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AN APPRAISAL OF THE CONTRACT OF SALE OF GOODS UNDER INTERNATIONAL LAW

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ABSTRACT: The cross-border exchange of goods represents a fundamental aspect of the global economic landscape. This trade is regulated by an intricate tapestry of legal instruments established to streamline international commerce. This article presents a thorough evaluation of the contractual doctrines that form the basis for the sale of goods within the framework of international law. It delves into the analysis of significant treaties, conventions, and established customary practices. With a specific focus on the tenets of the United Nations Convention on Contracts for the International Sale of Goods (CISG), the paper examines the legal entitlements and responsibilities of the involved parties, mechanisms for resolving disputes, and the persistent difficulties in aligning disparate legal systems. The study concludes by offering insights into the efficacy of existing legal tools and the potential for future advancements in legal unification.

Keywords: *International Commerce, Uniform Commercial Law, CISG, Cross-Border Transactions, Treaty Law*

1. Introduction

The contract for the sale of goods under international law serves as the lifeblood of the world's interconnected economy. In an age defined by accelerating globalization, the movement of goods across sovereign borders has become a standard feature of commerce. Such transactions are, by their nature, multifaceted, navigating a landscape of varied legal histories, commercial norms, and public policy objectives. In response, a range of legal instruments has been crafted to bring order and predictability to international sales.

Among the most significant of these is the United Nations Convention on Contracts for the International Sale of Goods (CISG), which was finalized in 1980. This convention establishes a standardized legal structure for international sales contracts, designed to dismantle legal obstacles, lower transaction costs, and enhance certainty within global trade. The objective of this paper is to scrutinize the provisions of the CISG, evaluate the convention's scope and practical application, pinpoint the challenges that hinder its universal adoption, and propose recommendations to address the identified problems and complexities.

1.2 Conceptual Clarification

For any scholarly analysis to be robust, it is imperative to establish a clear and unambiguous understanding of its core terminology. This process of conceptual clarification involves a detailed explanation of abstract ideas or principles to ensure precision and prevent misinterpretation. By delineating the meaning, boundaries, and implications of key concepts, we create a common lexicon that facilitates effective communication and rigorous analysis. This foundational step is essential for preventing misunderstandings and enabling informed decision-making within the discussion that follows. A thorough clarification requires examining various definitions, illustrating the concept's application through relevant examples, and identifying the distinct characteristics that differentiate it from related notions. Therefore, to fully grasp the subject of this paper, it is necessary to define the United Nations, the term 'convention,' and the nature of an international contract for the sale of goods.

1.2.1 United Nations

The United Nations (UN) is a global intergovernmental body formed in the aftermath of the Second World War, following the dissolution of the League of Nations.

Established by its charter in 1945, the UN's primary mandate is the preservation of international peace and security. Its objectives extend to fostering greater political and economic collaboration among member nations, cultivating amicable relations between states, and promoting global cooperation. The organization acts as a central hub for coordinating the actions of nations to achieve these common goals, with a strong emphasis on peace, security, and human rights.

Headquartered in New York City, the UN currently comprises 193 member states, all of which are represented in the General Assembly. The UN operates through six principal organs that were founded along with the organization in 1945: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat.

The General Assembly serves as the principal forum for deliberation, policy creation, and representation among all member states. Annually in September, the entire UN membership convenes in New York for its general session, which is often addressed by numerous heads of state. Resolutions on critical issues like peace, security, the admission of new members, and budgetary allocations necessitate a two-thirds majority vote, while other matters are decided by a simple majority.

The Security Council holds the chief responsibility for upholding international peace and security. It consists of fifteen members—five permanent and ten non-permanent—with each member possessing a single vote. The UN Charter obligates all member states to adhere to the Council's decisions. The Council is tasked with identifying threats to peace or acts of aggression, urging disputing parties to seek peaceful resolutions, and recommending settlement terms. In certain circumstances, it has the authority to impose sanctions or authorize military force to preserve or re-establish international peace.

The Economic and Social Council is the central body for coordinating policy dialogue and making recommendations on economic, social, and environmental matters, as well as overseeing the implementation of internationally agreed-upon development objectives.

The International Court of Justice (ICJ) is the UN's main judicial body, located at the Peace Palace in The Hague, Netherlands, making it the only principal organ not based in New York. The ICJ's function is to adjudicate legal disputes submitted by states in conformity with international law and to provide advisory opinions on legal questions posed by authorized UN organs.

Finally, the Secretariat is the administrative arm of the UN, composed of the Secretary-General and a vast international staff responsible for executing the day-to-day operations mandated by the General Assembly and other principal organs. The Secretary-General, who functions as the UN's chief administrative officer, is appointed by the General Assembly upon the Security Council's recommendation for a renewable five-year term.

1.2.2 Convention

In legal discourse, the term 'convention' is often used interchangeably with 'contract' or 'agreement'. More specifically, it denotes a formal agreement or pact, particularly one established between nations. Within the realm of international law, a convention is understood as a legally binding treaty or accord between two or more sovereign states that regulates matters of mutual concern. It can be seen as a formal agreement, sometimes less ceremonious than a treaty, addressing specific issues.

International conventions are a foundational source of international law, created through negotiations aimed at tackling global challenges or setting rules for state conduct. For example, a convention to prohibit the proliferation of nuclear weapons is a multinational agreement signed by member states. Consequently, conventions are binding instruments that establish enforceable legal duties for the countries that have formally signed and ratified them. These agreements are frequently adopted at large international conferences, often under the patronage of organizations like the United Nations. They typically concentrate on a distinct subject; the Geneva Conventions, for instance, set standards for humanitarian conduct in warfare, whereas the UN Convention on the Law of the Sea (UNCLOS) outlines the rights and duties of nations regarding the world's oceans. Many conventions also incorporate enforcement mechanisms, such as monitoring bodies or penalties like sanctions for non-compliance.

1.2.3 Contract

A contract is a legally enforceable agreement between two or more parties that establishes an obligation to perform, or to abstain from performing, a particular act. It is characterized by a reciprocal exchange of value, which may take the form of goods, services, or money. To be valid and legally binding, a contract must comprise several key elements, including a clear agreement, an intention to create legal relations, and consideration. Essentially, a legally enforceable contract requires mutual assent (demonstrated through an offer and its acceptance) between legally competent parties who intend for their agreement to have legal force and have exchanged something of value.

An agreement is formed when one party presents an offer that is unequivocally accepted by another. In

Stover v Manchester City Council, an offer was defined as an expression of a willingness to be bound by specific terms upon acceptance by the intended recipient. For an offer to be valid, there must be an objective manifestation of the offeror's intent to be bound; the offeror's words or actions must lead a reasonable person to believe that an intention to be bound exists, regardless of the offeror's subjective state of mind. An offer must be distinguished from an "invitation to treat," which is merely an invitation for another party to make an offer and is not intended to be binding upon acceptance.

Furthermore, an agreement does not constitute a contract if the parties lack the intention to create legal relations. In commercial transactions, there is a rebuttable presumption that the parties do intend for their agreement to be legally binding. As established in

Edwards v Skyways Ltd, the burden of proving a lack of such intention falls on the party making that claim. Conversely, many social and domestic arrangements are not considered contracts because they are not intended to carry legal consequences. The case of

Balfour v. Balfour illustrates this principle, where a husband's promise to pay his wife a monthly allowance was deemed unenforceable because the parties did not intend it to be a legally binding arrangement.

Finally, consideration is a fundamental component of a contract under common law. It is the "something of value" given in exchange for a promise, making that promise legally enforceable. This value typically involves a detriment to the promisee (giving something up) or a benefit to the promisor (receiving something). For instance, a buyer's payment is consideration for the seller's promise to deliver goods, and vice-versa. Consequently, an informal promise made without any consideration is considered gratuitous and does not form a contract.

1.2.4 Sale of Goods

In the Nigerian legal system, contractual dealings involving goods are governed by the Sale of Goods Act (SGA). This legislation originated as an English law that was incorporated into Nigerian jurisprudence as a Statute of General Application prior to 1900. The Act defines a "contract of sale of goods" as an agreement through which a seller transfers, or commits to transferring, the property in goods to a buyer in return for a monetary payment known as the price.

This definition confirms that a sale of goods is a form of contract and must therefore include all the essential elements of a contract. The definition also highlights two additional required components: the subject matter must be "goods," and the consideration must be monetary. The critical nature of payment was affirmed in Nidocco v. Mrs. I.A. Gbajabiamila, where the court ruled that failure to pay the purchase price constitutes a fundamental breach of the contract. The court further stated that a contract lacking consideration is incomplete and cannot be subject to a decree of specific performance.

The SGA uses the term "contract of sale" to encompass both a "sale" and an "agreement to sell". A contract becomes a sale when the property in the goods is immediately transferred from seller to buyer. In contrast, it is an agreement to sell if the transfer of property is scheduled for a future date or is contingent upon the fulfillment of a condition. An agreement to sell transforms into a sale once the stipulated time has passed or the necessary conditions have been met.

To properly understand this area of law, it is essential to define "goods." The Act specifies that goods include all personal chattels except for choses in action and money. The term also covers emblements, industrial growing crops, and items attached to land that are intended to be severed before sale. The Court of Appeal in *Berende v. Usman & Anor* provided a classification of chattels, explaining that they can be personal or real. Personal chattels are those that belong directly to a person, such as a horse, or are recoverable only through personal legal actions.

1.2.5 International Sale of Goods

The term "International Sale of Goods" pertains to the commercial trade of physical products between private entities located in different nations. This field is predominantly governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG). The contract of sale is the foundational element of international trade for all countries, regardless of their legal traditions or stage of economic development. For this reason, the CISG is regarded as a core convention in international trade law, and its universal adoption is highly encouraged.

The CISG is the culmination of legislative efforts that began in the early twentieth century, resulting in a text that carefully balances the interests of both buyers and sellers. It has also served as an inspiration for domestic contract law reforms in various countries. The importance of a robust legal framework for promoting international trade and investment cannot be overstated. This recognition led the United Nations General Assembly to establish the United Nations Commission on International Trade Law (UNCITRAL) via Resolution 2205 (XXI) on December 17, 1966. UNCITRAL plays a crucial role in fostering the progressive harmonization and modernization of international trade law by developing and encouraging the use of legislative and non-legislative tools across key areas of commerce, including dispute resolution, international contracts, transport, insolvency, e-commerce, international payments, and the sale of goods. It was UNCITRAL's work on creating a uniform sales law that led directly to the adoption of the CISG in Vienna in 1980.

1.3 Legal Foundations of International Sale of Goods

A solid legal foundation for contracts in the international sale of goods is indispensable. Without such a framework, it becomes challenging to define the obligations of the parties, ensure the transfer of valid title, or ascertain the quality of goods. A clear legal foundation establishes the rights and duties of the contracting parties, mitigates risks, and brings certainty to their relationship. Furthermore, it helps prevent fraudulent activities and provides a structured mechanism for resolving disputes that may arise in international commercial dealings.

1.3.1 United Nations Convention on Contracts for International Sale of Goods

The primary legal instrument governing international sales contracts is the United Nations Convention on Contracts for the International Sale of Goods, commonly referred to by its acronym, CISG. Adopted in 1980, the CISG came into effect eight years later. It is designed to apply automatically to contracts for the sale of goods between parties located in different Contracting States, unless the parties have explicitly opted out. The convention's articles address crucial aspects of the transaction, including the formation of the contract, the obligations of both the buyer and the seller, the transfer of risk, and the available remedies in the event of a breach. By harmonizing international commercial law, the CISG has been adopted by over 90 countries. It is important to note that Nigeria has not ratified this convention, and even if it were to do so, the Nigerian constitution would require it to be enacted into domestic law before it could be enforced locally.

1.3.2 Scope of the Law

The CISG applies to contracts for the sale of goods between parties whose places of business are in different countries under two specific conditions. The first is when both of the countries are Contracting States that have ratified the convention. In this scenario, the CISG governs the contract automatically, superseding domestic law unless the parties agree otherwise. The second condition is when the principles of private international law (or conflict of laws) dictate that the law of a Contracting State should apply to the contract. This means the CISG can become the governing law indirectly, even if one or both parties are not from a Contracting State, provided that the relevant jurisdiction's conflict-of-law rules point to the law of a country that has adopted the CISG.

This approach promotes uniformity and predictability while reducing legal uncertainty in cross-border commerce. However, the convention's applicability is not universal; it explicitly excludes certain types of transactions. The CISG does not apply to the sale of goods purchased for personal, family, or household use (consumer sales), unless the seller was unaware of the intended use. Also excluded are sales conducted by auction, sales executed by legal authority, and transactions involving financial instruments such as stocks, shares, and negotiable instruments. Furthermore, the convention does not govern the sale of ships, vessels, aircraft, or electricity. These exclusions ensure that the CISG remains focused on its core purpose: governing international sales of tangible commercial goods.

Although Nigeria is not a signatory to the CISG, the convention's provisions can still be applied by Nigerian courts. The extension of the CISG's scope through the rules of private international law means it can govern a transaction involving a Nigerian party. For example, a German court case involving a German buyer and a Nigerian seller demonstrated how the convention's provisions could be applied even when one party is from a non-contracting state.

1.3.3 Form and Formation of Contract

The CISG adopts a flexible approach to the form of a contract, stipulating that a contract of sale does not need to be concluded in or evidenced by writing. It is not subject to any other formal requirements, emphasizing instead the principle of mutual agreement between the parties. The convention is modern in its accommodation of various forms of communication, including electronic ones, for establishing an offer and acceptance. The parties have the liberty to formalize their agreement in any manner they choose, and the existence of the contract can be proven by any means.

However, the text of the convention does reflect the technological context of its time. For instance, the definition of "writing" explicitly includes telegram and telex , and the rules for when a communication "reaches" an addressee refer to oral delivery or physical delivery to a place of business or mailing address. These provisions appear somewhat restrictive in the current digital era. Limiting official communication to these modes could slow down commercial transactions and negatively impact international trade. A contemporary interpretation should therefore consider modern electronic means like email, fax, and WhatsApp as valid forms of communication under the convention's principles.

1.3.4 Duties of the Parties

In an international sale of goods, the duties of the seller and buyer are determined by a hierarchy of rules: first, the express terms agreed upon by the parties; second, any established practices or trade usages they have implicitly consented to; and third, the default provisions of the CISG.

For the seller, a primary obligation is the delivery of the goods. The seller is required to deliver the goods, provide any related documentation, and transfer the property in the goods as stipulated by both the contract and the convention. Regarding the timing of delivery, the CISG provides three default options in the absence of a specific contractual term: a date that is fixed or can be determined from the contract; a period of time that is fixed or determinable from the contract; or, if neither is specified, "within a reasonable time after the conclusion of the contract". For the place of delivery, since international sales often involve the transportation of goods, the primary default rule is that delivery occurs when the seller hands the goods over to the first carrier for transmission to the buyer.

The seller must also deliver goods that conform to the contractual requirements in terms of quantity, quality, and packaging. It is the buyer's responsibility to examine the goods within the shortest practical timeframe after receipt. If a lack of conformity is found, the buyer must notify the seller within a reasonable time, specifying the nature of the defect. Failure to provide timely notice can result in the buyer losing the right to claim a breach. The convention establishes a final deadline, barring any claim from the buyer if notice is not given within two years from the date the goods were handed over, unless a longer contractual guarantee period applies. The seller remains liable for any non-conformity that existed at the time the risk passed to the buyer, even if the defect only becomes apparent later.

The transfer of risk is another critical aspect. In contracts involving the carriage of goods where the seller is not obligated to deliver at a specific location, the risk passes to the buyer once the goods are handed over to the first carrier. If the contract specifies a particular place for the handover to the carrier, the risk transfers to the buyer only at that point.

1.5 Conclusion

The legal framework governing the international sale of goods has evolved considerably, with the CISG standing as its central pillar. While the convention has made undeniable strides in harmonizing legal standards and promoting international trade, the goal of complete uniformity has yet to be achieved. To unlock the full potential of this and other international legal instruments, persistent efforts are needed to encourage wider adoption, ensure consistent judicial interpretation, and develop effective enforcement mechanisms. As global commerce continues to transform, the legal structures that support it must also adapt to remain relevant, inclusive, and effective.

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