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Buyer's obligations under the UN Convention on Contracts for
the International Sale of Goods (CISG)

Thesis

Olomouc 2014

“I declare that this master’s thesis on the topic *Buyer’s obligations under the UN Convention on Contracts for the International Sale of Goods (CISG)* I elaborated on my own and I quoted all sources used.“

Olomouc, 20 November 2014

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My heartfelt thanks go to Mrs. JUDr. Miluši Hrnčířikové, Ph.D., who gladly provide me all the necessary advices to the subject of my thesis, always was flexible to help me to deal with the process of creating my work and with her friendly approach, she was always a big support to me.

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ABBREVIATIONS

Art.	Article
BGB	Bürgerliches Gesetzbuch
Cc	Code civil (France)
cf.	confer
CISG	United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980
Ex.	example
EXW	ex works (INCOTERMS)
FIATA	Fédération Internationale des Associations de Transitaires et Assimilés / International Federation of Freight Forwarders Association (Vienna 1926)
FOB	free on board (INCOTERMS)
GMBH	Gesellschaft mit beschränkter Haftung / Company with Limited Liability
Ibid	Ibidem, the same place
ie / i.e.	id est (that is)
INCOTERMS	International Commercial Terms
L/C	Letter of credit
LLC	Limited Liability Company
n. / NO.	number
OR	Schweizerisches Obligationenrecht of 30 March 1911
p. / pp.	page / pages
PECL	Principles of European Contract Law
UN	United Nations
UNCITRAL	United Nation Commission on International Trade Law
UNIDROIT	Institut International pour l'Unification du Droit Privé / International Institute for the Unification of Private Law
UPIC	UNIDROIT Principles of International Commercial Contracts
US	United States of America

INTRODUCTION:

The theme of this work is buyer's obligations under the UN Convention on Contracts for the International Sale of Goods (CISG).¹ The author of this work chose this theme, because he is very interesting in international law and in practice he met with this Convention by participating as a member of the Palacký University in simulated Court proceeding concerning this issue, Willem C. Vis International Commercial Arbitration Moot. There he realized that this is actually a very interesting theme and the meaning of it is even broader, that it can look like from the Convention itself. Because of it there can arise possible misunderstandings or negligence in the interpretation of concerned Articles, which can cause mainly for the buyer some problems afterwards.

The United Nations Convention on Contracts for the International Sale of Goods become more and more important in the international business between the parties and this is supported mostly every year with ratifications of this Convention from other non-contracting States, which want to be bound by it. Due to this increase it is important to know Convention very well, for both parties and their lawyers, to conclude the contract, which will suit them the most. They should bear in mind, that even the parts of the Convention, which can look easy to apply, can arise difficulties after conclusion of the contract.

That is why the theme of this work will devote considerable attention to the problem of explanation of buyer's obligations under the CISG, which can look like comprehensive adjustment, but not everything is as clear as it may seem from the first view. The author asks himself whether the wording of the buyer's principal obligations in Chapter III Part III of the Convention is sufficient enough to understand the full meaning under it? And if not, what a buyer should be aware of before the conclusion of the contract. The author will concentrate mainly on the point of view of the buyer, because of his obligations. But even the seller can take some important knowledge from this work. This theme is mainly covered under Chapter III of Part III of the Convention, however, there are also other Articles, which are linked with this Chapter and on which buyer, his lawyer or simply businessmen should not have to forget,

¹ In German: „Das Übereinkommen der Vereinten Nationen über Verträge über den internationalen Warenkauf“.

Hereinafter will be in text referred to as Convention or CISG.

mainly before preparing the contract. Therefore the meaning of obligations, mainly obligations under Chapter III are need to be reviewed thoroughly and explain. The aim of this work is therefore also to help and bring near to the buyer his possible obligations through the explanation and practical point of view. Find all possible problems and try to resolve them in a way which will help the buyer to be sure in his future contract and predict the consequences.

All of this needs to be supported by literature, authorities and case law. The author did not concentrate only on the well-known commentary on the Convention by Schlechtriem & Schwenger, but also on a lot of other books from well-known authorities in this field of law. Author also tried to bring near some basic terminology concerning CISG Articles in German language. German terminology is very important, especially in our region, where a lot of trades take place with German-speaking countries and all of them are contracting states of CISG², so it will be beneficial to know it. It is important to mention that there exist a big source of literature, journals, commentaries and case law on website of Pace Law School Institute of International Commercial law, from where the author took also some information. The last but not least source of information was UNCITRAL Digest of Case Law, which were published for the first time in 2004 and make an interpretation of the Convention in a clear, concise and objective manner by supporting every Article with a lot of cases.

In the process of work there will be used a method of analysis, where every provision will be divided into important parts and review into a possible solution altogether with a method of synthesis. Also, there will be an application of the deductive method, from where will be drawn conclusions for particular solutions. The least will be using the method of induction, by which the author will try to take the different view on conclusions of other authorities.

The first part of this work will be concentrated on the United Nations Convention on Contracts for the International Sale of Goods itself. Introduction to the Convention and its application.

The main part of the work will be concentrated on buyer's obligations under Chapter III of Part III of the Convention. However the author will mention others Articles linkable with Chapter III and therefore important mainly for the buyer before the

² KRITZER, Albert, H. *CISG: Table of Contracting States* [online]. Pace Law School Institute of International Commercial Law, June 24, 2014 [cit. September 20, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/countries/cntries.html>>.

conclusion of the contract. All of it supported by the literature, authorities and the case law.

At the end the author will try to summarize all the findings to which he reached and give the comprehensive overview of buyer's obligations with some recommendations for everyone, who will want to be bound by the contract under the CISG.

1 Generally about CISG

Before looking to the buyer's obligations under this Convention it is important in this Chapter to make a small introduction to CISG (1.1). Following the outline of its application (1.2).

1.1 Introduction to CISG

The United Nations Convention on Contracts for the International Sale of Goods (CISG) was adopted on April 11, 1980, and entered into force on January 1, 1988, under the auspices of the United Nations Commission on International Trade Law (UNCITRAL).³ The CISG has established a World law of international sales and has influenced several national sales laws.⁴ As can be seen from the United Nations Treaty collection (on the website: <https://treaties.un.org/> it is possible to see more details about the Convention) since its entry into force on 1 January 1988, the number of Contracting States up to 29 September 2014 has risen to 83. This amount of Contracting States increases almost every month (even the author had to change this amount a couple of times during this work) and therefore this shows how the Contracting States trust and rely on the Convention. The parties to CISG come from every corner of the world. The author personally found that the first State to ratify the CISG was Lesotho and the most recent was up to 29 September 2014, Guyana.

In 2010, when Schlechtriem & Schwenzler wrote a commentary on the CISG, approximately 80 per cent of the world's trade in goods were (potentially) governed by the Convention.⁵ Nowadays, in 2014, when the number of Contracting States has risen from 74 in 2010 up to 83 in 2014, the author assumes, that this number of 80 per cent could be even bigger. The CISG has also been an outstanding success in the legal publishing world. The Pace CISG website, <http://www.cisg.law.pace.edu/>, lists 8,000 Articles and books in 28 languages. The website also contains 1,900 references

³ DIMATTEO, Larry A. *International Sales Law: A Critical Analysis of CISG Jurisprudence*. Cambridge University Press, 2005. p. 2.

⁴ JANSSEN, Andre, MEYER, Olaf. *CISG Methodology*. Sellier European Law Publishers, 2009, p. 1.

⁵ SCHLECHTRIEM, Peter, SCHWENZLER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 1.

(nowadays 2500⁶) to decisions of Courts and arbitral tribunals. Anyone researching a CISG problem in depth cannot complain about a shortage of material.⁷ When arise a problem with interpretation of Articles, then a prominent role in the creation and preservation of uniform interpretation is played by the CISG Advisory Council who addresses current contentious questions in the application of the CISG by way of opinions. Already today, even State Courts rely on the position taken in these opinions.⁸ The interpretation of CISG is also under the influence of the UNIDROIT Principles of International Commercial Contracts (UPIC) and the Principles of European Contract Law (PECL).⁹

The CISG is divided into four parts. Part I contains the rules on the sphere of its application and general provisions. Part II governs the formation of the contract. Part III contains the substantive rules for the sales contract, above all obligations and rights of the parties. Part IV contains the final public international law provisions. Important to bear in mind that Article 92(1) permits a Contracting State to implement the Convention without Part II or Part III.¹⁰

1.2 Sphere of application

Upon the entry into force of the CISG Contracting States are bound by public international law to apply its provisions within the anticipated sphere of the Convention. State Courts within Contracting States, therefore do not apply the CISG as foreign law or international law but as a unified State law. The applicability of the Convention is therefore to be examined by the Court *ex officio* and given where the requirements of the rules in Chapter I of Part I are met.¹¹

The CISG is thus “self-executory treaty” which is not dependent on any legislative act or enactment.¹² In our area, therefore, the Convention applies over the

⁶ KRITZER, Albert, H. *CISG: Table of Contracting States* [online]. Pace Law School Institute of International Commercial Law, June 24, 2014 [cit. September 20, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/countries/cntries.html>>.

⁷ HUBER, Peter, MULLIS, Alastair. *The CISG: A New Textbook for Students and Practitioners*. Sellier European Law Publishers, 2007, p. 7.

⁸ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 12.

⁹ JANSSEN, Andre, MEYER, Olaf. *CISG Methodology*. Sellier European Law Publishers, 2009, p. 1.

¹⁰ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 3.

¹¹ *Ibid*, pp. 19-20.

¹² *Ibid*, p. 24.

provisions of the Czech legal code.¹³ It follows that it is the original text in the (equally) authentic Arabian, Chinese, French, Russian, and Spanish language versions which applies to contracts. Translations into other languages as for example the German translation on which the German speaking countries have agreed, have no binding effect and can merely assist Courts in the respective countries.¹⁴

Concerning the positive application, every law must indicate the transactions or situations to which it applies,¹⁵ in this Convention we can find it in Article 1 of the CISG. Even though it is not a purpose of this work to explain thoroughly the application of the Convention, there should be a demonstrative example for better understanding.

Assume that the seller, US Company, LLC, is a Pittsburgh, Pennsylvania, USA, based manufacturer of widgets (the „Goods“) that are used as parts in large industrial equipment. The buyer, German GmbH, is a German company based in Düsseldorf that is a well-established manufacturer of large industrial equipment (the „Equipment“). It wishes to purchase the Goods as one of many component parts used in the production of the Equipment. As the buyer’s and the seller’s places of business are in different „Contracting States“, the CISG applies to this transaction unless its application is expressly excluded (CISG art. 1(1)(a)).¹⁶

After stating the positive application, there is also a need to state the negative application or restrictions of the sphere of application. The negative application can be found in Article 2 of the Convention. The exceptions enumerated in Article 2 are exhaustive and may not be applied by way of analogy to other cases.¹⁷ Under wording ‘restrictions’ is covered a possibility of a State to make a reservation to some Article and therefore not be bound by cases shown in that particular Article. Within the CISG these are exhaustively (Article 98) enumerated in Article 92-96.

¹³ PEPRNÝ, Aleš, STEJSKAL, Ladislav. *Mezinárodní obchod*. V Brně: Mendelova univerzita, 2011. p. 91.

¹⁴ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. pp. 24-25.

¹⁵ JANSSEN, Andre, MEYER, Olaf. *CISG Methodology*. Sellier European Law Publishers, 2009. p. 21.

¹⁶ FLECHTNER, Harry M., BRAND, Ronald A., WALTER, Mark S. and Editors, *Drafting Contracts under CISG*. Oxford: Oxford University Press, 2008. p. 5.

¹⁷ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 49.

In practice, for example States such as Argentina, Belarus, etc. declared reservation under Article 96 against freedom from requirements as to form and require only written form of the contract for sale of goods.¹⁸

¹⁸ KRITZER, Albert, H. *CISG: Table of Contracting States* [online]. Pace Law School Institute of International Commercial Law, June 24, 2014 [cit. September 20, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/countries/cntries.html>>.

2 Summary of Buyer's Obligations

2.1 Article 53 General responsibilities

As it can be visible even for a non-expert in this field of law, the meaning of Article 53 states the principal obligations of the buyer and serves as an introduction to the provisions of Chapter III. The principal obligations of the buyer are to pay the price and take delivery of the goods “...as required by the contract and this Convention”¹⁹, Art. 53 is therefore the opposite of Article 30 (Seller's obligations).

Both Articles taken together can be understood as a definition of the 'contract of sale of goods' in the sense of Article 1(1). Since this phrase describes the basic subject matter of the Convention, both parts of its definition determine the scope of application of the Convention. That this definition is split into two parts is typical of the drafting style of the Convention and reflective of its structure -- separate chapters for the obligations of the seller and of the buyer. The Convention gives further details for the payment of the price in Articles 54 to 59 and for taking delivery in Article 60.²⁰

¹⁹ United Nations Convention on Contracts for the International Sale of Goods (1980).

²⁰ MASCOW, Dietrich. *Article 53* [online]. Pace Law School Institute of International Commercial Law, February 2, 2005 [cit. June 7, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb53.html>>.

3 The Buyer's obligation to pay the purchase price

Under the CISG contract consist of the duty of the seller According to Article 30, which 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”*²¹ to the buyer, which for its part agrees to pay the price²² for the goods and take delivery²³ of them.

The question of payment of the purchase price is regularly stipulated in the payment condition.²⁴ Thus, it is upon to the parties to define them in the Contract, otherwise the Convention will apply to fill the gaps. The Convention deals with three sets of questions arising in the context payment of the price:

- A. what shall the buyer pay,
- B. where shall he pay, and
- C. when shall he pay.²⁵

A. Concerning this problem Convention contains two provisions. First is Article 55, which deals with the problem how to calculate the price if a validly concluded contract does not fix the price or make provisions for determining it. Article 55 causes particular difficulties in relation to Article 14.²⁶ The second provision can be found in Article 56, where the price is fixed according to the weight of the goods, it shall, in case of doubt, be determined by the net weight. As it will be shown later this Article does not make big difficulties for the buyer except of the case of packing.²⁷

B. In the determination of the place to pay Article 57 outlines two situations. According to the first mentioned in Article 57(1) (a): *“If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller at the seller's place of business.”*²⁸ Another situation is against handing over of the goods in Article 57 (1)

²¹ United Nations Convention on Contracts for the International Sale of Goods (1980).

²² Pay the price (In German: “Zahlung des Kaufpreises”).

²³ Take delivery (In German: “Abnahme der Ware”).

²⁴ ROZEHNALOVÁ, Naděžda. *Právo mezinárodního obchodu*. 3. vydání. Praha: Wolters Kluwer, ČR, a. s., 2010, p. 324.

²⁵ SEVÓN, Leif. *Obligations of the Buyer under the Vienna Convention on the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, January 27, 2000 [cit. June 8, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/sevon.html>>.

²⁶ See Chapter 3.2 hereof.

²⁷ See Chapter 3.3 hereof.

²⁸ United Nations Convention on Contracts for the International Sale of Goods (1980).

(b): “If payment is to be made against the handing over of the goods or of documents, the buyer must pay the price at the place where the handing over takes place.”²⁹ These situations will be described below in details.³⁰

C. Regarding to the time of payment, Convention describes it in Article 58. The basic rule is that the goods should be exchanged for payment of the price. The seller is not obliged to extend credit to the buyer and the buyer is not required to pay until he receives the goods or documents controlling their disposition.³¹

3.1 Article 54 Buyer’s obligation to ensure the contract price for the goods is paid

What is mentioned under the wording „pay the price“ (Kaufpreiszahlung) is partly shown in Article 54: „*The buyer’s obligation to pay the price includes taking such steps³² and complying with such formalities³³ as may be required under the contract or any laws and regulations to enable payment to be made.*”³⁴

The buyer must pay the price either as fixed in the contract or as determined according to contractual terms.³⁵ First, it is important to understand the meaning of the provision **(3.1.1)**, then the consequences of buyer’s failure to pay the price **(3.1.2)**, problems arising out of the provision **(3.1.3)**, important case law for buyer’s awareness **(3.1.4)**, recommendations concerning this Article **(3.1.5)** and in case of breach of contract the burden of proof **(3.1.6)**.

3.1.1 Meaning of the provision:

According to some authorities³⁶ there is a possibility to distinguish between **(A)** the commercial and **(B)** the administrative requirements to effect payment. Author agrees with such a distinction, because it is quite visible from the Convention itself.

²⁹ Ibid.

³⁰ See Chapter 3.4 hereof.

³¹ See Chapter 3.5 hereof.

³² Taking such steps (in German: „Maßnahmen zu treffen“).

³³ Complying with such formalities (In German: „Formalitäten zu erfüllen“).

³⁴ United Nations Convention on Contracts for the International Sale of Goods (1980).

³⁵ SCHLECHTRIEM, Peter. *Uniform Sales Law – The UN-Convention on Contracts for the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, June 7, 2000 [cit. June 8, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/schlechtriem-54.html>>.

³⁶ GONZÁLEZ, Alejandro, Osasuna. *Buyer’s Enabling Steps to Pay the Price: Article 54 of the United Nations Convention on Contracts for the International Sale of Goods* [online]. Pace Law School Institute

A. The meaning of **commercial measures** can be understood from Article 54 as “...taking such steps and complying with such formalities as may be required under the contract...”³⁷ According to case law, it can be understood as for ex. opening of a letter of credit. In a not so far published *Cotton Seed Case*³⁸ even so the buyer opened a letter of credit in favor of seller he included conditions not contemplated in the contract, which the defendant refused to remove despite the seller’s requests. In consequence, the Court ruled, that avoidance was rightful and buyer should pay damages³⁹ (similar in cases *Crude Oil Case*⁴⁰ and *Propane Case*⁴¹). This case shows us in a clear way consequences arising for the buyer if he does not comply with Article 54 in its previously shown wording. In another case, *Mushrooms case*,⁴² such a commercial measure was in obtaining a bank guarantee. In this case the buyer should secure payment for deliveries by a bank guarantee in favor of the seller, which should be valid until a certain date. The seller started to deliver the goods, but as the buyer failed to make payment, stopped further deliveries and declared the contract avoided. On a later date, the parties agreed that the seller would resume delivery on condition that the buyer provide the required guarantee. The buyer finally sent a guarantee which, however, bore the expiry date originally agreed upon and therefore was no longer valid. The Court held the issuance of a bank guarantee which had already expired would be contrary to the principle of good faith (Art. 7(1) CISG) and to the understanding that a reasonable person would have had in the same circumstances (Art. 8(3) CISG). In a result the avoidance of a contract was lawful and the buyer had to pay interest on the unpaid price (Art. 78 CISG).⁴³ This case leads to result, that even if it seems that the buyer met the requirements stated in Article 54, he can be still liable under Article 7(1) of CISG and therefore should be careful of it. The other commercial

of International Commercial Law, November 3, 2006 [cit. June 12, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/osuna2.html>>.

MASCOW, Dietrich. *Article 54* [online]. Pace Law School Institute of International Commercial Law, February 2, 2005 [cit. June 12, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb54.html>>.

³⁷ United Nations Convention on Contracts for the International Sale of Goods (1980).

³⁸ Seoul High Court, Republic of Korea 14 October 2010, 2010NA29609.

³⁹ *Republic of Korea 14 October 2010 Seoul High Court (Cotton seed case)* [online]. Pace Law School Institute of International Commercial Law, November 8, 2013 [cit. September 20, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/101014k3.html>>.

⁴⁰ Seoul Central District court, Republic of Korea 19 December 2008, 2007Gahap97810.

⁴¹ Oberster Gerichtshof [Supreme Court], Austria 6 February 1996, 10 Ob 518/95.

⁴² Budapest Arbitration proceeding Hungary 17 November 1995, VB 94/124.

⁴³ *Hungarian Chamber of Commerce and Industry Court of Arbitration, 17 November 1995* [online]. Unilex.info [cit. October 24, 2014]. Available at <<http://www.unilex.info/case.cfm?id=217>>.

measure can be to “...*obtain a demand guarantee, to sign a bill of exchange, to make a check to effect payment, or even to make a promissory note to secure it.*”⁴⁴

When complying with his commercial requirements, the buyer's standard of performance is that he must achieve a specific result. These steps to enable payment clearly fall within buyer's control; thus failure to comply with them would be buyer's sole responsibility, and would very likely constitute a fundamental breach.⁴⁵

B. The meaning of **administrative measures** can be understood from Article 54 as: “...*taking such steps and complying with such formalities as may be required under [...] any laws and regulations to enable payment to be made.*”⁴⁶ Therefore, they are those where the buyer must comply with something ordered in a statute, or with a governmental or administrative ordinance.⁴⁷ This can a very broad meaning for a buyer, to preclude its violation. Therefore the buyer should be very careful and greater importance should be given to a case law, to show what is covered under it.

Under the case law, this can be a case of complying with currency exchange regulations. In the *CLOUT Case N. 142*⁴⁸ where the buyer received the goods, but did not pay the price on the ground that there was a failure on the part of the bank responsible for the buyer's foreign currency transactions to give instructions for the amount payable for the goods under the contract to be transferred to the seller. The bank did not transfer the foreign currency amounts to the seller on the grounds that there were no funds available in the buyer's account in freely convertible currency to pay for the goods. The tribunal held that in the present case, as follows from the materials of the case and from the explanations given by the representative of the buyer at the hearing, the buyer did not take any definite steps to enable payment to be made except for sending a request to the bank to transfer the price of the goods to the seller's account. Therefore the buyer had to pay a sum owed to the seller.⁴⁹ The result

⁴⁴ GONZÁLEZ, Alejandro, Osasuna. *Buyer's Enabling Steps to Pay the Price: Article 54 of the United Nations Convention on Contracts for the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, November 3, 2006 [cit. June 12, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/osuna2.html>>.

⁴⁵ Ibid.

⁴⁶ United Nations Convention on Contracts for the International Sale of Goods (1980).

⁴⁷ GONZÁLEZ, Alejandro, Osasuna. *Buyer's Enabling Steps to Pay the Price: Article 54 of the United Nations Convention on Contracts for the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, November 3, 2006 [cit. June 12, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/osuna2.html>>.

⁴⁸ Arbitration proceeding, Russian Federation 17 October 1995, 123/1992.

⁴⁹ *Russia 17 October 1995 Arbitration proceeding 123/1992* [online]. Pace Law School Institute of International Commercial Law, August 16, 2005 [cit. October 7, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/951017r1.html>>.

of this case is that the buyer should be careful and not simply rely on the bank, but do all possible steps even before the conclusion of the contract to be sure like for ex. in this particular case, that he will have enough funds in a convertible currency.

Because the CISG does not speak of the applicable domestic law, but of any laws and regulations, no choice of law-approach is warranted to determine the applicable law. Rather, all and any laws and regulations that may have any effect on the payment by the buyer need to be observed by him.⁵⁰ First of all the legal code of the place of business of the buyer and of course also a seller, in terms of a cooperation in fulfilling this obligation.⁵¹ With respect to the foreign exchange rules of the seller's country, the seller is under an obligation to cooperate with the buyer to inform him about all applicable rules⁵²

In conclusion, there is a need to mention the difference between them in case of non-achievement of the desired result. As was stated above steps to achieve a specific result in commercial measures fall within buyer's control. This will not be a case where a seller has to cooperate with a buyer like in *Propane Case*⁵³, where the letter of credit was not issued because the seller's did not inform the buyer of the place of loading despite their obligation to do so and their express confirmation in this regard, and it result lead to exemption of buyer liability under Article 80.⁵⁴ However, in case of administrative measures it is not within a buyer's control.

It is well known that government authorities in some states act with a greater degree of discretion than others, and often times refuse to grant or issue a license, such as an authorization to purchase foreign currency or to transfer funds abroad. Still, the buyer must make his best reasonable effort to pursue compliance with the legal requirements full heartedly, with a view to actually obtaining the desired result.⁵⁵ But what in case if the buyer took all reasonable effort to pursue compliance with the legal

⁵⁰ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 812.

⁵¹ ROZEHNALOVÁ, Naděžda. *Právo mezinárodního obchodu*. 3. vydání. Praha: Wolters Kluwer, ČR, a. s., 2010, p. 324.

⁵² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 812.

⁵³ Oberster Gerichtshof [Supreme Court], Austria 6 February 1996, 10 Ob 518/95.

⁵⁴ *Austria 6 February 1996 Supreme Court (Propane case)* [online]. Pace Law School Institute of International Commercial Law, June 19, 2007 [cit. September 18, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/960206a3.html>>.

⁵⁵ GONZÁLEZ, Alejandro, Osasuna. *Buyer's Enabling Steps to Pay the Price: Article 54 of the United Nations Convention on Contracts for the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, November 3, 2006 [cit. June 12, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/osuna2.html>>.

requirements, but still failed? Is there a possibility for exemption under Article 79? Article 79 states: “ ... *not liable for a failure to perform any of its obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract...* ”.⁵⁶ In this case, therefore there is a possibility that buyer will be exempted, because it usually will be interpreted as an impediment beyond his control. The introduction of the term ‘impediment’ should ensure a narrow and objective understanding of the grounds for exemption. Therefore, only objective circumstances that prevent performance, ie those external to the promisor, can be considered to be impediments within the meaning of Article 79.⁵⁷ Unlike the case where the buyer must comply with his commercial obligations, when it comes to administrative authorizations, the buyer will not have an alternative.⁵⁸

However, this is not a case where the parties agreed on so called *force majeure* clauses.⁵⁹ In previously mentioned *CLOUT Case N. 142*⁶⁰, concerning administrative measure, the Court held that buyer's reference to force majeure circumstances, and, in particular, to the lack of funds in hard currency necessary in order to pay for the goods imported, cannot be taken into consideration by the Tribunal, since clause 10 of the contract contained the exhausted list of grounds on which the fulfillment of one's obligations under the contract may be postponed. The above list does not include such circumstance as the buyer's lack of hard currency funds.⁶¹ Therefore, this case showed that even if the buyer will take all reasonable effort to pursue compliance with the legal requirements, but still fail, he will not be exempted under Article 79, because such an exemption it is not stated in a contract. The buyer should therefore be very careful in writing such a clause and at least from the point of view of author it is questionable if it is better or not to write such a clause. From one side it will be good to know possible

⁵⁶ United Nations Convention on Contracts for the International Sale of Goods (1980).

⁵⁷ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 1067.

⁵⁸ GONZÁLEZ, Alejandro, Osasuna. *Buyer's Enabling Steps to Pay the Price: Article 54 of the United Nations Convention on Contracts for the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, November 3, 2006 [cit. June 12, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/osuna2.html>>.

⁵⁹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 1085.

⁶⁰ Arbitration proceeding, Russian Federation 17 October 1995, 123/1992.

⁶¹ *Russia 17 October 1995 Arbitration proceeding 123/1992* [online]. Pace Law School Institute of International Commercial Law, August 16, 2005 [cit. October 7, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/951017r1.html>>.

exemptions, from the other side, it is almost impossible to write all of them and in the end can lead to losing a case in case of such an obstacle.

3.1.2 Consequences of buyer's failure to pay the price

The CISG does not distinguish between the buyer's obligation to pay the price and his associated obligations under Article 54. Due to the fact that the same remedies apply regardless of whatever the obligation breached is for the payment of the price or for one of the buyer's associated obligations under Article 54, classification of the buyer's associated obligations to his obligation to pay the price is irrelevant in practice. Specifically the buyer's failure to take enabling steps in accordance with Article 54 is a breach of contract in itself is not just an anticipatory breach of his obligation to pay the purchase price in the future.⁶² This all will lead to consequences like in *Crude Oil Case*⁶³, where buyer's failure to open a L/C constituted a fundamental breach of contract because the buyer did not comply with the obligation required under the contract and since seller already resell the goods for him in a worse conditions, the Court decision was that buyer had to pay the difference between the contract price and the price in the substitute transaction and the extra payment for the storage (Art. 75 CISG).⁶⁴

To sum up, the buyer should be careful that he bears consequences not only for not paying the price, but also for his associated obligation under the same Article.

3.1.3 Problems arising out of the provision

The Convention shows from its wording that the buyer has "*obligation to pay the price*" however it is not stated in which currency he has to pay. As it seems from the Convention in Article 53: "*The buyer must pay the price [...] as required by the contract ...*"⁶⁵ and taking together with party autonomy in Article 6, the main possibility how to pay the price is conclude it in a contract. But what if the contract does not specify the currency? In this case there could exist any usage or practice according to Article 9

⁶² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 813.

⁶³ Seoul Central District court, Republic of Korea 19 December 2008, 2007Gahap97810.

⁶⁴ *Republic of Korea 19 December 2008 Seoul Central District Court (Crude oil case)* [online]. Pace Law School Institute of International Commercial Law, November 8, 2013 [cit. October 5, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/081219k3.html>>.

⁶⁵ United Nations Convention on Contracts for the International Sale of Goods (1980).

between the parties, if they previously had some businesses together. For example, if they agreed to pay every time by Euro to specific kind of goods. Where no result is reached by all these means, resort is to be taken to the law applicable by virtue of the rules of private international law (Article 7(2)), taking into consideration the currency regulations of the countries concerned.⁶⁶ This possible solution is shown in *Oven Case*⁶⁷ where the Court stated: “*The CISG does not contain any provision concerning the currency or the statutory means of payment. In the absence of contractual conditions specifying the currency of the payment, it is determined by the national law, designated by the rules of conflict of laws*”.⁶⁸ Therefore, according to this decision in a case where the parties do not specify the currency in a contract, the currency should be determined by the national law. However, on the other side several courts have accordingly relied on Article 57, which determines the place of payment of the price, and this has led them to rule in favor of the currency where the seller’s place of business is located according to Article 57 (1) (a). This is because Article 57 (1) (a) is a general principle of the CISG⁶⁹ (this view is supported by *Veneer cutting machine case*⁷⁰) and according to Article 7(2) questions which are not expressly settled in the Convention should rely on general principles, therefore even on Article 57(1)(a). For example, in *Computer chip case*⁷¹, where the claim was awarded in French Francs and permission to make payment in German currency pursuant to the German Civil Code was not granted, as this was dependent upon the place of performance of the contract being in Germany. According to Article 57(1)(a) of the CISG, the seller’s place of business in France was the proper place of performance.⁷²

To sum up the above mentioned the currency must be in accordance with a contract. In absence of it in accordance with a usage or practice between the parties or even if this is not a case there a two possibilities to rely on Article 7(2) in connection

⁶⁶ MASCOW, Dietrich. *Article 54* [online]. Pace Law School Institute of International Commercial Law, February 2, 2005 [cit. June 8, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb54.html>>.

⁶⁷ CLOUT case No. 934, Canton Appellate Court Valais, Switzerland 27 April 2007, C1 06 95.

⁶⁸ *Switzerland 27 April 2007 Canton Appellate Court Valais (Oven case)* [online]. Pace Law School Institute of International Commercial Law, October 22, 2010 [cit. October 15, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/070427s1.html>>.

⁶⁹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 138.

⁷⁰ Appellate Court Düsseldorf Germany 2 July 1993, 17 U 73/93.

⁷¹ Appellate Court Koblenz, Germany 17 September 1993, 2 U 1230/91.

⁷² *Germany 17 September 1993 Appellate Court Koblenz (Computer chip case)* [online]. Pace Law School Institute of International Commercial Law, March 12, 2005 [cit. October 15, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/930917g1.html>>.

with law applicable by virtue of the rules of private international law or on Article 57 (1)(a) as a general principle of CISG (Art. 7(2)). According to author opinion in this case Article 57(1)(a) should prevail. This is because from the meaning of Article 7(2) “questions concerning matters governed by this Convention which are not expressly settled...” we can see that this Article can be used only in cases, where the Convention does not give an answer on a specific problem. However, in the point of view of the author this problem is solved under Article 57(1)(a), which is a general principle and with connection of Article 7(2) should explain the possible gaps in the Convention. This will be good even for a seller, because it will lead mostly to a seller place of business, according to a general principle in Article 57 (1)(a) and the view of this place of payment is similar to the domestic laws of several European States.⁷³ Otherwise, it will not be predictable for parties and will lead to more burdensome consequences.

3.1.4 Important case law for buyer’s awareness

The main purpose of this section is to bring near to the buyer important cases concerning this Article, to be aware of some problems which can arise in practice before concluding the contract.

CLOUT Case NO. 176 (*Propane Case*):⁷⁴

The plaintiff, a German buyer, and the defendant, an Austrian seller, entered into an agreement for the FOB delivery of a certain quantity of propane gas. The parties exchanged communications by facsimile and telephone on the terms of their agreement, including the method of payment (letter of credit). The buyer, however, did not obtain a letter of credit since an essential element was missing, i.e. the seller failed to name the port of origin.⁷⁵

The parties had initially intended to enter into a "basic agreement", which would contain the general conditions of the seller and would constitute the trade usages that would govern the transactions between the parties, but could not reach an agreement.⁷⁶

⁷³ See Chapter 3.4.2 hereof.

⁷⁴ Oberster Gerichtshof [Supreme Court], Austria 6 February 1996, 10 Ob 518/95.

⁷⁵ *Austria 6 February 1996 Supreme Court (Propane case)* [online]. Pace Law School Institute of International Commercial Law, June 19, 2007 [cit. September 18, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/960206a3.html>>.

⁷⁶ *Ibid.*

The Court found that the parties could be bound by any trade practices or usage established between themselves (Article 9(1) CISG). In such instances, Article 9(1) CISG must be interpreted in the light of Article 8(1) CISG to the effect that a party must have known of the intent of the other party. As regards the letter of credit, the Court found that under Article 54 CISG the buyer would be under an obligation to obtain a letter of credit. However, the Court held that the buyer did not violate such an obligation since the seller failed to provide the necessary details and the buyer was under no obligation to obtain a "blank" letter of credit.⁷⁷

The question of the case arises – “Is buyer allowed to fill in the blanks” where the seller fails to provide information for a letter of credit by his (seller’s) omission?

This kind of gap can be resolved by Article 9(1), in case where the parties established any practice between them. This could be a case when parties already dealt with similar contracts between them, the buyer therefore has to consider such a dealings and try his best effort to keep the contract valid. Another option could be according to Article 65. Despite the fact, that this Article is in use when the buyer fail to specify some form, measurement or other features of the goods, it also can be applied if the contract does not require or authorize the buyer to make the specification unilaterally but leaves the specification to be agreed by both parties and, later on, they fail to do so.⁷⁸ Therefore, from the point of view of the author it also could be seen as a possibility for a buyer to specify the contract when a seller fails to do so. This is because the wording ‘agreed by both parties’ could be solved in this particular case by filling the port of origin by the buyer as an offer and the possible seller acceptance under Article 18(3). The wording of this Article “ *...the offeree may indicate assent by performing an act [...] the acceptance is effective at the moment the act is performed ...* ”⁷⁹ shows that it can be done for ex. by delivering the goods to the port of origin for loading by the seller. In this case it also will not be contradict to a good faith (Article 7(1)), because by doing so, the buyer will not change the contract in a way which can be burdensome for a seller, he will avoid a possible avoidance of a contract with appropriate bad consequences for a seller.

Hilaturas Miel, S.L. v. Republic of Iraq⁸⁰

⁷⁷ Ibid.

⁷⁸ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 914.

⁷⁹ United Nations Convention on Contracts for the International Sale of Goods (1980).

⁸⁰ Federal District Court (New York) United States 20 August 2008, 06 Civ 12.

In 2000, a Spanish company bid for a contract under the “Oil for Food Program” (“OFFP”) to provide acrylic yarn to an Iraqi state-owned enterprise. The Spanish company classified second, but it was subsequently assigned the contract entered into by the original contractor. Under the terms of the contract, in accordance with the conditions laid down in a memorandum of understanding between the United Nations Secretariat and Iraqi Government and implementing the OFFP, no payment would be made absent the UN Secretary’s confirmation of the goods’ actual arrival in Iraq and their compliance with the requirements in the letter of credit issued for the seller at the request of the Central Bank of Iraq. Under the contract, Cotecna had the responsibility for inspecting the Aqaba Goods and issuing the credit conform documents. The contract also allowed partial payments corresponding to actual partial deliveries.⁸¹

The Spanish company made several deliveries, prior to the commencement of the armed hostilities, which were paid for. However, due to the beginning of the war and the removal of all the personnel appointed as OFFP inspectors, subsequent deliveries were stored in the port of Aqaba, Jordan, while the final shipment was retained in Valencia, Spain, awaiting the seller for instructions and payment by either the United Nations or the Iraqi government. Hilaturas sent a letter to the U.N. Office of the Iraq Program on March 24, 2003, asserting that delivery of the yarn could not be completed as a consequence of the withdrawal of the COTECNA staff and the outbreak of war. The letter advised that to postpone shipment to the utmost but within the L/C validity (Apr. 30th) with the hope that in the meantime, some solution may be glimpsed.⁸²

Therefore, it is undisputed that with Cotecna's withdrawal from the region, Hilaturas was unable to secure credit-conform documents, which was a condition precedent to the payment of the letter of credit issued on behalf of Hilaturas under the OFFP Contract. In November 2003, the Spanish company rejected the UN settlement proposal, and in September 2004 filed a lawsuit against the Iraqi government, as successor of all rights and obligations assumed under the OFFP, which was based, inter alia, on Art. 73 CISG.⁸³

⁸¹ *U.S. District Court, New York (Southern District), 20 August 2008* [online]. Unilex.info [cit. October 18, 2014]. Available at <<http://www.unilex.info/case.cfm?pid=1&do=case&id=1465&step=FullText>>.

⁸² *Ibid.*

⁸³ *Ibid.*

As to the merits, the Court found that the Spanish company had been prevented from performing its contractual obligations by the occurrence of impediments beyond its control (i.e., the commencement of the war and the withdrawal of the OFFP inspectors).⁸⁴

The question of the case arise - "If the buyer has an obligation to offer alternatives to seller once it became clear that seller could not secure credit-conform documents?"

Hilaturas (seller) does cite CISG Art. 54, which states that "*the buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.*"⁸⁵ However, the duty described in Article 54 does not speak to whether a buyer is required to accept alternative performance when it becomes clear that seller cannot perform according to the contract's terms, but rather addresses the buyer's performance. Therefore, the Court rejected the Spanish seller's contention that, pursuant to Art. 54 CISG, Iraq should have offered alternatives to it once it became clear that it would not be able to comply with the contractual terms and recalled that the CISG does not address the issue of substitute performance.⁸⁶

To sum up these two important cases buyer now have to know, that there is a possibility under some circumstances cited above to fill the letter of credit in case of seller omission to provide information for letter of credit. And that the buyer has no obligation to offer alternatives to seller once it became clear that seller could not secure credit-conform documents under Article 54.

3.1.5 Recommendations concerning this Article

As is evident from the above mentioned, the text of this Article can hide many difficulties which the parties should be aware before the conclusion of the contract to be sure that the contract will be inconsistent with their needs and business and to prevent problems arising later from such a contract. It is important to bear in mind what is covered under wording "*taking such steps*" and "*comply with such formalities*", because a failure of it could constitute a fundamental breach.⁸⁷ The case law is really

⁸⁴ Ibid.

⁸⁵ United Nations Convention on Contracts for the International Sale of Goods (1980).

⁸⁶ Ibid.

⁸⁷ See Chapter 3.1.1 hereof.

important to show the possible difficulties already arisen in practice like if the contract requires payment by letter of credit, the failure to take steps to open the letter could constitute a breach. However, this is different from case to case.⁸⁸ Importance should be given in consideration of writing *force majeure clauses*⁸⁹, define the currency⁹⁰, possibility to fill the blanks.⁹¹ However the most reliable and safe is to choose the lawyer who will be familiar with a case law in this field of law and therefore will know the difficulties which already arose in practice and help to overcome such obstacles in future. This recommendation also applies to the following Articles.

3.1.6 Burden of proof

The seller has the burden of proof that the buyer was under an obligation associated with the payment and that he is in fact breached this obligation.⁹²

3.2 Article 55 When the price is not set by the agreement⁹³

First of all it is important to see the scope of application **(3.2.1)** then the comparison of Article 14 and 55 and the importance of intention **(3.2.2)**. Further understanding of different views on interplay between Article 14 and 55 **(3.2.3)**. Following by important case law on the distinction between Articles 14 and 55 **(3.2.4)**, the price determination **(3.2.5)**, some recommendation concerning this Article **(3.2.6)** and in case of breach of the contract the burden of proof **(3.2.7)**.

3.2.1 Scope of application

As is revealed by the Convention's travaux préparatoires, the interplay of Articles 14 and 55 is one of the most difficult questions raised by the Convention.⁹⁴ And one of the most controversial issues arising under the CISG is the validity of an

⁸⁸ See Chapters 3.1.1 and 3.1.4 hereof.

⁸⁹ See Chapter 3.1.1 hereof.

⁹⁰ See Chapter 3.1.3 hereof.

⁹¹ See Chapter 3.1.4 hereof.

⁹² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 814.

⁹³ In German: "Wenn der Preis nicht unter die Vereinbarung gesetzt".

⁹⁴ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

open price contract.⁹⁵ The controversial views on open price contracts are still visible in the apparent conflict of application of Article 14 and Article 55.⁹⁶ This issue is unresolved even in the case law, where exist two decisions with different solutions.⁹⁷

A wide variety of different views are still held today on how to resolve this conflict in the sphere of application of the respective provisions. On each side of the spectrum of different views, a clear position is taken. On the one side, the view is taken that Article 14 prevails over Article 55. On the other side, the view is taken that Article 55 generally prevails over Article 14.⁹⁸ The author will try to compare both of them and reach the best solution for a buyer.⁹⁹

3.2.2 Comparison of Article 14 and 55 and importance of intention

Because courts and arbitral decisions consistently hold that, in order to determine whether Article 55 is applicable, one must refer first and foremost to the intention of the parties.¹⁰⁰ For example, in a case *Alain Veyron v. Ambrosio*¹⁰¹ buyer relied in his briefs on Article 55 of the Vienna Convention (CISG) in the case of an undetermined price to be the price determined under market price. However the Court held that the reference to the market price in Article 55 of the CISG, as much as it is applicable in the case, is cast aside in the face of a contrary agreement by the parties governed by the totality of the provisions of the CISG subject to Article 12 (Article 6). Moreover, the Court stated that in light of the taking delivery of the goods ordered by buyer, without challenging in a precise manner their sale price, seller could have, pursuant to Article 8, paragraphs 2 and 3 of the CISG, interpreted buyer's behavior as an indication of acceptance of the price.¹⁰² Therefore as was stated above court rely on Article 8 in connection with Article 55 in the interpretation of a behavior of the

⁹⁵ KAROLLUS, Martin. *Judicial Interpretation and Application of the CISG in Germany 1988-1994* [online]. Pace Law School Institute of International Commercial Law, August 16, 1999 [cit. June 12, 2014]. Available at <<http://cisgw3.law.pace.edu/cisg/text/karollus14,55.html>>.

⁹⁶ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 817.

⁹⁷ See Chapter 3.2.4 hereof.

⁹⁸ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 817.

⁹⁹ See Chapter 3.2.3 hereof.

¹⁰⁰ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

¹⁰¹ CLOUT Case NO. 151 Appellate Court Grenoble, France 26 April 1995, 93/1613.

¹⁰² *France 26 April 1995 Appellate Court Grenoble (Alain Veyron v. Ambrosio)* [online]. Pace Law School Institute of International Commercial Law, March 20, 2007 [cit. October 11, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/950426f1.html>>.

parties. Moreover, Article 8, which also addresses the question of interpreting statements or other conduct of a party (i.e., intention), is part of the standard of Article 14(1),¹⁰³ thus for better understanding of the interplay between Article 55 and 14 there should be a space for understanding of Article 8.

To begin with, Article 8(1), which state, that “...*statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have unaware what that intent was.*”¹⁰⁴ Therefore the Article rely as it was confirmed in a case *MCC-Marble Ceramic Center v. Ceramica Nuova D'Agostin*¹⁰⁵ on a *subjective* interpretation.

On the other hand Article 8(2) “...*statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances*”¹⁰⁶ rely on an *objective* interpretation and this view is supported by the *Packaging machine case*.¹⁰⁷

And finally Article 8(3) applies to the understanding of the intent of the party Article 8(1) and reasonable person Article 8 (2). In a sense, Article 8(3) serves as an “objective” overlay to the standards of both Articles 8(1) and 8(2).¹⁰⁸ By stating that the intent of the party and a reasonable person should be made “*due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties*”¹⁰⁹ the wording “all relevant circumstances” including particular examples should be understandable as an *objective* criteria as it was confirmed in a *Fruit and vegetables case*.¹¹⁰ The Article also refers to Article 9 in terms of understanding “practice” and “usage.” In terms of “negotiations” and

¹⁰³ AMATO, Paul. *U.N. Convention on Contracts for the International Sale of Goods -- The Open Price Term and Uniform Application: An Early Interpretation by the Hungarian Courts* [online]. Pace Law School Institute of International Commercial Law, January 29, 2001 [cit. June 12, 2014]. Available at <<http://cisgw3.law.pace.edu/cisg/biblio/amato.html>>.

¹⁰⁴ United Nations Convention on Contracts for the International Sale of Goods (1980).

¹⁰⁵ Federal Appellate Court (11th Circuit) United States 29 June 1998, 97-4250.

¹⁰⁶ United Nations Convention on Contracts for the International Sale of Goods (1980).

¹⁰⁷ Civil Court Basil-Stadt Switzerland 8 November 2006, P 2004 152.

¹⁰⁸ AMATO, Paul. *U.N. Convention on Contracts for the International Sale of Goods -- The Open Price Term and Uniform Application: An Early Interpretation by the Hungarian Courts* [online]. Pace Law School Institute of International Commercial Law, January 29, 2001 [cit. June 12, 2014]. Available at <<http://cisgw3.law.pace.edu/cisg/biblio/amato.html>>.

¹⁰⁹ United Nations Convention on Contracts for the International Sale of Goods (1980).

¹¹⁰ Handelsgericht (Commercial Court) Aargau Switzerland 26 November 2008, HOR.2006.79 / AC / tv.

“subsequent conduct” it will be differ from case to case and thus will be on a court to decide if in a particular case such a criteria were met.

With the understanding of the Article 8 it can be easier to understand the meaning of Article 14, mainly the wording “a proposal is sufficiently definite [...] expressly or implicitly fixes or makes provision for determining the quantity and the price”¹¹¹ and consequently the wording of Article 55 “...does not expressly or implicitly fix or make provisions for determining the price...”.¹¹² Difficulty arises, however, in the requirement that the price be sufficiently definite. This clause has caused controversy in the early examinations of CISG, and the difficulty it engenders is highlighted by the facts of *Pratt & Whitney v. Malev*.¹¹³

The basis of the controversy arises from the interplay, or lack thereof, between the reference in Article 14(1) to a sufficiently definite price term and the open price provision of Article 55.¹¹⁴

3.2.3 Different views on interplay between Article 14 and 55

Regarding to the first view that Article 14 prevails over Article 55, this point of view defends Professor Farnsworth. As Professor Farnsworth stated “the law in many other countries is less receptive to open price terms, however, and Article 14 seems to reflect this more restrictive view”¹¹⁵ it may seem that he wanted to say by this, that Article 14 refers a restrictive view on open price terms and therefore Article 55 cannot apply without Article 14. Moreover, he confirmed this opinion by wording “Article 55 only operates if a contract has been ‘validly concluded’.”¹¹⁶ But still it is not understandable, when exactly the contract will be validly concluded? Farnsworth stated that, where the Convention is ratified with no reservation under Article 92, in case of Part II of Convention, Article 14 will prevent a contract with an unstated price

¹¹¹ United Nations Convention on Contracts for the International Sale of Goods (1980).

¹¹² Ibid.

¹¹³ See Chapter 3.2.4 hereof.

AMATO, Paul. *U.N. Convention on Contracts for the International Sale of Goods -- The Open Price Term and Uniform Application: An Early Interpretation by the Hungarian Courts* [online]. Pace Law School Institute of International Commercial Law, January 29, 2001 [cit. June 12, 2014]. Available at <<http://cisgw3.law.pace.edu/cisg/biblio/amato.html>>.

¹¹⁴ Ibid.

¹¹⁵ FARNSWORTH, Allan E. *Formation of Contract* [online]. Pace Law School Institute of International Commercial Law, December 9, 2004 [cit. June 12, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/farnsworth1.html>>.

¹¹⁶ Ibid.

from being validly concluded, so that Article 55 could not have an effect.¹¹⁷ Therefore, with a view of Professor Murray he joins others who believe that Article 55, in Part III of CISG dealing with the obligations of the parties to an existing contract, was designed for use only where a Contracting State made a declaration under Article 92(1) that it will not be bound by Part II of the Convention.¹¹⁸ Therefore, if a Contracting State made a reservation under Article 92 and is not bound by Part II of the Convention, Article 14 will not apply as a part of Part II. Therefore Article 55 will be applicable directly and the contract will be valid (if it will be valid under domestic law) even if it did not meet conditions in Article 14.

On the other side Professor Honnold, posits that Article 55 resolves any doubt as to open price terms and therefore prevails over Article 14. Professor Honnold stated that “Article 14(1) provides that a communication that does not state or make provision for the price is not an ‘offer’ so that a reply ‘I accept’ does not close a contract. However, Article 14(1) does not bar the parties from concluding a contract by express agreement or by conduct (e.g., by shipping, receiving and using goods) that shows their ‘intention...to be bound’ (Art. 14(1)). The only rule of ‘validity’ with respect to agreement on price results from the opening phrase of Article 55 which defers to applicable domestic law.”¹¹⁹ Therefore he argued that validity is not rely on offer and acceptance, but can exist even without it, according to intention of the parties (Article 8, 9). And therefore validity is on the domestic law, which he supported by the fact of a history of developing of this provision, which support this view and state that assessment of the validity is upon to an applicable domestic law.¹²⁰

From the point of view of the author both scenarios are possible, however he is inclined to the Honnold side, because it does not make sense to make a contract and resolve the case according to Article 55 in wording “...*in the absence of any* indication [...] made reference to the price generally charged ...”¹²¹ when the validity is still dependent on Article 14, even how it was mentioned it was not a intent of a drafting of

¹¹⁷ Ibid.

¹¹⁸ MURRAY, John E. *An Essay on the Formation of Contracts and Related Matters under the United Nations Convention on Contracts for the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, February 6, 1998 [cit. June 12, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/murray.html>>.

¹¹⁹ HONNOLD, John O. *Uniform Law for International Sales Under the 1980 United Nations Convention*. Kluwer Law International; 3rd Revised edition, 1999. p. 155.

¹²⁰ Ibid, p. 154.

¹²¹ United Nations Convention on Contracts for the International Sale of Goods (1980).

this Article. Moreover, as the Court held in *Oven case*¹²² Article 55 protects the buyer from paying too much on the other hand, with the applicability of Article 14 buyer bears the risk to pay more than foreseen.¹²³ Therefore, it is more favorable to rely on the applicability of Article 55 to the needs of a buyer. For the buyer to preclude such obstacles and predict a possible result the best solution will be to determine the price in a contract otherwise if he will want to rely and be sure of the applicability of Article 55 he needs to know that Contracting state in a dispute made a reservation in case of Part II of Convention under Article 92. However the solution of this problem will differ from case to case as it will be mention in the next section.

3.2.4 Important case law on distinction between Article 14 and 15

If we have to look at decision, which give precedence to Article 14 over Article 55, supported by view of Professor Farnsworth, we have to refer to a *Pratt & Whitney v. Malev*¹²⁴ case, where Hungarian Supreme Court found that the contract terms were not sufficiently definite to indicate that a contract existed. Although the Court made reference to CISG Articles 8 and 19, it relied on Article 14(1) in finding that P&W's offer was not sufficiently definite in regard to price, and thus, that P&W's proposal did not reasonably constitute an offer. In passing, the Court also considered Article 55 (regarding open price contracts), stating that the price here could not be determined based on Article 55 since "jet engine systems have no market prices."¹²⁵ This is also supported by another case, *Cutlery case*¹²⁶ where the Court held that a contract had been validly concluded although not all relevant points had been addressed by the parties, such as the purchase price. The buyer had ordered specific sets of cutlery and had informed the seller about the time of delivery. This offer was sufficiently definite (Article 14(1) CISG).¹²⁷ In this case, the Court did not take into account possible applicability of Article 55 at all.

¹²² CLOUT case No. 934, Canton Appellate Court Valais, Switzerland 27 April 2007, C1 06 95.

¹²³ *Switzerland 27 April 2007 Canton Appellate Court Valais (Oven case)* [online]. Pace Law School Institute of International Commercial Law, October 22, 2010 [cit. October 15, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/070427s1.html>>.

¹²⁴ CLOUT Case NO. 53, Supreme Court Hungary 25 September 1992, Gf.I. 31 349/1992/9.

¹²⁵ *Hungary 25 September 1992 Supreme Court (Pratt & Whitney v. Malev)* [online]. Pace Law School Institute of International Commercial Law, February 15, 2007 [cit. October 15, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/920925h1.html>>.

¹²⁶ Commercial Court Aargau Switzerland 26 September 1997, OR.96.0-0013.

¹²⁷ *Switzerland 26 September 1997 Commercial Court Aargau (Cutlery case)* [online]. Pace Law School Institute of International Commercial Law, October 30, 2006 [cit. September 19, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/970926s1.html>>.

According to a Honnold view that Article 55 apply over Article 14 there is a need to refer to *Case NO. 185/2000*¹²⁸ where the Tribunal stated that the parties to the contract in controversy qualified the "beyond-the-contract" use of goods by buyer as a delivery of the goods at the commercial prices, i.e., they treated it as a sales contract. However, they did not expressly or implicitly define those prices. In such circumstances, Art. 55 CISG should apply. A similar rule is provided for by Art. 424 of the Russian Federation Civil Code. Since, according to Art. 4 CISG, the CISG does not deal with the validity of the contract itself, its validity has to be determined according to the applicable national (in the present case - Russian) law. Russian law, according to Art. 424 of the Russian Federation Civil Code, allows conclusion of contracts without setting forth the price.¹²⁹

To sum up these three cases it is visible then even for a courts it is not easy to choose one of the two possibilities. Therefore, this problem parties should try to prevent before the conclusion of the contract otherwise it will be hard for them to predict consequences.

3.2.5 Price determination

Where Article 55 applies, the parties are presumed to have intended "...*the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.*"¹³⁰ As was already stated above¹³¹ in *Oven case*¹³² such a meaning of the Article protects the buyer from paying too much and it does not permit the buyer to benefit from a very advantageous price.

This view is even supported from the drafting history of the Article where previously was stated "*the price generally charged by the seller*" which gave unfair advantage to seller changed to the meaning which is now "*the price generally charged at the time of the conclusion of the contract.*"¹³³

When referring to "the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned," Article 55 says nothing about the geographical area where the trade is

¹²⁸ Arbitration proceeding 185/2000 Russia 30 May 2001, 185/2000.

¹²⁹ Ibid, taken from the full text, Available at < <http://cisgw3.law.pace.edu/cases/010530r2.html> >.

¹³⁰ United Nations Convention on Contracts for the International Sale of Goods (1980).

¹³¹ See Chapter 3.2.3 hereof.

¹³² CLOUT case No. 934, Canton Appellate Court Valais, Switzerland 27 April 2007, C1 06 95.

¹³³ HONNOLD, John O. *Uniform Law for International Sales Under the 1980 United Nations Convention*. Kluwer Law International; 3rd Revised edition, 1999. p. 154.

carried on.¹³⁴ In the Pitted sour cherries case¹³⁵ the price of sour cherries was determined by the market price of the seller, because seller fixed its financial terms on the basis of that market.¹³⁶ Therefore, in this case Court favor seller's place of business.

The other view is that the determination of the price will only be relatively easy if market prices or exchange notations exist. If such a current price exists, Article 76(2) can be used as a guideline to determine the place where the applicable current price is set. From Article 76(2) it follows that the current price at the place where delivery of the goods should have been made is decisive.¹³⁷ This approach may be advantageous in regard to the choice of such place under Article 76 (2) for calculating damages in the event of contract avoidance.¹³⁸ If no current price exists at that place, the price at such other place serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods, can be applied instead. In the distributive chain, the relevant market is the selling market of the seller not the purchasing market of the buyer. Attention is to be given to premium and deductions applicable to goods traded on such markets. If no market price exists at either the place of delivery or a substitute place, the determination of the applicable price under Article 55 becomes very difficult.¹³⁹ The example of such a case was stated above in *Pratt & Whitney v. Malev*¹⁴⁰ where the price could not be determined under Article 55 because jet engine systems in that case had no market prices.

In another *Frozen food case*¹⁴¹, the Court held determination of the price according to the seller's price list. Even such a reference will be hard to make if the goods are manufactured or produced specifically for the buyer.¹⁴² The reference to

¹³⁴ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

¹³⁵ District Court Neubrandenburg Germany 3 August 2005, 10 O 74/04.

¹³⁶ *Germany 3 August 2005 District Court Neubrandenburg (Pitted sour cherries case)* [online]. Pace Law School Institute of International Commercial Law, May 9, 2007 [cit. October 7, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/050803g1.html>>.

¹³⁷ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 821.

¹³⁸ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

¹³⁹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 821.

¹⁴⁰ See Chapter 3.2.4 hereof.

¹⁴¹ Appellate Court Rostock, Germany 10 October 2001, 6 U 126/00.

¹⁴² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 821.

sales made “under comparable circumstances” requires that consideration be given to delivery and payment terms, such as those defined by the Incoterms, or to discounts generally applied¹⁴³ which was also mentioned in *Pitted sour cherries case*¹⁴⁴.

If no price can be determined under the outlined requirements of Article 55, the majority view comes to the unsatisfactory solution that then a contract has not been concluded. Recourse to domestic law provisions solution that might provide for a substitute approach to determine the price, such as the seller’s right to set the price, is excluded.¹⁴⁵

To sum up, the wording of Article 55 protects the buyer from unforeseeable price, however, it does not state geographical area of a trade and mostly it will lead to the market price of the seller. So this Article seems to be in favor of both parties and the buyer must insist on the use of this Article arguing with such a view that is good for both parties.

3.2.6 Recommendations concerning this Article

In the case of Article 55 the buyer should be aware of problems which can arise from such called “open price contracts”, the meaning of it was already discussed above.¹⁴⁶ To preclude such problems the parties should determine the price in contract or to be sure of the applicability of Article 55,¹⁴⁷ however even in such a case the courts can solve the case differently.¹⁴⁸ Therefore the author try here to point out some points which will give the effect of “open price contracts” according to Article 55 to be valid and binding:

- a) Firstly the parties should have intention to conclude an open price contract. In such a case, Article 14 will be derogated by the parties agreement in accordance with Article 6 (the so called “party autonomy” Article). As it was confirmed by *Pitted sour cherries case*.¹⁴⁹

¹⁴³ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

¹⁴⁴ District Court Neubrandenburg, Germany 3 August 2005, 10 O 74/04.

¹⁴⁵ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 822.

¹⁴⁶ See Chapter 3.2.1 hereof.

¹⁴⁷ See Chapter 3.2.3 hereof.

¹⁴⁸ See Chapter 3.2.4 hereof.

¹⁴⁹ District Court Neubrandenburg Germany 3 August 2005, 10 O 74/04.

- b) Parties (partly) performed the contract despite the open price. An evident example of a valid open price contract is the (partial) performance of the parties despite the price being left open. Contract performance will allow for a price determination in accordance with Article 55 even if the parties originally left the price to be agreed in the future.¹⁵⁰ The author does not agree with such a scenario and based his opinion on *Implicit agreement on price case*¹⁵¹ where Court hold the view that Article 55 CISG, allowing the price of goods to be determined where it was not expressly or implicitly fixed in a contract or where a contract made no provision for determining it, was not applicable since the parties had implicitly indicated the need to reach agreement on the price in the future.¹⁵² Author defends this position because according to Article 55 if the price is not fixed or determinable, then the price should be according to generally charged at the time of the conclusion. The wording 'charged at the time of conclusion' is very important, because this wording defend a buyer from the unforeseeable price in the future. Therefore this scenario is not the best solution and should not be applicable.
- c) In case of failure of (one of) the parties or a third party to determine the price. If the contract provides for one of the parties or both parties together or a third party to determine the purchase price, the question arises whether Article 55 can be used in a case of failure of the designated party or parties or this party to determine the price. If the contract provides for a third party to determine the purchase price and this third party fails to do so, the parties are obliged under the general duty to cooperate (Article 7) to nominate a new third party. If the contract calls for both parties to mutually agree upon the purchase price and the parties fail to do so, Article 55 applies. If the contract gives a right to determine the purchase price to only one of the parties, and such a clause is valid under the applicable domestic law, the failure to set the price by the nominated party will lead to an application of Article 55. The reason for this solution is that a failure

¹⁵⁰ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 818.

¹⁵¹ Arbitration proceeding 309/1993 Russia 3 March 1995, 309/1993.

¹⁵² *Russia 3 March 1995 Arbitration proceeding 309/1993 (Implicit agreement on price case)* [online]. Pace Law School Institute of International Commercial Law, May 19, 2009 [cit. October 4, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/950303r1.html>>.

of the nominated party to set the price shall not lead to the advantage of this party but allow the other party to perform the agreed contract.¹⁵³

- d) Reservation under Article 92 as regard to Part II. Article 14 does not apply if Part II of this Convention is not applicable because the law of a Contracting state, that has made a reservation under Article 92, applies. Then the validity is upon on a domestic law.¹⁵⁴
- e) Article 55 as a means of interpretation of implicit price terms. In practice, the purchase price will often be determinable as to give effect to an implicit agreement by the parties. Such an implicit agreement by the parties needs to be interpreted in accordance with Articles 8 and 9. In interpreting the contract, an arbitral tribunal or a State court may have recourse to Article 55 and apply the market price so determined as the implicit agreement of the parties. For example, the buyer who orders spare part is deemed to have agreed to the usual prices of such parts at the time of the conclusion of the contract.¹⁵⁵

3.2.7 Burden of proof

The party who relies on Article 55 has to prove its prerequisites. This will in most cases be seller, who brings an action for the purchase price to require the buyer to make payment. However because the question of price is interlinked with the question of formation of contract, the buyer might also rely on Article 55 in order to establish the conclusions of a contract and thereby make his claim for delivery of the goods.¹⁵⁶

3.3 Article 56 Price set by weight¹⁵⁷

This Article seems does not make any problems in a practice, however there are some doubts. First, it is important to mention about price fixed according to the weight **(3.3.1.)**, then problems concerning the provision **(3.3.2.)**, recommendations

¹⁵³ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 819.

¹⁵⁴ See Chapter 3.2.3 hereof.

¹⁵⁵ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. pp. 819-820.

¹⁵⁶ *Ibid*, p. 822.

¹⁵⁷ In German: "Kaufpreis nach Gewicht".

concerning this Article **(3.3.3.)** and in case of breach of the contract the burden of proof **(3.3.4.)**.

3.3.1 Price fixed according to the weight

Article 56 deals with contracts where the price is fixed according to the weight of the goods. In case of doubts the weight should be determined by the net weight.¹⁵⁸The net weight is the total weight less the weight of the packing materials.¹⁵⁹ This is a rule of interpretation which only applies if the parties have neither expressly nor impliedly agreed otherwise (Article 6 and 8) and are not bound by any usage or any practice to the contrary (Article 9).¹⁶⁰ This provision provides a rule of interpretation. It does not of itself impose rights and duties on the parties. However, if the parties have made an agreement but left something unclear, their agreement is to be interpreted by a rule of this kind.¹⁶¹

Article 56 is applicable if the contract is fixed according to the weight of the goods. It does not apply, for example, if the price is fixed per unit, even if the weight of the units is given for purpose of specification.¹⁶² Because in sales contracts, the methods for determination of the price most frequently relate it to the quantity of pieces or units, or to the weight.¹⁶³ Therefore, there should be made a distinction between units and weight. Author assumes that the price determinable per unit is mostly a case of selling for ex. machines on the other side price per weight of the goods is mostly the case of commodities like for ex. corn, tomatoes, etc.

The net weight is decisive, in case of doubt, under Article 56. No doubt exists as to the determination of the weight of the goods where the contract or the Convention (including usages and practices applicable under Article 9) gives a clear indication. Where the redispach of packing materials is agreed upon it goes without saying that

¹⁵⁸ United Nations Convention on Contracts for the International Sale of Goods (1980).

¹⁵⁹ MASCOW, Dietrich. *Article 56* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb56.html>>.

¹⁶⁰ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 824.

¹⁶¹ MASCOW, Dietrich. *Article 56* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb56.html>>.

¹⁶² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 824.

¹⁶³ MASCOW, Dietrich. *Article 56* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb56.html>>.

the weight agreed shall be the net weight. On the other hand, the clause 'gross for net' means that the price is calculated using the total value of goods and packing.¹⁶⁴ If the contract does not specify otherwise, net weight means the weight of the goods without packaging material.¹⁶⁵

3.3.2 Problems concerning this provision

Therefore, as it was in general indicated in previous section the provision does not answer the question whether the buyer shall pay for packaging. Article 35(2)(d) says: “...*the goods do not conform with the contract unless they are contained or packaged in a manner usual for such goods...*”,¹⁶⁶ therefore it is thus up to the seller to provide such packaging. It would seem that the seller cannot charge separately for packaging, which he is required to provide but would have to include the calculated cost for such packaging into his price.¹⁶⁷

In doctrine, it is also disputed whether the net weight shall be determined at the place of delivery (Article 31) or at the time when the risk passes to the buyer in accordance with Articles 67 to 69. The two views will in practice often lead to similar outcomes, particularly in cases of contracts involving the carriage of goods, because Article 31 and Article 67 both reference the place where the goods are handed over to the first carrier for transmission to the buyer. In all other cases, preference is to be given to Article 31 because the net weight should be determined at the place where and at the time when the seller has delivered the goods to the buyer.¹⁶⁸

3.3.3 Recommendations concerning this Article

Concerning this Article the buyer in contract should be careful in defining price fixed to the weight, because determination of the price could be the price according to the net weight (not including packing) or clause gross for net (including packing). Article 56 applies only in case if there is not any usage or practice according to Convention or

¹⁶⁴ Ibid.

¹⁶⁵ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. pp. 824-825.

¹⁶⁶ United Nations Convention on Contracts for the International Sale of Goods (1980).

¹⁶⁷ SEVÓN, Leif. *Obligations of the Buyer under the Vienna Convention on the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, January 27, 2000 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/sevon.html>>.

¹⁶⁸ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 825.

it is not defined in the contract. Therefore, if the parties did not define it in the contract, then it will be upon the seller to decide if the buyer will pay or will not pay for packing.

3.3.4 Burden of proof

The party who relies on the express or implied agreement by the parties or any binding usage or practice has to prove such an express or implied term of the contract. Otherwise the net weight will be determined in accordance with Article 56. The party relying on Article 56 will be required to prove the net weight at the applicable place of delivery.¹⁶⁹

3.4 Article 57 Place of payment¹⁷⁰

This Article is quite important in buyer's obligation to pay the price. Firstly it is important to know a significance of place of payment **(3.4.1)**, then explain the subject matter of Article 57 **(3.4.2)**, following with contractual place of payment **(3.4.3)**, payment against goods or documents at the place of exchange, Article 57 (1) (b) **(3.4.4)** and payment at the seller's place of business, Article 57 (1)(a) **(3.4.5)**. There is also a possibility of a change of the seller place of business **(3.4.6)**, mention problems concerning the provision **(3.4.7)**, recommendations concerning this Article **(3.4.8)** and in the case of breach of the contract the burden of proof **(3.4.9)**.

3.4.1 A significance of place of payment

It is important to know why place of payment is so significant. In many countries it is impossible to export funds without a license, payment made in place of such countries may be of little value to a seller from a different country. By the same token buyer in "soft currency" countries may find it difficult to pay in "hard currency" countries.¹⁷¹ Therefore, it is important for parties to specify the place of payment and the currency in the contract (Article 6) to prevent such difficulties. Or if it is a case of a long-standing business relationship between the parties, they can establish a practice

¹⁶⁹ Ibid.

¹⁷⁰ In German: „Zahlungsort“.

¹⁷¹ HONNOLD, John O. *Article 57: Place of payment* [online]. Pace Law School Institute of International Commercial Law, February 25, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/ho57.html>>.

between themselves, which can accordingly to Article 9 apply in cases where they forgot to mention something in a contract.

But still some problems can arise out of a contract. In the first case when the parties agreed on place of payment, but not agreed to the currency, which currency will apply? According to the place of payment or maybe some other place? According to prevailing opinion the place of payment will also determine the currency in hand under the general principle of party autonomy, Article 6.¹⁷² Assuming the other option when the parties did not determine the place of payment neither the currency in the contract, some courts already ruled in favor of the currency where the seller's place of business is located.¹⁷³ However, how to resolve the case when the place of payment according to Article 57 will be determined under 57(1)(b) where payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place? In such a case it is questionable, which currency should apply. The currency of a place of business of the seller or the place where the handing over takes place? The views of authorities differ, however the predominant view is that the currency of place where the hanging over takes place should apply.¹⁷⁴ The view of the author is however different, because as was stated above¹⁷⁵ Article 57 (1) (a) is a general principle of the CISG, but not Article 57 (1) (b). In this case, therefore according to Article 7 (2) could only Article 57 (1) (a) fill the gap and therefore a currency should be the currency of the place of business of the seller.

The buyer has to be aware of the consequence of choosing a place of payment on currency. If the buyer agreed with the seller to make a place of payment for example in France and did not agree on the currency, the currency will be Euro as a currency of France. Therefore, it will be in a country with freely exchangeable, or "hard", currency. The Euro is indeed one of the world's most important and stable currencies.

Agreement on the place of payment in one of many developing nations, such as Argentina or Nigeria, would have created many more problems, perhaps most

¹⁷² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 794.

¹⁷³ See Chapter 3.1.3 hereof.

¹⁷⁴ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 795.

¹⁷⁵ See Chapter 3.1.3 hereof.

importantly sinking values in the world markets and occasional periods when currency controls restricted access to hard currency in exchange for the local soft currency.¹⁷⁶

Nations restrict access to hard, foreign currency for principally one reason – they do not have enough to go around. Few hard currency nations restrict the flow of their currencies abroad, although many require the reporting of large transfers. It is the market rather than the government which determines the value of hard currencies. Soft currency nations by definition have currencies which are not exchangeable. They are not exchangeable because people believe that if they accept such currency it will not be usable, or when it is exchanged for hard currency its value will have decreased.¹⁷⁷ For example, if in case above the agreement will be on the place of payment in Nigeria with no reference to currency, but the seller will be from France, he will accept that the currency will be the currency of Nigeria, therefore 'Naira'. And what after all the French seller should do with such money? They will not be useful in France and they can be hardly useful in international trade. The seller might use them for buy products from Nigeria, if there will be such products to buy. Despite the fact, that this is mainly a problem of the seller, the buyer should be careful of it too, just simply because he maybe needs to have a good relationship of a long-standing business relationship between firms or just do not need to damage the reputation of the company in the eyes of other possible business partners. In this case the author highly recommend to choose the 'hard' currency.

3.4.2 The subject matter of Article 57

Art. 57 is concerned with the place where the buyer must pay the price – a question of considerable importance in international trade because of the widespread existence of exchange controls and other restriction on the transfer of funds¹⁷⁸, shown by example in *CLOUT Case N. 142* above.¹⁷⁹ This Article sets out a three – tier approach. First the parties may contractually provide for the applicable place of payment, either by express agreement (Article 57(1) in connection with Article 6) or by

¹⁷⁶ FOLSOM, Ralph H., GORDON, Michael W., SPANOGLE Jr. John A, FIZGERALD, Peter L. *International Business Transactions: a problém – oriented coursebook*. WEST publishing CO. 2006. p. 943.

¹⁷⁷ Ibid, p. 986.

¹⁷⁸ ZIEGEL, Jacob S. *Report to the Uniform Law Conference of Canada on Convention on Contracts for the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, April 23, 1999 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/text/ziegel57.html>>.

¹⁷⁹ See Chapter 3.1.1 hereof.

implicit agreement (Article 57(1) in connection with Article 8 and 9). Second, if the parties have neither expressly nor impliedly agreed on the place of payment, the buyer must pay the purchase price at the place where the handing over of the goods or documents against payment takes place, Article 57(1) (b). Third, if neither the parties have agreed on a place of payment nor the payment takes place against handing over of the goods or documents, the buyer has to pay the purchase price at the seller's place of business, Article 57 (1) (a).¹⁸⁰

Payment at the seller's place of business occurs in international trade mainly (a) in cases of advance payment (although it would be rather unusual for the whole sales price to be paid in advance, this happens rather frequently for parts of the price); (b) when the agreed-upon conditions of payment are 'cash after receipt of the goods', 'cash against open invoice', or 'cash a certain period after receipt of the goods' (if the goods are handed over against evidence for payment, such as an irrevocable order to the bank to pay, payment likewise has to be made at the seller's place of business), and (c) when damages, penalties and the like have to be paid and expenses reimbursed (application by analogy).¹⁸¹ It follows that Article 57 (1) (a) is the general default rule of the CISG pursuant to which absent any indication to the contrary, money obligations are discharged only if the money is placed at the creditor's disposal at his place of business.¹⁸²

The default rule as set forth by Article 57(1)(a) that the buyer has to pay the purchase price at the seller's place of business is similar to the domestic laws of several European States, such as Swiss law, English law, Irish law, Scottish law, Dutch law, Scandinavian law, Italian law, Portuguese law, Polish law, Greek law, as well as Turkish law, and US law, and is consistent with standard contract practices in the international trade. In contrast, the place of business of the debtor is the place of payment under French law, Belgian law, Luxembourgian law, Austrian law as well as German law.¹⁸³

¹⁸⁰ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 827.

¹⁸¹ MASCOW, Dietrich. *Article 57* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb57.html>>.

¹⁸² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 827.

¹⁸³ *Ibid.*

Article 57 governs the question of whether the buyer is discharged from his obligation to pay the purchase price. Thereby, it also answers the question as to who has to bear the risk of loss and delay of payment. The CISG does not govern civil procedural law matters. However, by determining the place of performance of the buyer's obligation to pay the purchase price, the CISG may incidentally affect procedural aspects, such as international jurisdiction.¹⁸⁴

3.4.3 Contractual place of payment

Despite the general effect of Article 6, the basic rule is reiterated in the introductory clause of Article 57(1) which states that payment is to be made at the place agreed upon by the parties, either expressly or implicitly (i.e., derived from the contract).¹⁸⁵ In reference to the express agreement, this will be the case if the contract indicates a particular account which the seller holds with a bank. Often, the seller's bank will not have its seat in the country of the seller's place of business but in a different country. In such a case, the place of business of the seller's bank – nor his own place of business – will be decisive for determining the place of payment.¹⁸⁶

In the absence of an explicit agreement by the parties, the place of payment will often be implicitly agreed by the parties. The indication of a bank account on an invoice from the seller is open to various interpretations. For example, in decision *White urea case*¹⁸⁷ the Court held that the mere nomination of bank details cannot be understood as an offer to conclude an agreement as to the place of performance. Rather, stating a post account or bank account on an invoice formula is to be understood as a unilateral authorization of the creditor in favor of the debtor to satisfy its contractual obligation by undertaking performance to a third party.¹⁸⁸

The use of payment clauses will often also influence and implicitly determine the place of payment. The clauses “net cash”, “cash against invoice”, or “cash before

¹⁸⁴ Ibid.

¹⁸⁵ MASCOW, Dietrich. *Article 57* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb57.html>>.

¹⁸⁶ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. pp. 827-828.

¹⁸⁷ CLOUT Case NO. 221. Civil Court Basel Switzerland 3 December 1997, P4 1996/00448.

¹⁸⁸ *Switzerland 3 December 1997 Civil Court Basel (White urea case)* [online]. Pace Law School Institute of International Commercial Law, February 10, 2006 [cit. October 18, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/971203s2.html>>.

delivery” (CBD) provide implicitly for payment at the seller’s place of business.¹⁸⁹ Also “cash against delivery” clause, under which payment has to be made at the place of handover.¹⁹⁰

The place of payment may also be established by means of practice or usage under Article 9 was already stated above.¹⁹¹ For example, in *Medical equipment case*¹⁹² the Court held according to the practices established between the parties, that the seller had borne the transaction costs. Under CISG the law of the place of payment determines the bearing of costs. The Court concluded that if the seller usually had to bear the transaction costs, then the place of payment had to be the buyer’s place of business.¹⁹³

3.4.4 Payments against goods or documents, Art. 57 (1) (b)¹⁹⁴

As was stated above¹⁹⁵ Article 57(1) (b) applies if the parties have neither expressly nor impliedly agreed on the place of payment. This Article determines the place of payment “...as *the place where the handing over takes place.*”¹⁹⁶ Whether or not the payment is to be made against the handing over the goods or documents has to be decided by interpreting the contract, in the absence of an agreement, by application of Article 58.¹⁹⁷ Further for Article 57 (1) (b) to be applicable there has to be simultaneous performance of the buyer’s obligation to pay the price and of the seller’s obligation to place the goods or documents at the buyer’s disposal. This means that Article 57 (1) (b) is inapplicable if one party is obliged to render performance before the other party is required to do so.¹⁹⁸ As an example of it is *CLOUT Case NO. 194*¹⁹⁹

¹⁸⁹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 828.

¹⁹⁰ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

¹⁹¹ See Chapter 3.4.2 hereof.

¹⁹² CLOUT Case NO. 363 District Court Bielefeld Germany 24 November 1998, 11 O 61/98.

¹⁹³ *Germany 24 November 1998 District Court Bielefeld (Medical equipment case)* [online]. Pace Law School Institute of International Commercial Law, September 20, 2006 [cit. October 14, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/981124g1.html>>.

¹⁹⁴ In German: „Zahlung gegen Übergabe der Ware oder den Dokumenten“.

¹⁹⁵ See Chapter 3.4.2 hereof.

¹⁹⁶ United Nations Convention on Contracts for the International Sale of Goods (1980).

¹⁹⁷ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. pp. 829-830.

¹⁹⁸ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

¹⁹⁹ CLOUT Case NO. 194 Tribunal fédéral, Switzerland, 18 January 1996, 122 III, 43.

where 30 per cent of the sale price was payable at the time of the order, 30 per cent at the beginning of assembly, 30 per cent on completion of assembly and 10 per cent on start-up. The same inapplicability of Article 57 (1) (b) was visible in *White Urea Case*²⁰⁰, where the price was payable 30 days following presentation of the bill of lading.

The CISG does not define documents which are meant by Article 57 (1) (b). Because Article 57 (1) (b) is interconnected with Article 58 (1), the term documents has the same meaning as under Article 58(1). Documents in this sense encompass all operational, commercial documents required by the sales contract and by the law and rules applicable to the relevant delivery and payment arrangement.²⁰¹

3.4.5 Payment at the seller's place of business, Art. 57 (1) (a)²⁰²

Article 57 (1) (a) is applied when previous possibilities failed. The rule that, when the parties have not agreed otherwise, the buyer must pay at the seller's place of business is consistent with standard contract practices applicable to international trade.²⁰³ It's even supported by the case law, such in a case *Chinchilla furs case*²⁰⁴, where was stated: "In the absence of agreement, the price was to be paid at seller's place of business."²⁰⁵ Thus, comparing to Article 57(1) (b) stated above where was simultaneous performance, it seems that in Article 57 (1) (a) one party is required to perform its obligations before the other and this is supported by various decisions. For example, in *Case 8 O 41 7/01 Freiburg*²⁰⁶ the buyer's obligation of a payment which, in accordance with the invoice, was to be made 14 days after dispatch of the goods. In another *Case 11 O 151/05 Krefeld*²⁰⁷ in which the seller has to ship the goods and the buyer to pay 60 days after arrival in Germany or 85 days after loading.

²⁰⁰ CLOUT Case NO. 221. Civil Court Basel Switzerland 3 December 1997, P4 1996/00448.

²⁰¹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. pp. 830-831.

²⁰² In German: „Zahlungsort am Ort der Niederlassung des Verkäufers“.

²⁰³ HONNOLD, John O. *Article 57: Place of payment* [online]. Pace Law School Institute of International Commercial Law, February 25, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/ho57.html>>.

²⁰⁴ Supreme Court Austria 10 November 1994, 2 Ob 547/93.

²⁰⁵ *Austria 10 November 1994 Supreme Court (Chinchilla furs case)* [online]. Pace Law School Institute of International Commercial Law, May 22, 2014 [cit. October 4, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/941110a3.html>>.

²⁰⁶ Landgericht Freiburg, Germany, 26 April 2002, 8 O 41 7/01.

²⁰⁷ Landgericht Krefeld, Germany, 20 September 2006, 11 O 151/05.

In summing up these three possibilities of place of payment it shows that the best possibility for the buyer at least according to the author is to conclude a contract according to Art. 57 (1) (a) namely because in this case he will pay the price after delivering of the goods, which will protect him from a possible non-supply of goods or supply the defective goods at least in quantity.²⁰⁸

3.4.6 Change of the seller place of business, Art. 57(2)²⁰⁹

Article 57 (2), which state that “*the seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract*”²¹⁰, show that seller bear the risk of increasing the expenses because of his changing the place of business. What is mean under the term place of business is determined under Article 10 of the Convention. However the place of business may change. Under Article 57(2) the relevant place of business is that at the time of payment.²¹¹ If the seller’s place of payment changes between the conclusion of the contract and the actual payment, the buyer must pay the purchase price at the new place.²¹² The buyer can pay only at the seller’s place of business if he knows it. Generally, each party knows the other’s place of business at the time of the making of the contract. If the seller later changes his place of business; this can bear on the place of payment only if it is communicated to the buyer reasonably in advance of payment so that the buyer can comply with the formalities related to the new place of business.²¹³ The seller’s duty to inform arises under Article 7(2) as part of general duty to cooperate and inform. Moreover, if the seller fails to inform the buyer of the change of his place of business, he must accept the buyer’s payment made at his original place of business by virtue of Article 80.²¹⁴

²⁰⁸ See Chapter 3.5.6 hereof.

²⁰⁹ In German: „Wechsel der Niederlassung“.

²¹⁰ United Nations Convention on Contracts for the International Sale of Goods (1980).

²¹¹ MASCOW, Dietrich. *Article 57* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb57.html>>.

²¹² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 832.

²¹³ MASCOW, Dietrich. *Article 57* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb57.html>>.

²¹⁴ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 833.

The question to this paragraph of this Article arise if the buyer is somehow protected? For example, if there are any limitations on the seller's right to demand payment at his new place of business? Or if the seller must bear any incidental increase in the expenses? Author responds positively to these questions. Firstly concerning the question of limitations, Mascow said, that: "*the limitations might be found in the principle of good faith (Article 7(1)), prohibiting the seller from relying on the right granted by Article 57(2) if he changes his place of business to a remote place, to another continent or to a place where the payment (leaving aside the matter of expense) is substantially more burdensome and risky.*"²¹⁵ Secondly, concerning the question of incidental increase in the expenses, Schlechtriem & Schwenger commentary stated: "*The seller must bear any increase in the expenses incidental to payment that is caused by a change in his place of business subsequent to the conclusion of the contract, Article 57(2). This includes any losses of interest or currency incurred by the buyer as a consequence of the seller's change of his place of business.*"²¹⁶

3.4.7 Problems concerning the provision

There are two main problems concerning the provision. First is problem of assignment of the claim for the purchase price. Second, place of payment of sums other than the purchase price.

The first problem is a problem of assignment of the claim for the purchase price.

When the assignment of claims is not excluded the creditor as a rule is entitled to assign the claim for the price without consent of the debtor.²¹⁷ To a third party, usually his supplier or a financial institution, to finance his business.²¹⁸ This practice is

²¹⁵ MASCOV, Dietrich. *Article 57* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb57.html>>.

²¹⁶ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 833.

²¹⁷ MASCOV, Dietrich. *Article 57* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb57.html>>.

²¹⁸ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 834.

of growing importance in international trade (e.g., forfeiting).²¹⁹ If a valid assignment of the purchase price has taken place in accordance with the applicable law, the question arises of where the assigned obligation can be discharged.²²⁰

No problem will arise if the place of payment is determined by the sales contract or in application of Article 57 (1) (b) at the place where the goods or the documents are exchanged for the price. Only in cases where seller's place of business is the place of payment in accordance with Article 57 (1) (a) will the problem arise of whether the buyer must pay the purchase price at the assignor's or the assignee's place of business.²²¹ In contracts assigning a claim, the original creditor commonly transfers his claim to the new creditor, but his claim is transferred 'as is' i.e., without changing the place of payment. Therefore the debtor should be entitled to pay at the original place of payment although, assuming the conditions established by the applicable law are fulfilled, for the benefit of the new creditor. The original creditor is not allowed to agree with a third party to the disadvantage of the debtor. Although the debtor should be entitled to pay at the place of business of the new creditor, he cannot be obliged to do so. The question may become important, where payment at the place of business of the new creditor is substantially more burdensome for the debtor.²²² According to the personal view of the author it will differ from case to case and should be resolved on the basis of Article 7 (1), on the observance of a good faith. According to another view in Schlechtriem & Schwenger commentary, Article 57 (2) applies as a general principle under Article 7 (2) with the consequence that the buyer must pay the purchase price at the assignee's place of business. There is a possibility also to argue that, domestic law applicable by virtue of the rules of private international law will determine whether the buyer can still pay to the assignor with discharging effect, which is commonly possible until notice of assignment is given. Although the uniform approach correctly argues that without a change in the place of payment to the place of business of the assignee, payment will practically not be possible, it is unreasonable to allocate all risks and costs to the buyer in application of Article 57 (2). Therefore, it is advocated

²¹⁹ MASCOW, Dietrich. *Article 57* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb57.html>>.

²²⁰ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 834.

²²¹ *Ibid.*

²²² MASCOW, Dietrich. *Article 57* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 23, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb57.html>>.

here that the discharging effects on an assigned purchase claim arising from a CISG contract have to be determined by the law applicable to the assignment.²²³

However the author does not agree with the view that Article 57 (2) applies under Article 7 (2) as a general principle. Neither the literature nor the case law supports the view that Article 57 (2) is a general principle. Even if we assume from what was mentioned, that they relied on wording 'changing of the seller place of business' we cannot confuse terms 'assignee' and 'seller'. Assignee is different person to a seller and can have place of business really far away from the place where seller had. This is supported by what was already stated above²²⁴ that seller cannot demand on the payment in a new place if it is contradict to a good faith 7 (1) and is more burdensome and risky. Therefore, this view should not apply to such cases. The view of applicability of domestic law under the rules of private international law 7 (2) can be used according to the author only in cases, where the payment will not be possible in the determined place before assignment. Otherwise for a predictability, the place of payment after assignment should not change.

To sum up, even if this problem does not shown directly from the Convention, it is quite important for the buyer and if he wants to prevent possible burden, which can arise lately, he should exclude possible assignment of claims in the contract.

The second problem is a problem of the place of payment of sums other than the purchase price.

The question arises whether Article 57 (1) is also applicable to determine the place for payment of monetary obligations other than the price.²²⁵ Article 57 deals explicitly only with the payment of the purchase price, and the CISG does not contain any equivalent rule in relation to damages claims.²²⁶ According to the Maschow, Article 57, in particular sub-paragraph (1)(a), might be applied by analogy to other payments resulting from the contract, e.g. damages, interest.²²⁷ Author agrees with such a view, mainly because of what was already stated above in previous problem of this section

²²³ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. pp. 834-835.

²²⁴ See Chapter 3.4.6 hereof.

²²⁵ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

²²⁶ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 839.

²²⁷ MASCHOW, Dietrich. *Article 57* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 24, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maschow-bb57.html>>.

concerning sub-paragraph (1)(a) of Article 57. However, in the case law, there are two ways of interpretation of such a scenario.

According to the first interpretation stated for ex. in *Vehicle safety devices case*²²⁸ the Court held that the obligee's place of business has to be regarded as the place of performance, this must also apply to a claim for compensatory damage.²²⁹

According to the second interpretation stated for ex. in *Paint mist vacuuming machine case*²³⁰ the place of performance of secondary obligations is that of the primary obligations even in the absence of exact provisions in Art. 57(1)(a). Therefore a Court held that the place of performance of a damages claim is the same place as the place of performance of the breached obligation.²³¹

This view leads to result that the seller's damages claim for the buyer's failure to pay the purchase price would, absent any agreement on the place of performance by the parties, depend on whether or not the payment was to be made against the handing over of the goods or documents (Article 57 (1) (b)). Only if payment was to be made at the seller's place of business would this approach lead to a reasonable result. In all other cases, the result would be unreasonable because the damages claim would be payable at the place of exchange of the goods against the document or at any other place as determined by the parties' agreement.²³² This leads to a place of payment at the seller's place of business for all damages claims of the seller for any failure on the side of the buyer. Contractual penalties and liquidated damages claims are to be paid at the creditor's place of business in accordance with the general principle of Article 57 (1) (a). The same applies to contractual claims by the buyer for payment of a bonus promised by the seller.²³³ Any claim for interest (under Article 78) is to be discharged at the place of payment of the underlying primary obligation. In the case of interest on the purchase price, interest must be paid in accordance with Article 57.²³⁴

²²⁸ District Court Giessen Germany 17 December 2002, 6 O 23/02.

²²⁹ *Germany 17 December 2002 District Court Giessen (Vehicle safety devices case)* [online]. Pace Law School Institute of International Commercial Law, May 17, 2006 [cit. October 5, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/021217g1.html>>.

²³⁰ Supreme Court Austria 29 March 2004, 5 Ob 313/03w.

²³¹ *Austria 29 March 2004 Supreme Court (Paint mist vacuuming machine case)* [online]. Pace Law School Institute of International Commercial Law, April 26, 2005 [cit. October 15, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/040329a3.html>>.

²³² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 839.

²³³ *Ibid*, p. 840.

²³⁴ *Ibid*, p. 841.

3.4.8 Recommendations concerning this Article

Concerning this Article the author will highly recommend to specify the place of payment and currency. Currency because of possible export licenses, moreover the case if the buyer is from 'soft' currency country is better to choose stable 'hard' currency for ex. like Euro. If the currency will be chosen according to the place of payment for ex. in some developing states, it can cause many problems.²³⁵ Also, it is important to choose a place of payment in contract to prevent the difficulties of possible widespread existence of exchange controls and other restriction on the transfer of funds and exclude the problems arising out of determination of the particular place according to Article 57.²³⁶ The buyer should also be careful with payment clauses to understand where exactly he has to pay.²³⁷ Among the places of payment in Article 57 the best suited place for a buyer is seller's place of business according to 57 (1) (a) namely because in this case he will mostly pay the price after delivering of the goods.²³⁸ However, in such a case the problem could arise with assignment of the claim for the purchase price and whether the buyer must pay the purchase price at the assignor's or the assignee's place of business. But author thinks this cannot consider as an obstacle while the original creditor commonly transfers his claim to the new creditor, but his claim is transferred 'as is' i.e., without changing the place of payment.²³⁹ There are therefore a lot of things to bear in mind and the best way is to take into account the pros and cons of each individual case.

3.4.9 Burden of proof

The party who invokes a contractual agreement to the contrary or that payment is to be made against the handing over of the goods or of the documents pursuant to Article 57 (1) (b), bears the burden of proving the factual circumstances that support his allegation. The seller has to prove his change in place of business in accordance with Article 57 (2). If the buyer has incurred any additional costs from a change in the seller's place of business, the buyer has to prove such costs.²⁴⁰

²³⁵ See Chapter 3.4.1 hereof.

²³⁶ See Chapter 3.4.2 hereof.

²³⁷ See Chapter 3.4.3 hereof.

²³⁸ See Chapter 3.4.5 hereof.

²³⁹ See Chapter 3.4.7 hereof.

²⁴⁰ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 841.

3.5 Article 58 Time of payment²⁴¹

Article 58 is concerned with the time when the buyer must pay the price. It is important to divide this Article into some sections. In first section describe the subject matter **(3.5.1)**, then in following sections talk about the contractual time of payment **(3.5.2)**, payment against goods or documents **(3.5.3)**, contract involving carriage of goods, under the seller's reservation **(3.5.4)**, rights of retention **(3.5.5)** and right to examine the goods before payment **(3.5.6)**. Also mention the problems arising out of the provision **(3.5.7)**, recommendations concerning this Article **(3.5.8)** and in case of breach of the contract the burden of proof **(3.5.9)**.

3.5.1 Subject matter

Looking to the wording of Article 58 it is clear that it deals with time of performance and as was stated in *Filters case*²⁴² it defines the time when the price becomes due in the absence of any particular contractual stipulation on the matter. According to *Fruit and vegetables case*²⁴³ Article 58 also determines when the interest according to Article 78 begin to accrue. In this particular case the Court held that the interest claim arises at the time when the primary claim becomes mature. If the parties have not reached a particular agreement, claims which arise out of sales contracts will become mature in accordance with Art. 58 in conjunction with Art. 59.²⁴⁴

According to Article 58, the time for payment is primarily determined by the contract, and the seller need not send any advance reminder or other formal request for payment (Article 59).²⁴⁵ We distinguish prepayment (advance payment), the payment upon delivery and payment for some time after accomplishment the delivery, i.e. credit payments.²⁴⁶ In a bilateral contract, unless otherwise agreed, the parties are to exchange their performance obligations at the same point in time: i.e., payment and

²⁴¹ In German: "Zahlungszeit".

²⁴² District Court Mönchengladbach Germany 15 July 2003, 7 O 221/02.

²⁴³ Handelsgericht (Commercial Court) Aargau Switzerland 26 November 2008, HOR.2006.79 / AC / tv.

²⁴⁴ *Switzerland 26 November 2008 Handelsgericht [Commercial Court] Aargau (Fruit and vegetables case)* [online]. Pace Law School Institute of International Commercial Law, March 28, 2011 [cit. October 10, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/081126s1.html>>.

²⁴⁵ SCHLECHTRIEM, Peter. *Uniform Sales Law – The UN-Convention on Contracts for the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, June 7, 2000 [cit. September 25, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/schlechtriem-58.html>>.

²⁴⁶ ROZEHNALOVÁ, Naděžda. *Právo mezinárodního obchodu*. 3. vydání. Praha: Wolters Kluwer, ČR, a. s., 2010, p. 326.

delivery are constructive conditions concurrent.²⁴⁷ Other rules are derived from these central themes, for example corresponding of retention, Article 58 (1), sentence 2, (2), as well as the buyer's right to briefly examine the goods before payment, Article 58 (3).²⁴⁸

For the determination of the time of payment, Article 58 sets out a three-step approach: First, if it is up to the parties to agree on the time of payment Article 58(1) in connection with Article 6. Second, if the parties have not agreed on a specific time for the payment of the purchase price, the buyer must pay it when the seller places either the goods or the documents controlling their disposition at the buyer's disposal, Article 58 (1). As this exchange of the goods or the documents for the price will be difficult to achieve if the contract involves the carriage of the goods, Article 58 (2) provides the seller with the right to dispatch the goods on terms whereby the goods or documents will not be handed over to the buyer except against payment of the purchase price. Third, unless inconsistent with the agreed schedule for delivery and payment, the buyer may briefly examine the goods prior to payment and thereby defer payment by a short period of time, Article 58 (3).²⁴⁹

3.5.2 Contractual time of payment

The introductory sentence of Article 58 (1) makes it clear that the provision applies only insofar as nothing else can be derived from the contract, that is to say, that no other express or implied stipulations of the parties exist. Since this already follows from Article 6, this sentence might be understood as directing the parties to make such an agreement.²⁵⁰

The determination of the time of payment can be made by nominating a particular point in time or by providing for a period of time in which payment has to be effected. The time of payment does not have to be fixed but needs to be interpreted in accordance with Article 8 and 9. For ex. the time of payment can be conditional upon the execution of a specific act by one of the parties – notice of readiness (to deliver)

²⁴⁷ LOOKOFSKY, Joseph. *The 1980 United Nations Convention on Contracts for the International Sale of Goods: Article 58* [online]. Pace Law School Institute of International Commercial Law, April 5, 2005 [cit. September 25, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/loo58.html>>.

²⁴⁸ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 843.

²⁴⁹ Ibid.

²⁵⁰ MASCOV, Dietrich. *Article 58* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 25, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb58.html>>.

delivery, receipt of invoice, withdrawal (usage), etc. Often the time of payment will result from the usage of a payment clause. Clauses such as '60 days after receipt of invoice', 'two weeks from delivery', or 'cash before delivery' are specific enough. If the occurrence of a condition is subject to an act of the other party, the other party's failure to act and thereby fulfill the condition precedent will render the payment due.²⁵¹

It is important to bear in mind that parties by their agreement can derogate from all what is stated in Article 58. For ex. from the possibility of examination of the goods before paying the price (Art. 58 (3)) under Article 6, because party autonomy will prevail in such cases. Another example is in *Waste gas cleansing installation case*²⁵², a dispute heard by the Swiss Higher Federal Court, where the contract stipulated that 30 per cent of the price was to be paid at the time when an industrial plant was ordered, 30 per cent at the commencement of assembly and 30 per cent on completion of installation, the final 10 per cent being due after successful start-up of the facility. The Court observed that the parties had thus derogated from the principle of simultaneous performance as embodied in CISG Article 58.²⁵³ Also as was mentioned in *Textiles case*²⁵⁴ the parties derogate from the principle of simultaneous performance if they decide to postpone the payment date by arranging, after delivery of the goods, for settlement by bill of exchange.²⁵⁵

3.5.3 Payment against goods or documents, Article 58(1)

Paragraph (1) of Article 58 means as was stated in cases in previous section '*simultaneous performance*', thus that buyer should pay the price at the time " ...*when the seller place either the goods or the documents controlling their disposition at the buyer's disposal...*"²⁵⁶ This view is supported by the *Stone blocks case*²⁵⁷ where Court

²⁵¹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 844.

²⁵² CLOUT Case NO. 194, Federal Supreme Court Switzerland 18 January 1996.

²⁵³ *Schweizerisches Bundesgericht, 18 January 1996* [online]. Unilex.info [cit. October 20, 2014]. Available at <<http://www.unilex.info/case.cfm?pid=1&do=case&id=199&step=FullText>>.

²⁵⁴ CLOUT Case NO. 5, District Court Hamburg Germany 26 September 1990, 5 O 543/88.

²⁵⁵ *Landgericht Hamburg, 26 September 1990* [online]. Unilex.info [cit. October 19, 2014]. Available at <<http://www.unilex.info/case.cfm?pid=1&do=case&id=7&step=FullText>>.

²⁵⁶ United Nations Convention on Contracts for the International Sale of Goods (1980).

²⁵⁷ Appellate Court Valais Switzerland 20 December 1994, C 323/94.

stated that Article 58 CISG presupposed that payment was to be effected when the seller placed the goods at the buyer's disposal.²⁵⁸

What placing at the buyer's disposal means depends on the delivery terms of the particular contract as agreed by the parties (either expressly or impliedly by using a trade term of the INCOTERMS) or implied by Article 31.²⁵⁹ This Article 31 consists of three possibilities.

First possibility according to Article 31 (a): *"If the contract of sale involves carriage of the goods – in handing the goods over to the first carrier for transmission to the buyer"*²⁶⁰ This part however is not so clear and must be interpreted in accordance with Article 58 (2).²⁶¹

Second possibility, in case the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew the goods were at, or were to be manufactured or produced at, a particular place, the seller must deliver by placing the goods at the buyer's disposal at that place, Article 31 (b).²⁶²

Third possibility according to Article 31 (c) is applicable in other cases, " ...at the place where the seller had his place of business at the time of conclusion of the contract."²⁶³

Similar obligations of the seller must arise under the trade term EXW (Incoterms 2000), pursuant to which the seller must place the goods at the disposal of the buyer at the named place of delivery, not loaded on any collecting vehicle. Neither CISG nor the INCOTERMS defines what placing at the buyer's disposal requires. An autonomous of the CISG leads to the basic requirements of identifying the goods to the contract and giving notice to the buyer that the goods are available for collection. Making the goods available for collection may further include checking, packaging, and making as per rule A9 of the trade term EXW (INCOTERMS 2000). The notice requirement is also set out in the trade term EXW; pursuant to its rule A7, the seller

²⁵⁸ *Switzerland 20 December 1994 Appellate Court Valais (Stone blocks case)* [online]. Pace Law School Institute of International Commercial Law, December 14, 2007 [cit. September 24, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/941220s1.html>>.

²⁵⁹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 845.

²⁶⁰ United Nations Convention on Contracts for the International Sale of Goods (1980).

²⁶¹ See Chapter 3.5.4 hereof.

²⁶² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. pp. 845-846.

²⁶³ United Nations Convention on Contracts for the International Sale of Goods (1980).

must give the buyer sufficient notice as to when and where the goods will be placed at his disposal.²⁶⁴

After receipt by the buyer of the seller's notice the buyer has to take delivery within a reasonably short period of time. This short reaction time for the buyer runs independent from the buyer's right to examine the goods under Article 58(3). The seller's notice of readiness becomes effective when it reaches the buyer. Article 27, according to which any notice given in accordance with Part III of the Convention is sent at the risk of the receiving party, does not apply. This is because the notice discussed here is not expressly set out in the Convention and Article 27 does not provide for a sensible allocation of risks if the notice gives rise to obligation of the addressee.²⁶⁵

Another possibility is contracts involving goods stored in a third party warehouse basically follow the same rules as apply to delivery by placing the goods at the buyer's disposal at the place of storage (which mean the seller's place of storage) or production. The only difference is that the third party warehouse keeper will have to make available the goods to the buyer. The seller may instruct the third party warehouse keeper to release the goods only against receipt of the payment, a right of the seller under Article 58(2). In most cases, payment clauses, such as 'cash against warehouse receipt' or 'cash against documents', will impliedly determine the time of payment.²⁶⁶

First paragraph of Article 58 looks clear, despite of it the buyer should be aware of some problems in practice. As follows from the above mentioned the time of payment depends on the time of delivery, and this dependence could cause in some certain cases problems as it will be shown in an illustrative example. Assume that buyer from Argentina and seller from Italy conclude a contract on production clothing of custom-made in Italy for a special spring season 2015. However, parties did not determine the time of delivery in contract. In that case the buyer would risk that goods will not be deliver on time and because they are seasonable goods, it will be hard to resell them later. In this case the buyer could claim that seller should know under Article 8 either under Article 8 (1) the intention of the buyer to resell them in a particular time

²⁶⁴ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 846.

²⁶⁵ Ibid.

²⁶⁶ Ibid, p. 848.

or under Art. 8 (2) that a reasonable person should know it. However the result is not predictable and to avoid such a scenario the buyer has to determine for his own good the place of payment.

3.5.4 Contract involving carriage of goods under the seller's reservation, Art. 58(2)

In the case of a contract involving the carriage of goods, according to Article 31 (a) seller delivers the goods when he hands over the goods to the first carrier for transmission to the buyer. This action however does not make the goods available to the buyer. The buyer only receives the goods at the place of destination, ie where the carrier hands over the goods to the buyer. Upon receipt of the notice of readiness, the purchase price become due pursuant to the general rule of Article 58 (1).²⁶⁷ However, seller may ship the goods and hold a shipping document that controls delivery of the goods until the buyer pays the price.²⁶⁸ Nevertheless, the buyer has the right under Article 58 (3) to examine the goods prior to payment.²⁶⁹

3.5.5 Right of retention

Unless otherwise agree in contract, Article 58(1) in his second sentence state "... *the seller may make such payment a condition for handing over the goods or documents*"²⁷⁰. In other words the seller can insist on payment before giving the goods to the buyer. In the case of goods stored at a third party warehouse, the seller cannot practically make the payment of the purchase price a condition of his delivery; Article 58(1), sentence 2, does not apply to this case.²⁷¹ A seller who decides to exercise that right is nevertheless required to grant the buyer an opportunity to examine the goods (Article 58 (3)).²⁷²

Article 58 (2) also establishes a right of retention in the seller's favor in the case of a sale involving carriage of the goods within the meaning of Article 31 (a): "...*the seller may dispatch the goods on terms whereby the goods or documents controlling*

²⁶⁷ Ibid, pp. 849-850.

²⁶⁸ HONNOLD, John O. *Uniform Law for International Sales Under the 1980 United Nations Convention*. Kluwer Law International; 3rd Revised edition, 1999. p. 364.

²⁶⁹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 850.

²⁷⁰ United Nations Convention on Contracts for the International Sale of Goods (1980).

²⁷¹ Ibid, p. 852.

²⁷² *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

*their disposition will not be handed over to the buyer except against payment of the price.*²⁷³ The implementation of the seller's right of retention entails the cooperation of the carrier.²⁷⁴ Article 58 (2) applies in cases where the goods are stored at a third party warehouse; the seller instructs the third party warehouse keeper to release the goods only against payment of the purchase price.²⁷⁵ In this case also, a seller who decides to exercise that right is required to grant the buyer an opportunity to examine the goods (Article 58 (3)).²⁷⁶

But what will happen if the seller will not grant an opportunity to examine under para (1), (2) of Art. 58 previously mentioned? In such a case, if the seller precludes the buyer from inspecting, he would not have delivered according to the contract, and the buyer would be entitled to refuse paying the price. If the seller fails to allow inspection, the buyer may resort to his ordinary remedies for breach of contract.²⁷⁷

The buyer's right of retention follows from Article 58 (1), sentence 1, in that only the placing of the goods at his disposal will cause the payment to become due.²⁷⁸ This is supported in practice under the *Granite rock case*²⁷⁹ where the Court stated that according to paragraph 1, sentence 1 of Art. 58 CISG if the buyer is not obliged to pay at the specific payment period, he has to pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal and also stated that according to paragraph 3, sentence 1 the buyer is not bound to pay the price until he has had an opportunity to examine the goods.²⁸⁰

The buyer should know about such a retention possibility of seller however in practice it will not be such a burdensome for him, because he will still have a chance to examine the goods. Despite of this fact, he still should insist on the first sentence of Article 58 for such called '*simultaneous performance*'.

²⁷³ United Nations Convention on Contracts for the International Sale of Goods (1980).

²⁷⁴ Ibid.

²⁷⁵ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 852.

²⁷⁶ UNCITRAL *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

²⁷⁷ MASCOW, Dietrich. *Article 58* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 25, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb58.html>>.

²⁷⁸ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 852.

²⁷⁹ CLOUT Case NO. 432 District Court Stendal Germany 12 October 2000, 22 S 234/94.

²⁸⁰ *Germany 12 October 2000 District Court Stendal (Granite rock case)* [online]. Pace Law School Institute of International Commercial Law, April 23, 2002 [cit. October 14, 2014]. Available at <<http://cisgw3.law.pace.edu/cisg/text/001012g1german.html>>.

3.5.6 Right to examine the goods before payment Art 58(3)

The meaning of Article 58 (3) is that buyer has no obligation to make (full) payment for goods which do not conform to the contract. Before making payment, and before accepting delivery, the buyer is entitled (though not obligated) to examine the goods.²⁸¹ This right of the buyer comprises a short and brief examination of the goods, which will usually relate to the quantity of the goods.²⁸² However, in already mentioned above *Granite rock case*²⁸³ the Court ruled, in connection with Article 58, by reference to Article 38, that a two-month period for examination was reasonable.²⁸⁴ This view on the matter is not mostly acceptable. For example Schlechtriem & Schwenzler commentary state to this matter, that: “A detailed examination as to the quality of the goods will not be feasible at this stage. In particular, the right of the buyer to examine the goods prior to payment in accordance with Article 58 (3) must not be confused with the buyer’s duty to examine the goods for non-conformity under Article 38. Only in cases of apparent non-conformities, which will most likely be present in case of overshipments or undershipments will the buyer’s right to examine the goods under Article 58 (3) trigger the starting point off the time limits as set by Article 39. The costs of examination are to be borne by the buyer.”²⁸⁵ In this different views on the interplay between Art. 58 (3) and Art. 38 the author is inclined to think that second view that Art. 58 (3) is different from Art. 38 should be applicable in such a case. This can be understandable even from the easy wording of this Article. Where in Art. 58 (3) the buyer has an ‘opportunity to examine’ (which is supported by words, unless the procedures or payment are inconsistent with such an opportunity) in the other hand you have in Art. 38 wording ‘must examine’. Therefore the distinction is pretty clear Art. 58 (3) give an opportunity (but it is not necessary to do it), Art. 38 on the other hand, with a word ‘must’ give a strong duty to do it.

²⁸¹ LOOKOFSKY, Joseph. *The 1980 United Nations Convention on Contracts for the International Sale of Goods: Article 58* [online]. Pace Law School Institute of International Commercial Law, April 5, 2005 [cit. September 25, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/loo58.html>>.

²⁸² SCHLECHTRIEM, Peter, SCHWENZLER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 855.

²⁸³ CLOUT Case NO. 432 District Court Stendal Germany 12 October 2000, 22 S 234/94.

²⁸⁴ *Germany 12 October 2000 District Court Stendal (Granite rock case)* [online]. Pace Law School Institute of International Commercial Law, April 23, 2002 [cit. October 14, 2014]. Available at <<http://cisgw3.law.pace.edu/cisg/text/001012g1german.html>>.

²⁸⁵ SCHLECHTRIEM, Peter, SCHWENZLER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 855.

CISG does not specify the place for the examination under Article 58(3). In doctrine, it has been suggested that the place of examination should be the place of delivery under Article 31.²⁸⁶ When the transaction calls for the buyer to send for the goods (cf. a sale "ex works") or when the seller delivers the goods in its own trucks, inspection before payment may be quite feasible.²⁸⁷ However, if the contract involves carriage of goods, the place of delivery (Article 31 (a)) and the place of payment (Articles 58 (1), 57 (1) (a)) will be different if the seller does not make use of his right under Article 58 (2). In such a case, the place of examination will be the place of destination.²⁸⁸

Even if the Article 58 (3) says nothing about the suspension of the payment of the price in case of revealing of non-conformity of the goods during the examination, the case *Recycling machine case*²⁸⁹, helped us to solve this problem. In this case the Supreme Court of Austria has ruled that "*from the principle of concurrent performance in Art. 58, para. 3, 71 CISG, as well as right to withhold one's performance until the other party performs, as laid down in Art. 85, 86 CISG, it follows by way of interpretation in accordance with Art. 7 para. 2 CISG that the buyer has a general right to withhold performance in cases where the delivered goods do not conform to the contract.*"²⁹⁰ However it should bear in mind, as was stated above, that this concern only a non-conformance in cases of quantity of the goods delivered, not the defects which cannot be examined in such a short period of time.

However the right of the buyer under Article 58 (3) may be derogated from by the parties' prior agreement, Article 6. The most important example of such a case is the payment clause 'cash against documents'. Cash against documents means that the buyer must pay upon presentation of the documents without having the opportunity to examine the goods. It does not matter whether, at the time of presenting the documents, the goods are still in transit or have already arrived.²⁹¹ Example: *A contract called for Seller to ship goods to Buyer on June 1 on the "S.S. North Star" which (as*

²⁸⁶ Ibid.

²⁸⁷ HONNOLD, John O. *Uniform Law for International Sales Under the 1980 United Nations Convention*. Kluwer Law International; 3rd Revised edition, 1999. p. 366.

²⁸⁸ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. pp. 855-856.

²⁸⁹ Supreme Court Austria 8 November 2005, 4 Ob 179/05k.

²⁹⁰ *Austria 8 November 2005 Supreme Court (Recycling machine case)* [online]. Pace Law School Institute of International Commercial Law, January 30, 2007 [cit. October 17, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/051108a3.html>>.

²⁹¹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 856.

the parties knew) was scheduled to dock at Buyer's city on or about July 15. The contract further provided that on June 10 Seller would present a sight draft, with accompanying bill of lading, to Buyer for the full price. These agreed terms are inconsistent with inspection before payment. The crucial question is the provision in the contract.²⁹² Because if the parties agreed on payment clause 'cash against documents' the seller could insist on payment without buyer's opportunity to examine the goods. On the other hand, if the parties did not agree so, and the seller will insist on such payment, it will be inconsistent with buyer right to examine, Article 58 (3) and he will even have a chance to avoid the contract.

The next possibility is the most frequent procedure of payment which is consistent with a prior examination by the buyer is 'cash against invoice' (after receipt of the goods) in its various modifications. If the invoice travels with such the goods, the buyer may examine the goods under Article 58(3). However, if the invoice arrives prior to the goods, the buyer must pay the purchase price to comply with the clear language of these clauses.²⁹³

However, a buyer who is concerned that the seller might ship defective goods can usually arrange for a commercial inspection agency to act on its behalf in inspecting the goods before they are loaded on the carrier a step that normally is less onerous than for the seller to redispense of goods that the buyer has wrongfully rejected after they have arrived in his country.²⁹⁴ If the parties have agreed on a letter of credit arrangements, the seller is usually required to tender a certificate of quality by an independent inspection agency.²⁹⁵

To sum up, this paragraph may offer several pitfalls. The buyer should be aware that he has a right to examine the goods if nothing else was agreed upon on the contract. Therefore, before the conclusion of the contract, the buyer should be careful and not derogate from the paragraph of this Article. Also, be aware of possible payment clauses which can derogate his right to examine in different ways even if it not expressly stated in a contract. If he is not sure about seller credibility he should think

²⁹² HONNOLD, John O. *Uniform Law for International Sales Under the 1980 United Nations Convention. Kluwer Law International*; 3rd Revised edition, 1999. p. 367.

²⁹³ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 856.

²⁹⁴ HONNOLD, John O. *Uniform Law for International Sales Under the 1980 United Nations Convention. Kluwer Law International*; 3rd Revised edition, 1999. p. 367.

²⁹⁵ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 857.

about making steps for inspection before loading or at least to know about such a possibility in the case of letter of credit. This all mentioned above will avoid loss of buyer's right to examine and as a consequence will avoid possible expenses in a later stage.

3.5.7 Problems arising out of a provision

The problem arising out of the this Article is in wording “...*he must pay in when the seller places either the goods or documents...*”²⁹⁶. However Article 58 does not deal with what documents should the seller place to the buyer. It only states that this documents should be “*in accordance with the contract and this Convention*”²⁹⁷. Article 58 makes maturity dependent on the seller's presentation of all documents required by the contract.²⁹⁸ Strictly speaking, documents controlling disposition of the goods are only documents of title, as a bill of lading, a warehouse receipt, or a FIATA combined Transport bill of lading, that is, documents according to which the goods described therein are deliverable only to a lawful holder.²⁹⁹ Without the delivery of documents of title that allow the buyer to receive the goods, the purchase price will not become due.³⁰⁰ In addition, two other types of documents giving evidence of delivery exist: documents confirming that the goods have been taken over by the transporter or depositor (quai receipt, mate's receipt), and documents additionally certifying the conclusion of a transport (or warehousing) contract (sender's copy of the way-bill for railway, road, or air transport). These documents are most important for the buyer, since they give evidence that the goods have been handed over to a neutral person, a step toward the buyer's possession of the goods.³⁰¹ The contract or the relevant payment clause may require the seller to present additional documents, such as invoices, multi modal or combined transport documents, insurance documents, certificates of origin or quality, and/or customs documents. And any failure to comply

²⁹⁶ United Nations Convention on Contracts for the International Sale of Goods (1980).

²⁹⁷ Ibid.

²⁹⁸ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 849.

²⁹⁹ MASCOW, Dietrich. *Article 58* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 25, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb58.html>>.

³⁰⁰ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 849.

³⁰¹ MASCOW, Dietrich. *Article 58* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 25, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb58.html>>.

with the requirements of the contract or the applicable laws and rules may prevent the purchase price from becoming due.³⁰²

3.5.8 Recommendations concerning this Article

The parties can agree to derogate from Article 58³⁰³, however the parties should take in account pros and cons in doing so. The parties should know that time of payment could be dependent on time of delivery and what consequences could arise out of it.³⁰⁴ The buyer should be aware of the possibility of seller's reservation³⁰⁵ and right of retention³⁰⁶ and opportunity to exclude them in a contract. Because for ex. under seller's right to retention the buyer may pay before receiving the documents or the goods and it can cause possibility that seller will not deliver at all, or deliver defective goods or there will be another failure. On the other side, however also exist buyer's right of retention, which favor the buyer position.³⁰⁷ The buyer should bear in mind that under this Article he has a possibility examine the goods³⁰⁸ (it is also important to know in advance the meaning of 'examination' under Article 58(3) and Article 38, not to be confused later³⁰⁹) and seller does not have a right to preclude it.³¹⁰ However, this is not a case, where the parties agree on clauses like 'cash against documents' which mean that the buyer has to pay upon presentation of documents without previous examination. The buyer should be also careful on clause 'cash against invoice', because if this invoice does not travel with the goods and arrive earlier than the goods, the buyer in such a case has to pay before he even has an opportunity for examination. Therefore the author would highly recommended, especially for the buyer to arrange commercial inspection agency (inspection before loading) or at least to know about such a possibility in the case of letter of credit.³¹¹

³⁰² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 849.

³⁰³ See Chapter 3.5.2 hereof.

³⁰⁴ See Chapter 3.5.3 hereof.

³⁰⁵ See Chapter 3.5.4 hereof.

³⁰⁶ See Chapter 3.5.5 hereof.

³⁰⁷ Ibid.

³⁰⁸ See Chapter 3.5.6 hereof.

³⁰⁹ Ibid.

³¹⁰ See Chapter 3.5.5 hereof.

³¹¹ See Chapter 3.5.6 hereof.

3.5.9 Burden of proof

The seller has to prove the time of payment. In other words, he has to show that the purchase price is due. In order to show that the purchase price is due, the seller has to show that, in accordance with the contract, as the case may be, he has either placed the goods or the documents at the buyer's disposal or given notice to the buyer that he is withholding delivery until payment by the buyer. In the case of a contract involving the carriage of goods, the seller has to show that the goods have arrived at their place of destination.³¹²

The buyer bears the burden of proof that he has effected payment at the right time and the right place.³¹³

If one of the parties invokes a right of retention, the party invoking such right bears the burden of proving the facts on which he relies to support such a right.³¹⁴

3.6 Article 59 Buyer's affirmative obligation to make payment³¹⁵

For better understanding of the Article 59 the author divided it into a couple of sections. The first section is about subject matter **(3.6.1)**, following by a section about payment of sums other than the purchase price **(3.6.2)**, problems arising out of the provision **(3.6.3)** and recommendations concerning this Article **(3.6.4)**.

3.6.1 Subject matter

Article 59 states that "*the buyer must pay the price on the date fixed by or determinable from the contract or the Convention without the need for any request or compliance with any formality on the part of the seller*".³¹⁶ This provision makes it clear that payment is not subject to any formal demand by the seller in order to become due.³¹⁷ This provision rejects domestic formal demands for payment of the price, such as the French *mise en demeure* (Art. 1139 Cc) or the Swiss (Art. 102 OR) and German

³¹² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 857.

³¹³ Ibid.

³¹⁴ Ibid.

³¹⁵ In German: "Zahlung ohne Aufforderung".

³¹⁶ United Nations Convention on Contracts for the International Sale of Goods (1980).

³¹⁷ SEVÓN, Leif. *Obligations of the Buyer under the Vienna Convention on the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, January 27, 2000 [cit. June 8, 2014]. Available at < <http://www.cisg.law.pace.edu/cisg/biblio/sevon.html>>.

(§286 BGB) *Mahnung*.³¹⁸ Concerning the matter of date of payment, as was already stated above it is upon to the parties to agree according to Article 6 on a date fixed or determinable under the contract.³¹⁹ However, if the buyer pays only part of the price of the goods delivered, the seller is entitled to reject the payment and exercise his remedies under Article 61. If the seller accepts partial payment, he may nevertheless withhold the goods or documents until full payment has been made, when delivery and payment are concurrent conditions. If he does not or is not entitled to do so, he may rely on his remedies for his claim for the rest of the price.³²⁰ Article 59 also applies to the buyer's enabling steps to effect payment, for example, opening of a letter of credit.³²¹

3.6.2 Payment of sums other than the purchase price

According to its wording, Article 59 only applies to the buyer's obligation to pay the purchase price.³²² It is generally accepted that Article 59 expresses a general principle (within the meaning of Article 7 (2)) that is applicable to the different types of monetary claims made by one party to a sales contract against the other. Such claims include payment of interest on the price or on any sum that is in arrears (Article 78), damages claims arising from, inter alia, penalty clauses, claims for restitution of the price or payment of interest or benefits following contract avoidance (Article 81 (2) and Article 84 (2)), claims for reimbursement of the difference between the price paid and the price reduced in accordance with Article 50, and reimbursement of expenses incurred for preservation of the goods (Articles 85 and 86). In order for Article 59 to be applicable in these different cases, however, it is necessary for the debtor to know the amount of the sum owed.³²³ This was supported by a *Leather goods case*,³²⁴ where

³¹⁸ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 858.

³¹⁹ See Chapter 3.5.2 hereof.

³²⁰ MASCOW, Dietrich. *Article 59* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 26, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb59.html>>.

³²¹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 858.

See Chapter 3.1.1 hereof.

³²² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 860.

³²³ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

³²⁴ Appellate Court München Germany 9 July 1997, 7 U 2070/97.

the Court stated that, because the defendant had been unaware, at the due date, of the exact amount of the price, the invoices had to be paid, at the latest, at the time of their presentation in the course of the proceedings.³²⁵

3.6.3 Problems arising out of the provision

There are two possible questions arising out of the provision. The first question may arise as to whether an invoice is also a request or a formality in the sense of Article 59. Where the invoice is part of the documents controlling disposition of the goods (in particular, where the buyer has to clear the goods through customs authorities), the buyer may refuse to pay if no invoice is submitted.³²⁶ Generally, the invoice should be looked upon as a precondition for payment. Absent a contractual stipulation to the contrary, the sending or handing over of invoices should be viewed as a usage in the sense of Article 9 (2). Both parties need the invoice for their bookkeeping. Often invoices are required in order to obtain the authorizations necessary under currency regulations. When special forms of invoices (confirmation by a consulate) are required this must be agreed upon in the contract, since generally such requirements are not covered by usage.³²⁷

The second question can arise with a connection to buyer obligation to pay at the fixed date. Mainly what happened if the buyer will pay earlier than on fixed date? Since the buyer is obliged to pay at the fixed date as indicated in Article 59, the seller is not obliged to accept payment before that date. Just as Article 52 (1) expressly permits for the symmetrical case of delivery, the seller may reject payment, but according to the principle of good faith he must do so immediately. On the other hand, nothing prevents the seller from accepting earlier payment. When he does so and suffers a loss because of currency fluctuations, the question may arise as to whether he is entitled to damages? It is clear that if the seller only accepts earlier payment as fulfillment of the contract under an appropriate reservation he may claim for losses caused by currency fluctuations subsequent to payment, but prior to the due date.

³²⁵ *Germany 9 July 1997 Appellate Court München (Leather goods case)* [online]. Pace Law School Institute of International Commercial Law, January 30, 2008 [cit. October 22, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/970709g1.html>>.

³²⁶ MASCOW, Dietrich. *Article 59* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 26, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb59.html>>.

³²⁷ MASCOW, Dietrich. *Article 59* [online]. Pace Law School Institute of International Commercial Law, February 3, 2005 [cit. September 26, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb59.html>>.

Where the seller simply takes payment and does not react at all, it must be assumed that he has accepted earlier payment.³²⁸

Finally, we must remember that Article 59 may be varied by agreement. Such an agreement could be useful in many situations and may be found in many standard contracts³²⁹.

3.6.4 Recommendations concerning this Article

There are just a few recommendations. Firstly buyer does not have to pay without an invoice, because invoice is needed for his bookkeeping or authorization necessary under currency regulation. In such a case he will not be in delay if he will not pay. In case of special invoices like 'confirmation by consulate' they need to be in the contract, because they are not covered by usage like in other cases.³³⁰

The author also do not recommend to pay earlier than on a fixed date, otherwise it will be up to the seller to accept payment or not. It can cause possible responsibility for losses because of currency fluctuations.³³¹

³²⁸ Ibid.

³²⁹ TALLON, Denis. *The Buyer's Obligations Under the Convention on Contracts for the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, December 15, 2004 [cit. September 26, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/tallon.html>>.

³³⁰ See Chapter 3.6.3 hereof.

³³¹ Ibid.

4 The buyer's obligation to take delivery of the goods

Section II of Chapter III contains only one Article 60 of the second general obligation of the buyer, taking delivery of the goods **(4.1)**.

4.1 Article 60 Taking delivery

The author divided this Article into these sections, obligation of a buyer to do all acts to enable seller to make delivery **(4.1.1)**, taking over the goods **(4.1.2)**, rights to reject **(4.1.3)**, recommendations concerning this Article **(4.1.4)** and in case of breach of the contract the burden of proof **(4.1.5)**.

4.1.1 All acts to enable seller to make delivery

The buyer obligation to take delivery (Begriff der Abnahme) under Article 60 in subparagraph (a) consist of *"in doing all acts which could reasonably be expected of him in order to enable the seller to make delivery."*³³² The preparatory activities which have to be performed by the buyer are defined by two elements: FIRST, they must be necessary 'to enable the seller to make delivery', and SECOND, they must be reasonably expected of the buyer.³³³

This first criterion makes clear that only such activities which have an influence on the delivery itself are meant. Accordingly, obligations to the buyer whose purpose is to enable production by the seller are not covered.³³⁴ Better understanding of this acts to enable seller to make delivery bring the case law. For example it could be the preliminary examination of the goods by the buyer prior to delivery and the signing of a qualification certificate (*Cushion case*³³⁵); the obtaining of the import license (*Case 27/2001*³³⁶); the conclusion of the contract of carriage or notification of the name of the vessel on board which the goods are to be delivered (*Mung bean case*³³⁷); the obligation to give notice to the seller within a reasonable period in connection with

³³² United Nations Convention on Contracts for the International Sale of Goods (1980).

³³³ MASCOV, Dietrich at BIANCA, Cesare Massimo. In BIANCA, Massimo C., BONELL, Joachim M.. *Commentary on the international sales law: the 1980 Vienna sales convention*. Milan: Giuffr , 1987. p. 436.

³³⁴ Ibid.

³³⁵ CIETAC Arbitration proceeding China 29 September 2000, CISG/2000/15.

³³⁶ Arbitration proceeding Russia 24 January 2002 27/2001.

³³⁷ CLOUT case No. 987, Arbitration proceeding China 22 March 2001 CIETAC, CISG/2001/02.

deliveries to be made at the buyer's request (*Geneva Pharmaceuticals Tech. Corp. v. Barr Labs. Inc.*³³⁸) or the obligation of a contracting party bound by a purchase obligation to place orders required under the contract (*Beer case*³³⁹). If the place of delivery is the buyer's place of business, the buyer must ensure that the seller has access to those premises. If the seller is required to, for example, install equipment, the site must be prepared for that purpose (*Printing machine case*³⁴⁰).

As regards the second element (reasonable expectation of the buyer). The acts that could be reasonably expected of the buyer will often be expressly or impliedly provided for in the contract.³⁴¹ Therefore the main expectations are stated in the contract itself.

However, it is important to differentiate between the duty to cooperate within the meaning of Article 60 (a) and the buyer's other, subsidiary obligations, since only a breach of the former can be penalized by avoidance of the contract after an additional period of time has elapsed without performance (Article 64 (1) (b)).³⁴²

The question whether the duties of the buyer come within the scope of the acts referred to in Article 60 (a) is the subject of debate, especially in connection with the buyer's obligation to provide plans, documents or data necessary for the manufacture of the goods. According to one legal view, such an obligation cannot be linked to Article 60 because it is too far removed from the obligation to take delivery of the goods, while another view holds that Article 60 is applicable.³⁴³ This second view is supported by case *Geneva Pharmaceuticals Tech. Corp. v. Barr Labs. Inc.*³⁴⁴ where the Court stated that preparatory measures such as the provisions of plans or data, are also part of the cooperation required of the buyer since ultimately they serve to enable the seller to make delivery.³⁴⁵

³³⁸ CLOUT case No. 579, Federal District Court (New York) United States 10 May 2002, 98 CIV 861 (RWS) and 99 CIV 3607 (RWS).

³³⁹ CLOUT case No. 591, Appellate Court Brandenburg Germany 18 November 2008, 6 U 53/07.

³⁴⁰ CLOUT case No. 732, Spain 26 September 2005 Appellate Court Palencia, 227/2005.

³⁴¹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 863.

³⁴² *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

³⁴³ *Ibid.*

³⁴⁴ CLOUT case No. 579, Federal District Court (New York) United States 10 May 2002, 98 CIV 861 (RWS) and 99 CIV 3607 (RWS).

³⁴⁵ *United States 10 May 2002 Federal District Court [New York] (Geneva Pharmaceuticals Tech. Corp. v. Barr Labs. Inc.)* [online]. Pace Law School Institute of International Commercial Law, August 31, 2012 [cit. October 4, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/020510u1.html>>.

Doubts can also arise if this Article is connected to Article 65, where is described a scenario, what will happen if the buyer fail to specify the form, measurement or other features of the goods under the contract. Author thinks that there could be a connection because as was stated above, Article 60 by wording 'acts which could reasonably be expected' refers mainly to a contract and non-fulfillment under Article 65 is also under the contract. However Article 65 state "...the seller may [...] make the specification himself..."³⁴⁶ therefore this obstacle can be overcome by the seller (differently from Article 60(a)) and moreover in *Automobile catalyst case*³⁴⁷ Article 65 was cited as merely created for remedies. Therefore, according to opinion of the author Article 65 is outside of the sphere of Article 60 (a).

The time and the place for the performance of all these further obligations of the buyer to enable the seller to make delivery will depend largely on the specifics of a given case and where such steps are to be undertaken by the buyer. If a specific time cannot be determined from the contract, Article 65(1) provides a general principle of the Convention which can be applied to this question. Accordingly, the buyer must take all necessary steps upon request by the seller.³⁴⁸

To sum up, the buyer should not forget to make a thorough list of acts which he had to do, to fulfill the obligation to take delivery and also try to mention the time and place of such a performance to avoid possible negative consequences.

4.1.2 Taking over the goods

The second obligation under Article 60 of the buyer to take delivery in consist in 'taking over the goods' (Article 60 (b)). As was already stated in the previous section it is usually on parties to specify the details in the contract, this also applies on this subparagraph. Sales contracts normally call upon the seller to take the initiative in procuring or manufacturing goods and in placing them at the buyer's disposition. Usually the contract states what the seller should do to make the goods available to the buyer; if not, Article 31 in three detailed paragraphs fills the gaps. The brevity of

³⁴⁶ United Nations Convention on Contracts for the International Sale of Goods (1980).

³⁴⁷ The Court of Appeals of Athens Greece 2006 Decision 4861/2006, 4861/2006.

³⁴⁸ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. pp. 864-865.

Article 60 results from the fact that the buyer's obligation to take the goods does not arise until the seller makes the goods available.³⁴⁹

As noted in several court decisions, for example, in already mentioned above *Beer case*³⁵⁰, taking delivery within the meaning of Article 60 (b) is the physical handing over of the goods. In other words, taking over the goods is a factual act and does not include any legal concept, such as acceptance under various domestic laws.³⁵¹ And it is important to bear in mind, how it was stated in the *Model locomotives case*³⁵², that taking delivery of the goods or documents does not imply their approval by the buyer. In other words, taking delivery does not affect the buyer's right to give notice of a lack of conformity in the goods or documents (Article 39 (1)) or to resort to the remedies available to the buyer in the event of late delivery or delivery at an unsuitable place.³⁵³

The place where the goods are to be taken over, which is not specified in Article 60 (b), and the takeover arrangements depend on the procedures for delivery agreed on by the parties or, in their absence, on the rules set forth in Article 31 (a), (b) and (c).³⁵⁴ This view is supported by the *Electronic hearing aid case*³⁵⁵ where the Court applied Article 31 (b) CISG and determined that Aachen, where the goods had been manufactured, was the place where the seller was obliged to deliver (art. 31 (b) CISG).³⁵⁶

As to the time when the buyer has to take over the goods or documents. Article 58 (1) applies.³⁵⁷ The buyer who fails to take over the goods in time will bear the risk of accidental loss or damage after that time. In cases involving carriage, the buyer's failure to take over the goods (from the carrier) will constitute a breach, and the buyer

³⁴⁹ HONNOLD, John O. *Uniform Law for International Sales Under the 1980 United Nations Convention*. Kluwer Law International; 3rd Revised edition, 1999. pp. 373-374.

³⁵⁰ CLOUT case No. 591, Appellate Court Brandenburg Germany 18 November 2008, 6 U 53/07.

³⁵¹ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 862.

³⁵² CLOUT case No. 892, District Court Schaffhausen Switzerland 27 January 2004, 11/1999/99.

³⁵³ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

³⁵⁴ *Ibid.*

³⁵⁵ CLOUT case No. 47, District Court Aachen Germany 14 May 1993, 43 O 136/92.

³⁵⁶ *Germany 14 May 1993 District Court Aachen (Electronic hearing aid case)* [online]. Pace Law School Institute of International Commercial Law, December 2, 2005 [cit. October 15, 2014]. Available at <<http://cisgw3.law.pace.edu/cases/930514g1.html>>.

³⁵⁷ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 862.

may well be liable for the damages which result, e.g., so as to provide the seller with compensation for extra costs paid to the carrier in this regard.³⁵⁸

In practice the taking over of the goods will often be determined in the contract or by the use of specific trade terms. Where the parties have agreed on delivery in accordance with the business terms like INCOTERMS, the question of place and time of taking over the goods is resolved there.³⁵⁹ Specifically, the question of which party has to undertake the loading or unloading of the goods will be important. Rule A4 of all INCOTERMS specifies the obligation as to loading and unloading. For example, under the trade term EXW, the seller must not load the goods on to a collection vehicle.³⁶⁰

To sum up, even if it is not automatically arise from the contract the parties can determine the place and time of taking over the goods by referring to specifying trade terms. However the buyer's obligation to take the goods will not arise until the seller makes the goods available. The buyer should also bear in mind that the fact he took over the goods does not mean he approved the goods and hence does not have a chance to give a notice of a lack of conformity or to resort to the remedies.

4.1.3 Rights to reject

In several cases, the buyer has the right to withhold his cooperation with the delivery by the seller.³⁶¹ Article 60 does not specify in which situations the buyer is entitled to reject the goods. However, by examining the Convention we can find some possibilities. First possibility is stated in Article 52(1) where *“if the seller delivers the goods before the date fixed, the buyer [...] may refuse to take delivery”*.³⁶² Second possibility is stated in the same Article 52 (2) where *“If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer [...] refuse to take delivery of the excess quantity.”*³⁶³ Another possibility is a case of late delivery. In such a case, the buyer has to accept a late delivery unless he is entitled to declare the

³⁵⁸ LOOKOFSKY, Joseph. *Article 60: Taking Delivery* [online]. Pace Law School Institute of International Commercial Law, April 5, 2005 [cit. September 27, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/loo60.html>>.

³⁵⁹ ROZEHNALOVÁ, Naděžda. *Právo mezinárodního obchodu*. 3. vydání. Praha: Wolters Kluwer, ČR, a. s., 2010, p. 327.

³⁶⁰ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 862.

³⁶¹ *Ibid.*, p. 865.

³⁶² United Nations Convention on Contracts for the International Sale of Goods (1980).

³⁶³ *Ibid.*

contract avoided, Article 49 (1), (2) (a).³⁶⁴ It is almost unanimously accepted that the buyer has the right to reject the goods if the seller commits a fundamental breach of contract (Article 25), which entitles the buyer to declare the contract avoided (Article 49 (1) (a)) or to demand delivery of substitute goods (Article 46 (2)). Similarly, the buyer also has a right to avoid (and thus a right to reject delivery) if the seller fails to deliver within an additional period of time fixed in accordance with Article 47 (see Article 49 (1) (b)).³⁶⁵

However, whether or not the buyer has a chance to reject delivery of the goods where non-conformity does not amount of fundamental breach of the Contract is a debatable question. According to the one view stated by the Court in *Shoes case*³⁶⁶ the buyer is, in that event, obliged to take delivery of the goods.

According to another view in doctrine, a right to rejection may be established as part of a general right of retention on the basis of Article 7 and under consideration of the seller's right to cure under Article 48. Under this view, the decisive factor is the place where the goods are to be delivered. If the goods are delivered at the seller's place of business or another particular place, such as the place of storage, the buyer should be entitled to reject taking over the goods. However, if the contract involves carriage of the goods or the goods were to be placed at the buyer's disposal at the buyer's place of business or any other particular place in the buyer's country, the buyer should not be entitled to reject the goods.³⁶⁷ In the view of author the second view will be better for both parties, because it will save the money for both of them. For the seller because such a non-conformity can cause under Article 50 of the Convention reduction of the price, which can be bigger than a cure under Article 48. For the buyer because such non-conformity of goods can cause loose in business in possible resale of such goods. And a possible subsequent loss in a damage of his reputation, by reselling the goods below his standard quality.

If the buyer intends to reject the goods, the buyer is required to take reasonable steps to preserve them and may even be obliged to take possession of the goods for

³⁶⁴ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 865.

³⁶⁵ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

³⁶⁶ COU case NO. 79, Appellate Court Frankfurt Germany 18 January 1994, 5 U 15/93.

³⁶⁷ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 866.

this purpose, but will be entitled to reimbursement for the expenses of preservation (Article 86).³⁶⁸

4.1.4 Recommendations concerning this Article

In conclusion of the Contract the parties and mainly the buyer should be aware of what is covered under wording 'doing all acts' and 'reasonably expected'.³⁶⁹ The buyer could use the opportunity to state in the contract what a seller should do to make the goods available to him, mainly state that seller should undertake loading and unloading, which is important for possible damages on them during this time (liability will be on seller side).³⁷⁰ Buyer should not forget on his possibility to refuse, under some circumstances, the late delivery or delivery of a greater quantity of goods (excess quantity). If there will be a chance to refuse them the buyer should preserve them, but will be entitled to reimbursement for the expenses.³⁷¹

4.1.5 Burden of proof

The seller as the party relying on the buyer's obligation has to prove the existence and the content of the buyer's obligation to take delivery of the goods under particular circumstances of the given case and any other obligation of the buyer to enable the seller to make delivery under the particular circumstances of the given case. It is also the seller who has to establish that the buyer is in breach of the obligation as established.³⁷²

³⁶⁸ *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* [online]. Uncitral.org [cit. October 10, 2014]. Available at <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

³⁶⁹ See Chapter 4.1.1 hereof.

³⁷⁰ See Chapter 4.1.2 hereof.

³⁷¹ See Chapter 4.1.3 hereof.

³⁷² SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 867.

5 Other obligations of the buyer

The obligations mentioned in Article 53 are primary obligations which are to be fulfilled in the normal performance of the contract. The buyer also has secondary obligations which apply when normal performance is disturbed. These obligations are regulated in detail by the Convention. The buyer has to give notice to the seller of an impediment causing a failure to perform (Article 79). The buyer has certain obligations to preserve the goods under specified conditions (Articles 85 et seq.). And, the buyer may have an obligation to examine the goods (Article 38). Depending on the case the buyer can be responsible for other obligations.³⁷³ Such as not to purchase directly from the seller's suppliers, not to resell into specific countries, or to maintain confidentiality. These obligations may only arise from the contract, either by express agreement of the parties or by implied terms in accordance with Articles 8 or 9 (intent of parties, usage and practice between parties)³⁷⁴.

CISG speaks directly about these other obligations in Art. 62 and also regulates special cases, indirectly, in Art. 65 "Specifications"³⁷⁵, his obligation to specify the form of the goods. Also the obligations of the buyer to furnish technical drawings (Article 42(2)(b)).³⁷⁶ These other obligations according to Art. 62 could be typical of sales transactions such as to provide security interests, furnish information, plans, and technical drawings, deliver materials or components, follow distribution directives, and heed export and re-import prohibitions, etc.³⁷⁷ Article 81 mentions "the rights and obligations of the parties consequent upon the avoidance of the contract", thus indicating other obligations of the buyer.³⁷⁸

³⁷³ MASCOW, Dietrich. *Article 53* [online]. Pace Law School Institute of International Commercial Law, February 2, 2005 [cit. June 7, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb53.html>>.

³⁷⁴ SCHLECHTRIEM, Peter, SCHWENZER, Ingeborg. *Commentary on the UN Convention on the International Sales of Goods (CISG)*. Oxford: Oxford University Press, 2010. p. 808.

³⁷⁵ In German: "Spezifikationen".

³⁷⁶ MASCOW, Dietrich. *Article 53* [online]. Pace Law School Institute of International Commercial Law, February 2, 2005 [cit. June 7, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb53.html>>.

³⁷⁷ SCHLECHTRIEM, Peter. *Uniform Sales Law – The UN-Convention on Contracts for the International Sale of Goods* [online]. Pace Law School Institute of International Commercial Law, June 7, 2000 [cit. June 7, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/schlechtriem-53.html>>.

³⁷⁸ MASCOW, Dietrich. *Article 53* [online]. Pace Law School Institute of International Commercial Law, February 2, 2005 [cit. June 7, 2014]. Available at <<http://www.cisg.law.pace.edu/cisg/biblio/maskow-bb53.html>>.

The most important way of fixing the other obligations of the buyer is by way of contractual stipulation. Since these obligations vary from contract to contract, the Convention wisely refrained from regulating them. Experience shows that parties are commonly able to agree on their primary obligations. On the other hand, they often fail to foresee the legal consequences of a breach, particularly those concerning other obligations. For this reason the strength of the Convention lies in its exhaustive treatment of the seller's remedies in the case of a breach of any obligation by the buyer, whether the obligation is provided for in the Convention or in the contract.³⁷⁹ Therefore the buyer should be careful in conclusion of the contract in these above mentioned possible other obligations and regulate them under contractual stipulation.

³⁷⁹ Ibid.

CONCLUSION

The whole work was primarily focused on the obligations of the buyer under the Convention and whether the wording of the buyer's principal obligations in Chapter III of Part III of the Convention is sufficient enough to understand the full meaning under it and in case of ambiguity, to point out what should primary the buyer, because of his obligations, be aware of.

The author therefore primarily focused on explanation of particular Articles in Chapter III of Part III of the Convention. With pointing out to the ambiguity of certain terms, their interconnection with other Articles and also with an emphasis on the case law which could bring in a case of doubts possible solutions. By this activity he also pointed out to different views of authorities and courts by dealing with particular situations and tried to point out of possible solutions from his perspective. He also did not neglect to warn about possible main problems arising out from particular Articles and tried to point out by the way of recommendations what should parties, mainly buyer, be aware of and what to avoid. With regard to the scope of the work the author believes that he managed to bring a better understanding of the given topic and pointed out to practical difficulties that may hide there. In conclusion, it is important to answer to a question which the author puts at the beginning of the work, whether the wording of buyer's principal obligations in Chapter III of Part III of the Convention is sufficient enough to understand the full meaning under it?

Parties at the time of conclusion of international contracts often know about the application of the Convention and the obligations of the buyer under this Convention, or at least they think so. Parties however, are unaware of the details hiding behind the meaning of these Articles and interconnection with other Articles in Convention, which in contracting should be taken into account. Author then believes that during the work he succeeded in bringing more clarity for understanding of these factors.

Concerning the first principal obligation of the buyer to pay the purchase price, some of the Articles concerning this obligation give the impression that they are more clear than others. Above all, Articles concerning 'price fixed according to the weight' (Article 56) and 'no formal request for payment' (Article 59) may give the impression that they cannot lead to the doubts. However the opposite is true, as the author found out, even these Articles can cause difficulties with their bad interpretation or

understanding. Regarding other Articles concerning this obligation the need for knowledge is even bigger for their better understanding and application.

The second principal obligation consists of one Article of taking delivery of the goods (Article 60) is also not such clear as it could seem from the Convention itself and therefore also requires sufficient knowledge.

However, it is necessary to point out to the fact, that because of the flexibility of the Convention it is possible to modify all the buyer's obligations differently. From this could benefit either buyer or the seller and on the other hand, lack of knowledge could also damage whomever of them. When we also take to account the fact, that Member States can use reservations to certain Articles and hereby exclude the application of the part of the Convention, we can come to the conclusion that there is a need for detailed knowledge in contracting of the contracts. However, not only about this particular Chapter, but also about all the relevant circumstances which have an impact on the application of these Articles (or other Articles related to this Chapter).

Another important factor is that despite the accurate elaboration of the Convention, there exist interconnections between the Articles in Chapter III and other Articles of the Convention, which are interpreted differently by authorities and courts. Therefore, for contracting parties, as was already mentioned above, exist a necessity to know these problems and possibly modify them differently in the contract.

In conclusion, it is necessary to mention that particular Articles also include some general terms and for their understanding there is a necessity to know the appropriate case law or literature and therefore necessary to use the services of lawyers or experts who understand the given issue. Their practical help can be useful at least to the point when the parties established practice between them or will gain sufficient knowledge to do business without them.

On the basis of the above mentioned author took the liberty to conclude this work with the statement, that despite the sophistication of the Convention and therefore also the given Chapter concerning buyer's obligations there is a necessity for greater knowledge and familiarity to understand the given issue and its possible application in practice.

Resume in English language

The content of my work are the obligations of the buyer under the United Nations Convention on Contracts for the International Sale of Goods (CISG) and since the definition of particular Articles is very general, this work is trying on their thorough analysis for their potential use. The aim of this work is therefore to analyze the particular Articles concerning principal buyer's obligations and their possible interconnection with other Articles. Considering the fact, that for their proper application in practice it is necessary to know the appropriate case law, this work also brings significant decisions and try bring with their application a clear knowledge of the situation.

To make this work more transparent, the content is divided into five separate chapters. The first chapter is dealing in general with CISG, its introduction, familiarization, content and application.

The second chapter is dealing with a brief summary of the main obligations of the buyer under the Convention.

The third chapter is dealing with the buyer's obligation to pay the purchase price and this chapter is divided into six subchapters. Where the first subchapter is dealing with the fact if the price for the goods is paid and bring the reader understanding what is covered under it. The second subchapter brings explanation to cases, when the price is not set by the agreement and what are the implications. In order in third subchapter is described what is meant by the price set by weight. In four subchapter are shown all possible places of payment and described on which aspects the place of payment is determined. In five subchapter the reader can read about the time of payment, when the buyer should pay. In the last subchapter is then determined a case of buyer's affirmative obligation to make payment.

The fourth chapter is dealing with the obligation of the buyer to take the delivery and what is entailed, what the buyer must comply with to fulfill this obligation.

The fifth and the last chapter focuses on all other obligations of the buyer, which are not considered principal and therefore are fragmented throughout the Convention.

Resume v českém jazyce

Obsahem mé práce jsou povinnosti kupujícího dle Úmluvy OSN o smlouvách o mezinárodním koupi zboží (dále jen Úmluva) a jelikož definice jednotlivých článků je velmi obecná, tato práce se pokouší o jejich důkladnější analýzu pro jejich případně použití. Cílem této práce je tedy rozbor jednotlivých článků týkajících se základních povinností kupujícího a jejich možné propojení s ostatními články. Vzhledem k tomu, že pro jejich správné použití v praxi je potřeba vědět patřičnou judikaturu, tato práce též přináší významná rozhodnutí a pokouší se tím poskytnout jasný přehled o situaci.

Aby tato práce byla více přehledná je rozdělena do pěti samostatných kapitol. První kapitola se zabývá obecně Úmluvou, úvodem a tedy seznámením s Úmluvou, jejím obsahem a aplikací.

Druhá kapitola se zabývá stručným souhrnem hlavních povinností kupujícího dle Úmluvy.

Třetí kapitola se zabývá povinností kupujícího zaplatit zboží a dělí danou kapitolu na šest podkapitol. Kde se v první podkapitole zabývá tím, jestli je cena za zboží zaplacená a přináší čtenáři vysvětlení, co se pod tím může skrývat. V druhé podkapitole přináší vysvětlení případu, kdy cena není stanovena ve smlouvě a co z toho plyne. V pořadí třetí podkapitole je vysvětleno, co je míněno pod cenou stanovenou dle hmotnosti. Ve čtvrté podkapitole jsou uvedeny všechny možné místa placení a na základě kterých hledisek se místo placení určuje. V páté podkapitole pak si čtenář může přečíst o době placení, tedy kdy kupující musí zaplatit. V poslední podkapitole je pak stanoven případ souhlasné povinnosti kupujícího k provedení platby.

Čtvrtá kapitola se pak zabývá povinností kupujícího převzít zboží, a co to obnáší, co musí kupující udělat, aby tuto povinnost splnil.

Pátá a poslední kapitola se zaměřuje na všechny další povinnosti kupujícího, jenž se nepovažují za základní a jsou roztrženy po celé Úmluvě.

LIST OF KEYWORDS

CISG, United Nations Convention on Contracts for International Sale of Goods, buyer's obligations, pay the purchase price, price determination, currency, place of payment, time of payment, costs of payment, assignment, partial payment, take delivery, other obligations, burden of proof.

SEZNAM KLÍČOVÝCH SLOV

Úmluva, úmluva OSN o smlouvách o mezinárodní koupi zboží, povinnosti kupujícího, zaplatit kupní cenu, stanovení ceny, měna, místo placení, čas platby, náklady na platby, cese, částečná úhrada, převzetí dodávky, jiné povinnosti, důkazní břemeno.

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