

## Abstract

This thesis on "Recoverable Damages under the United Nations Convention on Contracts for the International Sales of Goods (CISG)" focuses on Damages Provisions: Articles 74 – 76, referring to the general principle of full compensation. This principle may lead us to conclude that all kinds of loss, suffered by the party and caused by the breach of contract, are recoverable in accordance with the convention's goal of placing an aggrieved party in the same economic position in which he would have been if the contract had been performed. However, based on a preliminary literature review it is hypothesized that the general principle of full compensation underlying the CISG does not cover all damages caused by a breach of contract.

Some issues of damages not expressly set forth in the CISG are left open to interpretation and gap-filling of the Convention. Matters governed by but not expressly settled in the CISG pursuant to Article 7(2) are to be settled in conformity with the general principles on which it is based or, in the absence of such general principles, in conformity with the rule of private international law. To promote this Convention's goal of uniformity, before resorting to the application of a national law, judges and arbitrators first have to search for the general principles underlying the CISG.

The results of the study reveal that besides providing compensation for actual loss including loss of profit, suffered as a consequence of the breach, Article 74 does not define what concrete types of loss can be compensated. The principle of full compensation, therefore, may be applied in determining the loss subject to limitations on recovery of damages through the doctrines of foreseeability, causation, certainty and mitigation. Apart from recoverable damages under Article 74, if the contract has been avoided, an aggrieved party claiming the damages may recover the difference between the contract price and the price of the substitute transaction under Article 75, and in the event that no substitute transaction has been made, an aggrieved party may recover the difference between the price fixed by the contract and the current price under Article 76, without prejudice to any claim for damages recoverable under Article 74. However,

recoverable damages under Article 75 or Article 76 should not place an aggrieved party in a better position than it would have been if the contract had been performed properly.

Some unresolved damages issues addressed in this study include attorney fees, loss of goodwill, interest rate and exchange rate fluctuations. The findings reveal as follows: (1) courts and arbitration tribunals in many countries believe that the recovery of attorney fees as a procedural matter beyond the scope of the CISG (2) damages for loss of goodwill may be recoverable only if an aggrieved party can prove with reasonable certainty that it suffered a financial loss because of a breach of contract (3) most of courts held the question of the applicable interest rate was to be settled in conformity with the rules of private international law (4) exchange rate fluctuations are generally treated as domestic affairs, therefore the creditor has to bear this risk.

Recommendations for this study are as follows: (1) based on the general principle of full compensation underlying Article 74, every type of damages caused by a breach of contract shall be recoverable subject to the limitations on recovery of damages, namely foreseeability, cause, certainty and mitigation (2) liquidated damages should be reviewed and included in the CISG (3) the general principle of certainty should be contained expressly in the CISG (4) to promote uniformity of damages recovery in international sales transactions, judges or arbitrators are to conform to gap-filling method pursuant to Article 7 (2). In conclusion, it has to be emphasized that clarity, predictability and harmonization of the law of damages under the CISG are essential in the context of international trade.