretary-General. In particular, Annex I to this Note listed treaties to which the PRC is a Party, that would be applied to the Macao SAR as of 20 December 1999, provided that they fell within one of the following two categories: (i) Treaties that apply to Macao before 20 December 1999; and (ii) Treaties that must apply to the entire territory of a state as they concern foreign affairs or defence or their nature or provisions so require.

5.46 As for the HKSAR, the CISG is not on the list contained with Annex I to the Note. Section VI of the Note, in particular, states that:

*'With respect to treaties that are not listed in the Annexes to the Note, to which the People's Republic of China is or will become a Party, the Government of the People's Republic of China will go through separately the necessary formalities for their application to the Macao Special Administrative Region if it so decided.'* (emphasis added)

5.47 Concerning the status of the Macao SAR under the CISG after 20 December 1999, the immediate question therefore turns to whether the PRC has separately gone through the necessary formalities for the application of the CISG to the Macao SAR. In order to ascertain the answer to

this question, the first question that should be determined is what exactly the necessary formalities are for the application of the CISG to the Macao SAR.

5.48 The PRC has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in the CISG. Therefore, Article 93 of the CISG applies to the PRC. According to Article 93 (1), the PRC may, at the time of signature, ratification, acceptance, approval or accession, declare that the CISG is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time. Article 93 (2) then provides that the declaration should be notified to the depositary and to state expressly the territorial units to which the Convention extends. Because the PRC did not make any declaration pursuant to Article 93 (1) or (2), the Convention should extend to all territorial units of the PRC pursuant to Article 93 (4). Assuming that the term “all territorial units” encompasses any new territory that was not formerly subject to the CISG, can the PRC make an Article 93 declaration after it has already become a full Contracting State? Also, would such a declaration be a partial denunciation of the CISG? The author is of the view that Article 93 should be interpreted to allow a Contracting State to make any declaration or any amendments to alter its position pursuant to Article 93 at any time. Further, a declaration to contract out any territorial units after a Contracting State has already become a full Contracting State should not be seen as a partial denunciation of the CISG.

5.49 If the above is the logical effect and consequence of the absence of a declaration of the PRC pursuant to Article 93, then there are in fact no necessary formalities for the application of the

CISG to the Macao SAR. Thus, the CISG should apply to the Macao SAR automatically and immediately upon the resumption of exercise of sovereignty over Macao with effect from 20 December 1999.

5.50 This is the same logic as applied to the HKSAR.

### **5.2.2. CISG CASES INVOLVING MACAO PARTIES**

5.51 There are currently three CIETAC arbitral awards involving Macao parties available on the PACE CISG database. All of them were decided before the PRC resumed the exercise of sovereignty over Macao in 1999.

5.52 In the *Natural rubber case*<sup>64</sup>, the parties (one a mainland Chinese company and the other a Macao Company) did not stipulate the governing law in their contract. The Tribunal erroneously believed that Portugal, which exercised sovereignty over Macao at that time, was a Contracting State of the CISG. Thus, the Tribunal held that both parties were from the Contracting States of the CISG and because the parties did not exclude the CISG, the CISG applied.

---

<sup>64</sup> See China 4 September 1996 CIETAC Arbitration proceeding (Natural rubber case) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/960904c1.html>]

5.53 Similarly, in the *Wool case*<sup>65</sup>, the PRC buyer and Macao seller did not stipulate the governing law of their contract. The Tribunal once more erroneously held that the PRC and Portugal, which exercised sovereignty over Macao at that time, were both Contracting States of the CISG. The Tribunal therefore ruled that the CISG applied.

5.54 The same scenario repeated itself in the *Steel channels case*<sup>66</sup>. The PRC buyer and Macao seller did not stipulate the applicable law in their contract. The Tribunal again erroneously identified Portugal as a CISG Contracting State, and because the parties did not exclude the application of the CISG, the Tribunal held that the Convention applied.

5.55 These arbitral awards do not by any means clarify the status of the Macao SAR under the CISG, either before or after the PRC resumed its exercise of sovereignty over Macao. It is hoped that CIETAC will correct its mistake in regarding Portugal as a Contracting State of the CISG. It would be interesting to see whether CIETAC Tribunals would apply the CISG to Macao SAR parties now that the PRC has resumed the exercise of sovereignty over Macao. Although the number of available cases or arbitral awards involving Macao parties is much smaller than those involving Hong Kong parties as discussed above in Section 5.1.2.2, this does not make the clarification of

---

<sup>65</sup> See China 27 February 1996 CIETAC Arbitration proceeding (Wool case) [translation available] [Cite as: <http://cisgw3.law.pace.edu/cases/960227c1.html>]

<sup>66</sup> See China 18 November 1996 CIETAC Arbitration proceeding (Steel channels case) [translation available][Cite as: <http://cisgw3.law.pace.edu/cases/961118c1.html>]

the status of the Macao SAR under the CISG less important. The status of the Macao SAR under the CISG needs to be clarified.

### 5.2.3. THE CIRCUMSTANCES AND NEEDS OF THE MACAO SAR AND VIEWS OF THE MACAO SAR GOVERNMENT

5.56 Article 138 of the Macao SAR Basic Law stipulates:

*'[T]he application to the Macao Special Administrative Region of international agreements to which the People's Republic of China is a member or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region.'* (emphasis added)

5.57 This article mirrors Article 153 of the Hong Kong Basic Law discussed in paragraph 5.12 above. Similarly, according to Article 138 of the Macao SAR Basic Law, the application of the CISG to the Macao SAR should be decided by the Central Government, in accordance with the circumstances and needs of the Macao SAR, and after seeking the views of the government of the Macao SAR. Therefore, the same two questions arise: (1) whether application of the CISG to the Macao SAR

is in accord with the circumstances and needs of the Macao SAR and (2) what should the current views of the government of the Macao SAR be on the application of the CISG to the Macao SAR?

#### **5.2.3.1. THE CIRCUMSTANCES AND NEEDS OF THE MACAO SAR**

5.58 It is submitted that the application of the CISG to the Macao SAR is in accord with the circumstances and needs of the Macao SAR.

5.59 According to World Bank Statistics, the Macao SAR's top five export markets (shares) are the USA (40%), the Hong Kong SAR (20%), the Mainland of China (12%), Germany (4%), and the UK (2%). Macao's top five import markets (shares) are the Mainland of China (39%), the Hong Kong SAR (10%), Japan (8%), the USA (6%), and France (5%).<sup>67</sup> Macao's major trading partners, including the Mainland of China, the USA, Japan, France and Germany are all Contracting States of the CISG. The Macao SAR's trade with CISG jurisdictions accounts for more than 78% of the Macao SAR's total external merchandise trade.

5.60 The benefits of having the CISG in place as discussed in section 5.1.2.1 above also support the application of the CISG to the Macao SAR.

---

<sup>67</sup> See World Bank World Trade Indicators 2009/10 Macao, China: Trade-at-a-Glance Table.

### **5.2.3.2. THE VIEWS OF THE MACAO SAR GOVERNMENT**

5.61 Macao law is based primarily on Portuguese law, and therefore, is part of the civil law tradition of continental European legal systems. Portugal is not yet a party to the CISG, but unlike Portugal, the Macao SAR has received influence from not only German law, but also Chinese law, Italian law, and some aspects of common law. More importantly, unlike Portugal, the Macao SAR is located in the centre of East Asia and with a rapidly growing Mainland China as its motherland. The Macao SAR has very different needs for the development of its own law and legal system.

5.62 So far, there is no evidence to show that there is a real opposition to the CISG in the Macao SAR. Neither has there ever been any decision made to reject the CISG in the Macao SAR. As for the HKSAR, is it a mere lack of awareness or manpower to attend to this important matter? What current views should the Macao SAR Government have on the application of the CISG in the Macao SAR? It is submitted that the arguments in section 5.1.3 above should be considered by the Macao SAR government.

### **5.2.4. CONCLUSION TO THE APPLICATION OF THE CISG IN THE MACAO SAR**

5.63 Similar to the conclusion drawn in section 5.1.4 above, it is hoped that the Macao SAR Government will request that the Central Government of the PRC make the requisite

communication to the United Nations for the CISG to apply to the Macao SAR. As shown in the discussion above, there is no real reason why the CISG should not be made available to Macao parties. If the Macao SAR Government wants the CISG to apply, there is no reason why the Central Government could not make the requisite communication to the United Nations to clarify the situation. Right now uncertainty exists with respect to the application of the CISG in the Macao SAR as illustrated by the discussion above. Even if the government of the Macao SAR decided not to make the CISG available to Macao parties, again the Macao SAR Government should request that the Central Government of the PRC file a declaration according to Article 93 of the CISG to eliminate the confusion. Either way, it is time for the Macao SAR Government to act responsibly for the long term interest of the Macao SAR without further delay.

### **5.3. THE APPLICATION OF THE CISG IN TAIWAN**

#### **5.3.1. STATUS OF TAIWAN**

5.64 According to the UN General Assembly Resolution 2758 (XXVI) of Oct. 25, 1971, the UN General Assembly decided ‘to recognize the representatives of the People's Republic of China are the only legitimate representatives of China to the United Nations’. Given that the CISG is only open for accession by sovereign States,<sup>68</sup> Taiwan cannot become an independent party to the CISG. If, however, Taiwan is considered a different territorial unit of the PRC, the status of Taiwan under

---

<sup>68</sup> See the Preamble and Article 91(3) of CISG.



the CISG could then be clarified. Since the PRC makes no declaration under paragraph (1) of Article 93 of the CISG, the Convention is to extend to all territorial units of the PRC, including Taiwan.

5.65 The above analysis is sound at least in theory. In practice, sovereignty over Taiwan has been exercised by the Republic of China ('ROC' or commonly known as 'Taiwan government'), since the end of Chinese Civil War in 1949. Although the PRC considers Taiwan part of its territory and has offered a 'one country, two systems' solution similar to that applies to Hong Kong and Macao; many in Taiwan support the status quo. Thus, to some extent Taiwan's status remains 'unsettled'.

### **5.3.2. CISG CASES INVOLVING TAIWAN PARTIES**

5.66 There are four CISG cases involving Taiwan parties available on the PACE CISG database. One was decided by the Taiwan Business Arbitration Association in 1998.<sup>69</sup> The other was decided by CIETAC in 1999. The third one was decided by the High People's Court of Jiangsu Province in 2004 and the last one was decided by the Supreme Court of Switzerland in 2008.

---

<sup>69</sup> See Taiwan 15 May 1998 Shangwu zhongcai xiehui (Paper case) [Business Arbitration Association][Cite as: <http://cisgw3.law.pace.edu/cases/980515t1.html>]. Full details of this case are not available in the PACE CISG Database, except the title of the case.

5.67 In the *Chemical cleaning product equipment* case<sup>70</sup>, a CIETAC Arbitration proceeding between a Taiwan seller and a PRC buyer, the arbitral tribunal held, inter alia:

*'[T]he parties did not provide in the Contract for the applicable law to resolve the disputes in this case. In the court session, the parties explicitly agreed to apply laws of the People's Republic of China [hereinafter: PRC] to resolve the disputes under the Contract, stating that where there is no applicable regulation in PRC laws, the CISG should be applied. Therefore, when resolving the disputes under the Contract, the Arbitration Tribunal adopts PRC laws and the CISG.'*<sup>71</sup>

5.68 This case was decided before the current CL1999 came into effect on 1 Oct 1999. Notably, both the Taiwan and PRC parties agreed to apply the PRC laws and the CISG. In the arbitral award, the Tribunal only cited Articles 38 and 39 of the CISG, and no PRC law provisions were cited or referred to at all.

---

<sup>70</sup> See China 20 April 1999 CIETAC Arbitration proceeding (*Chemical cleaning product equipment* case) [Cite as: <http://cisgw3.law.pace.edu/cases/990420c1.html>]

<sup>71</sup> Ibid.

5.69 In *China Changzhou Kairui Weaving and Printing Company v. Taiwan Junlong Machinery Company*<sup>72</sup>, a case involving a Taiwan seller and PRC buyer, the Court of the First Instance, Changzhou Intermediate People's Court of Jiangsu Province, did not address the applicable law issue. In deciding the validity of the sales contract, the Court of the First Instance applied the Foreign-related Economic Contract Law ('FECL'), because the contract was concluded before the CL1999 came into effect<sup>73</sup>. In deciding other issues involved, the Court of First Instance cited simultaneously Articles 4, 142 and 146 of the General Principles of Civil Law ('GPCL'), Articles 8 (3) and 9 (1) of the CISG and Articles 18 and 26 of the FECL.

5.70 Although the Court of the First Instance did not explicitly explain the basis for its application of the CISG, it cited Article 142 of the GPCL in its judgment.<sup>74</sup> The Court seems to have taken the position that under Article 142 of the GPCL, the CISG, a treaty to which the PRC is a party,

---

<sup>72</sup> See China 2 December 2004 High People's Court [Appellate Court] of Jiangsu Province (*China Changzhou Kairui Weaving and Printing Company v. Taiwan Junlong Machinery Company*) [Abstract available][Cite as: <http://cisgw3.law.pace.edu/cases/041202c1.html>]

Chinese text CISG-China: <[http://aff.whu.edu.cn/cisgchina/en/news\\_view.asp?newsid=86](http://aff.whu.edu.cn/cisgchina/en/news_view.asp?newsid=86)>

<sup>73</sup> See Supreme People's Court's Interpretation I on Several Issues concerning the Application of the Contract Law of the People's Republic of China Article 3: The people's court shall, when deciding the validity of a contract, apply this Contract Law if the contract formed before the implementation of the Contract Law is void under the law at that time but valid under this Contract Law. Article 3 in Chinese text: 第三条 人民法院确认合同效力时, 对合同法实施以前成立的合同, 适用当时的法律合同无效而适用合同法合同有效的, 则适用合同法。

<sup>74</sup> See GPCL Article 142: The application of law in civil relations with foreigners shall be determined by the provisions in this Chapter. If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations. International practice may be applied on matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.

automatically applies as part of the PRC laws. The Court did not otherwise explain whether and why the CISG applies to Taiwan. What was clear from this decision, however, was that a sales contract, or indeed any commercial transactions, between Taiwan and PRC parties are treated as foreign-related; thus Chapter VIII of the GPCL (Articles 142 to 150) on applicable law issues in foreign-related civil relations applies.

5.71 Moreover, having decided the FECL applies, the Court of First Instance then decided that the CISG is applicable as well pursuant to the GPCL Article 142. However, the Court failed to explain when to apply FECL and when to apply the CISG. If the intention is to apply both FECL and the CISG in parallel, as opposed to using the CISG to fill gaps of FECL (e.g. in the CIETAC *Chemical cleaning product equipment* case as discussed in paragraph 5.67 above)<sup>75</sup>. Further, the Court should have cited Article 23 of the FECL instead of Article 18 of the FECL in reaching its decision to award interest.<sup>76</sup> The Court seems to have picked some provisions from the FECL and others from the CISG without giving any rationale or justification for doing so. This approach was not only confusing, but also likely to invite criticism.

---

<sup>75</sup> See China 20 April 1999 CIETAC Arbitration proceeding (Chemical cleaning product equipment case) [Cite as: <http://cisgw3.law.pace.edu/cases/990420c1.html>]

<sup>76</sup> FECL Article 18: If a party fails to perform the contract or its performance of the contractual obligations does not conform to the agreed terms, which constitutes a breach of contract, the other party is entitled to claim damages or demand other reasonable remedial measures. If the losses suffered by the other party cannot be completely made up after the adoption of such remedial measures, the other party shall still have the right to claim damages. FECL Article 23: If a party fails to pay on time any amount stipulated as payable in the contract or any other amount related to the contract that is payable, the other party is entitled to interest on the amount in arrears. The method for calculating the interest may be specified in the contract. See also prior discussion on the awarding of interest in Chapter 4.

5.72 Nevertheless, the decision of the Court of First Instance was upheld by the Appellate Court, the High People's Court of Jiangsu Province, which did deal with the applicable law issue specifically and held, inter alia:

*'[A]lthough the parties did not choose the governing law of the contract, they did not dispute the application of PRC laws in the court of the first instance. During the proceedings in the appellate court, parties explicitly choose the law of the PRC as governing law. Therefore, according to Article 145 of the PRC General Principles of Civil Law, PRC laws apply to the current case.'*

Thus, the Appellate Court seemingly took the position that the CISG is applicable because the parties chose the laws of the PRC to govern. The Appellate Court did not otherwise consider whether the CISG applies to Taiwan as a territorial unit of the PRC under the CISG Article 93.

5.73 In the Laser Microjet case,<sup>77</sup> the Swiss Federal Supreme Court held, inter alia:

---

<sup>77</sup> See Switzerland 16 December 2008 Supreme Court (Laser microjet case) [translation available] [Cite as: <http://cisgw3.law.pace.edu/cases/081216s1.html>]

*'[T]he contracting parties have their places of business in different States. As a result of their failure to choose the applicable law, Swiss law applies because the characteristic performance was undertaken by the seller, Defendant Y S.A., whose place of business is in Switzerland (cf. Art. 117 LDIP). The UN Convention on Contracts for the International Sale of Goods adopted in Vienna on 11 April 1980 (CISG; RS 0.221.211.1) is part of Swiss law. It is applicable in this case because the contract involved a machine not for personal, family or household use, and the buyer did not furnish any material necessary for manufacturing the goods (cf. Art. 1(1)(b), Art. 2(a) and Art. 3(1) CISG). CISG provides for the passing of risk (cf. Art. 66 et seq. CISG); if the contract involves carriage of goods, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer (cf. Art. 67 CISG). This stage was not reached in this case.'*<sup>78</sup>

Therefore, the Swiss Federal Supreme Court applied the CISG as part of Swiss law pursuant to Article 1(1)(b). In this case, it is irrelevant whether Taiwan should be regarded a territorial unite of the PRC therefore a party to the CISG by way of Article 93 or not.

5.74 These cases and awards do not by any means clarify the status of Taiwan under the CISG. Although the number of available cases or arbitral awards involving Taiwan parties is much

---

<sup>78</sup> Ibid.

smaller than that of those involving Hong Kong parties as discussed above in Section 5.1.2.2, this does not make the clarification of the status of Taiwan under the CISG less important in any way. The status of Taiwan under the CISG needs to be clarified.

### **5.3.3. BENEFITS OF APPLYING THE CISG IN TAIWAN**

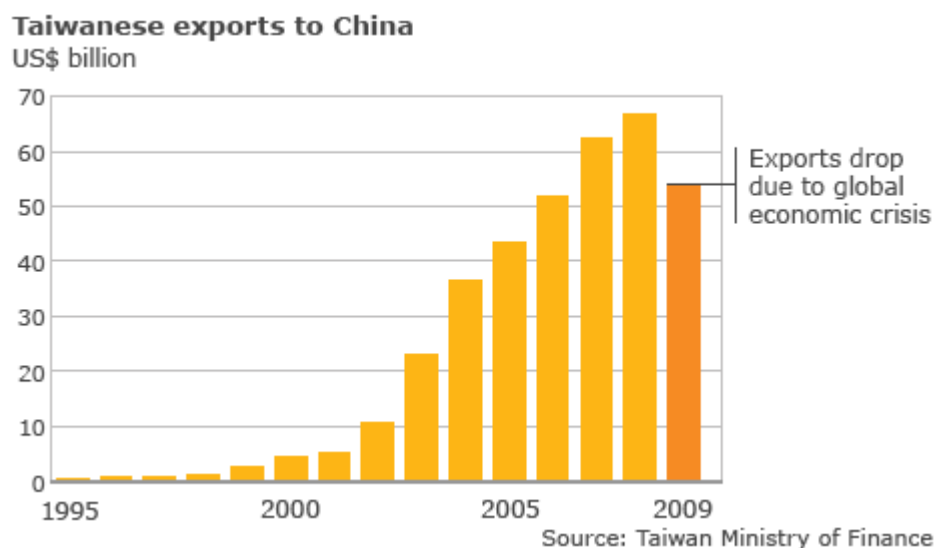
5.75 Putting aside the controversies involved in the status of Taiwan, the benefits of applying the CISG in Taiwan are rather obvious.

5.76 Taiwan's foreign trade totals around \$500 billion a year. Among its major trading partners, Mainland China, United States, Japan, Republic of Korea, Singapore and most European countries are all Contracting States of the CISG. The benefits of applying the CISG in Hong Kong discussed in section 5.1.2.1 above arguably also apply to Taiwan.

## **5.4. APPLYING THE CISG BETWEEN THE MAINLAND, HONG KONG, MACAO AND TAIWAN**

5.77 Putting aside the controversies involved in the status of Taiwan, the HKSAR and the Macao SAR under the CISG, this section proposes that the PRC should declare the application of the CISG to sales between the Mainland, Taiwan, the HKSAR and the Macao SAR.

5.78 As we know, Taiwan-Beijing relations have improved in recent years since pro-Beijing President Ma Ying-jeou took power in Taiwan. In June 2010, leaderships of both sides signed the first historical trade pact, the Economic Co-operation Framework Agreement (ECFA). It is believed that the ECFA will further boost Taiwan-Mainland trade, which already totals \$110 billion (£73 billion) a year. (See table below)



5.79 In addition, trade between Taiwan and Hong Kong totals around \$40 billion (£27 billion) a year.<sup>79</sup>

Trade between Hong Kong and the Mainland totals around \$300 billion (£202 billion) a year.<sup>80</sup>

---

<sup>79</sup> See Taiwan Foreign Trade Statistics available at the website of the Ministry of Finance of Taiwan ([www.mof.gov.tw](http://www.mof.gov.tw)): <http://www.mof.gov.tw/public/data/statistic/trade/9050.htm> last accessed on 10 January 2011.



Trade between PRC's territorial units, i.e. the Mainland, Taiwan, the HKSAR and the Macao SAR, is significant. A new economic co-operation framework for trade and investment between these territorial units has emerged as evidenced by the Mainland and Hong Kong Closer Economic Partnership Arrangement,<sup>81</sup> the Mainland and Macao Closer Economic Partnership Arrangement,<sup>82</sup> and the Mainland and Taiwan Economic Co-operation Framework Agreement. What is lacking and needed now is a uniform and harmonious legal framework for all of the PRC territorial units, upon which traders and investors can rely.

5.80 It is against the above political and economic background that the author proposes that the CISG should be utilised as the default sales law governing sales transactions occurring throughout the PRC's territorial units. By adopting a uniform sales law, such as the CISG, legal barriers to trade can be removed. A uniform sales law can reduce transaction costs associated with negotiating choice-of-law clauses. Operating upon the understanding of a common sales law will enhance traders' confidence and facilitate transactions.

5.81 Applying the CISG as the default sales law to govern sales throughout the PRC territorial units does not take away the freedom of parties to choose the laws of their own territorial units by

---

<sup>80</sup> See trade statistics published by the Trade and Industry Department of HKSAR, available at <<http://www.tid.gov.hk/english/aboutus/publications/tradestat/wmt08tt.html>>, last accessed on 10 January 2011.

<sup>81</sup> traditional Chinese: 內地與香港關於建立更緊密經貿關係的安排

<sup>82</sup> traditional Chinese: 內地與澳門關於建立更緊密經貿關係的安排; Portuguese: Acordo de Estreitamento das Relações Económicas e Comerciais entre o Continente Chinês e Macau)

agreement or through the application of conflict of law rules. What the CISG does provide is an alternative and neutral sales law framework in case parties fail to agree on their own governing law clause. There is no need to change the existing sales laws in different territorial units. Adopting the CISG as the common international sales law can save costs in dealing with diverse legal systems and sales laws that are currently practised in these territorial units. There is every reason to make the CISG available to traders from all these territorial units.

5.82 Because only sovereign states can become parties to the CISG, Taiwan, the HKSAR or the Macao SAR cannot become a party to the CISG independently. The only way these territorial units can become parties to the CISG is by way of Article 93 of the CISG. The author is of the view that the PRC did not and has not made any reservation according to Article 93 of the CISG. Accordingly, the CISG should automatically apply to all the PRC territorial units. Article 93, however, does not and cannot extend the scope of the CISG to cover sales between different territorial units. To do so, the PRC would need to make a declaration to that effect. Alternatively, the PRC needs to deal with this issue via its domestic law or internal arrangements among all its territorial units. The author argues that the former is preferable because it avoids the complication and uncertainties involved in the PRC's inter-territorial conflict of law rules.

5.83 It is proposed that the PRC should deposit the following notification to the United Nations:

*'The People's Republic of China declares that the Convention applies to sales between all its territorial units. Other than this declaration, the PRC has not made any other reservation under Article 93 of the CISG.'*

5.84 The first part of this proposed declaration deals with the extension of the CISG to the PRC's inter-territorial sales. It will extend the sphere of application of the CISG in China to cover potentially six types of inter-territorial sales between (1) the Mainland and the HKSAR; (2) the Mainland and the Macao SAR; (3) the Mainland and Taiwan; (4) the HKSAR and the Macao SAR; (5) the HKSAR and Taiwan; and (6) the Macao SAR and Taiwan.

5.85 The second part of this proposed declaration clarifies the PRC's position on Article 93 of the CISG. By declaring that no other reservation has been made under Article 93, this second part of the proposed declaration will affirm that the CISG applies to all PRC territorial units, including the Hong Kong SAR, the Macao SAR and Taiwan. Thus, the declaration will eliminate any uncertainty or confusion as to the application of the CISG to these territorial units.

## **5.5. CONCLUSION (Chapter 5)**

5.86 As explained in this chapter, at the moment, it is unclear whether the CISG applies to the HKSAR, the Macao SAR and Taiwan. This chapter calls on the PRC, the HKSAR, the Macao SAR and Taiwan to take work together to clarify the status of these PRC territorial units under the CISG.

- 5.87 Those court cases and arbitral awards uncovered in this chapter have demonstrated that the CISG can be, and in fact, has been applied to the HKSAR, the Macao SAR and Taiwan. Despite the lack of sound legal reasoning or any expressed provisions to support the application of the CISG beyond its own scope of application pursuant to Article 1 of the CISG within a domestic law context in the PRC, there are strong policy reasons to support such an extension.
- 5.88 The PRC should make an unequivocal declaration to this effect. An unequivocal declaration, such as the one proposed in this chapter will provide a sound legal basis under international law for the application of the CISG to inter-territorial sales in China.
- 5.89 A need for the adoption of a uniform sales law among all of the PRC territorial units is clearly indicated by the development of closer economic ties and the very considerable amount of trade between the PRC territorial units. The CISG is 'the' uniform sales law that is readily available to fulfil this mission. Irrational and inconsistent decisions on the application of the CISG to the PRC territorial units result in uncertainty and unpredictability. This observation supports the proposal set out in this chapter regarding the need for a PRC declaration not only to clarify the status of its territorial units under the CISG but also to extend the application of the CISG to inter-territorial sales in today's China.

## 6. CONCLUSION

- 6.01 This thesis has identified some significant obstacles to the application of the CISG in the PRC, including the Special Administrative Regions of Hong Kong and Macau, and Taiwan. It has put forward a number of proposals for overcoming the remaining obstacles to the application of the Convention in the PRC.
- 6.02 Chapter One examined the barriers to the adoption of the CISG in the PRC created by the understanding of contract law within the Chinese political, legal, and business establishments. It explained that this understanding derives from pre-Communist era (i.e. pre-1949) approaches to 'contractual' arrangements, as well as the various forms of contract law that have been promulgated since the foundation of the PRC.
- 6.03 It further explained that these barriers have led the PRC to adopt a cautious approach to its approval of the CISG. The PRC's adoption of the CISG was both an expression of its willingness to enter into the mainstream of international diplomacy and a demonstration of that willingness to the international community. However, the influence of the CISG on commercial and legal practice was more limited than might have been expected and lagged behind the government's diplomatic activities and political pronouncements.
- 6.04 Although the CISG provided a convenient model for the PRC when modernising its contract and sales law legislation during the 1980s, domestic considerations prevented the PRC from adopting the convention in its entirety. The inability of a PRC citizen to be a party to a foreign-related economic contract was a politically sensitive issue at that time. The fledgling market

economy that existed in the early stages of the implementation of the Reform and Opening-up policy required a separate legal regime for foreign-related contracts. This split between domestic and foreign-related contract law allowed the domestic market economy to develop further before fully opening itself up to the outside world. Perhaps unsurprisingly, the PRC declared two reservations when adopting the CISG, details of which are provided in Chapter One. The pre-1999 PRC contract laws comprised the Economic Contract Law (1981), the Foreign-related Economic Contract Law (1985) and the Technology Contract Law Technology Contract Law (1987), which largely followed models from the USSR.

6.05 As also discussed in Chapter One, contract law as a formal legal institution did not exist in Imperial China, neither did it exist in the PRC until the first PRC Economic Contract Law was promulgated in 1981. ‘Offer’ and ‘Acceptance’ did not form any part of the contract law regime prior to 1999. To reform and open up to the outside world, the PRC needed to build a modern contract law regime from scratch. The CISG, a politically neutral and international uniform sales law, was seen as the best model available. Chapter One demonstrated that domestic and international attitudes towards the adoption and application of the CISG in the PRC were largely positive.

6.06 However, the usage of the CISG in the PRC prior to 1999 was frustrated by the widespread lack of a comprehensive understanding of Western style contract law and conflict law rules, as these did not exist in the PRC at that time. Linguistic and cultural barriers also played a part. The Chinese text of the CISG was characterised by an inadequate use of Chinese legal terminology. Some fundamental legal concepts, such as ‘Offer’ and ‘Acceptance’, were translated into commercial expressions ‘Fajia’ (发价) and ‘Jieshou Fajia’ (接受发价) instead of proper legal

terms ‘yaoyue’ (要约) and ‘Chengnuo’ (承诺). The poor quality of the Chinese text of the CISG was likely due to a combination of the absence of suitable legal terms in Chinese at the time and the lack of legal expertise among the translation team.

6.07 Today, the Chinese legal landscape has changed dramatically. Chinese legal terminology has become well established and continues to grow. Chapter One concludes by proposing that the Chinese text of the CISG should be updated and revised using contemporary Chinese legal terminologies.

6.08 Chapter Two examined the reduction of the political, economic and legal barriers to the CISG’s application in the PRC brought about during the post-CL1999 era. The growingly diverse contractual and commercial activities taking place in the PRC required a comprehensive and modern contract law. The CL1999 recognised the freedom of contract – a milestone in the history of contract law legislation in China.

6.09 More importantly, the CL1999 replaced the separate domestic and international contract law regime. If the purpose of the PRC’s Article 95 reservation under the CISG was to safeguard the distinction between international and domestic contracts, the enactment of the CL1999 would seem to suggest that PRC legislators no longer found such distinction essential. This, in turn, would render the Article 95 reservation unnecessary.

6.10 Moreover, Chapter Two uncovered that of about 320 hundred PRC cases made available on the PACE CISG Database, none specifically addressed or cited the Article 95 reservation. Chapter Two raised a serious question as to the actual awareness of the Article 95 reservation among PRC jurists, practitioners and the legal and trade communities. Even if a degree of awareness

exists, there appears to be a state of confusion and uncertainty as to the effects of the Article 95 reservation. This is not altogether surprising, especially when considering the fact that the Article 95 reservation has proven controversial, both in theory and practice, among all the CISG Contracting States.

6.11 Chapter Two demonstrated that Article 95 reservation has resulted in confusion when it comes to choice of law issues under current PRC law and legal practice. In some cases, parties have had to explicitly choose both ‘the CISG and the law of the PRC’ for the CISG to apply. But even where the parties were prescient enough to make such a choice, the courts had to consider whether to apply both the CISG and PRC domestic law. If not, the court then had to decide which of the two should prevail. Although Article 142 of the GPCL provides that an international convention (such as the CISG) should prevail where a discrepancy exists, some courts have still resorted to domestic law. Where parties have chosen the law of the PRC as applicable law, an uncertainty exists as to whether a PRC court would recognize the CISG as a part of PRC law. Similarly, where courts have resorted to the rules of private international law, some have found the CISG applicable, others have not. These uncertainties not only create difficult conflict of law issues, but also discourage contractual parties from choosing PRC law as the governing law.

6.12 As to the PRC’s Article 96 reservation, Chapter Two demonstrated, first, without adopting the authorised declaration pursuant to Articles 2 and 96 of the CISG, the exact meaning and scope of PRC’s Article 96 reservation is ambiguous and open to controversy; second, the apparent and direct contradiction between the CL1999 and the PRC’s Article 96 reservation cannot be resolved; third, in any event, the effects and consequences of the Article 96 reservation on non-



Declaring States is minimal. As a result, it is the PRC courts which are forced to reconcile the apparent conflict between the CL1999 and the Article 96 reservation.

6.13 Chapter Two concluded that the two reservations made by the PRC upon its adoption of the CISG have become outdated. In fact, the two reservations now serve as major barriers to the CISG's application in the PRC. These two reservations no longer comport with current PRC sales and contract law or PRC court and arbitral practice. They lead to confusion and uncertainty, without providing any benefits in return. Therefore, as no need remains for their continued existence, the PRC should withdraw these two reservations.

6.14 Chapter Three asked whether or not the harmonisation achieved so far has facilitated the application of the CISG in the PRC post the CL1999. It provides evidence that international rules of law governing contracts, and sales contracts in particular, as reflected in the CISG and the UPICC, were among the major references and inspirations for the drafting of the CL1999. In harmony with the spirit of Chinese characteristics, an extensive range of comparative and selective techniques was adopted in modernising the PRC contract law. The CL1999 introduced a *new* framework differing dramatically from its predecessors but converging with modern, Western-style contract laws and especially with transnational uniform law instruments such as the CISG and the UPICC. Taking contract formation rules as an example, this chapter gives a general overview of how these three regimes (the CL1999, the CISG and the UPICC) bear a superficial resemblance to one another in their black letter rules.

6.15 Chapter 3 further demonstrated that harmonisation has been achieved between the CL1999 and, the CISG and the UPICC in two fundamental principles: party autonomy and good faith. Compared with the CISG, the CL1999 does not contain many mandatory rules on matters within

the substantive scope of the CISG. The freedom of parties to make their own arrangements in forming the contract of sale; and the rights and obligations of sellers and buyers arising from such a contract are by and large preserved. Most of the provisions of the CL1999 apply only as default rules. Transactions subject to mandatory restrictions in the PRC are essentially excluded from the scope of the CISG (Articles 2 and 4 of the CISG in particular). Therefore, the chapter concluded that in terms of the principle of party autonomy harmonisation has been achieved to a large extent between the CL1999 and the CISG.

6.16 Chapter Three also pointed out that the principle of good faith under the CL1999 is a fundamental principle that governs all aspects of a commercial transaction and should be construed broadly enough to cover every aspect and every stage of a contractual relationship, including but not limited to, modification of the contract. A broad construction of the principle of good faith under the CL1999 does not necessarily conflict with the position taken by the CISG or the UPICC. Furthermore, such construction reflects PRC judicial practice. It therefore concluded that on balance, the CL1999 possesses more similarities to the CISG and the UPICC than it does differences, especially when comparing with those pre-1999 PRC contract laws. With that said, differences and discrepancies do still exist, as after all, the CL1999 is not a mirror image of either the CISG or the UPICC.

6.17 As also explained in Chapter Three, harmonisation is not the same as uniformity, and uniform rules do not guarantee uniform application or interpretation across a diverse range of legal systems. The harmonisation of the PRC contract law legislation with international uniform contract law rules has had a positive influence on the creation and development of the modern PRC contract law. However, if harmonisation is perceived superficially, the more highly

assimilated the rules in the CL1999, the CISG and the UPICC appear to be, the more likely that their textual similarities disguise their more subtle differences. Hence, there is a real concern that PRC courts, jurists, and practitioners will misapply or misinterpret the CISG in the PRC as a result of views influenced primarily by domestic considerations.

6.18 Chapter Four explored the ways in which the CISG can be and has been integrated into PRC domestic law on the level of substantive rules and investigated whether the integration provides an obstacle or not to the success of the application of the CISG in the PRC, and how it could be changed or improved.

6.19 Taking the issues of awarding interest and calculation of interest rate as examples, Chapter Four showed that on the one hand, real obstacles exist to the application of the CISG in the PRC, because some PRC courts either refuse to apply the CISG where it should or some apply the CISG on the incorrect or superficial understanding of the uniform law, or worse yet, some do not even realise that it exists. On the other hand, no genuine obstacle exists to the integration of the CISG into the current PRC contract and sales law in terms of specific substantive rules and provisions. Because of the relative youth of the current PRC contract law regime, which by and large has only been constructed in the last decade, the application and interpretation of the CL1999 often seeks to accommodate international rules of law and practice in comparable areas. Contrary to the common notion of using domestic laws to fill the CISG's gaps, the CISG has served as 'the' international sales contract law to fill the gaps within the current PRC domestic contract law. The lack of a special regime to deal with international sales contracts under the CL1999 further supports the use of the CISG in this manner.

- 6.20 The analysis in Chapter Four demonstrated that PRC domestic law lacked a consistent approach when it came to the awarding of interest until the Supreme People's Court issued its Interpretation II of the CL1999, which espoused a position in keeping with the CISG's Article 78. The discussion of Article 7.4.9 (2) of the UPICC in this chapter indicated that PRC contract law could both accommodate and use the UPICC's methods for the calculation of pre- and post-judgment interest.
- 6.21 The current People's courts practice of adopting the interest rate of the People's Bank of China regardless of the facts needs correction. Chapter Four proposed that a two-step approach should be taken: (1) identify the applicable law; and (2) identify the appropriate interest rate applicable to the transaction in issue. The use of the UPICC's provisions concerning interest would only further the reforms set forth in the Supreme People's Court's Interpretation II of the CL1999.
- 6.22 Overall, the outcome, in terms of the awarding of interest and the actual interest rate to be applied under the various factual circumstances, may well prove identical regardless of whether the courts use PRC domestic law, the CISG or the UPICC. Thus, Article 78 of the CISG and Article 7.4.9 (2) of the UPICC comport with PRC domestic law. In particular, the UPICC offers an excellent model for further legal reform, as it incorporates a considered, uniform and international method of calculating interest.
- 6.23 Due to the evolving nature of the current PRC law and the limitations of the CL1999, the integration of the CISG and the UPICC into the PRC sales and contract law will depend on the willingness of PRC courts to take actions consistent with any such integration. Chapter Four

called for the People's Courts to continue to favour the integration of international uniform law rules into PRC law.

6.24 Chapter Five analysed the barriers to the application of the CISG in the PRC's different territorial regions, namely Hong Kong Special Administrative Region, Macau Special Administrative Region, and Taiwan. As explained in this chapter, at the moment, it is unclear whether the CISG applies to the HKSAR, the Macao SAR and Taiwan. This chapter called on the PRC, the HKSAR, the Macao SAR and Taiwan to take work together to clarify the status of these PRC territorial units under the CISG.

6.25 Those court cases and arbitral awards uncovered in Chapter Five have demonstrated that the CISG can be, and in fact, has been applied to the HKSAR, the Macao SAR and Taiwan. Despite the lack of sound legal reasoning or any expressed provisions to support the application of the CISG beyond its own scope of application pursuant to Article 1 of the CISG within a domestic law context in the PRC, there are strong policy reasons to support such an extension. The PRC should, however, make an unequivocal declaration to this effect. An unequivocal declaration, such as the one proposed in this chapter will provide a sound legal basis under international law for the application of the CISG to inter-territorial sales in China.

6.26 Chapter Five concluded that a need for the adoption of a uniform sales law among all of the PRC territorial units is clearly indicated by the development of closer economic ties and the very considerable amount of trade between the PRC territorial units. The CISG is 'the' uniform sales law that is readily available to fulfil this mission. Irrational and inconsistent decisions on the application of the CISG to the PRC territorial units result in uncertainty and unpredictability. This observation supports the proposal set out in this chapter regarding the need for a PRC

declaration not only to clarify the status of its territorial units under the CISG but also to extend the application of the CISG to inter-territorial sales in today's China.

6.27 This study has therefore focused on aspects of the application of the CISG within the PRC domestic legal systems, and more specifically, the PRC laws relating to contracts for international sale of goods. The choice of the PRC balances the extensive research that the CISG has received in other Contracting States, especially those European states in the past. Having identified the barriers and proposed methods to remove those barriers to the application of the CISG in the PRC in this research, it is hoped that this research will contribute to future research on the uniform interpretation of the CISG in the PRC.

## APPENDIX 1A: THE CL1999 CONTRACT FORMATION RULES THAT CLOSELY RESEMBLE THEIR CISG COUNTERPARTS

PRC Contract Law 1999	CISG 1980
<p>Article 14 An offer is an expression of intent to enter into a contract with another person. Such expression of intent shall comply with the following: (1) its contents shall be specific and definite; (2) it indicates that the offeror will be bound by the expression of intent in case of acceptance by the offeree.</p> <p>Article 15 An invitation for offer is an expression of intent to invite other parties to make offers thereto. Mailed price lists, public notices of auction and tender, prospectuses and commercial advertisements, etc. are invitations for offer. Where the contents of a commercial advertisement meet the requirements for an offer, it shall be regarded as an offer.</p>	<p>Article 14</p> <p>1. A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.</p> <p>2. A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.</p>
<p>第十四条 【要约】</p> <p>要约是希望和他人订立合同的意思表示，该意思表示应当符合下列规定：</p> <p>（一）内容具体确定；</p> <p>（二）表明经受要约人承诺，要约人即受该意思表示约束。</p> <p>第十五条 【要约邀请】</p> <p>要约邀请是希望他人向自己发出要约的意思表示。寄送的价目表、拍卖公告、招标公告、招股说明书、商业广告等为要约邀请。</p> <p>商业广告的内容符合要约规定的，视为要约。</p> <p>最高人民法院关于适用《中华人民共和国合同法》若干问题的解释（二）</p> <p>第三条 悬赏人以公开方式声明对完成一定行为的人支付报酬，完成特定行为的人请求悬赏人支付报酬的，人民法院依法予以支持。但悬赏有合同法第</p>	<p>第十四条</p> <p>（1）向一个或一个以上特定的人提出的订立合同的建议，如果十分确定并且表明发价人在得到接受时承受约束的意旨，即构成发价。一个建议如果写明货物并且明示或暗示地规定数量和价格或规定如何确定数量和价格，即为十分确定。</p> <p>（2）非向一个或一个以上特定的人提出的建议，仅应视为邀请做出发价，除非提出建议的人明确地表示相反的意向。</p>

<p align="center"><b>PRC Contract Law</b></p> <p align="center"><b>1999</b></p>	<p align="center"><b>CISG</b></p> <p align="center"><b>1980</b></p>
<p>五十二条规定情形的除外。</p>	
<p>Article 16 An offer becomes effective when it reaches the offeree.</p> <p>If a contract is concluded through data-telex, and a recipient designates a specific system to receive the date-telex, the time when the data-telex enters such specific system shall be the time of arrival; if no specific system is appointed, the time when the data-telex first enters any of the recipient's systems shall be regarded as the time of arrival.</p> <p>Article 17 An offer may be withdrawn. The withdrawal notice shall reach the offeree before or at the same time when the offer arrives.</p>	<p>Article 15</p> <p>1. An offer becomes effective when it reaches the offeree.</p> <p>2. An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.</p>
<p>第十六条 【要约的生效】</p> <p>要约到达受要约人时生效。</p> <p>采用数据电文形式订立合同，收件人指定特定系统接收数据电文的，该数据电文进入该特定系统的时间，视为到达时间；未指定特定系统的，该数据电文进入收件人的任何系统的首次时间，视为到达时间。</p> <p>第十七条 【要约的撤回】</p> <p>要约可以撤回。撤回要约的通知应当在要约到达受要约人之前或者与要约同时到达受要约人。</p>	<p>第十五条</p> <p>（1）发价于送达被发价人时生效。</p> <p>（2）一项发价，即使是不可撤销的，得予撤回，如果撤回通知于发价送达被发价人之前或同时，送达被发价人。</p>
<p>Article 18 An offer may be revoked. The revocation notice shall reach the offeree before it has dispatched a notice of acceptance.</p> <p>Article 19 An offer may not be revoked, if</p> <p>(1) the offeror indicates a fixed time for acceptance or otherwise explicitly states that the offer is irrevocable; or</p> <p>(2) the offeree has reasons to rely on the offer as being irrevocable and has made preparation for performing the contact.</p>	<p>Article 16</p> <p>1. Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.</p> <p>2. However, an offer cannot be revoked;</p> <p>(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or</p> <p>(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.</p>
<p>第十八条 【要约的撤销】</p>	<p>第十六条</p>



<p><b>PRC Contract Law</b></p> <p><b>1999</b></p>	<p><b>CISG</b></p> <p><b>1980</b></p>
<p>要约可以撤销。撤销要约的通知应当在受要约人发出承诺通知之前到达受要约人。</p> <p><b>第十九条 【要约不得撤销的情形】</b></p> <p>有下列情形之一的，要约不得撤销：</p> <p>（一）要约人确定了承诺期限或者以其他形式明示要约不可撤销；</p> <p>（二）受要约人有理由认为要约是不可撤销的，并已经为履行合同作了准备工作。</p>	<p>（1）在未订立合同之前，发价得予撤销，如果撤销通知于被发价人发出接受通知之前送达被发价人。</p> <p>（2）但在下列情况下，发价不得撤销：</p> <p>（a）发价写明接受发价的期限或以其它方式表示发价是不可撤销的；或</p> <p>（b）被发价人有理由信赖该项发价是不可撤销的，而且被发价人已本着对该项发价的信赖行事。</p>
<p><b>Article 20</b> An offer shall lose efficacy under any of the following circumstances:</p> <p>(1) the notice of rejection reaches the offeror;</p> <p>(2) the offeror revokes the offer in accordance with the law;</p> <p>(3) the offeree fails to dispatch an acceptance before the expiration of the time limit for acceptance;</p> <p>(4) the offeree makes substantial changes to the contents of the offer.</p>	<p><b>Article 17</b></p> <p>An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.</p>
<p><b>第二十条 【要约的失效】</b></p> <p>有下列情形之一的，要约失效：</p> <p>（一）拒绝要约的通知到达要约人；</p> <p>（二）要约人依法撤销要约；</p> <p>（三）承诺期限届满，受要约人未作出承诺；</p> <p>（四）受要约人对要约的内容作出实质性变更。</p>	<p><b>第十七条</b></p> <p>一项发价，即使是不可撤销的，于拒绝通知送达发价人时终止。</p>
<p><b>Article 21</b></p> <p>An acceptance is the expression of an intention to by the offeree to assent to the offer.</p> <p><b>Article 22</b></p> <p>The acceptance shall be made in the form of a notice, except where acceptance may be made by an act on the basis of customary business practice or as</p>	<p><b>Article 18</b></p> <p>1. A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.</p> <p>2. An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror. An acceptance is</p>

<p align="center"><b>PRC Contract Law</b></p> <p align="center"><b>1999</b></p>	<p align="center"><b>CISG</b></p> <p align="center"><b>1980</b></p>
<p>expressed in the offer.</p> <p>Article 23</p> <p>An acceptance shall reach the offeror within the time limit prescribed in the offer.</p> <p>Where no time limit is prescribed in the offer, the acceptance shall reach the offeror in accordance with the following provisions:</p> <p>(1) if the offer is made in dialogues, the acceptance shall be made immediately unless otherwise agreed upon by the parties;</p> <p>(2) If the offer is made in forms other than a dialogue, the acceptance shall reach the offeror within a reasonable period of time.</p> <p>Article 26</p> <p>An acceptance becomes effective when its notice reaches the offeror. If notice of acceptance is not required, the acceptance shall become effective when an act of acceptance is performed in accordance with transaction practices or as required in the offer.</p> <p>Where a contract is concluded in the form of date-telex, the time of arrival of an acceptance shall be governed by the provisions of Paragraph 2, Article 16 of this Law.</p>	<p>not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.</p> <p>3. However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.</p>
<p>第二十一条 【承诺的定义】</p> <p>承诺是受要约人同意要约的意思表示。</p> <p>第二十二条 【承诺的方式】</p> <p>承诺应当以通知的方式作出，但根据交易习惯或者要约表明可以通过行为作出承诺的除外。</p> <p>第二十三条 【承诺的期限】</p> <p>承诺应当在要约确定的期限内到达要约人。</p> <p>要约没有确定承诺期限的，承诺应当依照下列规定到达：</p> <p>（一）要约以对话方式作出的，应当即时作出承诺，但当事人另有约定的除外；</p> <p>（二）要约以非对话方式作出的，承诺应当在</p>	<p>第十八条</p> <p>（1）被发价人声明或做出其它行为表示同意一项发价，即是接受，缄默或不行动本身不等于接受。</p> <p>（2）接受发价于表示同意的通知送达发价人时生效。如果表示同意的通知在发价人所规定的时间内，如未规定时间，在一段合理的时间内，未曾送达发价人，接受就成为无效，但须适当地考虑到交易的情况，包括发价人所使用的通讯方法的迅速程序。对口头发价必须立即接受，但情况有别者不在此限。</p> <p>（3）但是，如果根据该项发价或依照当事人之间确立的习惯作法和惯例，被发价人可以做出某种行为，例如与发运货物或支付价款有关的行为，来表示同意，而无须向发价人发出通知，则接受于该行为做出时生效，但该项行为必须在上一款所规定的期间内做出。</p>

<p><b>PRC Contract Law</b></p> <p><b>1999</b></p>	<p><b>CISG</b></p> <p><b>1980</b></p>
<p>合理期限内到达。</p> <p><b>第二十六条 【承诺的生效】</b></p> <p>承诺通知到达要约人时生效。承诺不需要通知的，根据交易习惯或者要约的要求作出承诺的行为时生效。 采用数据电文形式订立合同的，承诺到达的时间适用本法第十六条第二款的规定。</p>	
<p>Article 30 The contents of an acceptance shall comply with those of the offer. If the offeree substantially modifies the contents of the offer, it shall constitute a new offer. The modification relating to the subject matter, quality, quantity, price or remuneration, time or place or method of performance, liabilities for breach of contract and method of dispute resolution, etc. shall constitute the substantial modification of an offer.</p> <p>Article 31 If the acceptance does not substantially modifies the contents of the offer, it shall be effective, and the contents of the contract shall be subject to those of the acceptance, except as rejected promptly by the offeror or indicated in the offer that an acceptance may not modify the offer at all.</p>	<p>Article 19</p> <p>(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.</p> <p>(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.</p> <p>(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.</p>
<p><b>第三十条 【承诺的变更】</b></p> <p>承诺的内容应当与要约的内容一致。受要约人对要约的内容作出实质性变更的，为新要约。有关合同标的、数量、质量、价款或者报酬、履行期限、履行地点和方式、违约责任和解决争议方法等的变更，是对要约内容的实质性变更。</p> <p><b>第三十一条 【承诺的内容】</b></p> <p>承诺对要约的内容作出非实质性变更的，除要约人及时表示反对或者要约表明承诺不得对要约的内容作出任何变更的以外，该承诺有效，合同的内容以承诺的内容为准。</p>	<p><b>第十九条</b></p> <p>（1）对发价表示接受但载有添加、限制或其它更改的答复，即为拒绝该项发价，并构成还价。</p> <p>（2）但是，对发价表示接受但载有添加或不同条件的答复，如所载的添加或不同条件在实质上并不变更该项发价的条件，除发价人在不过分迟延的期间内以口头或书面通知反对其间的差异外，仍构成接受。如果发价人不做出这种反对，合同的条件就以该项发价的条件以及接受通知内所载的更改为准。</p> <p>（3）有关货物价格、付款、货物质量和数量、交货地点和时间、一方当事人对另一方当事人的赔偿</p>

<p><b>PRC Contract Law</b></p> <p><b>1999</b></p>	<p><b>CISG</b></p> <p><b>1980</b></p>
	<p>责任范围或解决争端等等的添加或不同条件，均视为在实质上变更发价的条件。</p>
<p>Article 24</p> <p>Where an offer is made by letter or telegram, the time limit for acceptance shall accrue from the date shown in the letter or from the date on which the telegram is handed in for dispatch. If no such date is shown in the letter, it shall accrue from the postmark date on the envelope.</p> <p>Where an offer is made by means of instantaneous communication, such as telephone or facsimile, etc. the time limit for acceptance shall accrue from the moment that the offer reaches the offeree.</p>	<p>Article 20</p> <p>1. A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the 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.</p> <p>2. Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.</p>
<p>第二十四条 【承诺期限的起点】</p> <p>要约以信件或者电报作出的，承诺期限自信件载明的日期或者电报交发之日开始计算。信件未载明日期的，自投寄该信件的邮戳日期开始计算。要约以电话、传真等快速通讯方式作出的，承诺期限自要约到达受要约人时开始计算。</p>	<p>第二十条</p> <p>（1）发价人在电报或信件内规定的接受期间，从电报交发时刻或信上载明的发信日期起算，如信上未载明发信日期，则从信封上所载日期起算。发价人以电话、电传或其它快速通讯方法规定的接受期间，从发价送达被发价人时起算。</p> <p>（2）在计算接受期间时，接受期间内的正式假日或非营业日应计算在内。但是，如果接受通知在接受期间的最后 1 天未能送到发价人地址，因为那天在发价人营业地是正式假日或非营业日，则接受期间应顺延至下一个营业日。</p>
<p>Article 28 Where an offeree makes an acceptance beyond the time limit for acceptance, the acceptance shall be a new offer except that the offeror promptly informs the offeree of the effectiveness of the said acceptance.</p> <p>Article 29 If the offeree dispatched the acceptance within the time limit specified for acceptance, and under normal circumstances the acceptance would have reached the offeror in due time, but due to</p>	<p>Article 21</p> <p>1. A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.</p> <p>2. If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal</p>

<p><b>PRC Contract Law</b></p> <p><b>1999</b></p>	<p><b>CISG</b></p> <p><b>1980</b></p>
<p>other reasons the acceptance reaches the offeror after the time limit for acceptance has expired, such acceptance shall be effective, unless the offeror notifies the offeree in a timely manner that it does not accept the acceptance due to the failure of the acceptance to arrive within the time limit.</p>	<p>it would have reached the offeror in 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.</p>
<p><b>第二十八条 【新要约】</b></p> <p>受要约人超过承诺期限发出承诺的，除要约人及时通知受要约人该承诺有效的以外，为新要约。</p> <p><b>第二十九条 【迟到的承诺】</b></p> <p>受要约人在承诺期限内发出承诺，按照通常情形能够及时到达要约人，但因其他原因承诺到达要约人时超过承诺期限的，除要约人及时通知受要约人因承诺超过期限不接受该承诺的以外，该承诺有效。</p>	<p><b>第二十一条</b></p> <p>（1）逾期接受仍有接受的效力，如果发价人毫不迟延地用口头或书面将此种意见通知被发价人。</p> <p>（2）如果载有逾期接受的信件或其它书面文件表明，它是在传递正常、能及时送达发价人的情况下寄发的，则该项逾期接受具有接受的效力，除非发价人毫不迟延地用口头或书面通知被发价人：他认为他的发价已经失效。</p>
<p><b>Article 27</b> An acceptance may be withdrawn, but a notice of withdrawal shall reach the offeror before or at the same time when the notice of acceptance reaches the offeror.</p>	<p><b>Article 22</b></p> <p>An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the time as the acceptance would have become effective.</p>
<p><b>第二十七条 【承诺的撤回】</b></p> <p>承诺可以撤回。撤回承诺的通知应当在承诺通知到达要约人之前或者与承诺通知同时到达要约人。</p>	<p><b>第二十二条</b></p> <p>接受得予撤回，如果撤回通知于接受原应生效之前或同时，送达发价人。</p>
<p><b>Article 25</b> A contract is formed when the acceptance becomes effective.</p>	<p><b>Article 23</b> A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.</p>
<p><b>第二十五条 【合同成立时间】</b> 承诺生效时合同成立。</p>	<p><b>第二十三条</b> 合同于按照本公约规定对发价的接受生效时订立。</p>
<p><b>Article 11</b> 'Written form' refers to a form such as a written contractual agreement, letter, electronic data text (including a telegram, telex, fax, electronic data exchange and e-mail) that can tangibly express the contents contained therein.</p>	<p><b>Article 13</b></p> <p>For the purpose of this Convention 'writing' includes telegram and telex.</p>
<p><b>第十一条 【书面形式】</b> 书面形式是指合同书、信件和数据电文（包括电报、电传、传真、电子数据交换和电子邮件）等可以有形地表现所载内容的形式。</p>	<p><b>第十三条</b></p> <p>为本公约的目的，'书面'包括电报和电传。</p>

## APPENDIX 1B: CONTRACT FORMATION RULES OVERLAPS AND GAPS BETWEEN THE CL1999 AND THE UPICC

PRC Contract Law 1999	UPICC 1994
<p>Article 10</p> <p>The parties may use written, oral or other forms in entering into a contract. A contract shall be in written form if the laws or administrative regulations so provide. A contract shall be concluded in written form if the parties so agree.</p> <p>Article 13</p> <p>The parties shall conclude a contract in the form of an offer and an acceptance.</p>	<p>Article 2.1 - Manner of Formation</p> <p>A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.</p>
<p>第十条 【合同的形式】</p> <p>当事人订立合同，有书面形式、口头形式和其他形式。</p> <p>法律、行政法规规定采用书面形式的，应当采用书面形式。当事人约定采用书面形式的，应当采用书面形式。</p> <p>第十三条 【订立合同方式】</p> <p>当事人订立合同，采取要约、承诺方式。</p>	<p>第 2.1 条（订立的形式）</p> <p>合同可通过对要约的承诺或通过能充分表明当事人各方合意的行为而成立。</p>
<p>Article 14</p> <p>An offer is an expression of intent to enter into a contract with another person. Such expression of intent shall comply with the following: (1) its contents shall be specific and definite; (2) it indicates that the offeror will be bound by the expression of intent in case of acceptance by the offeree.</p> <p>Article 15</p> <p>An invitation for offer is an expression of intent to invite other parties to make offers thereto. Mailed price lists, public notices of auction and tender, prospectuses and commercial advertisements, etc.</p>	<p>Article 2.2 - Definition of Offer</p> <p>A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.</p>

<p align="center"><b>PRC Contract Law</b></p> <p align="center"><b>1999</b></p>	<p align="center"><b>UPICC</b></p> <p align="center"><b>1994</b></p>
<p>are invitations for offer. Where the contents of a commercial advertisement meet the requirements for an offer, it shall be regarded as an offer.</p>	
<p><b>第十四条 【要约】</b></p> <p>要约是希望和他人订立合同的意思表示，该意思表示应当符合下列规定：</p> <p>（一）内容具体确定；</p> <p>（二）表明经受要约人承诺，要约人即受该意思表示约束。</p> <p><b>第十五条 【要约邀请】</b></p> <p>要约邀请是希望他人向自己发出要约的意思表示。寄送的价目表、拍卖公告、招标公告、招股说明书、商业广告等为要约邀请。</p> <p>商业广告的内容符合要约规定的，视为要约。</p> <p>最高人民法院关于适用《中华人民共和国合同法》若干问题的解释（二）</p> <p><b>第三条</b> 悬赏人以公开方式声明对完成一定行为的人支付报酬，完成特定行为的人请求悬赏人支付报酬的，人民法院依法予以支持。但悬赏有合同法第五十二条规定情形的除外。</p>	<p><b>第 2.2 条 （要约的定义）</b></p> <p>一项订立合同的建议，如果十分确定，并表明要约人在得到承诺时受其约束的意旨，即构成一项要约。</p>
<p><b>Article 16</b> An offer becomes effective when it reaches the offeree.</p> <p>If a contract is concluded through data-telex, and a recipient designates a specific system to receive the data-telex, the time when the data-telex enters such specific system shall be the time of arrival; if no specific system is appointed, the time when the data-telex first enters any of the recipient's systems shall be regarded as the time of arrival.</p> <p><b>Article 17</b> An offer may be withdrawn. The withdrawal notice shall reach the offeree before or at the same time when the offer arrives.</p>	<p><b>Article 2.3 - Withdrawal</b></p> <p>(1) An offer becomes effective when it reaches the offeree.</p> <p>(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.</p>
<p><b>第十六条 【要约的生效】</b></p> <p>要约到达受要约人时生效。</p>	<p><b>第 2.3 条 （要约的撤回）</b></p> <p>（1）要约于送达受要约人时生效；</p>

<p><b>PRC Contract Law</b></p> <p><b>1999</b></p>	<p><b>UPICC</b></p> <p><b>1994</b></p>
<p>采用数据电文形式订立合同，收件人指定特定系统接收数据电文的，该数据电文进入该特定系统的时间，视为到达时间；未指定特定系统的，该数据电文进入收件人的任何系统的首次时间，视为到达时间。</p> <p><b>第十七条 【要约的撤回】</b></p> <p>要约可以撤回。撤回要约的通知应当在要约到达受要约人之前或者与要约同时到达受要约人。</p>	<p>(2) 一项要约即使是不可撤销的，也可以撤回，如果撤回通知在要约送达受要约人之前或与要约同时送达受要约人。</p>
<p>Article 18 An offer may be revoked. The revocation notice shall reach the offeree before it has dispatched a notice of acceptance.</p> <p>Article 19 An offer may not be revoked, if</p> <p>(1) the offeror indicates a fixed time for acceptance or otherwise explicitly states that the offer is irrevocable; or</p> <p>(2) the offeree has reasons to rely on the offer as being irrevocable and has made preparation for performing the contract.</p>	<p>Article 2.4 - Revocation of Offer</p> <p>(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before it has dispatched an acceptance.</p> <p>(2) However, an offer cannot be revoked</p> <p>(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or</p> <p>(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance of the offer.</p>
<p><b>第十八条 【要约的撤销】</b></p> <p>要约可以撤销。撤销要约的通知应当在受要约人发出承诺通知之前到达受要约人。</p> <p><b>第十九条 【要约不得撤销的情形】</b></p> <p>有下列情形之一的，要约不得撤销：</p> <p>（一）要约人确定了承诺期限或者以其他形式明示要约不可撤销；</p> <p>（二）受要约人有理由认为要约是不可撤销的，并已经为履行合同作了准备工作。</p>	<p><b>第 2.4 条 （要约的撤销）</b></p> <p>（1）在合同订立之前，要约得予撤销，如果撤销通知在受要约人发出承诺之前</p> <p>送达受要约人。</p> <p>（2）但是，在下列情况下，要约不得撤销：</p> <p>（a）要约写明承诺的期限，或以其他方式表明要约是不可撤销的；或</p> <p>（b）受要约人有理由信赖该项要约是不可撤销的，且受要约人已依赖该要约行事。</p>
<p>Article 20 An offer shall lose efficacy under any of the following circumstances:</p> <p>(1) the notice of rejection reaches the offeror;</p> <p>(2) the offeror revokes the offer in accordance with the law;</p> <p>(3) the offeree fails to dispatch an acceptance before the expiration of the time limit for acceptance;</p> <p>(4) the offeree makes substantial changes to the</p>	<p>Article 2.5 - Rejection of Offer</p> <p>An offer is terminated when a rejection reaches the offeror.</p>



<p align="center"><b>PRC Contract Law</b></p> <p align="center"><b>1999</b></p>	<p align="center"><b>UPICC</b></p> <p align="center"><b>1994</b></p>
<p>contents of the offer.</p>	
<p>第二十条 【要约的失效】</p> <p>有下列情形之一的，要约失效：</p> <p>（一）拒绝要约的通知到达要约人；</p> <p>（二）要约人依法撤销要约；</p> <p>（三）承诺期限届满，受要约人未作出承诺；</p> <p>（四）受要约人对要约的内容作出实质性变更。</p>	<p>第 2.5 条 （要约的拒绝）</p> <p>要约于拒绝通知送达要约人时终止。</p>
<p>Article 21</p> <p>An acceptance is the expression of an intention to by the offeree to assent to the offer.</p> <p>Article 22</p> <p>The acceptance shall be made in the form of a notice, except where acceptance may be made by an act on the basis of customary business practice or as expressed in the offer.</p> <p>Article 23</p> <p>An acceptance shall reach the offeror within the time limit prescribed in the offer.</p> <p>Where no time limit is prescribed in the offer, the acceptance shall reach the offeror in accordance with the following provisions:</p> <p>(1) if the offer is made in dialogues, the acceptance shall be made immediately unless otherwise agreed upon by the parties;</p> <p>(2) If the offer is made in forms other than a dialogue, the acceptance shall reach the offeror within a reasonable period of time.</p> <p>Article 26</p> <p>An acceptance becomes effective when its notice reaches the offeror. If notice of acceptance is not required, the acceptance shall become effective when an act of acceptance is performed in accordance with transaction practices or as required in the offer.</p> <p>Where a contract is concluded in the form of</p>	<p>Article 2.6 - Mode of Acceptance</p> <p>(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.</p> <p>(2) An acceptance of an offer becomes effective when the indication of assent reaches the offeror.</p> <p>[Section (3) of Principles 2.6 presented below]</p> <p>Article 2.7 - Time of Acceptance</p> <p>An offer must be accepted within the time the offeror has fixed or, if no time is fixed, within a reasonable time having regard to the circumstances, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise. Article 2.6 - Mode of Acceptance</p> <p>(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act without notice to the offeror, the acceptance is effective when the act is performed.</p>

<p align="center"><b>PRC Contract Law</b></p> <p align="center"><b>1999</b></p>	<p align="center"><b>UPICC</b></p> <p align="center"><b>1994</b></p>
<p>date-telex, the time of arrival of an acceptance shall be governed by the provisions of Paragraph 2, Article 16 of this Law.</p>	
<p><b>第二十一条 【承诺的定义】</b></p> <p>承诺是受要约人同意要约的意思表示。</p> <p><b>第二十二条 【承诺的方式】</b></p> <p>承诺应当以通知的方式作出，但根据交易习惯或者要约表明可以通过行为作出承诺的除外。</p> <p><b>第二十三条 【承诺的期限】</b></p> <p>承诺应当在要约确定的期限内到达要约人。</p> <p>    要约没有确定承诺期限的，承诺应当依照下列规定到达：</p> <p>        （一）要约以对话方式作出的，应当即时作出承诺，但当事人另有约定的除外；</p> <p>        （二）要约以非对话方式作出的，承诺应当在合理期限内到达。</p> <p><b>第二十六条 【承诺的生效】</b></p> <p>承诺通知到达要约人时生效。承诺不需要通知的，根据交易习惯或者要约的要求作出承诺的行为时生效。</p> <p>    采用数据电文形式订立合同的，承诺到达的时间适用本法第十六条第二款的规定。</p>	<p><b>第 2.6 条 （承诺的方式）</b></p> <p>    （1）受要约人做出的声明或表示同意一项要约的其他行为构成承诺。缄默或不行为本身不构成承诺。</p> <p>    （2）对一项要约的承诺于同意的表示送达要约人时生效。</p> <p>    （3）但是，如果根据要约本身，或依照当事人之间建立的习惯做法或依照惯例，受要约人可以通过做出某行为来表示同意，而无须向要约人发出通知，则承诺于做出该行为时生效。</p> <p><b>第 2.7 条 （承诺的时间）</b></p> <p>    要约必须在要约人规定的时间内承诺；或者如果未规定时间，应在考虑了交易的具体情况，包括要约人所使用的通讯方法的快捷程度的一段合理的时间内做出承诺。对口头要约必须立即做出承诺，除非情况有相反表示。</p>
<p><b>Article 24</b></p> <p>Where an offer is made by letter or telegram, the time limit for acceptance shall accrue from the date shown in the letter or from the date on which the telegram is handed in for dispatch. If no such date is shown in the letter, it shall accrue from the postmark date on the envelope.</p> <p>Where an offer is made by means of instantaneous communication, such as telephone or facsimile, etc. the time limit for acceptance shall accrue from the moment that the offer reaches the offeree.</p>	<p><b>Article 2.8 - Acceptance Within a Fixed Period of Time</b></p> <p>(1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by means of instantaneous communication begins to run from the moment that offer reaches the offeree.</p> <p>(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of</p>

<p><b>PRC Contract Law</b></p> <p><b>1999</b></p>	<p><b>UPICC</b></p> <p><b>1994</b></p>
	<p>acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.</p>
<p><b>第二十四条 【承诺期限的起点】</b></p> <p>要约以信件或者电报作出的，承诺期限自信件载明的日期或者电报交发之日开始计算。信件未载明日期的，自投寄该信件的邮戳日期开始计算。要约以电话、传真等快速通讯方式作出的，承诺期限自要约到达受要约人时开始计算。</p>	<p><b>第 2.8 条 （规定期限内的承诺）</b></p> <p>要约人规定的承诺期限自要约发出时起算。要约中表示的日期应被视为是要约发出的时间，除非情况有相反表示。</p>
<p><b>Article 28</b> Where an offeree makes an acceptance beyond the time limit for acceptance, the acceptance shall be a new offer except that the offeror promptly informs the offeree of the effectiveness of the said acceptance.</p> <p><b>Article 29</b> If the offeree dispatched the acceptance within the time limit specified for acceptance, and under normal circumstances the acceptance would have reached the offeror in due time, but due to other reasons the acceptance reaches the offeror after the time limit for acceptance has expired, such acceptance shall be effective, unless the offeror notifies the offeree in a timely manner that it does not accept the acceptance due to the failure of the acceptance to arrive within the time limit.</p>	<p><b>Article 2.9 - Late Acceptance. Delay in Transmission</b></p> <p>(1) A late acceptance is nevertheless effective as an acceptance if without undue delay the offeror so informs the offeree or gives notice to that effect.</p> <p>(2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance, unless without undue delay, the offeror informs the offeree that it considers the offer as having lapsed.</p>
<p><b>第二十八条 【新要约】</b></p> <p>受要约人超过承诺期限发出承诺的，除要约人及时通知受要约人该承诺有效的以外，为新要约。</p> <p><b>第二十九条 【迟到的承诺】</b></p> <p>受要约人在承诺期限内发出承诺，按照通常情形能够及时到达要约人，但因其他原因承诺到达要约人时超过承诺期限的，除要约人及时通知受要约人因承诺超过期限不接受该承诺的以外，该承诺有效。</p>	<p><b>第 2.9 条 （逾期承诺与传递迟延）</b></p> <p>（1）逾期承诺仍应具有承诺的效力，但要约人应毫不迟延地告知受要约人该承诺具有效力或就此向受要约人发出通知。</p> <p>（2）如果载有逾期承诺的信息表明它是在如果传递正常即能及时被送达要约人的情况下发出的，则该逾期的承诺仍具有承诺的效力，除非要约人毫不迟延地通知受要约人此要约已失效。</p>
<p><b>Article 27</b> An acceptance may be withdrawn, but a notice of withdrawal shall reach the offeror before or at the same time when the notice of acceptance reaches the offeror.</p>	<p><b>Article 2.10 - Withdrawal of Acceptance</b></p> <p>An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the</p>

<p><b>PRC Contract Law</b></p> <p><b>1999</b></p>	<p><b>UPICC</b></p> <p><b>1994</b></p>
	<p>acceptance would have become effective.</p>
<p><b>第二十七条 【承诺的撤回】</b></p> <p>承诺可以撤回。撤回承诺的通知应当在承诺通知到达要约人之前或者与承诺通知同时到达要约人。</p>	<p><b>第 2.10 条 （承诺的撤回）</b></p> <p>承诺可以撤回，只要撤回通知在承诺本应生效之前或同时送达要约人。</p>
<p><b>Article 30</b> The contents of an acceptance shall comply with those of the offer. If the offeree substantially modifies the contents of the offer, it shall constitute a new offer. The modification relating to the subject matter, quality, quantity, price or remuneration, time or place or method of performance, liabilities for breach of contract and method of dispute resolution, etc. shall constitute the substantial modification of an offer.</p> <p><b>Article 31</b> If the acceptance does not substantially modifies the contents of the offer, it shall be effective, and the contents of the contract shall be subject to those of the acceptance, except as rejected promptly by the offeror or indicated in the offer that an acceptance may not modify the offer at all.</p>	<p><b>Article 2.11 - Modified Acceptance</b></p> <p>(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.</p> <p>(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror without undue delay, objects to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.</p>
<p><b>第三十条 【承诺的变更】</b></p> <p>承诺的内容应当与要约的内容一致。受要约人对要约的内容作出实质性变更的，为新要约。有关合同标的、数量、质量、价款或者报酬、履行期限、履行地点和方式、违约责任和解决争议方法等的变更，是对要约内容的实质性变更。</p> <p><b>第三十一条 【承诺的内容】</b></p> <p>承诺对要约的内容作出非实质性变更的，除要约人及时表示反对或者要约表明承诺不得对要约的内容作出任何变更的以外，该承诺有效，合同的内容以承诺的内容为准。</p>	<p><b>第 2.11 条 （变更的承诺）</b></p> <p>（1）对要约意在表示承诺但载有添加、限制或其他变更的答复，即为对要约的拒绝，并构成反要约。</p> <p>（2）但是，对要约意在表示承诺但载有添加，或不同条件的答复，如果所载的添加或不同条件没有实质性地改变要约的条件，那么，除非要约人毫不迟延地表示拒绝这些不符，则此答复仍构成承诺。如果要约人不做出拒绝，则合同的条款应以该项要约的条款以及承诺通知中所载有的变更为准。</p>
	<p><b>Article 2.12 - Writings in Confirmation</b></p> <p>If a writing which is sent within a reasonable time after the conclusion of the contract and which purports to be a confirmation of the contract contains additional or different terms, such terms become part of the contract, unless they materially alter the contract or</p>

<p><b>PRC Contract Law</b></p> <p><b>1999</b></p>	<p><b>UPICC</b></p> <p><b>1994</b></p>
	<p>the recipient, without undue delay, objects to the discrepancy.</p>
	<p>第 2.1.12 条（书面确认）</p> <p>在合同订立后一段合理时间内发出的意在确认合同的书面文件，如果</p> <p>载有添加或不同的条款，除非这些添加或不同条款实质性地变更了合同，或者接收方毫不延迟地拒绝了这些不符，则这些条款应构成合同的一个组成部分。</p>
	<p>Article 2.13 - Conclusion of Contract Dependent on Agreement on Specific Matters or in a Specific Form</p> <p>Where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a specific form, no contract is concluded before agreement is reached on those matters or in that form</p>
	<p>第 2.13 条</p> <p>（合同的订立基于对特定事项或特定形式的协议）</p> <p>在谈判过程中，凡一方当事人坚持合同的订立以对特定事项或以特定形式达成协议为条件的，则在对这些特定事项或形式达成协议之前，合同不能订立。</p>
	<p>Article 2.14 - Contract with Terms Deliberately Left Open</p> <p>(1) If the parties intend to conclude a contract, the fact that they intentionally leave a term to be agreed upon in further negotiations or to be determined by a third person does not prevent a contract from coming into existence.</p> <p>(2) The existence of the contract is not affected by the fact that subsequently</p> <p>(a) the parties reach no agreement on the terms; or</p> <p>(b) the third person does not determine the term, provided that there is an alternative means of rendering the term definite that is reasonable in the circumstances, having regard to the intention of the</p>

<p><b>PRC Contract Law</b></p> <p><b>1999</b></p>	<p><b>UPICC</b></p> <p><b>1994</b></p>
	<p>parties.</p>
	<p>第 2.14 条</p> <p>(特意待定的合同条款)</p> <p>(1) 如果当事人各方意在订立一项合同，但却有意将一项条款留待进一步谈判商定或由第三人确定，则这一事实并不妨碍合同的成立。</p> <p>(2) 考虑到当事人各方的意思，如果在具体情况下存在一种可选择的合理方法来确定此条款，则合同的存在不受此后发生的下列情况的影响：</p> <p>(a) 当事人各方未就该条款达成协议；或</p> <p>(b) 第三人未确定此条款。</p>
<p>Article 42 The party shall be liable for damage if it is under one of the following circumstances in concluding a contract and thus causing losses to the other party:</p> <p>(1) pretending to conclude a contract, and negotiating in bad faith;</p> <p>(2) deliberately concealing important facts relating to the conclusion of the contract or providing false information;</p> <p>(3) performing other acts which violate the principle of good faith.</p>	<p>Article 2.15 - Negotiations in Bad Faith</p> <p>(1) A party is free to negotiate and is not liable for failure to reach an agreement.</p> <p>(2) However, a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party.</p> <p>(3) It is bad faith, in particular, for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.</p>
<p>第四十二条 【缔约过失】当事人在订立合同过程中有下列情形之一，给对方造成损失的，应当承担损害赔偿责任：</p> <p>(一) 假借订立合同，恶意进行磋商；</p> <p>(二) 故意隐瞒与订立合同有关的重要事实或者提供虚假情况；</p> <p>(三) 有其他违背诚实信用原则的行为。</p>	<p>第 2.15 条 (恶意谈判)</p> <p>(1) 当事人可自由进行谈判，并对未达成协议不承担责任；</p> <p>(2) 但是，一方当事人如果恶意进行谈判或恶意终止谈判，则该方当事人应对因此给另一方当事人所造成的损失承担责任；</p> <p>(3) 恶意，特别是指一方当事人在无意与对方达成协议的情况下，开始或继续进行谈判。</p>
<p>Article 43 A trade secret the parties learn in concluding a contract shall not be disclosed or improperly used, no matter the contract is concluded or not. If the party discloses or improperly uses such</p>	<p>Article 2.16 - Duty of Confidentiality</p> <p>Where information is given as confidential by one party in the course of negotiations, the other party is</p>

<p><b>PRC Contract Law</b></p> <p><b>1999</b></p>	<p><b>UPICC</b></p> <p><b>1994</b></p>
<p>trade secret and thus causing loss to the other party, it shall be liable for damages.</p>	<p>under a duty not to disclose that information or to use it improperly for its own purposes, whether or not a contract is subsequently concluded. Where appropriate, the remedy for breach of that duty may include compensation based on the benefit received by the other party.</p>
<p>第四十三条 【保密义务】当事人在订立合同过程中知悉的商业秘密，无论合同是否成立，不得泄露或者不正当地使用。泄露或者不正当地使用该商业秘密给对方造成损失的，应当承担损害赔偿责任。</p>	<p>第 2.16 条 （保密义务）</p> <p>在谈判过程中，一方当事人以保密性质提供的信息，无论此后是否达成合同，另一方当事人有义务不予泄露，也不得为自己的目的不适当地使用这些信息。在适当的情况下，违反该义务的救济可以包括根据另一方当事人泄露该信息所获得之利益予以赔偿。</p>
	<p>Article 2.17 - Merger Clause</p> <p>A contract in writing which contains a clause indicating that the writing completely embodies the terms on which the parties have agreed cannot be contradicted or supplemented by evidence of prior statements or agreements. However, such statements or agreements may be used to interpret the writing.</p>
	<p>第 2.17 条 （合并条款）</p> <p>若一个书面合同中载有的一项条款表明该合同包含了各方当事人已达成一致的全部条款，则此前存在的任何陈述或协议不能被用作证据对抗或补充该合同。但是，这些陈述或协议可用于解释该书面合同。</p>
	<p>Article 2.18 - Written Modification Clauses</p> <p>A contract in writing which contains a clause requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has acted in reliance on that conduct.</p>
	<p>第 2.18 条 （特定形式修改）</p> <p>如果书面合同中载有的一项条款要求合同的任何修改或终止必须以特定形式做出，则该合同不得以其他形式修改或终止。但是，在一方当事人的行为使另一方当事人产生信赖并依此行事的限度内，则该</p>

<p align="center"><b>PRC Contract Law</b></p> <p align="center"><b>1999</b></p>	<p align="center"><b>UPICC</b></p> <p align="center"><b>1994</b></p>
	<p>一方当事人因其行为可被拒绝主张本条款。</p>
<p>Article 39 Where standard terms are adopted in concluding a contract, the party supplying the standard terms shall define the rights and obligations between the parties abiding by the principle of fairness, and shall inform the other party to note the exclusion or restriction of its liabilities in a reasonable way, and shall explain the standard terms upon request by the other party.</p> <p>Standard terms are clauses that are prepared in advance for general and repeated use by one party, and which are not negotiated with the other party when the contract is concluded.</p>	<p>Article 2.19 - Contracting Under Standard Terms</p> <p>(1) Where one party or both parties use standard terms in concluding a contract, the general rules of formation apply, subject to Articles 2.20 - 2.22.</p> <p>(2) Standard terms are provisions which are prepared in advance for general and repeated use by one party and which are actually used without negotiation with the other party.</p>
<p><b>第三十九条 【格式合同条款定义及使用人义务】</b></p> <p>采用格式条款订立合同的，提供格式条款的一方应当遵循公平原则确定当事人之间的权利和义务，并采取合理的方式提请对方注意免除或者限制其责任的条款，按照对方的要求，对该条款予以说明。</p> <p>格式条款是当事人为了重复使用而预先拟定，并在订立合同时未与对方协商的条款。</p>	<p><b>第 2.19 条（按标准条款订立合同）</b></p> <p>（1）一方或双方当事人使用标准条款订立合同，适用订立合同的一般规则，但应受本章第 2.1.20 条至第 2.1.22 条的约束。</p> <p>（2）标准条款是指一方为通常和重复使用的目的而预先准备的条款，并在实际使用时未与对方谈判。</p>
<p>Article 40</p> <p>When standard terms are under the circumstances stipulated in Articles 52 and 53 of this Law, or the party which supplies the standard terms exempts itself from its liabilities, increases the liabilities of the other party, and deprives the material rights of the other party, the terms shall be invalid.</p>	<p>Article 2.20 - Surprising Terms</p> <p>(1) No term contained in standard terms which is of such a character that the other party could not reasonably have expected it, is effective unless it has been expressly accepted by that party.</p> <p>(2) In determining whether a term is of such a character regard is to be had to its content, language and presentation.</p>
<p><b>第四十条 【格式合同条款的无效】</b> 格式条款具有本法第五十二条和第五十三条规定情形的，或者提供格式条款一方免除其责任、加重对方责任、排除对方主要权利的，该条款无效。</p>	<p><b>第 2.20 条（意外条款）</b></p> <p>（1）如果标准条款中含有另一方当事人不能合理预见性质的条款，则该条款无效，除非对方明示地表示接受；</p> <p>（2）在确定某一条款是否属于这种性质时，应考虑到该条款的内容、语言和表达方式。</p>



<p align="center"><b>PRC Contract Law</b></p> <p align="center"><b>1999</b></p>	<p align="center"><b>UPICC</b></p> <p align="center"><b>1994</b></p>
<p>Article 41 If a dispute over the understanding of the standard terms occurs, it shall be interpreted in accordance with common understanding. Where there are two or more kinds of interpretation, an interpretation unfavorable to the party supplying the standard terms shall prevail. Where the standard terms are inconsistent with non-standard terms, the latter shall prevail.</p>	<p>Article 2.21 - Conflict Between Standard Terms and Non-Standard Terms In case of conflict between a standard term which is not a standard term the latter prevails.</p>
<p>第四十一条 【格式合同的解释】</p> <p>对格式条款的理解发生争议的，应当按照通常理解予以解释。对格式条款有两种以上解释的，应当作出不利于提供格式条款一方的解释。格式条款和非格式条款不一致的，应当采用非格式条款。</p>	<p>第 2.21 条（标准条款与非标准条款的冲突）</p> <p>若标准条款与非标准条款发生冲突，以非标准条款为准。</p>
	<p>Article 2.22 - Battle of Forms Where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms and of any standard terms which are common in substance unless one party clearly indicates in advance, or later and without undue delay informs the other party, that it does not intend to be bound by such a contract.</p>
	<p>第 2.22 条（格式合同之争）</p> <p>在双方当事人均使用标准条款的情况下，如果双方对除标准条款以外的条款达成一致，则合同应根据已达成一致的条款以及在实体内容上相同的标准条款订立，除非一方当事人已事先明确表示或事后毫不迟延地通知另一方当事人其不愿受这种合同的约束。</p>

## APPENDIX 1C: THE CL1999 CONTRACT FORMATION RULES THAT DO NOT HAVE ANY EQUIVALENT IN EITHER THE CISG OR THE UPICC

<p style="text-align: center;"><b>PRC Contract Law 1999</b></p> <p style="text-align: center;"><b>English</b></p>	<p style="text-align: center;"><b>PRC Contract Law 1999</b></p> <p style="text-align: center;"><b>Chinese</b></p>
<p>Article 9</p> <p>In entering into a contract, the parties shall have appropriate capacities for civil rights and civil acts. A party may appoint an agent to enter into a contract on its behalf in accordance with the law.</p>	<p>第九条 【订立合同的能力】</p> <p>当事人订立合同，应当具有相应的民事权利能力和民事行为能力。</p> <p style="padding-left: 2em;">当事人依法可以委托代理人订立合同。</p>
<p>Article 12</p> <p>The contents of a contract are agreed upon by the parties, and generally include the following clauses:</p> <p>(1) titles or names and domiciles of the parties;</p> <p>(2) subject matter;</p> <p>(3) quantity;</p> <p>(4) quality;</p> <p>(5) price or remuneration;</p> <p>(6) time limit, place and method of performance;</p> <p>(7) liability for breach of contract; and</p> <p>(8) method to settle disputes.</p> <p>The parties may conclude a contract by reference to a model text of each kind of contract.</p>	<p>第十二条 【合同内容】</p> <p>合同的内容由当事人约定，一般包括以下条款：</p> <p style="padding-left: 2em;">（一）当事人的名称或者姓名和住所；</p> <p style="padding-left: 2em;">（二）标的；</p> <p style="padding-left: 2em;">（三）数量；</p> <p style="padding-left: 2em;">（四）质量；</p> <p style="padding-left: 2em;">（五）价款或者报酬；</p> <p style="padding-left: 2em;">（六）履行期限、地点和方式；</p> <p style="padding-left: 2em;">（七）违约责任；</p> <p style="padding-left: 2em;">（八）解决争议的方法。</p> <p style="padding-left: 2em;">当事人可以参照各类合同的示范文本订立合同。</p>
<p>Article 32</p> <p>Where the parties conclude a contract in written form, the contract is formed when it is signed or sealed by the parties.</p>	<p>第三十二条 【合同成立时间】</p> <p>当事人采用合同书形式订立合同的，自双方当事人签字或者盖章时合同成立。</p>
<p>Article 33</p> <p>Where the parties conclude the contract in the form of letters or electronic communication, etc., one party may request to sign a letter of confirmation before the conclusion of the contract. The contract is formed</p>	<p>第三十三条 【确认书与合同成立】</p> <p>当事人采用信件、数据电文等形式订立合同的，可以在合同成立之前要求签订确认书。签订确认书时合同成立。</p>

<p><b>PRC Contract Law 1999</b></p> <p><b>English</b></p>	<p><b>PRC Contract Law 1999</b></p> <p><b>Chinese</b></p>
<p>at the time when the letter of confirmation is signed.</p>	
<p>Article 34</p> <p>The place of effectiveness of an acceptance is the place of the conclusion of the contract.</p> <p>If the contract is concluded in the form of electronic communication, the main business place of the recipient is the place of conclusion. If the recipient does not have a main business place, its habitual residence is the place of conclusion. Where the parties agree otherwise, such agreement prevails.</p>	<p>第三十四条 【合同成立地点】</p> <p>承诺生效的地点为合同成立的地点。</p> <p>采用数据电文形式订立合同的，收件人的主营业地为合同成立的地点；没有主营业地的，其经常居住地为合同成立的地点。当事人另有约定的，按照其约定。</p>
<p>Article 35</p> <p>Where the parties conclude a contract in written form, the place where both parties sign or affix their seals on the contract is the place of conclusion.</p>	<p>第三十五条 【书面合同成立地点】</p> <p>当事人采用合同书形式订立合同的，双方当事人签字或者盖章的地点为合同成立的地点。</p>
<p>Article 36</p> <p>Where a contract is to be concluded in written form as required by relevant laws and administrative regulations or as agreed by the parties, and the parties failed to conclude the contract in written form, but one party has performed the principal obligation and the other party has accepted it, the contract is concluded.</p>	<p>第三十六条 【书面合同与合同成立】</p> <p>法律、行政法规规定或者当事人约定采用书面形式订立合同，当事人未采用书面形式但一方已经履行主要义务，对方接受的，该合同成立。</p>
<p>Article 37</p> <p>Where a contract is to be concluded in written form, if one party has performed its principal obligation and the other party has accepted it before signing or sealing of the contract, the contract is concluded.</p>	<p>第三十七条 【合同书与合同成立】</p> <p>采用合同书形式订立合同，在签字或者盖章之前，当事人一方已经履行主要义务，对方接受的，该合同成立。</p>
<p>Article 38</p> <p>Where the State has issued a mandatory plan or a State purchasing order based on necessity, the relevant legal persons and the other organizations shall conclude a contract between them in accordance with the rights and obligations as stipulated by the relevant laws and administrative regulations.</p>	<p>第三十八条 【依国家计划订立合同】</p> <p>国家根据需要下达指令性任务或者国家订货任务的，有关法人、其他组织之间应当依照有关法律、行政法规规定的权利和义务订立合同。</p>

## APPENDIX 2: THE CL1999 PROVISIONS THAT EXPLICITLY ALLOW DEROGATION

PRC Contract Law 1999 English	PRC Contract Law 1999 Chinese
Article 23  (1) if the offer is made in dialogues, the acceptance shall be made immediately, <i>except as otherwise agreed by the parties</i> ;	第二十三条 【承诺的期限】  (一) 要约以对话方式作出的，应当即时作出承诺， <i>但当事人另有约定的除外</i> ；
Article 34  The place of formation of the contract is the place of acceptance.  If the contract is concluded by data-telex, the main place of business of the recipient is the place of formation; if the recipient does not have a main place of business, its habitual residence is the place of formation. <i>Where the parties agree otherwise, their agreement applies.</i>	第三十四条 【合同成立地点】  承诺生效的地点为合同成立的地点。  采用数据电文形式订立合同的，收件人的主营业地为合同成立的地点；没有主营业地的，其经常居住地为合同成立的地点。 <i>当事人另有约定的，按照其约定。</i>
Article 133  The ownership of a subject matter is transferred upon delivery, <i>except as otherwise stipulated by law or agreed upon by the parties.</i>	第一百三十三条 【标的物所有权转移时间】标的物的所有权自标的物交付时起转移， <i>但法律另有规定或者当事人另有约定的除外。</i>
Article 137  In a sale of any subject matter which contains intellectual property such as computer software, etc., the intellectual property in the subject matter does not belong to the buyer, <i>except as otherwise provided by law or agreed upon by the parties.</i>	第一百三十七条 【知识产权归属】出卖具有知识产权的计算机软件等标的物的， <i>除法律另有规定或者当事人另有约定的以外</i> ，该标的物的知识产权不属于买受人。
Article 142  The risk of damage to or loss of a subject matter shall be borne by the seller prior to the delivery of the subject matter and by the buyer after delivery, <i>except as otherwise stipulated by law or agreed upon by the parties.</i>	第一百四十二条 【标的物的风险负担】标的物毁损、灭失的风险，在标的物交付之前由出卖人承担，交付之后由买受人承担， <i>但法律另有规定或者当事人另有约定的除外。</i>
Article 144  Where the seller sells a subject matter delivered to a carrier for carriage and is in transit, <i>unless otherwise agreed upon by the parties</i> , the risk of damage to or missing of the subject matter shall be borne by the	第一百四十四条 【在途标的物的风险承担】出卖人出卖交由承运人运输的在途标的物， <i>除当事人另有约定的以外</i> ，毁损、灭失的风险自合同成立时起由买受人承担。

<p>PRC Contract Law 1999</p> <p>English</p>	<p>PRC Contract Law 1999</p> <p>Chinese</p>
<p>buyer as of the time of establishment of the contract.</p>	
<p>Article 208</p> <p>Where the borrower prepays the loan, <i>unless otherwise agreed by the parties</i>, the interest shall be calculated based on the actual period of loan.</p>	<p>第二百零八条 【提前偿还借款的利息计算】借款人提前偿还借款的，<i>除当事人另有约定的以外</i>，应当按照实际借款的期间计算利息。</p>
<p>Article 220</p> <p>The lessor shall perform the obligations of maintenance and repair of the lease item, <i>except otherwise agreed by the parties</i>.</p>	<p>第二百二十条 【租赁物的维修】出租人应当履行租赁物的维修义务，<i>但当事人另有约定的除外</i>。</p>
<p>Article 225</p> <p>During the lease term, any benefit accrued from the possession or use of the lease item belongs to the lessee, <i>except otherwise agreed by the parties</i>.</p>	<p>第二百二十五条 【租赁物的收益】在租赁期间因占有、使用租赁物获得的收益，归承租人所有，<i>但当事人另有约定的除外</i>。</p>
<p>Article 243</p> <p><i>Unless otherwise agreed by the parties</i>, the rent under a financial leasing contract shall be determined based on the major portion of or full costs of purchasing the lease item and the lessor's reasonable profit.</p>	<p>第二百四十三条 【租金的确定】融资租赁合同的租金，<i>除当事人另有约定的以外</i>，应当根据购买租赁物的大部分或者全部成本以及出租人的合理利润确定。</p>
<p>Article 253</p> <p>The contractor shall use its own equipment, skills and labor to complete the main part of the work, <i>except as otherwise agreed upon by the parties</i>.</p>	<p>第二百五十三条 【承揽工作的完成】承揽人应当以自己的设备、技术和劳力，完成主要工作，<i>但当事人另有约定的除外</i>。</p>
<p>Article 264</p> <p>Where the ordering party fails to pay the remuneration or cost for the materials, etc. to the contractor, the contractor is entitled to lien upon the work results, <i>except as otherwise agreed upon by the parties</i>.</p>	<p>第二百六十四条 【承揽人的留置权】定作人未向承揽人支付报酬或者材料费等价款的，承揽人对完成的工作成果享有留置权，<i>但当事人另有约定的除外</i>。</p>
<p>Article 267</p> <p>Joint contractors are jointly and severally liable to the ordering party, <i>except as otherwise agreed upon by the parties</i>.</p>	<p>第二百六十七条 【共同承揽】共同承揽人对定作人承担连带责任，<i>但当事人另有约定的除外</i>。</p>
<p>Article 293</p> <p>A passenger transportation contract is established</p>	<p>第二百九十三条 【合同的成立】客运合同自承运人向旅客交付客票时成立，<i>但当事人另有约定</i></p>

<p>PRC Contract Law 1999</p> <p>English</p>	<p>PRC Contract Law 1999</p> <p>Chinese</p>
<p>upon the carrier's delivery of the passenger ticket to the passenger, <i>except as otherwise agreed upon by the parties</i> or there are other transaction practices.</p>	<p>或者另有交易习惯的除外。</p>
<p>Article 315</p> <p>Where the consignor or consignee fails to pay the freight, storage fees and other carriage expenses, the carrier is entitled to lien on the relevant carried cargoes, <i>except as otherwise agreed upon by the parties</i>.</p>	<p>第三百一十五条 【运送物的留置】 托运人或者收货人不支付运费、保管费以及其他运输费用的，承运人对相应的运输货物享有留置权，<i>但当事人另有约定的除外</i>。</p>
<p>Article 339</p> <p><i>Unless otherwise agreed upon by the parties</i>, the right to apply for patent on the invention or innovation resulting from a commissioned development belongs to the developer. Where the developer is granted a patent, the commissioning party may exploit such patent free of charge.</p>	<p>第三百三十九条 【技术成果的归属】 委托开发完成的发明创造，<i>除当事人另有约定的以外</i>，申请专利的权利属于研究开发人。研究开发人取得专利权的，委托人可以免费实施该专利。</p>
<p>Article 340</p> <p><i>Unless otherwise agreed upon by the parties</i>, the right to apply for patent on the invention or innovation resulting from a cooperative development belongs to the parties therein jointly. Where a party is to assign its joint patent application right, the other parties shall have the right to priority in acquiring such right under the same conditions.</p>	<p>第三百四十条 【合作开发技术成果的归属】 合作开发完成的发明创造，<i>除当事人另有约定的以外</i>，申请专利的权利属于合作开发的当事人共有。当事人一方转让其共有的专利申请权的，其他各方享有以同等条件优先受让的权利。</p>
<p>Article 353</p> <p>Where the exploitation of the patent or the use of the technical secret by the transferee in accordance with the contract infringes on the lawful interests of any other person, the liability shall be borne by the transferor, <i>except as otherwise agreed upon by the parties</i>.</p>	<p>第三百五十三条 【技术合同让与人侵权责任】 受让人按照约定实施专利、使用技术秘密侵害他人合法权益的，由让与人承担责任，<i>但当事人另有约定的除外</i>。</p>
<p>Article 359</p> <p>Where the client under a technical consulting contract fails to provide the necessary materials and data in accordance with the contract, thereby impairing the progress and quality of the work, or fails to accept or delays in accepting the work result, it may not claim refund of the remuneration paid, and shall pay any</p>	<p>第三百五十九条 【委托人与受托人的违约责任】 技术咨询合同的委托人未按照约定提供必要的资料和数据，影响工作进度和质量，不接受或者逾期接受工作成果的，支付的报酬不得追回，未支付的报酬应当支付。</p> <p>技术咨询合同的受托人未按期提出咨询报告或者提出的咨询报告不符合约定的，应当承担减</p>

<p>PRC Contract Law 1999</p> <p>English</p>	<p>PRC Contract Law 1999</p> <p>Chinese</p>
<p>unpaid remuneration.</p> <p>Where the consultant under the technical consulting contract fails to provide the consulting report within the agreed period or the consulting report submitted does not comply with the contract, it shall be liable for the breach of contract by way of reducing or foregoing the remuneration, etc.</p> <p>The client under a technical consulting contract shall compensate the loss resulting from any decision made by it based on the complying consulting report and opinion provided by the consultant, <i>except as otherwise agreed upon by the parties.</i></p>	<p>收或者免收报酬等违约责任。</p> <p>技术咨询合同的委托人按照受托人符合约定要求的咨询报告和意见作出决策所造成的损失，由委托人承担，<i>但当事人另有约定的除外。</i></p>
<p>Article 363</p> <p>In the course of performing a technical consulting contract or a technical service contract, any new technology developed by the consultant or service provider utilizing the technical materials and working conditions provided by the client belongs to the consultant or service provider. Any new technology developed by the client utilizing the work results provided by the consultant or service provider belongs to the client. However, <i>if the parties agree otherwise in the contract, such provisions shall prevail.</i></p>	<p>第三百六十三条 【新创技术成果的归属和分享】在技术咨询合同、技术服务合同履行过程中，受托人利用委托人提供的技术资料和工作条件完成的新的技术成果，属于受托人。委托人利用受托人的工作成果完成的新的技术成果，属于委托人。<i>当事人另有约定的，按照其约定。</i></p>
<p>Article 367</p> <p>A storage contract is established upon delivery of the deposit, <i>except as otherwise agreed upon by the parties.</i></p>	<p>第三百六十七条 【保管合同的成立】保管合同自保管物交付时成立，<i>但当事人另有约定的除外。</i></p>
<p>Article 371</p> <p>The depository may not delegate storage of the deposit to a third party, <i>except as otherwise agreed upon by the parties.</i></p>	<p>第三百七十一条 【第三人代为保管】保管人不得将保管物转交第三人保管，<i>但当事人另有约定的除外。</i></p>
<p>Article 372</p> <p>The depository may not use, or allow the use of, the deposit, <i>except as otherwise agreed upon by the parties.</i></p>	<p>第三百七十二条 【保管人不得使用保管物的义务】保管人不得使用或者许可第三人使用保管物，<i>但当事人另有约定的除外。</i></p>
<p>Article 380</p> <p>Where the depositor fails to pay the storage fee and other expenses, the depository is entitled to lien on</p>	<p>第三百八十条 【保管人的留置权】寄存人未按照约定支付保管费以及其他费用的，保管人对保</p>

<p>PRC Contract Law 1999</p> <p>English</p>	<p>PRC Contract Law 1999</p> <p>Chinese</p>
<p>the deposit, <i>unless as otherwise agreed upon by the parties.</i></p>	<p>管物享有留置权，但 <i>当事人另有约定的除外。</i></p>
<p>Article 405</p> <p>Upon completion of the commissioned affair by the agent, the principal shall pay the remuneration thereto. Where the agency appointment contract is terminated or the commissioned affair is not capable of being completed due to any reason not attributable to the agent, the principal shall pay to the agent an appropriate amount of remuneration. <i>If the parties agree otherwise, such agreement shall prevail.</i></p>	<p>第四百零五条 【委托人支付报酬的义务】受托人完成委托事务的，委托人应当向其支付报酬。因不可归责于受托人的事由，委托合同解除或者委托事务不能完成的，委托人应当向受托人支付相应的报酬。 <i>当事人另有约定的，按照其约定。</i></p>
<p>Article 411</p> <p>A commission contract is discharged when either the principal or the agent is deceased or incapacitated or enters into bankruptcy, <i>except where the parties agree otherwise</i>, or where discharge is inappropriate in light of the nature of the commissioned affair.</p>	<p>第四百一十一条 【委托合同的终止】委托人或者受托人死亡、丧失民事行为能力或者破产的，委托合同终止，但 <i>当事人另有约定或者根据委托事务的性质不宜终止的除外。</i></p>
<p>Article 415</p> <p>The expenses incurred by the commission agent in the course of handling the commissioned affair shall be borne by the commission agent, <i>except as otherwise agreed upon by the parties.</i></p>	<p>第四百一十五条 【处理委托事务的费用承担】行纪人处理委托事务支出的费用，由行纪人负担，但 <i>当事人另有约定的除外。</i></p>
<p>Article 422</p> <p>Where the commission agent has completed the entrusted matter or has partially completed the entrusted matter, the principal shall pay the appropriate remuneration thereto. Where the principal fails to pay the remuneration within the prescribed period, the commission agent is entitled to lien on the entrusted item, <i>except as otherwise agreed upon by the parties.</i></p>	<p>第四百二十二条 【行纪人的报酬请求权及留置权】行纪人完成或者部分完成委托事务的，委托人应当向其支付相应的报酬。委托人逾期不支付报酬的，行纪人对委托物享有留置权，但 <i>当事人另有约定的除外。</i></p>



## BIBLIOGRAPHY

**ANDERSEN**, Camilla Baasch

2005. The Uniform International Sales Law and the Global Jurisconsultorium, 24 Journal of Law and Commerce (2005) 159-179

**ANDERSEN**, Camilla Baasch

2007. Uniform Application of the International Sales Law: Understanding Uniformity, the Global Jurisconsultorium and Examination and Notification Provisions of the CISG, Kluwer Law International (2007) 242 p.

**ANDERSEN**, Camilla B.

2008. General Principles of the CISG - Generally Impenetrable?, in: Camilla B. Andersen / Ulrich G. Schroeter eds., Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday, Wildy, Simmonds & Hill Publishing (March 2008) 13-33

**ANDERSEN**, Camilla B. / **SCHROETER**, Ulrich G. eds.

2008. Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday, Wildy, Simmonds & Hill Publishing (March 2008) 654 p. [contributions by: N. Orkun Akseli; Camilla B. Andersen; William M. Barron; Gary, F. Bell; Eric E. Bergsten; Michael Joachim Bonell; Michael Bridge; Siegfried Eiselen; Franco Ferrari; Harry M. Flechtner;

René Franz Henschel; Ruth M. Janal; Christopher Kee; Bertram Keller; Robert Koch; Joseph Lookofsky; Ulrich Magnus; Simon Manner; Francesco G. Mazzotta; John P. McMahon; Marie Stefanini Newman; Elisabeth Opie; Pilar Perales Viscasillas; Jan Ramberg; Vikki M. Rogers; Peter Schlechtriem; Ulrich G. Schroeter; Ingeborg Schwenzer; Hans Smit; Hiroo Sono; Anna Veneziano; Andrea Vincze; Jeffrey Waincymer; Fan Yang; Bruno Zeller; Alberto L. Zuppi]

**BAILEY, James E.**

*1999. Facing the Truth: Seeing the Convention on Contracts for the International Sale of Goods as an Obstacle to a Uniform Law on International Sales, 32 Cornell Int'l L.J. 273 (1999)*

**BELL, Gary**

*2005. Why Singapore should withdraw its reservation to the United Nations Convention on Contracts for the International Sale of Goods (CISG), Singapore Year Book of International Law, (2005) 9 SYBIL 55 – 73*

**BERGER, Klaus Peter**

*2000. The relationship between the UNIDROIT Principles of International Commercial Contracts and the new lex mercatoria, in: International Uniform Law Conventions, Lex Mercatoria and UNIDROIT Principles. Symposium held at Verona University (Italy), Faculty of Law, 4-6 November 1999, Uniform Law Review (2000) 152-170*

**BERGER, Klaus Peter**

*2000. The new law merchant and the global market place: A 21st century view of transnational law, 3 International Arbitration Law Review, Issue 4 (2000) 91-102*

**BERGER**, Klaus Peter

2001. The New Law Merchant and the Global Market Place - A 21st Century View of Transnational Law, in: Klaus Peter Berger ed., The Practice of Transnational Law, Kluwer Law International (2001) 1-22 [The 'Milestones' of the Lex Mercatoria Doctrine (Malynes and Blackstone: From the Ancient Law Merchant to the Codification Wave, Zitelmann: The Vision of a 'World Law', Goldman, Fouchard and Kahn: The Rebirth of the Lex Mercatoria by the French School, Clive Schmitthoff: The Power of International Arbitrators and International Formulating Agencies, UNIDROIT: The Report on the 'Progressive Codification of the Law of International Trade', Dezalay, Garth and Teubner: The Sociological Approach, UNIDROIT, Lando-Commission, CENTRAL: The New Phenomenon of the 'Creeping Codification' of Transnational Law), The Present State of the Doctrine of Transnational Law (The Evolution of a 'Global Market Place' and a 'Global Civil Society', The Decreasing Significance of State Sovereignty in the Traditional Theory of Legal Sources, The Modern Law Merchant in the Global Market Place)]

**BERNHARDT**, Kathryn / **HUANG**, Philip C.C

1994. Civil Law in Qing and Republican China, Stanford: Stanford University Press (1994)

**BERNSTEIN**, Herbert / **LOOKOFSKY**, Joseph

2003. Understanding the CISG in Europe, Kluwer, 2d ed. (2003) 266 p.

**BIANCA**, Cesare Massimo / **BONELL**, Michael Joachim (eds.)

1987. Bianca-Bonell Commentary on the International Sales Law, Giuffrè: Milan (1987) 886 p.  
Commentaries by J. Barrera Graf , H.T. Bennett , C.M. Bianca , M.J. Bonell , G. Eörsi , M. Evans , E.A.

Farnsworth , W. Khoo , V. Knapp , O. Lando , D. Maskow , B. Nicholas , J. Rajska , K. Sono , D. Tallon , M. Will.

**BODDE**, Derk / **MORRIS**, Clarence

1967. Law in Imperial China, Cambridge, Mass: Harvard University Press (1967), 3-51

**BOELE-WOELKI**, Katherina

2001. Terms of Co-Existence: The CISG and the UNIDROIT Principles, in: Sarcevic / Volken ed., The International Sale of Goods Revisited, Kluwer (April 2001) 203-240; see also Terms of Co-existence: The CISG and the UNIDROIT Principles, in: F. Willem Grosheide / Ewoud Hondius ed., International Contract Law: Articles on Various Aspects of Transnational Contract Law, Molengrafica Series 2003, Intersentia (2004) 275-308

**BONE**, Sheila / **OSBORN**, P.G.

2001. Osborn's Concise Law Dictionary, Sweet & Maxwell; 9Rev Ed edition (30 Aug 2001)

**BONELL**, Michael Joachim

1987. Introduction to the Convention, in: Bianca-Bonell Commentary on the International Sales Law, Giuffrè: Milan (1987) 1-20

**BONELL**, Michael Joachim

1994. An International Restatement of Contract Law - The UNIDROIT Principles of International Commercial Contracts, Irvington, NY: Transnational Juris (1994) 394 p.

**BONELL, Michael Joachim**

1994. International Uniform Sales Law and the Uniform Commercial Code: Two Models Compared, in: Drobnig, Ulrich/Rehbinder eds., Rechtsrealismus, multikulturelle Gesellschaft und Handelsrecht, Berlin: Duncker & Humblot (1994) 221-241

**BONELL, Michael Joachim**

1996. The UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law: Similar Rules for the Same Purpose?, Uniform Law Review (1996) 229-246

**BONELL, Michael Joachim**

1996. The UNIDROIT Principles of International Commercial Contracts and the Vienna Sales Convention - Alternatives or Complementary Instruments?, Revue de droit uniforme/Uniform Law Review (1996) 26-39

**BONELL, Michael Joachim**

1997. The UNIDROIT Principles in practice: the experience of the first two years, Uniform Law Review (1997) 34-45

**BONELL, Michael Joachim ed.**

1999. A New Approach to International Commercial Contracts: The UNIDROIT Principles of International Commercial Contracts [General Report: Bonell; National Reports: Australia (Moens/Cohn/Peacock), Belgium (Fontaine), China (Danhan), Denmark (Lookofsky), France (Fauvarque-Cosson), Germany (Basedow), Iran (Izadi), Israel (Rabello), Italy (Alpa), Japan (Yamashita), Mexico (Veytia), Netherlands (De

Ly), Quebec (Sabourin), Romania (Cosmovici/Munteanu), Sweden (Hultmark), Switzerland (Werro/Belser), United Kingdom (Furmston), United States (Rosett/Gordon), Vietnam (Le Net)]. XVth International Congress of Comparative Law, Bristol, 26 July-1 August 1998, Kluwer Law International (1999) 444 p.

**BONELL**, Michael Joachim, translated by **LIANG** Huixing

1999. Guoji shangshi hetong tongze yu guoji huowu xiaoshou hetong gongyue - shi liangzhe ze yi huo huxiang buchong [The UNIDROIT Principles of International Commercial Contracts and CISG: Alternatives or Complementary Instruments? - *in Chinese*], in: Waiguofa yipping [Foreign law Translated and Commented], Beijing (1999.2), 12-16

**BONELL**, Michael Joachim

2004. The new edition of the Principles of International Contracts adopted by the International Institute for the Unification of Private Law, Uniform Law Review (2004) 5-40

**BONELL**, Michael Joachim

2005. Soft law and party autonomy: The case of the UNIDROIT Principles, in: Brendan Brown Lecture Series: UNIDROIT Symposium, 51 Loyola Law Review (Summer 2005) 229-252

**BONELL**, Michael Joachim ed.

2005. An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts, 3d ed., Transnational Publishers (2005) 650 p.

**BONELL**, Michael Joachim

2006. The UNIDROIT Principles and CISG: Sources of Inspiration for English Courts?, *Uniform Law Review* (2006/2) 305-318

**BONELL**, Michael Joachim

2006 - 2007. The UNIDROIT Principles a Decade After Their First Appearance: What Have They Achieved and What Are Their Prospects for the Future?, in: *The UNIDROIT Principles 2004 - Their Impact on Contractual Practice, Jurisprudence and Codification*, ISDC Colloquium, 8/9 June 2006, Schulthess: Zürich (2007) 259-265

**BRIDGE**, Michael G.

1984. Does Anglo-Canadian Law Need a Doctrine of Good Faith?, 9 *Canadian Business Law Journal* (1984) 385 et seq.

**BRIDGE**, Michael G.

1994. Guide to Practical Applications of the United Nations Convention on Contracts for the International Sale of Goods, *Lloyd's Maritime & Commercial Law Quarterly* (1994) 297-298

**BRIDGE**, Michael G.

1995/1997. Expectation Damage and Uncertain Future Losses (Merton College, Oxford: September 1993), in: Beatson/Friedmann eds., *Good Faith and Fault in Contract Law*, Oxford: Clarendon (1995/1997) 427-469 [CISG 437 n.40]

**BRIDGE**, Michael G.

1997. The Bifocal World of International Sales: Vienna and Non-Vienna, in: Making Commercial Law- Essays in Honour of Roy Goode, R. Cranston ed., Oxford (1997) 227-296

**BRIDGE**, Michael G.

1997. The Vienna Sales Convention and English Law: Curing defective performance by the seller, in: Fiskrift til O. Lando: den 2 September 1997, København: Gad Jura (1997) 83-108

**BRIDGE**, Michael G.

2001. The UK Sale of Goods Act, the CISG and the UNIDROIT Principles, in: Sarcevic / Volken ed., The International Sale of Goods Revisited, Kluwer (April 2001) 115-225

**BRIDGE**, Michael G.

2003. Uniformity and diversity in the law of international sales, 15 Pace International Law Review (Spring 2003) 55-89

**BRIDGE**, Michael G.

2004. A commentary on Articles 1-13 and 78, in: Franco Ferrari / Harry Flechtner / Ronald Brand eds., The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention [Papers of the Pittsburgh Conference Organized by the Center for International Legal Education (CILE)], Sellier, European Law Publishers GmbH: München / Sweet & Maxwell: London (2004) 235-258

**BRIDGE**, Michael G.



2005. Uniform and Harmonized Sales Law: Choice of Law Issues, in: James J. Fawcett, Jonathan M. Harris & Michael Bridge, International Sale of Goods in the Conflict of Laws, Oxford University Press (2005) 908-988

**BRIDGE**, Michael G.

2005 - 2006. Issues Arising Under Articles 64, 72 and 73 of the United Nations Convention on Contracts for the International Sale of Goods: Avoidance, Suspension and Anticipatory Breach, at: Conference Celebrating the 25th Anniversary of United Nations Convention on Contracts for the International Sale of Goods sponsored by UNCITRAL and the Vienna International Arbitration Centre (Vienna: 15-18 March 2005), 25 Journal of Law and Commerce, Issue No. 1 (Fall 2005 / Spring 2006) 405-421

**BRIDGE**, Michael G.

2007. Choice of Law and the CISG: Opting In and Opting Out, in: Flechtner / Brand / Walter ed., Drafting Contracts Under the CISG, Oxford University Press (November 2007) 65-102

**BRIDGE**, Michael G.

2007. The International Sale of Goods: Law and Practice, Oxford University Press, 2d ed. (2007) 770 p.  
[See Chapter 11 "The CISG: General Issues" and Chapter 12, "The CISG and English Law Compared"]

**BRIDGE**, Michael G.

2007. A Law for International Sales, 37 Hong Kong Law Journal (2007) 17-40

**BRIDGE**, Michael G.

2009. Reviews: Franco Ferrari ed., "The CISG and its Impact on National Legal Systems" and Andre Janssen & Olaf Meyer eds., "CISG Methodology", 72 Modern Law Review (5/2009) 867-873

**CASHIN RITAINE**, Eleanor / **LEIN**, Eva eds.

2007. The UNIDROIT Principles 2004. Their Impact on Contractual Practice, Jurisprudence and Codification, Reports of the ISCD Colloquium, 8/9 June 2006, Zurich (2007)

**CHANDRASENAN**, Anukarshan

2007. UNIDROIT Principles to Interpret and Supplement the CISG: An Analysis of the Gap-Filling Role of the UNIDROIT Principles, 11 Vindobona Journal of International Commercial Law and Arbitration (2007/1) 65-80

**CHANG**, Hanchu

1973. A History of the Modern Chinese Legal System (Zhongguo Jindai Fazhishi), Taipei: The Commercial Press (1973), Chapter 7

**CHEN**, Jianfu

2008. Chinese law: context and transformation, Leiden; Boston: Martinus Nijhoff Publishers, (2008)

**CHENG**, Chung-ying

1991. New Dimensions of Confucian and Neo-Confucian Philosophy, Albany, State University of New York Press (1991)

**CISG-ADVISORY COUNCIL: Opinion no. 1**

2003. CISG-AC Opinion no. 1, Electronic Communications under CISG, 15 August 2003. Rapporteur: Professor Christina Ramberg, Gothenburg, Sweden. Opinion unanimously adopted by the CISG-AC: Peter Schlechtriem (*Chair*); Eric E. Bergsten, Michael Joachim Bonell, Alejandro M. Garro, Roy M. Goode, Sergei N. Lebedev, Pilar Perales Viscasillas, Jan Ramberg, Ingeborg Schwenzer, Hiroo Sono, Claude Witz (*Members*); Loukas A. Mistelis (*Secretary*).

**CISG-ADVISORY COUNCIL: Opinion no. 6**

2006. Calculation of Damages under CISG Article 74, Spring 2006. Rapporteur: Professor John Y. Gotanda. Opinion unanimously adopted by the CISG-AC: Jan Ramberg (*Chair*), Eric E. Bergsten, Michael Joachim Bonell, Alejandro M. Garro, Roy M. Goode, John Y. Gotanda, Sergei N. Lebedev, Pilar Perales Viscasillas, Peter Schlechtriem, Ingeborg Schwenzer, Hiroo Sono, Claude Witz (*Members*); Loukas A. Mistelis (*Secretary*)

**CISG-ADVISORY COUNCIL: Opinion no. 8**

2008. Calculation of Damages under CISG Articles 75 and 76 (15 November 2008). Rapporteur: Professor John Y. Gotanda. Opinion unanimously adopted by the CISG-AC: Eric E. Bergsten (*Chair*); Michael Joachim Bonell, Michael G. Bridge, Alejandro M. Garro, Roy M. Goode, John Y. Gotanda, Sergei N. Lebedev, Pilar Perales Viscasillas, Jan Ramberg, Ingeborg Schwenzer, Hiroo Sono, Claude Witz (*Members*); Sieg Eiselen (*Secretary*)

**CISG-ADVISORY COUNCIL: Opinion no. 9**

2008. Consequences of Avoidance of the Contract (15 November 2008). Rapporteur: Professor Michael G. Bridge. Opinion unanimously adopted by the CISG-AC: Eric E. Bergsten (*Chair*); Michael Joachim

Bonell, Michael G. Bridge, Alejandro M. Garro, Roy M. Goode, John Y. Gotanda, Sergei N. Lebedev, Pilar Perales Viscasillas, Jan Ramberg, Ingeborg Schwenzer, Hiroo Sono, Claude Witz (*Members*); Sieg Eiselen (*Secretary*)

**CLARKE**, Donald C.

2003. Puzzling Observations in Chinese Law: When Is a Riddle Just a Mistake? in Hsu (ed.), *Understanding China's Legal System* (NYU Press, 2003)

**COOK**, V. Susanne

1997. The U.N. Convention on Contracts for the International Sale of Goods: A Mandate to Abandon Legal Ethnocentricity, 16 *Journal of Law & Commerce* (1997) 257-263 [includes a review of the U.S. Circuit Court ruling in *Delchi v. Rotorex* 6 December 1995]

**de Cruz**, Peter

1993. *A Modern Approach to Comparative Law*, Deventer: Kluwer, (1993)

**CURRAN**, Vivian Grosswald

2007. A Comparative Perspective on the CISG, in: Flechtner / Brand / Walter ed., *Drafting Contracts Under the CISG*, Oxford University Press (November 2007) 49-64

**DASSER**, Felix J.

2001. *Lex Mercatoria - Critical Comments on a Tricky Topic*, in: Appelbaum / Feltstiner / Gessner ed., *Rules and Networks: The Legal Culture of Global Business Transactions*, Hart Publishing (2001) 189-200

**DE LY, Filip J.M.**

1998. Lex Mercatoria and Unification of Law in the European Union, in: Hartkamp et al eds., Towards a European Civil Code, 2d ed. (1998) 45 et seq.

**DE LY, Filip J.M.**

1998. Uniform Commercial Law and International Self-Regulation, in Franco Ferrari ed., The Unification of International Commercial Law, Baden-Baden: Nomos (1998)

**DE LY, Filip J.M.**

1999. National Report: Netherlands, in: A New Approach to International Commercial Contracts: The UNIDROIT Principles of International Commercial Contracts, XVth International Congress of Comparative Law, Bristol, 26 July-1 August 1998, Kluwer Law International (1999) 203-235 [The UNIDROIT Principles in The Netherlands: general perspective; Teaching purposes; In scholarly writings; In contract negotiation and drafting; In Dutch judicial proceedings; In international commercial arbitration]

**DE LY, Filip J.M.**

2005. Sources of International Sales Law: An Eclectic Model, presentation at UNCITRAL - SIAC Seminar on Celebrating Success: 25 Years United Nations Convention on Contracts for the International Sale of Goods, Singapore (22 September 2005) 8 p.

**DIEDRICH, Frank**

1996. Maintaining Uniformity in International Uniform Law via Autonomous Interpretation: Software Contracts and the CISG, 8 Pace International Law Review (1996) 303-338

**DiMATTEO, Larry A.**

1997. The Counterpoise of Contracts: The Reasonable Person Standard and the Subjectivity of Judgment, South Carolina Law Review (Winter 1997) 293-355

**DiMATTEO, Larry A.**

1997. The CISG and the Presumption of Enforceability: Unintended Contractual Liability in International Business Dealings, 22 Yale Journal of International Law (1997) 111-170

**DiMATTEO, Larry A.**

1998. Resolving international contract disputes: the CISG covers many international trade conflicts, 53:4 Disp. Res. J. (1998) 75-79 = Guide to the International Sale of Goods Convention, Chesterland, Ohio: Business Laws (November 1999) [44 Supp. 12] 106.001-106.006

**DiMATTEO, Larry A.**

2000. The Law of International Contracting, Kluwer Law International (2000) 578 p [1. Introduction to international contracting (1-8); 2. Principles of contract drafting (9-33); 3. Common international contract clauses (35-70); 4. The documentary transaction 71-127); 5. National laws affecting international sales (129-162); 6. International sales contract 163-202); 7. The CISG (205-251); 8. General principles of service contracting (253-293); 9. Law of intellectual property transfer (295-350); 10. Joint venturing & franchising contracts (351-376); 11. Electronic contracting (377-405)]

**DiMATTEO, Larry A. / DHOOGHE, Lucien / GREENE, Stephanie / MAURER, Virginia / PAGNATTARO, Marisa**

2004. The Interpretive Turn in International Sales Law: An Analysis of Fifteen Years of CISG Jurisprudence, 24 Northwestern Journal of International Law and Business (Winter 2004) 299-440

**DIMATTEO**, Larry A. / **DHOOGHE**, Lucien / **GREENE**, Stephanie / **MAURER**, Virginia / **PAGNATTARO**, Marisa

2005. International Sales Law: A Critical Analysis of CISG Jurisprudence, Cambridge University Press (2005)

**DING**, Ding

1999. China and CISG, in: Michael R. Will ed., CISG and China: Theory and Practice, Faculté de droit, Université de Genève (1999) 25-37

**EISELEN**, Siegfried

1996. Adoption of the Vienna Convention for the International Sale of Goods (The CISG) in South Africa, 116 South African Law Journal (1999) 323-370

**EISELEN**, Siegfried

1999. Electronic Commerce and the UN Convention on Contracts for the International Sale of Goods (CISG) 1980, 6 EDI Law Review: legal aspects of paperless communication (1999) 21-46

**EISELEN**, Siegfried

2002. E-Commerce and the CISG: Formation, Formalities and Validity, 6 Vindobona Journal of International Commercial Law & Arbitration (2002) 305-318

**EISELEN, Siegfried**

2002. Modification or termination of contract: Remarks on the manner in which the UNIDROIT Principles of International Commercial Contracts may be used to interpret or supplement Article 29 CISG

**EISELEN, Siegfried**

2004. Remarks on the manner in which the UNIDROIT Principles of International Commercial Contracts may be used to interpret or supplement Article 78 CISG (September 2004)

**EISELEN, Siegfried**

2005. Unresolved damages issues of the CISG: A comparative analysis, 38 Comparative and International Law Journal of Southern Africa (2005/1) 32-46

**EISELEN, Siegfried**

2006. The battle of forms: A comparative analysis, 39 Comparative and International Law Journal of South Africa (2/2006) 214-240

**EISELEN, Siegfried**

2006. Modification or termination of contract and formalities: Remarks on the manner in which the UNIDROIT Principles of International Commercial Contracts may be used to interpret or supplement Article 29 of the CISG, in: John Felemegas ed., An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law, Cambridge University Press (2006) 163-166



**EISELEN, Siegfried**

2006. Interest on sums in arrears: Remarks on the manner in which the UNIDROIT Principles of International Commercial Contracts may be used to interpret or supplement Article 78 of the CISG, in: John Felemegas ed., An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law, Cambridge University Press (2006) 231-236

**EISELEN, Siegfried**

2007. Adopting the Vienna Sales Convention: Reflections Eight Years down the Line, 19 SA Mercantile Law Journal (2007) 14-24

**ELVIN, Mark**

1973. The Pattern of the Chinese Past, Stanford: Stanford University Press (1973)

**ENDERLEIN, Fritz**

1994. The UNIDROIT Principles as a Means for Interpreting International Uniform Law, paper presented at 25th IBA Biennial Conference, Melbourne (9-14 October 1994)

**ESCARRA, Jean**

1961. Chinese Law: Conception and Evolution, Legislative and Judicial Institutions, Science and Teaching, translated from a 1936 French edition by Gertrude R. Browne, Seattle: University of Washington (1961)

**FARNSWORTH, E. Allan**

1984. The Vienna Convention: History and Scope, 18 International Lawyer (1984) 17-20

**FARNSWORTH, E. Allan**

1987. Comments on Article 8 CISG [Interpretation of Contract], in: Bianca-Bonell Commentary on the International Sales Law, Giuffrè: Milan (1987) 95-102

**FARNSWORTH, E. Allan**

1987. Precontractual Liability and Preliminary Agreements: Fair Dealing and Failed Negotiations, 87 Columbia Law Review (1987) 217-294

**FARNSWORTH, E. Allan**

1988. Uniform Law and Its Impact on Business Circles - General Report, in: UNIDROIT ed., International Uniform Law in Practice/Le droit uniforme international dans la pratique [Acts and Proceedings of the 3rd Congress on Private Law held by the International Institute for the Unification of Private Law (Rome 7-10 September 1987)], Oceana: New York (1988) 547-552

**FARNSWORTH, E. Allan**

1990. Developments in Contract Law during the 1980's: The Top 10, 41 Case Western Reserve Law Review (1990) 203-230 [227-230]

**FARNSWORTH, E. Allan**

2002. The Role of the UNIDROIT Principles in International Commercial Application: A US perspective on their aims and application, in: UNIDROIT Principles of International Commercial Contracts: Reflections

on their use in international arbitration, ICC International Court of Arbitration Bulletin, Special Supplement (2002) 21-28

**FARNSWORTH, E. Allan**

2002. The interpretation of international contracts and the use of preambles, *Revue de droit des affaires internationales* / *International business law journal* (2002) No. 3-4, 271-279 [Barring use of extrinsic evidence to add or modify; Entire agreement clauses and N-O-M clauses / Barring use of extrinsic evidence to interpret; Plain meaning rules]

**FARNSWORTH, E. Allan**

2003. Modernization and Harmonization of Contract Law: An American Perspective, *Uniform Law Review*, vol. VIII, no. 1/2 (2003) 97-106

**FAZIO, Silvia**

2007. *The Harmonization of International Commercial Law*, Kluwer Law International (2007) 269 p.

**FERRARI, Franco**

1994. Uniform Interpretation of the 1980 Uniform Sales Law in: 24 *Georgia Journal of International and Comparative Law* (1994) 183-228

**FERRARI, Franco**

1995. *The Sphere of Application of the Vienna Sales Convention* (Kluwer 1995) 110 p.

**FERRARI, Franco**

1995. Specific Topics of the CISG in the Light of Doctrinal Writings and Judicial Applications [presentation to the Dutch Supreme Court (15 December 1995) on Sphere of Application, Notice of Non-Conformity, and Interest Provisions of the CISG - *in English*], in: 10 Preadvizen Uitgerracht Voor De Vereniging Voor Burgerlijk Recht 1 ff. (1995) 81-176; in: 15 Journal of Law and Commerce (1995) 1-126

**FERRARI, Franco**

1998. Applicability and Applications of the Vienna Sales Convention (CISG), 4 International Legal Forum (1998) 137-290

**FERRARI, Franco**

1998. CISG Case Law: A New Challenge for Interpreters?, 17 Journal of Law and Commerce (1998) 245-261

**FERRARI, Franco**

2004. CISG Articles 1-3 and 78. The Draft UNCITRAL Digest on the United Nations Convention on Contracts for the International Sale of Goods, in: Franco Ferrari / Harry Flechtner / Ronald Brand eds., The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention [Papers of the Pittsburgh Conference Organized by the Center for International Legal Education (CILE)], Sellier, European Law Publishers GmbH: München / Sweet & Maxwell: London (2004) 501-579 and 810-817

**FERRARI, Franco**

2004. The CISG's sphere of application: Articles 1-3 and 10, in: Franco Ferrari / Harry Flechtner / Ronald Brand eds., *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention* [Papers of the Pittsburgh Conference Organized by the Center for International Legal Education (CILE)], Sellier, European Law Publishers GmbH: München / Sweet & Maxwell: London (2004) 21-95

**FERRARI, Franco**

2004. Scope of Application: Articles 4-5, in: Franco Ferrari / Harry Flechtner / Ronald Brand eds., *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention* [Papers of the Pittsburgh Conference Organized by the Center for International Legal Education (CILE)], Sellier, European Law Publishers GmbH: München / Sweet & Maxwell: London (2004) 96-113

**FERRARI, Franco**

2004. CISG rules on exclusion and derogation: Article 6, in: Franco Ferrari / Harry Flechtner / Ronald Brand eds., *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention* [Papers of the Pittsburgh Conference Organized by the Center for International Legal Education (CILE)], Sellier, European Law Publishers GmbH: München / Sweet & Maxwell: London (2004) 114-137

**FERRARI, Franco**

2004. Interpretation of the Convention and gap-filling: Article 7, in: Franco Ferrari / Harry Flechtner / Ronald Brand eds., *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention* [Papers of the Pittsburgh Conference Organized by the Center for International

Legal Education (CILE)], Sellier, European Law Publishers GmbH: München / Sweet & Maxwell: London (2004) 138-171

**FERRARI, Franco**

2004. Interpretation of statements: Article 8, in: Franco Ferrari / Harry Flechtner / Ronald Brand eds., The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention [Papers of the Pittsburgh Conference Organized by the Center for International Legal Education (CILE)], Sellier, European Law Publishers GmbH: München / Sweet & Maxwell: London (2004) 172-190

**FERRARI, Franco**

2004. Trade usage and practices established between the parties: Article 9, in: Franco Ferrari / Harry Flechtner / Ronald Brand eds., The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention [Papers of the Pittsburgh Conference Organized by the Center for International Legal Education (CILE)], Sellier, European Law Publishers GmbH: München / Sweet & Maxwell: London (2004) 191-205

**FERRARI, Franco**

2004. Writing requirements: Articles 11-13, in: Franco Ferrari / Harry Flechtner / Ronald Brand eds., The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention [Papers of the Pittsburgh Conference Organized by the Center for International Legal Education (CILE)], Sellier, European Law Publishers GmbH: München / Sweet & Maxwell: London (2004) 206-215

**FERRARI, Franco**

2004. International Sales Law and the Inevitability of Forum Shopping: A Comment on Tribunale di Rimini, 26 November 2002, 23 Journal of Law and Commerce (2004) 169-192 [earlier version of this article published at 8 Vindobona Journal of International Commercial Law and Arbitration (2004-1) 11-22]

**FERRARI, Franco**

2005. What Sources of Law for Contracts for the International Sale of Goods, 25 International Review of Law and Economics (2005/3) 314-341

**FERRARI, Franco**

2005 - 2006. Remarks on the UNCITRAL Digest's Comments on Article 6 CISG, at: Conference Celebrating the 25th Anniversary of United Nations Convention on Contracts for the International Sale of Goods sponsored by UNCITRAL and the Vienna International Arbitration Centre (Vienna: 15-18 March 2005), 25 Journal of Law and Commerce, Issue No. 1 (Fall 2005 / Spring 2006) 13-37

**FERRARI, Franco**

2006. Short notes on the impact of the Article 95 reservation on the occasion of *Prime Start Ltd. v. Maher Forest Products Ltd. et al.*, Internationales Handelsrecht (6/2006) 248-252

**FERRARI, Franco**

2007. The Interaction Between the United Nations Convention on Contracts for the International Sale of Goods and Domestic Remedies, in: The Convention on the International Sale of Goods -- The 25th Anniversary: Its Impact in the Past -- Its Role in the Future. German Society of Comparative Law --

Private International Law Division Conference 2005: 22-24 September 2005, Würzburg, in: 71 Rabels  
Zeitschrift für ausländisches und internationales Privatrecht (January 2007) 52-80

**FERRARI, Franco**

2007. Choice of Forum and CISG: Remarks on the Latter's Impact on the Former, in: Flechtner / Brand /  
Walter ed., Drafting Contracts Under the CISG, Oxford University Press (November 2007) 103-148

**FERRARI, Franco**

2008. Have the Dragons of Uniform Sales Law Been Tamed? Ruminations on the CISG's Autonomous  
Interpretations by Courts, in: Camilla B. Andersen / Ulrich G. Schroeter eds., Sharing International  
Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his  
Eightieth Birthday, Wildy, Simmonds & Hill Publishing (March 2008) 134-167

**FERRARI, Franco / FLECHTNER, Harry / BRAND, Ronald A. eds.**

2004. The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales  
Convention, [Papers of the Pittsburgh Conference Organized by the Center for International Legal  
Education (CILE)], Sellier, European Law Publishers GmbH: München / Sweet & Maxwell: London (2004)  
818 + pages [Draft digests prepared by: Franco Ferrari (Arts. 1-13, 78); Peter Winship (Arts. 14-24, 66-  
77); Ulrich Magnus (Arts. 25-34, 45-52); Harry Flechtner (Arts. 35-44, 79-88); Claude Witz (Arts. 53-65).  
Commentaries prepared by: Ronald A. Brand, Michael Bridge, Filip De Ly, Johan Erauw, Henry Gabriel,  
Alejandro Garro, Joseph Lookofsky, John E. Murray, Jr., Pilar Perales Viscasillas, Petar Sarcevic, Paul  
Volken]

**FLECHTNER, Harry M.**



1995. Recent Developments: CISG, 14 Journal of Law and Commerce (1995) 153-176

**FLECHTNER**, Harry M.

1998. The Several Texts of the CISG in a Decentralized System: Observations on Translation, Reservations and Other Challenges to the Uniformity Principle in Article 7(1), 17 Journal of Law and Commerce (1998) 187-217

**FLECHTNER**, Harry M.

2006. Moving through tradition towards universalism under the U.N. Sales Convention (CISG): Notice of lack of conformity (Article 39) and burden of proof in the Bundesgerichtshof opinion of 30 June 2004, in: Tomljenovic / Erauw / Volken ed., Liber memorialis Petar Sarcevic, Universalism, tradition and the individual, Munich: Sellier European Law Publishers (2006) 457-470

**FLECHTNER**, Harry M. / **BRAND**, Ronald A. / **WALTER**, Mark S., eds.

2007. Drafting Contracts Under the CISG, Oxford University Press (November 2007) 632 p. [contributions by Michael P. van Alstine, Volker Behr, Ronald A. Brand, Michael Bridge, V. Susanne Cooke, Vivian Grosswald Curran, Johan Erauw, Franco Ferrari, Harry M. Flechtner, Alejandro M. Garro, Henry D. Gabriel, Kenneth Lehn, Joseph Lookofsky, Ulrich Magnus, John E. Murray, Jr., Alejandro Osuna-Gonzalez, Pilar Perales Viscasillas, Sandra Saiegh, Peter Schlechtriem, Jernej Sekolec, Marco Torsello, Mark Walter]

**GABRIEL**, Henry D.

1994. Practitioner's Guide to the CISG & UCC - A Comparison of the Substantive Law of the United Nations Convention on Contracts for the International Sale of Goods (CISG) with the Uniform Commercial Code (UCC), Dobbs Ferry, NY: Oceana (1994) 276 p.

**GAO, Huanyue**

1997. The Uniqueness of Ancient Chinese Civil Law, (no. 3, 1997) China Law 90

**GAO, Qicai**

1995. On Chinese Customary Law (Zhongguo Xiguan Fa Lun), Changsha: Hunan Press (1995)

**GAO, Yan / ZHAI, Xinhui** (eds)

1996. Zhaiquanfa Lijie Shiyong yu Anli Pingxi [Understanding the Application of and Analysing the Cases on the Law of Obligations] (1996)

**GARNER, Bryan A.** (Author)

2004. Black's Law Dictionary (Hardcover) by West Group; 8Rev Ed edition (1 Nov 2004)

**GARRO, Alejandro M.**

1989. Reconciliation of Legal Traditions in the U.N. Convention on Contracts for the International Sale of Goods, 23 International Lawyer (1989) 443-483

**GARRO, Alejandro M.**

1994. Contribution of the UNIDROIT Principles to the Advancement of International Commercial Arbitration, 3 Tulane Journal of International and Comparative Law (1994) 93-128 [CISG 100, 105-106, 122, 127]

**GARRO**, Alejandro M.

1995. The Gap-Filling Role of the UNIDROIT Principles in International Sales Law: Some Comments on the Interplay between the Principles and the CISG, 69 Tulane Law Review (1995) 1149-1190

**GARRO**, Alejandro M.

2006. Exemption of liability for damages: Comparison between provisions of the CISG (Art. 79) and the counterpart provisions of the UNIDROIT Principles (Art. 7.1.7), in: John Felemegas ed., An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law, Cambridge University Press (2006) 236-246

**GERHART**, Peter M.

2001. The Sales Convention in courts: Uniformity and adaptability, in: Sarcevic / Volken ed., The International Sale of Goods Revisited, Kluwer Law International (2001) 241-258

**GITTINGS**, John

2005. The Changing Face of China, Oxford University Press, Oxford (2005)

**GOLDSTAJN**, Aleksandar

2001. Lex Mercatoria and the CISG: The Global Law Merchant, in: Sarcevic / Volken ed., The International Sale of Goods Revisited, Kluwer (April 2001)

**GOODE**, Royston M.

1993. Reflections on the Harmonization of Commercial Law, in: Cranston/Goode eds., Commercial Law and Consumer Law. National and International Dimensions, Oxford (1993)

**GOODE**, Royston M.

1997. Usage and its reception in transnational commercial law, 46 International and Comparative Law Quarterly (1997) 1-36 [CISG 9, 19 n.53, 21-25 commenting on ICC No. 5713/1989]; in: Ziegel ed., New Developments in International Commercial and Consumer Law. Proceedings of the 8<sup>th</sup> Biennial Conference of the International Academy of Commercial and Consumer Law, Bar Ilan University 18-22 August 1996, Oxford: Hart (1998) 3-36

**GOODE**, Royston M.

2003. Contract and Commercial Law: The Logic and Limits of Harmonisation, vol 7.4 Electronic Journal of Comparative Law, (November 2003)

**GOODE**, Royston M.

2004. Commercial Law, 3rd ed., London: LexisNexis UK (2004) 1264 p. [The Vienna Convention on International Sales, 925-937 (ch. 33)]

**GOPALAN**, Sandeep

2004. New Trends in the Making of International Commercial Law, 23 J.L. & Com. 117 (Spring 2004)

**GOTANDA**, John Y.

2006. Charting Developments Concerning Punitive Damages: Is the Tide Changing? (November 2006)

Villanova University Legal Working Paper Series. Working Paper 65.

<<http://law.bepress.com/villanovalwps/papers/art65>>

**GOTANDA**, John Y.

2007. Using the UNIDROIT Principles to Fill Gaps in the CISG (October 2007), Villanova University School

of Law Working Paper Series, Working Paper 88 <<http://law.bepress.com/villanovalwps/papers/art88>>

**GOTANDA**, John Y.

2008. A Study of Interest, Dossier of the ICC Institute of World Business Law: Evaluation of Damages in International Arbitration (2008) 169-188

**GOTANDA**, John Y. / **SÉNÉCHAL**, Thierry J.

2008. Interest as Damages, Villanova University Legal Working Paper Series, Working Paper 107 (April

2008) <<http://law.bepress.com/villanovalwps/papers/art107>>

**GU**, Angran

1989. The Socialist Legal System and Legislative Work (Shehui Zhuyi Fazhi He Lifa Gongzuo) (Beijing: China University of Political Science and Law Press (1989)

**GU**, Angran

1999. Explanations on the PRC Contract Law (Draft) (9 March 1999 at the 2<sup>nd</sup> Session of the 9<sup>th</sup> NPC (National People's Congress))

**GU**, Angran

2008. Xin Zhongguo gai ge kai fang san shi nian de li fa jian zheng = Witness: thirty years of China's legislation since the reform and opening-up policy, Beijing: Fa lü chu ban she (2008)

**GUI**, Hongming

2005. A Study of the Civil Customary Law Survey during the Late Qing and Early KMT (Qingmo Minchu Minshangshi Xiguan Diaocha Zhi Yanjiu), Beijing: Law Press (2005)

**GUO**, Bingchang

1993. San min zhu yi ji Zhonghua Minguo xian fa gai yao (The Three Principles of the People and the Constitution of the Republic of China), Taipei Shi : Qian hua chu ban gong si, Minguo 82 (1993)

**HACKNEY**, Philip

2001. Is the United Nations Convention on the International Sale of Goods Achieving Uniformity?, 61 Louisiana Law Review (2001) 473-486

**HAN**, Shiyuan

2008. Chapter: China, in: Franco Ferrari (ed), The CISG and its Impact on National Systems, Sellier, 2008 at page 71

**HARTKAMP**, Arthur S.

1994. Principles of Contract Law, in: Hartkamp/Hesselink/Hondius/du Perron/Vranken eds., Towards a European Civil Code, Martinus Nijhoff: Dordrecht (1994) 37-50

**HARTKAMP**, Arthur S.

1994. The UNIDROIT Principles for International Commercial Contracts and the United Nations Convention on Contracts for the International Sale of Goods, in: Comparability and evaluation: essays on comparative law, private international law and international commercial arbitration, K. Boele-Woelki et al., The Hague: T.M.C. Asser Institute/Nijhoff Publishers (1994) 85-98

**HE**, Hangzhou

1992. On Legal Transplant and the Construction of an Economic Legal System, (no. 5, 1992) Legal Science in China (ZhongguoFaxue) 50

**HEIDEMANN**, Maren

2007. Methodology of Uniform Contract Law – The UNIDROIT Principles in International Legal Doctrine and Practice, 35 (Springer ed. 2007)

**HELLNER**, Jan

1990. Gap-Filling by Analogy: Art. 7 of the U.N. Sales Convention in Its Historical Context, in: Ramberg ed., Studies in International Law: Festschrift till Lars Hjernner, Stockholm: Norstedts (1990) 219-233; reprinted in: Hellner, Köch och avtal (1992) 155-168

**HENSCHEL**, René Franz

2008. Creation of Rules in National and International Business Law: A Non-National, Analytical-Synthetic Comparative Method, in: Camilla B. Andersen / Ulrich G. Schroeter eds., Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday, Wildy, Simmonds & Hill Publishing (March 2008) 177-202

**HILLMAN**, Robert A.

1995. Applying the United Nations Convention on Contracts for the International Sale of Goods: The Elusive Goal of Uniformity, Cornell Review of the Convention on Contracts for the International Sale of Goods (1995) 21-49

**HOLLANDER**, Samuel

2008, The economics of Karl Marx: analysis and application, Cambridge; New York: Cambridge University Press (2008)

**HONNOLD**, John O.

1979. The United Nations Commission on International Trade Law: Missions and Methods, 27 American Journal of Comparative Law (1979) 201-211

**HONNOLD**, John O.

1988. The Sales Convention in Action - Uniform International Words: Uniform Application?, 8 Journal of Law and Commerce (1988) 207-212

**HONNOLD**, John O.



1989. Documentary History of the Uniform Law for International Sales. The Studies, Deliberations and Decisions that led to the 1980 United Nations Convention with Introductions and Explanations, Deventer: Kluwer Law International (1989) 881 p.

**HONNOLD**, John O.

1991. Uniform Law for International Sales Under the 1980 United Nations Convention, 2nd ed., Deventer: Kluwer Law International (1991) 717 p.

**HONNOLD**, John O.

1999. Uniform Law for International Sales Under the 1980 United Nations Convention, 3rd ed. (Kluwer 1999) 630 p.

**HONNOLD**, John O.

1999. Remarks, in: Fletchner ed., Transcript of a workshop on the Sales Convention: Leading CISG scholars discuss contract formation, validity, excuse for hardship, avoidance, Nachfrist and much more, 18 Journal of Law and Commerce (1999) 191-258

**HONNOLD**, John O.

2009. Uniform Law for International Sales Under the 1980 United Nations Convention, 4th ed., edited and updated by Harry M. Flechtner, Deventer: Kluwer Law International (2009)

**HSU**, Francis L.K.

1948. Under the Ancestors' Shadow, New York: Columbia University Press (1948)

**HU, Kangsheng**

1998. Examinations on the PRC Contract Law (Draft) (at the 4<sup>th</sup> meeting of the 9<sup>th</sup> NPCSC (National People's Congress Standing Committee)), August 1998

**HU, Kangsheng**

1999. Explanations on the PRC Contract Law (Draft) (at the 2nd Session of the 9th National People's Congress (NPC)) 9 March 1999

**HU, Kangsheng (ed.)**

1999. Zhonghua Renmin Gongheguo Hetongfa Shiyi [Commentary on the PRC Contract Law], (1999)

**HUANG, Jie**

2008. Direct Application of International Commercial Law in Chinese Courts: Intellectual Property, Trade, and International Transportation, 5 Manchester Journal of International Economic Law (3/2008) 105 at 110-113

**HUBER, Peter**

2006. Comparative Sales Law, in Mathias Reiman / Reinhard Zimmerman ed., The Oxford Handbook of Comparative Law, Oxford University Press (2006) 937-967

**HUBER, Peter / MULLIS, Alastair**

2007. The CISG: A new textbook for students and practitioners, München: Sellier European Law Publishers (2007) 408 p.

**HUBER, Ulrich**

1998. Analysis of Arts. 28, 30-34, 44-52 in Commentary on the UN Convention on the International Sale of Goods (CISG) [updated English edition of the 1995 von Caemmerer/Schlechtriem KOMMENTAR, 2nd ed.], Peter Schlechtriem ed., Oxford (1998) 198-209, 217-273, 348-453

**IAN, Fletcher / MISTELIS, Loukas / CREMONA, Marise**

2001. Foundations and perspectives of international trade law / London: Sweet & Maxwell, (2001)

**JONES, William C**

1994. Great Qing Code, translated by William C Jones, Oxford, Clarendon Press (1994)

**JIANG, Ping (ed.)**

1993. Shichang Jingji He Yisi Zizhi [Market Economy and Party Autonomy], 6 Faxue Yanjiu [Legal Studies], at 20 (1993)

**JIANG, Ping**

1996. Drafting the Uniform Contract Law in China, (1996) 10 Columbia Journal of Asian Law 245

**JIANG, Ping (ed.)**

1999. Zhonghua Renmin Gongheguo Hetongfa Jianjie [A Concise Commentary on the PRC Contract Law] (1999)

**JIANG, Ping**

1999. On the Principles of Freedom of Contract and Good Faith in the New Contract Law, [Zhengfa Luntan [Politics and Law Forum], 1999, Vol.1

**JIAO**, Lvhong

1993. Fundamental Breach, China and Foreign Law Study (1993)

**KAROLLUS**, Martin

1995. Judicial Interpretation and Application of the CISG in Germany 1988-1994, Cornell Review of the Convention on Contracts for the International Sale of Goods (1995) 51-94

**KASHIWAGI**, Noboru

2007. Ratification by Japan of the Vienna Sales Convention, 4 University of Tokyo Journal of Law and Politics (2007) 92-98

**KASTELY**, Amy H.

1988. Unification and Community: A Rhetorical Analysis of the United Nations Sales Convention, 8 Northwestern Journal of International Law and Business (1988) 574-622

**KNAPP**, Charles L. / **CRYSTAL**, Nathan M. / **PRINCE**, Harry G.

2007. Rules of Contract Law. Selections from the Uniform Commercial Code, the CISG, the Restatement (second) of Contracts, the UNIDROIT Principles, with material on contract drafting and sample examination questions, Aspen Publishers (2007)

**KONERU**, Phanesh

1997. The International Interpretation of the UN Convention on Contracts for the International Sale of Goods: An Approach Based on General Principles, 6 Minnesota Journal of Global Trade (Winter 1997) 105-152 [includes consideration of: Freedom of contract; Good faith; Reasonableness; Restitution/reliance/expectation; Good faith; Validity; Open-price contracts; Liquidated damages/penalty clauses; Interest, rate/point of accrual; Payment, place/currency]

**KONG**, Qingming / **HU**, Liuyuan / **SUN**, Jiping (eds)

1996. A History of Chinese Civil Law (Zhongguo Minfa Shi), Changchun: Jilin People's Press (1996)

**KRITZER**, Albert H.

1989-94. Guide to Practical Applications of the United Nations Convention on Contracts for the International Sale of Goods, Kluwer Law International 2 vols. [looseleaf]

**KRITZER**, Albert H. / **BAUM**, Axel H.

1994. Checklist on the CISG, in: Albert H. Kritzer ed., Guide to Practical Applications of the United Nations Convention on Contracts for the International Sale of Goods volume of International Contract Manual (Kluwer Law International)

**KRITZER**, Albert H.

1997. CISG: Pace University School of Law Internet World Wide Web Site excerpt, 9 Pace International Law Review (1997) 187-222 [editorial remarks and other material included in case presentation of Delchi Carrier, S.p.A v. Rotorex Corp., 6 December 1995, U.S. Circuit Court of Appeals]

**KRITZER**, Albert H.

2005. Comments on *Raw Materials Inc., v. Manfred Forberich*, U.S. District Court [Illinois] 6 July 2004 (February 2005)

**KRITZER**, Albert H.

2007. Introduction to the Pace Law School CISG Database & Translation Program, in: International Sales Transactions: Are You in Compliance with the CISG and UCP 600?, [New York] City Bar Center for Continuing Legal Education (May 1, 2007) 243-257

**KRITZER**, Albert H.

2007. Application and Interpretation of the CISG in the P.R. of China - Progress in the Rule of Law in China, 40 Uniform Commercial Code Law Journal (2007/2) 261-268

**KRONKE**, Herbert

2006 - 2007. Opening of the Colloquium, in: The UNIDROIT Principles 2004 - Their Impact on Contractual Practice, Jurisprudence and Codification, ISDC Colloquium, 8/9 June 2006, Schulthess: Zürich (2007) 13-15

**LACRS** Commentary

Legislative Affair Commission Writing Group of the Research Section of the NPCSC (Standing Committee of the National People's Congress))

**LALIVE**, Pierre

1995. Préface to UNIDROIT Principles for International Commercial Contracts: A New Lex Mercatoria?, ICC Publication No. 490/1 (1995) 7-10

**LALIVE**, Pierre

2002. The UNIDROIT Principles as *Lex Contractus*, With or Without an Explicit or Tacit Choice of Law: An Arbitrator's Perspective, in: UNIDROIT Principles of International Commercial Contracts: Reflections on their use in international arbitration, ICC International Court of Arbitration Bulletin, Special Supplement (2002) 77-94

**LANDO**, Ole

1994. Assessing the Role of the UNIDROIT Principles in the Harmonization of Arbitration Law, 3 Tulane Journal of International and Comparative Law (1994) 129 et seq.

**LANSING**, Paul

1980. The Change in American Attitude to the International Unification of Sales Law Movement and UNCITRAL, 18 American Business Law Journal (1980) 269-280

**LANSING**, Paul / **HAUSERMAN**, Nancy R.

1980. A Comparison of the Uniform Commercial Code to UNCITRAL's Convention on Contracts for the International Sale of Goods, 6 North Carolina Journal of International Law and Commerce Regulation (1980) 63-80

**LAW**, Jonathan / **MARTIN**, Elizabeth A eds.

2009. A dictionary of law [electronic resource] Oxford; New York: Oxford University Press, (2009) 7th edition.

**LEBEDYANSKIY**, Kirill

2007. Comparative Analysis of the Civil Code of the Russian Federation and the CISG, 11 Vindobona Journal of International Commercial Law and Arbitration (2007/1) 39-52

**LEE**, Robert G.

1993. The UN Convention on Contracts for the International Sale of Goods: OK for the UK?, 37 Journal of Business Law (1993) 131-148

**LEEBRON**, David

Lying Down with Procrustes: An Analysis of Harmonization Claims in Jagdish Bhagwati and Robert E. Hudec (eds.), Fair Trade and Harmonization (1996), 41, 52;

**LEVY**, D.A.

1998. Contract formation under the UNIDROIT Principles of International Commercial Contracts, UCC, Restatement, and CISG 30 Uniform Commercial Code Law Journal 1998, 249-300

**LI**, Shuanyuan / **ZHANG**, Mao / **DU**, Jian

1994. A Study on the Assimilation of Chinese Law [with International Practice], (no. 3, 1994) Journal of Wuhan University (Wuhan Daxue Xuebao) (Philosophy & Social Sciences)

**LI**, Zhimi



1988. Ancient Chinese Civil Law (Zhongguo Gudai Minfa), Beijing: Publishing House of Law (1988)

**LIANG, Huixing**

1995. Cong Sanzudingli Zouxian Tongyi De Hetongfa [From the three pillars to a unified contract law], Zhongguo Faxue [Chinese Jurisprudence], No.3, 1995

**LIANG, Huixing**

1997. On the Third Draft of the Uniform Contract Law of China, (No.1, 1997) Jurisprudence Frontiers (Faxue Qianyan) 186

**LIANG, Huixing**

1999. The Principle of Good Faith and Gap-Filling, Minshangfa Luncong, [Civil and Commercial Law Review] Vol. 2

**LIANG, Huixing**

1999. Minfaxue shuopan liyu lifa yanjiu [Studies on Civil Law Theories, Cases and Legislation], Vol. 2, 1999 at 121

**LIANG, Zhiping**

1996. Customary Law in Qing Dynasty: Society and State (Qingdai Xiguan Fa: Shehui yu Guojiao), Beijing: China University of Political Science and Law Press (1996)

**LIANG, Zhiping**

1997. The Pursuit of Harmony in Natural Orders: A Study on Chinese Traditional Legal Culture (Xunqiu Ziran Zhixu Zhong De Hexie: Zhongguo Chuantong Falu Wenhua Yanjiu), Beijing: China University of Political Science and Law Press (1997)

**LING**, Bing / **ZHANG**, Shouwen

1999. Zhongguo Hetongfa [Chinese Contract Law], (1999)

**LING**, Bing

2002. Contract Law in China, Sweet & Maxwell Asia (2002)

**LIU**, Chengwei

2003. Recovery of Interest (November 2003) [includes analysis of 110 CISG cases]

**LIU**, Chengwei

2005. Cure by Non-Conforming Party: Perspectives from the CISG, UNIDROIT Principles and PECL [2nd edition: Case annotated update (March 2005)]

**LIU**, Hainian et al. (eds)

1996. Yifa Zhiguo, Jianshe Shehui Zhuyi Fazhi Guojia [Administering The Country According To Law, Establishing A Socialist Country Under The Rule Of Law], Zhongguo Fazhi Chubanshe, (1996) at 25

**LIU**, Hui-chen Wang

1959. The Traditional Chinese Clan Rules, New York: Association for Asian Studies (1959)

**LOGAN, Tim N.**

1988. The People's Republic of China and the United Nations Convention on Contracts for the International Sale of Goods: Formation Questions', 5 China L. Rep. 63 (1988)

**LOOKOFSKY, Joseph M.**

2000. The United Nations Convention on Contracts for the International Sale of Goods, in: Blanpain ed., International Encyclopaedia of Laws - Contracts, Suppl. 29, Kluwer Law International (December 2000) 1-192

**LOOKOFSKY, Joseph M.**

2004. Understanding the CISG in the USA, 2d ed., Kluwer Law International (2004) 214

**LOOKOFSKY, Joseph M.**

2006. Precedent and the Law in Denmark, presentation of Danish National Report at XVIIth Conference of the International Academy of Comparative Law, Utrecht 2006

**LOOKOFSKY, Joseph M.**

2007. Tooling Up for Warranties with the CISG, in: Flechtner / Brand / Walter ed., Drafting Contracts Under the CISG, Oxford University Press (November 2007) 343-378

**LOOKOFSKY, Joseph M.**

2008. Understanding the CISG, 3d (worldwide) edition, Wolters Kluwer (2008) 243 p.

**LOOKOFSKY, Joseph**

2008. Online with Al K., in: Camilla B. Andersen / Ulrich G. Schroeter eds., Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday, Wildy, Simmonds & Hill Publishing (March 2008) 287-302

**LUBMAN, Stanley B.**

1999. Bird in a Cage: Legal Reform in China after Mao, Stanford, Calif.: Stanford University Press, (1999).

**MacCORMACK, Geoffrey**

1996. The Spirit of Traditional Chinese Law, Athens/London: The University of Georgia Press (1996)

**MAGNUS, Ulrich**

1998. Remarks on Good Faith: The United Nations Convention on Contracts for the International Sale of Goods and the UNIDROIT Principles of International Commercial Contracts, Pace International Law Review, Vol. X (1998) 89-95

**MAGNUS, Ulrich**

2006. Comparative editorial remarks on the provisions regarding good faith in CISG Article 7(1) and the UNIDROIT Principles Article 1.7, in: John Felemegas ed., An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law, Cambridge University Press (2006) 45-48

**MARTIN, Elizabeth A. (ed.)**

2002. Dictionary of Law (Paperback) by Oxford University Press; 5Rev Ed edition (21 Feb 2002)

**MARTIN**, Elizabeth A. / **LAW**, Jonathan (eds.)

2006. A Dictionary of Law (Oxford Paperback Reference) (Paperback) by Oxford University Press; New Ed edition (22 Jun 2006)

**MARTÍNEZ CAÑELLAS**, Anselmo M.

2006 - 2007. The Influence of the UNIDROIT Principles on the Proposal of the Reform of the Spanish Commercial Code, in: The UNIDROIT Principles 2004 - Their Impact on Contractual Practice, Jurisprudence and Codification, ISDC Colloquium, 8/9 June 2006, Schulthess: Zürich (2007) 215-229

**MAZZOTTA**, Francesco G.

2003. The International Character of the UN Convention on Contracts for the International Sale of Goods: An Italian Case Example (June 2003); see also 15 Pace International Law Review (2003) 437-452

**MAZZOTTA**, Francesco G.

2004. CISG Article 78: Endless disagreement among commentators, much less among the courts (2004) [survey of over 275 cases]; see also Review of the Convention on Contracts for the International Sale of Goods (2003-2004) 123-161

**MAZZOTTA**, Francesco G.

2007. Notes on the United Nations Convention on the Use of Electronic Communications in International Contracts and its effects on the United Nations Convention on Contracts for the International Sale of Goods, 33 Rutgers Computer & Technology Law Journal (2007) 251-298

**MAZZOTTA**, Francesco G.

2008. The Written Form Requirement of an Arbitration Agreement in Light of New Means of Communication, in: Camilla B. Andersen / Ulrich G. Schroeter eds., Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday, Wildy, Simmonds & Hill Publishing (March 2008) 326-346

**McINTOSH**, Paul F.

2001. Selected Legal Aspects of International Sales Transactions: The United Nations Convention on Contracts for the International Sale of Goods, 103 Business Credit (October 1, 2001) No. 9, 36 et seq.

**McQUILLEN**, Marlyse

2007. The Development of a Federal CISG Common Law in U.S. Courts: Patterns of Interpretation and Citation, 61 University of Miami Law Review (January 2007) 509-537

**MEYER**, Lars

2006. Soft Law for Solid Contracts? A Comparative Analysis of the Value of the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law to the Process of Contract Law Harmonization, Denver Journal of International Law and Policy (Spring 2006) 119-155

**MENDES**, Errol P.

1988. The U.N. Sales Convention and U.S.- Canada Transactions. Enticing the World's Largest Trading Bloc to Do Business Under a Global Sales Law, 8 Journal of Law and Commerce (1988) 109-144

**MERRYMAN**, John Henry

1981. On the Convergence (and Divergence) of the Civil Law and the Common Law, 17 Stanford Journal of International Law (1981) 357-388 [No mention of the CISG but, as the title to this article indicates, its contents are highly relevant to the manner in which the CISG will be interpreted]

**MILLER**, Fred H.

1998. Realism not Idealism in Uniform Laws -- Observations from the Revision of the UCC, 39 So. Tex. L. Rev. 707, 721-26 (1998)

**MISTELIS**, Loukas A.

2000. Regulatory Aspects: Globalization, Harmonization, Legal Transplants, and Law Reform - Some Fundamental Observations, 34 International Lawyer (Fall 2000) 1055-1069

**MISTELIS**, Loukas A.

2001. Is harmonisation a necessary evil? The future of harmonisation and new sources of international trade law, in: Fletcher / Mistellis / Cremona ed., Foundations and perspectives of international trade law, London: Sweet & Maxwell (2001) 3-27

**MISTELIS**, Loukas A.

2003. CISG-AC publishes first opinion, *Internationales Handelsrecht*, vol. 3 (September / October 2003) 243-344; see also 15 *Pace International Law Review* (2003) 453-456

**MISTELIS**, Loukas A.

2003. The UNIDROIT Principles Applied as "Most Appropriate Rules of Law" in a Swedish Arbitral Award, *Uniform Law Review / Revue de droit uniforme*, vol. VIII (2003-3) 631-640

**MISTELIS**, Loukas / **KRITZER**, Albert H. / **MONTINERI**, Corinne

2008. The Case and How It Is Changing International Commercial Law, in: Janet Walker, ed., *The Vis Book, A Participant's Guide to the Willem C. Vis International Commercial Arbitration Moot*, Juris Publishing, Inc. (2008) 17-38

**MOSS**, Giuditta Cordero

2007. International Contracts between Common Law and Civil Law: Is Non-State Law to Be Preferred? The Difficulty of Interpreting Legal Standards Such as Good Faith, *Global Jurist: Vol. 7: Iss. 1 (Advances)*, Article 3, available at <<http://www.bepress.com/gj/vol7/iss1/art3>>

**MOSS**, Sally

2005 - 2006. Why the United Kingdom Has Not Ratified the CISG, at: Conference Celebrating the 25th Anniversary of United Nations Convention on Contracts for the International Sale of Goods sponsored by UNCTRAL and the Vienna International Arbitration Centre (Vienna: 15-18 March 2005), 25 *Journal of Law and Commerce*, Issue No. 1 (Fall 2005 / Spring 2006) 483-485

**MOURRE**, Alexis



2006. Application of the Vienna International Sales Convention in Arbitration, ICC International Court of Arbitration Bulletin (2006) 17:1:43-50

**MULLIS**, Alastair C.L.

1998. Avoidance for Breach Under the Vienna Convention: A Critical Analysis of Some of the Early Cases", in: Andreas / Jareborg ed., Anglo-Swedish Studies in Law, Lustus Forlag (1998) 326-355

**MULLIS**, Alastair C.L.

2007. Twenty-Five Years On -- The United Kingdom, Damages and the Vienna Sales Convention, in: The Convention on the International Sale of Goods -- The 25th Anniversary: Its Impact in the Past -- Its Role in the Future. German Society of Comparative Law -- Private International Law Division Conference 2005: 22-24 September 2005, Würzburg, in: 71 Rabels Zeitschrift für ausländisches und internationales Privatrecht (January 2007) 35-51

**MURRAY**, John E., Jr.

1988. An Essay on the Formation of Contracts and Related Matters Under the United Nations Convention on Contracts for the International Sale of Goods, 8 Journal of Law and Commerce (1988) 11-51

**MURRAY**, John E., Jr.

1998. The Neglect of CISG: A Workable Solution, 17 Journal of Law and Commerce (1998) 365-379

**OVIEDO ALBÁN**, Jorge

2004. Remarks on the Manner in which the UNIDROIT Principles May Be Used to Interpret or Supplement CISG Article 9 (October 2004)

**OVIEDO ALBÁN, Jorge**

2005. Commentary on the Manner in which the UNIDROIT Principles May Be Used to Interpret or Supplement CISG Article 14 (January 2005)

**OVIEDO ALBÁN, Jorge**

2006. Usages and practices: Editorial remarks on the manner in which the UNIDROIT Principles may be used to interpret or supplement CISG Article 9, in: John Felemegas ed., *An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law*, Cambridge University Press (2006) 51-59

**OVIEDO ALBÁN, Jorge**

2006. Criteria for an offer: Editorial remarks on the manner in which the UNIDROIT Principles may be used to interpret or supplement CISG Article 14, in: John Felemegas ed., *An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law*, Cambridge University Press (2006) 76-84

**OVIEDO ALBÁN, Jorge**

2006. Acceptance of an offer: Commentary on the manner in which the UNIDROIT Principles Arts. 2.6 and 2.7 may be used to interpret or supplement CISG Article 18, in: John Felemegas ed., *An International*

Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law, Cambridge University Press (2006) 97-106

**PASHUKANIS**, Evgeny B.

1983. Law and Marxism: a general theory / translated by Barbara Einhorn; edited and introduced by Chris Arthur. London: Pluto (1983)

**PEERENBOOM**, R.P.

1993. Law and Morality in Ancient China: The Silk Manuscripts of Huang-Lao, Albany: State University of New York Press (1993)

**PERALES VISCASILLAS**, M<sup>a</sup> del Pilar

1996. UNIDROIT Principles of International Commercial Contracts: Sphere of Application and General Provisions, 13 Arizona Journal of International and Comparative Law (1996) 380-441 [Primary issues analyzed: whether or not the Principles may be applied as *lex mercatoria*, whether or not they are part of the general principles referred to in CISG Article 7; the mutual relationship of the UNIDROIT Principles and the CISG is discussed throughout this work, especially in the discussion of the general provisions of the Principles, which show the strong influence of the general provisions of the CISG]

**PERALES VISCASILLAS**, M<sup>a</sup> del Pilar

2001. Formation of the Contract under the CISG, in: Center for Transnational Law ed., Law and Practice of Export Trade, Quadis: Münster (2001) 97-113

**PERALES VISCASILLAS**, M<sup>a</sup> del Pilar

2001. The Formation of Contracts & the Principles of European Contract Law, 13 Pace International Law Review (Fall 2001) 371-397

**PERILLO**, Joseph M.

1994. UNIDROIT Principles of International Commercial Contracts: The Black Letter Text and a Review, 63 Fordham Law Review (1994) 281-316

**PERILLO**, Joseph M.

2006. Interpretation of the contract: Editorial remarks on the manner in which the UNIDROIT Principles may be used to interpret or supplement CISG Article 8, in: John Felemegas ed., An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law, Cambridge University Press (2006) 48-51

**PETROCHILOS**, Georgios C.

1999. Arbitration Conflict of Laws and the 1980 International Sales Convention [text also published at 52 Revue Hellenique de Droit International (1991) 191-218]

**PHILIPPOPOULOS**, George V.

2008. Awareness of the CISG Among American Attorneys, 40 UCC Law Journal (Winter 2008) 357-371

**PILZ**, Burghard

2007. New Developments under the CISG, 11 Vindobona Journal of International Commercial Law and Arbitration (2/2007) 133-146

**POSCH, Willibald / PETZ, Thomas**

2002. Austrian Cases on the UN Convention on Contracts for the International Sale of Goods, Vindobona Journal of International Commercial Law and Arbitration, 6 Vindobona Journal of International Commercial Law and Arbitration (2002) 1-26

**POTTER, Pitman B.**

2000. Law-making in the PRC: The Case of Contracts, in J. Otto, et al. (Eds.), Law-Making in the People's Republic of China, 191 (2000).

**PRC NATIONAL JUDGES COLLEGE**

1994. Zhongguo Shenpa Anli Yaolan [Reports of Judicial Decisions in China] (1994)

2004. Zhongguo Shenpa Anli Yaolan [Reports of Judicial Decisions in China] (2004)

**RABEL, Ernst**

1929. *Rapport sur le droit comparé en matière de vente*, see also the original Report A of the UNIDROIT in Rabels Zeitschrift für ausländisches und internationales Privatrecht 3 (1929) 402, 406

**RABEL, Ernst**

1938-1967. A Draft of an International Law of Sales, 5 University of Chicago Law Review (1938) 543-565; in: Gesammelte Aufsätze: Tübingen (1967 III) 613-636

**RABEL, Ernst**

1952. The Hague Conference on the Unification of Sales Law, 1 American Journal of Comparative Law 91952) 58-69

**RAJSKI**, Jerzi

1987. Comments on Article 11 CISG [Form of Contract], in: Bianca-Bonell Commentary on the International Sales Law, Giuffrè: Milan (1987) 121-124

**RAMBERG**, Jan

2000. International Commercial Contracts, 2d ed., International Chamber of Commerce, Paris (2000)

**RAMBERG**, Jan

2003. Unification of Sales Law: A look at the Scandinavian States, Uniform Law Review, vol. VIII, no. 1/2 (2003) 201-208

**RAMBERG**, Jan

2003 / 2004. Comments on CISG-Advisory Council opinion no. 1 - electronic communications under the CISG, Review of the Convention on Contracts for the International Sale of Goods (CISG) (2003 / 2004) 105-112

**RAMBERG**, Jan

2007. The Vanishing Scandinavian Sales Law, Scandinavian Studies in Law, Stockholm (2007) 50:258-264

**REILEY / FU**

1989. Doing Business in China after Tiananmen Square: The Impact of Chinese Contract Law and the UN Convention on Sale of Goods in Sino-American Business Transactions', 24 U. San Francisco L. Rev. 54 n. 88 (1989)

**ROGERS**, Vikki M. / **KRITZER**, Albert H.

2003. A Uniform International Sales Law Terminology, in: Schwenzer, I. / Hager, G. eds., Festschrift für Peter Schlechtriem zum 70. Geburtstag, Tübingen: J.B.C. Mohr / Paul Siebeck (2003) 223-253

**ROGOWSKA**, Anna

2007. CISG in the United Kingdom: How does the CISG govern the contractual relations of English businessmen?, International Company and Commercial Law Review, Issue no. 7 (July 2007) 226-230

**ROSENBERG**, Mark N.

1992. The Vienna Convention: Uniformity in Interpretation for Gap-Filling - An Analysis and Application, 20 Australian Business Law Review (1992) 442-459

**SAIDOV**, Djakhongir

2001. Methods of Limiting Damages under the Vienna Convention on Contracts for the International Sale of Goods (December 2001)

**SAIDOV**, Djakhongir

2003. Cases on the CISG Decided in the Russian Federation, 7 Vindobona Journal of International Commercial Law and Arbitration (2003) 1-62

**SAIDOV**, Djakhongir

2005. Cases on the Sales Convention and the UNIDROIT Principles Decided in the Russian Federation: An Update, 9 Vindobona Journal of International Commercial Law and Arbitration (1/2005) 1-16

**SAIDOV**, Djakhongir

2005 - 2006. Damages: The Need for Uniformity, at: Conference Celebrating the 25th Anniversary of United Nations Convention on Contracts for the International Sale of Goods sponsored by UNCITRAL and the Vienna International Arbitration Centre (Vienna: 15-18 March 2005), 25 Journal of Law and Commerce, Issue No. 1 (Fall 2005 / Spring 2006) 393-403

**SALEH**, Nabil A.

1986. Unlawful Gain and Legitimate Profit in Islamic law: Riba, Gharar and Islamic Banking, Cambridge: Cambridge University Press (1986)

**SAMBUGARO**, Verona

2007. Exclusion of the 1980 Vienna Convention: Does recent US case law open the door to forum shopping?, Internationales Handelsrecht (6/2007) 231-237 [criticism of two 2007 U.S. rulings on the CISG that restrict Art. 6 exclusions of the Convention to "express" exclusions]

**SCHLECHTRIEM**, Peter

1983. Recent Developments in International Sales Law, 18 Israel Law Review (1983) 309-326

**SCHLECHTRIEM**, Peter



1984. The Seller's Obligations under the United Nations Convention on Contracts for the International Sale of Goods, in: Galston/Smit ed., International Sales, New York: Matthew Bender (1984) ch. 6, 1-35

**SCHLECHTRIEM, Peter**

1986. Guoji maimai hetong tongyifa de fazhan - cong haiya dao weiyena [From the Hague to Vienna - Progress in the Unification of the Law of International Sales Contracts - *in Chinese*], in: Waiguo faxue yicong [Foreign Legal Science Translation Series], Beijing: Chinese University of Political Science and Law (1986) No. 3, 41-46

**SCHLECHTRIEM, Peter**

1986. Uniform Sales Law: The UN-Convention on Contracts for the International Sale of Goods, Vienna: Manz (1986) 120 p.

**SCHLECHTRIEM, Peter**

1991-92. Uniform Sales Law - The Experience with Uniform Sales Laws in the Federal Republic of Germany, 3 Juridisk Tidskrift, Stockholm (1991/92) 1-28

**SCHLECHTRIEM, Peter / SCHWENZER, Ingeborg eds.**

2005. Commentary on the UN Convention on the International Sale of Goods (CISG), Second (English) Edition, Oxford University Press (March 2005) 1300 p. [Two parts to text: CISG (comments by Klaus Bacher, Georg Gruber, Günter Hager, Rainer Hornung, Ulrich Huber, Markus Müller-Chen, Peter Schlechtriem, Martin Schmidt-Kessel, Ingeborg Schwenzer, Hans Stoll, Corinne Widmer 1-940); Limitations Convention (comments by Markus Müller-Chen 956-1012)]

**SCHLECHTRIEM, Peter**

2007. 25 Years of the CISG: An International *Lingua Franca* for Drafting Uniform Laws, Legal Principles, Domestic Legislation and Transnational Contracts, in: Flechtner / Brand / Walter ed., Drafting Contracts Under the CISG, Oxford University Press (November 2007) 157-190

**SCHLECHTRIEM, Peter**

2008. Opting out of Merger and Form Clauses under the CISG - Second thoughts on *TeeVee Toons, Inc. & Steve Gottlieb, Inc. v. Gerhard Schubert GmbH*, in: Camilla B. Andersen / Ulrich G. Schroeter eds., Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday, Wildy, Simmonds & Hill Publishing (March 2008) 416-424

**SCHLECHTRIEM, Peter / BUTLER, Petra**

2009. UN law on international sales: the UN Convention on the International Sale of Goods, New York: Springer (2009)

**SCHMITTHOFF, Clive M.**

1981. Commercial Law in a Changing Economic Climate, 2d ed. (1981) 18 et seq.

**SCHROETER, Ulrich G.**

2004. The Status of Hong Kong and Macao under the United Nations Convention on Contracts for the International Sale of Goods, 16 Pace International Law Review (2004) 307-332  
<[http://www.schroeter.li/pdf/Schroeter\\_16\\_Pace\\_Intl\\_L\\_Rev\\_2004\\_307.pdf](http://www.schroeter.li/pdf/Schroeter_16_Pace_Intl_L_Rev_2004_307.pdf)>

**SCHWENZER**, Ingeborg

2005. The Danger of Domestic Preconceived Views with Respect to the Uniform Interpretation of the CISG: The Question of Avoidance in the Case of Non-Conforming Goods and Documents, Victoria University of Wellington Law Review (2005/4) 785-808

**SCHWENZER**, Ingeborg / **FOUNTOULAKIS**, Christiana eds.

2007. International Sales Law, Routledge-Cavendish: London / New York (2007) 617 p.

**SCHWENZER**, Ingeborg / **LEISINGER**, Benjamin

2007. Ethical Values and International Sales Contracts, in: Swiss Foreign Ministry, Human Security and Business (2007)

**SCHWENZER**, Ingeborg

2007. National Preconceptions that Endanger Uniformity, 19 Pace International Law Review (Spring 2007/1)

**SCHWENZER**, Ingeborg / **MANNER**, Simon

2008. The Pot Calling the Kettle Black: The Impact of the Non-Breaching Party's (Non-) Behavior on its CISG-Remedies, in: Camilla B. Andersen / Ulrich G. Schroeter eds., Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday, Wildy, Simmonds & Hill Publishing (March 2008) 470-488

**SCHWENZER**, Ingeborg

2009. Wider perspective: Force majeure and hardship in International Sales Contracts 39 Victoria University of Wellington Law Review (April 2009) 4:709-726

**SCHWENZER**, Ingeborg / **HACHEM**, Pascal

2009. The CISG - Successes and Pitfalls, 57 American Journal of Comparative Law (2009) 457-478

**SCHWENZER**, Ingeborg

2010. The Application of the CISG in Light of National Law, Internationales Handelsgericht (2/2010) 45-56

**SCHWENZER**, Ingeborg ed.

2010. Schlechtriem & Schwenger Commentary on the UN Convention on the International Sale of Goods (CISG), 3d ed., Oxford University Press (2010) 1,480 p. [contributions by Klaus Bacher, Christiana Fountoulakis, Pascal Hachem, Gunter Hager, Florian Mohs, Markus Müller-Chen, Peter Schlechtriem, Martin Schmidt-Kessel, Ulrich G. Schroeter, Ingeborg Schwenger, Corinne Widmer]

**SCOTT**, Robert E.

2000. The Uniformity Norm in Commercial Law, in The Jurisprudential Foundations of Corporate and Commercial Law 149 at 171 (Jody S. Kraus & Steven D. Walt, eds. 2000)

**SEKOLEC**, Jernej

2004. Preface. Digest of case law on the UN Sales Convention: The combined wisdom of judges and arbitrators promoting uniform interpretation of the Convention, in: Franco Ferrari / Harry Flechtner /

Ronald Brand eds., *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention* [Papers of the Pittsburgh Conference Organized by the Center for International Legal Education (CILE)], Sellier, European Law Publishers GmbH: München / Sweet & Maxwell: London (2004) 1-20

**SEKOLEC**, Jernej

2007. CISG: 25 Years of the United Nations Convention on Contracts for the International Sale of Goods (Welcome Address), in: Flechtner / Brand / Walter ed., *Drafting Contracts Under the CISG*, Oxford University Press (November 2007) 45-48

**SOLLUND**, Marius

2007. The U.N. Convention on Contracts for the International Sale of Goods, Article 7(1) - The Interpretation of the Convention and the Norwegian Approach, *Nordic Journal of Commercial Law*, Issue (2007#1) <[http://www.njcl.fi/1\\_2007/article2.pdf](http://www.njcl.fi/1_2007/article2.pdf)>

**SONO**, Hiroo

2008. The Applicability of the CISG to Software Sales Transactions, in: Camilla B. Andersen / Ulrich G. Schroeter eds., *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday*, Wildy, Simmonds & Hill Publishing (March 2008) 512-526

**SONO**, Hiroo

Japan's Accession to the CISG: The Asia Factor, Presentation in Wuhan Conference on "The Application and Interpretation of the CISG in Member States With Emphasis on Litigation and Arbitration in the P.R. China", October 13th - 14th in Wuhan, China.

**SONO**, Kazuaki

1986. Formation of International Contracts under the Vienna Convention: A Shift Above the Comparative Law, in: Sarcevic / Volken ed., Dubrovnik Lectures 1985, New York: Oceana (1986) 111-131

**SONO**, Kazuaki

1986. The Vienna Sales Convention: History and Perspective, in: Sarcevic / Volken ed., Dubrovnik Lectures 1985, New York: Oceana (1986) 1-17

**SPAIC**, Aneta

2007. Approaching Uniformity in International Sales Law through Autonomous Interpretation, 11 Vindobona Journal of International Commercial Law and Arbitration (2/2007) 237-258

**SPANOGLE**, John A. / **WINSHIP**, Peter

2000. International Sales Law: A Problem-Oriented Coursebook (West 2000) 332 p. [cites and comments on many CISG cases; contains excerpts from a number of CISG commentaries]

**STEPHAN**, Paul B.

1999. The Futility of Unification and Harmonization of International Commercial Law, 39 Virginia Journal of International Law (1999) 743-797 [CISG discussed at 722-780]

**STUCHKA, P.I.**

1988. Selected writings on Soviet law and Marxism; edited, annotated, translated, and introduced by Robert Sharlet, Peter B. Maggs, and Piers Beirne, London & New York (1988)

**STURLEY, Michael F.**

1986. The 1980 United Nations Convention on Contracts for the International Sale of Goods: Will a Homeward Trend Emerge?, 21 Tex. Int'l L.J. 540 (1986)

**STURLEY, Michael F.**

1987. International Uniform Law in National Courts: The Influence of Domestic Law in Conflicts of Interpretation, 27 Virginia Journal of International Law (1987) 729-802

**SU, Li**

2004. Roads to Cities – Rule of Law in Transitional China, (Daolu Tongxiang Chengshi – Zhuanxing Zhongguo de Fazhi), Beijing: Law Press (2004)

**SUN, Wen**

1988. San min zhu yi (The Three Principles of the People), Taipei : Zhong yang wen wu gong ying she, Minguo 77 (1988)

**SUN, Yatsen**

1953. Fundamentals of National Reconstruction, China Culture Service and printed by Sino-America Publishing Co. Ltd., Taipei (1953), at 43

**SUPREME PEOPLE'S COURT**

1994. Reports of Judicial Decisions in China (RJDC) “Zhongguo Shenpan Anli Yaolan” (in Chinese), (1994)

**SUPREME PEOPLE'S COURT**

1995. Supreme People's Court Gazette (1995) Vol. 2

**SUPREME PEOPLE'S COURT**

1998. Supreme People's Court Gazette (1998) Vol. 1

**SUPREME PEOPLE'S COURT**

1999. Supreme People's Court Commentary: Economic Division of the Supreme People's Court, Hetongfa Shijie yu Shiyong [ Interpretation and Application of the Contract Law], (in Chinese) 2 vols, (1999)

**SUTTON, Kenneth C. T.**

1976/1977. The Draft Convention on International Sale of Goods, Part I: 4 Australian Business Law Review [ABLR] (1976), 269-288, Part II: 5 ABLR (1977) 28-57, Part III: 5 ABLR (1977) 92-120

**SUTTON, Kenneth C. T.**

1977. Formation of Contract: Unity in International Sales of Goods, 16 University of Western Ontario Law Review (Canada) (1977) 113-162



**SWEETMAN**, Arthur / **ZHANG**, Jun (ed)

2009. Economic transitions with Chinese characteristics : thirty years of reform and opening up, McGill-Queens University Press (2009)

**SYCHOLD**, M.

2006 - 2007. The impact of the UNIDROIT Contract Principles on Australian law, in: The UNIDROIT Principles 2004 - Their Impact on Contractual Practice, Jurisprudence and Codification, ISDC Colloquium, 8/9 June 2006, Schulthess: Zürich (2007) 149-156

**TIAN**, Chengyou

2005. Local Customary Law in Rural Societies (Xiangtu Shehui Zhong de Minjianfa), Beijing: Law Press (2005)

**TIAN**, Jiyuan

1994. Report of the Work of the Standing Committee of the NPC delivered by to the NPC on 15 March 1994', published in People's Daily (Renmin Ribao) 26 March 1994

#### **UNITED NATIONS PUBLICATION**

1980. Official Records of the United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980 (United Nations Publication, Sales No. E.81.IV.3)

**VOLKEN**, Paul

1986. The Vienna Convention: Scope, Interpretation and Gap-filling, in: Sarcevic / Volken ed., Dubrovnik Lectures 1985, New York: Oceana (1986) 19-53

**VOUT**, Paul, **YE**, Jing-Sheng and **WU**, Yi Yi

2000. China Contracts Handbook (2<sup>nd</sup> ed), Sweet & Maxwell Asia (2000)

**WALKER**, Gregory C.

2005. Trade Usages and the CISG: Defending the Appropriateness of Incorporating Custom into International Commercial Contracts, 24 Journal of Law and Commerce (2005) 263-280

**WALKER**, Janet

2005 - 2006. Agreeing to Disagree: Can We Just Have Words? CISG Article 11 and the Model Law Writing Requirement, at: Conference Celebrating the 25th Anniversary of United Nations Convention on Contracts for the International Sale of Goods sponsored by UNCITRAL and the Vienna International Arbitration Centre (Vienna: 15-18 March 2005), 25 Journal of Law and Commerce, Issue No. 1 (Fall 2005 / Spring 2006) 153-165

**WANG**, Guiguo

1995. Economic Integration in Quest of Law, Journal of World Trade vol.29 no.2, April 1995, Geneva

**WANG**, Jiafu / **CUI**, Jianyuan

1991. Civil Law: Civil Obligations, [Zhongguo Minfaxue: Minfa Zhaiquan] China Law Press, Beijing (1991)

**WANG**, Liming

1999. An Inquiry into Several Difficult Problems in Enacting China's Uniform Contract Law, (1999) 8 Pacific Rim Law and Policy Journal 351

**WANG**, Liming / **CUI**, Jianyuan

1996. Hetongfa Xinlun: Zongze [New Textbook on Contract Law: General Provisions] (1996)

**WANG**, Liming / **XU**, Chuanxi

1999. Fundamental Principles of China's Contract Law, 13 Columbia Journal of Asian Law (1999) 1-34

**WANG** Xiaolin / **ANDERSEN**, Camilla Baasch

2004. The Chinese Art. 96 Reservation against Oral Contracts under the CISG - Time to Withdraw?, 8 Vindobona Journal of International Commercial Law and Arbitration (2004-1) 145-164

**WANG**, Zejian

1996. Minfa Zhaibian Zonglun [General Principles of Obligations of Civil Law], vol.1 (1996)

**WILKINSON**, Vanessa L.D.

1995. The New Lex Mercatoria, Reality of Academic Fantasy?, 12 Journal of International Arbitration (1995) 101 et seq.

**WILL**, Michael R. ed.

1999. CISG and China: Theory and Practice, Genève: Faculté de droit, Schiftenreihe deutscher Jura-Studenten in Genf, No. 18 (1999) 207 p. [An intercontinental exchange. Bruno Zeller (Melbourne), Ding

Ding (Beijing). A choice of materials. CISG: Chinese bibliography; CISG: Chinese awards and judgments; CISG: A Chinese-Australian case; The new Chinese Contract Law 1999: Relevant parts] Reviewed by BLASE (2000)

**WINSHIP, Peter**

1984. The Scope of the Vienna Convention on International Sales Contracts, in: Galston/Smit ed., International Sales, New York: Matthew Bender (1984) ch. 1, 1-53

**WINSHIP, Peter**

1988. Private International Law and the U.N. Sales Convention, 21 Cornell International Law Journal (1988) 487-533

**WITZ, Claude**

1997. The First Decision of France's Court of Cassation Applying the UN Convention on Contracts for the International Sale of Goods, 16 Journal of Law & Commerce (1997) 345-356 [English translation of Cour de Cassation 4 January 1995 and commentary in Dalloz Sirey 1995 (translation by Vivian G. Curran)]

**WU Dong**

2005. CIETAC's Practice on the CISG, presentation at UNCITRAL - SIAC Seminar on Celebrating Success: 25 Years United Nations Convention on Contracts for the International Sale of Goods, Singapore (22 September 2005) 43 p.; published by the Nordic Journal of Commercial Law 2/2005 <[http://www.njcl.utu.fi/2\\_2005/article2.htm](http://www.njcl.utu.fi/2_2005/article2.htm)>

**XIAO, Xun**

1999. Zhonghua Renmin Gongheguo Hetongfa Shilun [Commentary on the PRC Contract Law] (1999)

**XU**, Guodong

1992, Minfa Jiben Yuanze Jieshi [Interpretation of Fundamental Principles of Civil Law], (1992)

**YAN**, Zhijie

2009. Jing ji sheng yu lun = Theory of economic surplus, Beijing: Beijing da xue chu ban she, (2009)

**YANG** Fan

2006. The Application of the CISG in the Current PRC Law and CIETAC Arbitration Practice (December 2006) 26 p.

**YANG**, Fan

2008. CISG in China and Beyond, 40 UCC Law Journal (Winter 2008) 373-389

**YANG**, Fan

2008. CISG, CIETAC Arbitration and the Rule of Law in the P.R. of China: A Global Jurisconsultorium Perspective, in: Camilla B. Andersen / Ulrich G. Schroeter eds., Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday, Wildy, Simmonds & Hill Publishing (March 2008) 600-626

**YANG**, Fan

2008. A Comparative Case Study of the Interpretation Methodology of Article 14 of the CISG- A Global Jurisconsultorium Perspective, (2008) European Journal of Law Reform, Vol. X, no. 1, pp 3-20

**YANG, Fan**

2010. Hong Kong's adoption of the CISG: why do we need it, and now?, Hong Kong Lawyer, Issue 6, June 2010, pp 10-18

**YU, Liang**

1998. Hetong Xiaoli De Buchong [Supplementing the Effectiveness of a Contract], 4 Zhengfa Luntan [Political Science and Law Forum], at 75-79 (1998).

**ZAMORA, Stephen**

Economic Relations and Development, in: Christopher C. Joyner ed., The United Nations and International law, Cambridge University Press, American Society of International Law, 232-286

**ZAMORA, Stephen**

NAFTA and the Harmonization of Domestic Legal Systems: The Side Effects of Free Trade, in Vol. 12, Arizona Journal of International and Comparative Law 401-428 (1995)

**ZELLER, Bruno**

2007. CISG and Unification of International Trade Law, New York: Routledge-Cavendish (2007) 116 p.

**ZELLER, Bruno**

2008. Commodity Sale and the CISG, in: Camilla B. Andersen / Ulrich G. Schroeter eds., Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday, Wildy, Simmonds & Hill Publishing (March 2008) 627-639

**ZHANG, L.**

2002. The Enforcement of CIETAC Arbitration Awards, Hong Kong Lawyer, February (2002)

**ZHANG, Mo**

2006. Chinese Contract Law Theory and Practice, Introduction, Martinus Nijhoff Publishers, (2006)

**ZHANG, Yuejiao**

2007. Harmonization of Contract Law and its Impacts on China's Contract Law, presentation at the Modern Law for Global Commerce: Congress to Celebrate the Fortieth Annual Session of UNCITRAL (9-12 July 2007)

**ZHANG, Yuqing**

2009. Commentary on The United Nations Convention on Contracts for The International Sale of Goods (in Chinese), 3rd edition, China Commerce and Trade Press (2009)

**ZHAO, Xudong**

2003. Power and Justice: Dispute Resolution in Rural Societies and Plurality of Authorities (Quanli Yu Gongzheng – Xiangtu Shehui de Jiufen Yu Quanwei Duoyuan), Tianjin: Tianjin Ancient Books Publishing House (2003)