

Abstract

In 1980 the United Nations Convention on Contracts for the International Sale of Goods of which underlying aim is to promote international trade by removing legal uncertainty in international trade caused by the difference among each state's domestic sale law and private international law was established. Nevertheless, no drafters of any written law are able to foresee all potential cases which may emerge and fall into the scope of such written law and undoubtedly, there is no exception for CISG, CISG is not the complete statement of law ; thus, it possesses certain gaps/lacunae of law. This situation gives rise to the necessity of Gap-filling method. Thus, article 7(2) of CISG was created to serve as the gap-filling method of CISG of which the content are as followed

“Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.”

There are two fundamental compositions of article 7 (2) of CISG

1.The prerequisites to the application of article 7(2) which are

- "matters governed by the Convention"
- “not expressly settled”

2. The process of gap-filling according to article 7 (2) of CISG which is composed of three gap tools.

- application of analogy to gap-filling analogy which is not expressly stated in article 7(2) of CISG but widely admitted as one of gap-filling tool of CISG
- application of general principles on which the Convention is based
- application of law determined by the rules of private international law in case where neither analogy method nor general principles which CISG is based is able to be applied to the case

Article 7 of CISG stipulating the rule of interpretation (7(1)) and gap-filling (7(2)) of CISG article is one of the most important provisions in ensuring the future

success of the Convention' goal of creating uniformity as despite the fact that as of 18th May 2009 74 states are now the contracting state of CISG, CISG' s underlying purpose may not be achieved if the courts of each contracting states do not appreciate the value of the uniform interpretation of CISG and the gap-filling method of CISG is interpreted and applied differently from state to state. Thus, the application and interpretation of article 7(2) of CISG must be explored, comprehended and strictly complied by each contracting state in hope of creating uniform gap-filling method. Moreover, the fact that the proposal of the text of what has become article 7(2) was adopted by 17 votes to 14, with 11 abstentions of the delegations reflects that the gap-filling method is a highly debated and controversial issue. Therefore, the study of Gap-filling Method of CISG is not only crucial but also intriguing one.

This thesis has elaborated each step of gap-filling method of CISG and has dealt with the problems of interpretation or application appearing in each step of the gap-filling method of CISG, namely

1. the problem relating to the tendency of the deciding court to disregard the step of determining whether the matter of the case is governed by the CISG or not
2. the examples of the matter which are not yet clear that it is a gap/ lacunae according to article 7(2) of CISG or not
3. the issue of the admissibility of analogy as one of the gap-filling method of CISG
4. The problems pertaining to the source of the general principles on which CISG is based
5. The issue of paradox between the application of law determined by the rules of private international law as a gap-filling tool of CISG and the goal to create uniformity of law of CISG.

Having investigated all the issues mentioned in the preceding paragraph, this thesis provides three types of recommendations as followed

1. The recommendation on how article 7(2) of CISG shall be interpreted and applied

2. The recommendation on how to modify the content of article 7(2) of CISG

3. The recommendation pertaining to Gap-filling related to the issues Thailand should take into her consideration in deciding whether to become a contracting state of CISG or not.