

The CISG and its Impact on National Legal Systems

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Argentina

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General information

The United Nations Convention on Contracts for the International Sale of Goods (hereinafter: CISG) is in force in Argentina since January 1, 1988.¹

Generally speaking it is looked upon as a very useful and well balanced instrument which allows a wide range of party autonomy.

Many efforts have been made in Argentina, in particular in Buenos Aires, to raise awareness of it being in force in bar associations, as well as in universities. Lots of lectures, seminars, and Congress dealing with the Convention had taken place in Argentina. As far as I know the Convention is not so well known in business circles, in spite of the fact that practising lawyers, in general, know about the existence of the CISG.

I. CISG's impact on practicing lawyers

1. Most of practising lawyers are aware of the CISG. This is due to the efforts that were made for twenty five years to spread the existence, contents, and advantages of the Convention, among the legal community.

Sometimes, practising lawyers include conditions in their clients' contracts, that modify CISG rules, i.e. lack of conformity or damages. Moreover, lawyers sometimes add a certain period of time to notify lack of conformity.

Practising lawyers in general try to avoid the Convention's application to individual contracts. One of the reasons for excluding application of CISG to contracts is that main standard forms are prepared by sellers with the aim to exclude liability of the seller in a lot of circumstances. As the Convention has a good balance between seller's and buyer's obligations, it is not useful for the interests of the sellers.

2. The coming into force of the CISG in Argentina has not had any impact on the way practicing lawyers draft their briefs and memoranda, as far as I know.

¹ The Vienna Convention was approved by Law n° 22.765 of 1983 and ratified on July 19th, 1983.

In addition, the mandate to interpret the CISG in light of its international character and the need to promote uniformity in its application has not had any impact on the drafting of briefs and memoranda.

As far as I could find out, in CISG related cases practicing lawyers do not tend to refer to more case law than in purely domestic disputes. They do not tend neither to refer to more commentators than in purely domestic disputes.

On the other hand, the cites of foreign legal writing and foreign case law are not frequent when dealing with CISG related disputes. I do not know what are the reasons of this lack of cites, when some useful databases on case law on CISG are available in Internet.

3. It is not habitual that practicing lawyers use CISG solutions in purely domestic disputes to corroborate the results they want to reach, but may be that this happens in some cases.

II. CISG's impact on scholars

1. Scholars are the group of legal circles in Argentina that most attention have devoted to the CISG, both before and after its coming into force.

Perhaps private international law scholars are the most interested on the CISG. Also commercial contract law professors and scholars have focused their attention on the Convention.

The attention devoted to the CISG by scholars and professors have had a great impact on the awareness and application of the CISG, due to the quantity of books, articles, seminars, and courses at graduate and postgraduate level dealt with the CISG.

Scholars have mainly focused on the CISG itself rather than compared with domestic law. Nevertheless a few comparisons between the CISG and Argentine domestic law took place, in general with the aim of highlighting the differences between both systems.

Among other efforts to encourage the study of CISG, the University of Buenos Aires has participated in the Willem C. Vis International Commercial Arbitration Moot for several years. The Argentine Chamber of Commerce organized in 1999 a Moot on International Arbitration and International Sale of Goods, among commercial organizations, bar associations and universities of countries of Mercosur. The University of Buenos Aires is also conducting a Moot that follows the aims of the Willem C. Vis Moot, that is taking place in 2008 for first time.²

2. The enforcement of the CISG in Argentina impacted in local treaties, both on domestic and international law. References to CISG can be found in works on Argentine domestic commercial contract law, and com-

² http://www.derecho.uba.ar/institucional/deinteres/el_problema_2008.pdf

plete chapters are devoted to the CISG in private international law legal works.

3. Scholars works on CISG has had a great influence on Argentine legal system. Their works impacted on legal practice and legal education. One example may be mentioned: the characterization of a contract as international was changed by scholars when the CISG entered into force in Argentina. Before that, private international law scholars used to considered a contract as international, when its place of execution and its place of conclusion were located in different States. This characterization was changed when the Vienna Convention entered into force in Argentina: scholars began to affirm that a contract was international when the place of business of one party is located in a different State where the place of business of the other party is located.

4. I could not find out any information about the use of CISG's interpretations, to interpret other uniform law instruments.

III. CISG's impact on courts

1. The CISG's coming into force has not had any impact on the style of court decisions, for instance, I could not find more references to case law.

2. Argentine courts are not conscious enough of the mandate to interpret the CISG in light of its international character and in general do not take into account the need to promote uniformity in its application. Unfortunately I should say that Argentine courts have shown a certain homeward trend.

The courts ruled that lack of conformity of goods should be proved by expert arbitrators under art. 476 of the Argentine Commercial Code, which they considered applicable to the international contract of sale of goods, due to a legal loophole in the CISG on this issue.³

³ CNCom, sala E, 24/04/2000, "*Mayer, Alejandro c/ Onda Hofferle GMBH & Co. s/ ordinario*", *El Derecho*, 2001, t.194, pp. 495-499; CNCom., sala E, 7/11/2002, "*Cervecería y Maltería Paysandú S.A. c. Cervecería Argentina S.A.*", *La Ley*, 2003-D, pp. 416-419, <http://cisgw3.law.pace.edu/cisg/wais/db/cases2/020721a1.html>, comentado por Jorge R. Alborno, "Compraventa internacional de mercaderías. Ley aplicable. Disconformidad del comprador respecto de la calidad de la mercadería" en *DeCITA* 03/2005, pp. 500-505 y JNCom. 15, S. 29, 08/09/2006, "*Bravo Barros, Carlos Manuel del Corazón de Jesús c. Martínez Gares, Salvador s. ordinario*", <http://www.diprargentina.com>. The two first mentioned judgments were issued by the Commercial Court of Appeals of Buenos Aires City and the last decision was ruled by a 1st instance Commercial Court of the same city.

3. As far as I know, there are not reported cases in Argentina on the use of the CISG in relation to contracts not covered by its sphere of application.

4. I could not find out any information about courts having relied on interpretations of the CISG to interpret other uniform law instruments.

IV. CISG's impact on legislators

1. The CISG influenced the discussion on private international law reform in Argentina to some degree. The works for drafting a private international law began in the seventies, but the law never succeeded to be passed by the Parliament. The impact of CISG was mainly directed to the context of the drafted law rather than the discussion on law reform itself. Some principles of the Convention have been adopted in the private international law drafted law. The impact of CISG is not limited to sale-specific topics; its influence may be seen in other issues as well.

The Convention has not had any influence on civil or commercial codes reforms, in spite of the fact that the reform of these codes had been an old aim of Argentina.

2. The CISG did not lead ultimately to law reform. One of the reasons why there have been no reform of private international law in Argentina is that legislators are usually devoted to urgent political matters, in particular those that raised with the economic emergence.

3. There are not differences between the CISG and the Argentine domestic law that have been modelled after the adoption of the Vienna Convention. The differences may be found in the Civil Code and in the Commercial Code that were enacted in the XIX century.

4. There has not been any reform of Argentine domestic law modelled after the CISG was in force.