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Remedies for Breach of International Sales Contracts under the CISG: Evaluating Coherence and Predictability in Cross-Border Disputes

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ABSTRACT (ENGLISH)

This thesis analyses the remedial system of the United Nations Convention on Contracts for the International Sale of Goods (CISG), focusing on its coherence and predictability in cross-border sales disputes. Although the CISG is intended to provide uniform and legally certain solutions, the interpretation and application of its remedial provisions lead to different outcomes across jurisdictions.

The study examines the degree of coherence and predictability within the CISG's remedial framework, with a particular emphasis on issues such as damages, fundamental breach, foreseeability, avoidance, mitigation of loss, and specific performance. The CISG provisions and selected judicial and arbitral decisions are assessed using a combination of doctrinal and comparative methods, particularly from civil law and common law systems.

The findings demonstrate that the CISG's framework for remedies is internally consistent and commercially oriented, but its practical predictability is limited by open-textured standards and forum-dependent interpretation. The thesis concludes that greater methodological consistency and a stronger reliance on the Convention's international character are required to increase legal certainty in the application of CISG remedies.

ABSTRACT (GERMAN)

Diese Arbeit analysiert das Rechtsbehelfssystem des Übereinkommens der Vereinten Nationen über Verträge über den internationalen Warenkauf (CISG) mit Fokus auf dessen Kohärenz und Vorhersagbarkeit bei grenzüberschreitenden Kaufstreitigkeiten. Obwohl das CISG einheitliche und rechtssichere Lösungen bieten soll, führen Auslegung und Anwendung seiner Rechtsbehelfsbestimmungen in verschiedenen Rechtsordnungen zu unterschiedlichen Ergebnissen.

Die Studie untersucht den Grad an Kohärenz und Vorhersagbarkeit innerhalb des Rechtsbehelfsrahmens des CISG, insbesondere im Hinblick auf Schadenersatz, wesentliche Vertragsverletzung, Vorhersehbarkeit, Vertragsvermeidung, Schadensminderung und Erfüllung. Die CISG-Bestimmungen sowie ausgewählte Gerichts- und Schiedsentscheidungen werden mithilfe dogmatischer und vergleichender Methoden, insbesondere aus dem Zivilrecht und dem Common Law, analysiert.

Die Ergebnisse zeigen, dass der Rechtsbehelfsrahmen des CISG in sich schlüssig und wirtschaftlich orientiert ist, seine Vorhersagbarkeit in der Praxis jedoch durch vage Standards und eine vom jeweiligen Gerichtsstand abhängige Auslegung eingeschränkt wird. Die Arbeit kommt zu dem Schluss, dass mehr methodische Konsistenz und eine stärkere Berücksichtigung des internationalen Charakters des Übereinkommens erforderlich sind, um die Rechtssicherheit bei der Anwendung der Rechtsbehelfe des CISG zu erhöhen.

ABBREVIATIONS

BGB	Bürgerliches Gesetzbuch (German Civil Code)
CIF	Cost, Insurance, and Freight (Incoterm)
CISG	United Nations Convention on Contracts for the International Sale of Goods
CLOUT	Case Law on UNCITRAL Texts
EU	European Union
FOB	Free on Board (Incoterm)
ICC	International Chamber of Commerce
INCOTERMS	International Commercial Terms
OLG	Oberlandesgericht (Higher Regional Court, Germany)
UCC	Uniform Commercial Code (United States)
ULF	Uniform Law on the Formation of Contracts for the International Sale of Goods
ULIS	Uniform Law on the International Sale of Goods
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
US / U.S.	United States

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CHAPTER 1

Introduction

1.1 Research Background

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is one of the most successful attempts to unify a diverse international commercial law. Entered into force in 1980 and now ratified by over ninety states, the Convention regulates a substantial part of worldwide trade.[1] Its reach is felt in diverse legal traditions linking civil law, common law and hybrid legal systems within a uniform framework of international sales.[2] The ultimate goal of the CISG is to achieve legal certainty, accessibility, and predictability in cross-border transactions through a set of neutral rules intended to reduce transaction costs for the parties.[3]

The remedial system of contract law plays a crucial role within this framework. Remedies determine how contractual risks are allocated and how parties exercise their rights if expectations are not fulfilled.[4] The availability of an adequate remedial regime is essential in international business. Strong and predictable remedies help parties predict risks, negotiate contractual terms, set prices for their goods, and choose relevant dispute-resolution mechanisms.[5] Any degree of uncertainty or inconsistency in remedial outcomes could undermine the unifying function of the Convention and reduce its practical appeal.

Although the CISG provides an extensive and consistent remedial framework, its application by both courts and arbitral tribunals has led to substantial divergences.[6] Crucial terms such as fundamental breach, non-conformity of goods, notice requirement, foreseeability of

[1] UNCITRAL, 'Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)' (United Nations Treaty Collection, last updated 2025)
[2] Peter Schlechtriem and Ingeborg Schwenzer (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (4th edn, Oxford University Press 2016) 10-15.
[3] Ibid.
[4] Peter Huber, 'CISG – The Structure of Remedies' (2007) 71 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 13-18.
[5] Ibid 17-20.
[6] Ingeborg Schwenzer and Pascal Hachem, 'The CISG – Successes and Pitfalls' (2009) 57 *American Journal of Comparative Law* 458

damages, and specific performance have been interpreted in various ways by different countries.[7] Some studies suggest that a stricter doctrinal interpretation is applied in some EU countries, while decisions in other jurisdictions may emphasize a more flexible and commercial orientation , although the patterns are not uniform.[8]

The resulting inconsistency raises doubts about the potential of the Convention to achieve its aims of uniformity and predictability.[9] For commercial parties, divergent case law means that the outcome of a dispute could vary widely depending on where it is argued. This lack of predictability also weakens the Convention's commitment to neutrality and may discourage parties from electing it as the applicable law in cross-border sales agreements. Consequently, assessing the coherence and foreseeability of the CISG's remedial regime is both theoretically and practically required.[10]

In the light of this background, this thesis is guided by the following central research question:

To what extent does the CISG provide a coherent and predictable framework of remedies for breaches of international sales contracts in cross-border disputes?

In response to this key question, the thesis also considers whether the remedial mechanisms available under the CISG provide balanced and effective protection for both buyers and sellers, and how divergent judicial and arbitral interpretations affect the Convention's objective of legal certainty in international trade.

1.2 Problem Statement, Objectives, and Methodology

The CISG's remedies system, despite its widespread acceptance, is subject to interpretative fragmentation. Courts often have diverse interpretations of key concepts, for instance, "fundamental breach" under Article 25, "reasonable time" under Articles 38-39, the

[7] Ingeborg Schwenzer, 'Divergent Interpretations: Reasons and Solutions' in Larry A DiMatteo (ed), *International Sales Law: A Global Challenge* (Cambridge University Press 2014) 106-107.
[8] Ibid 110–120.
[9] Schwenzer and Hachem (n 6) 457–460.
[10] Ibid 490-494.

"foreseeability" rule under Article 74, or ''specific performance'' under Articles 46 and 62.[11] Such contradictions commonly arise from the CISG's intentional use of broad and flexible language designed to adapt to a variety of legal systems.

However, that flexibility has also created confusion. National courts frequently attach much importance to domestic legal traditions, despite the fact that Article 7(1) expressly requires regard to be taken of the Convention's "international character" and the need to promote uniformity in its application.[12] As a result, the coherence of the CISG's remedial system is threatened by varying court applications, and its predictability between different jurisdictions is not assured. [13]

Moreover, although academic commentary and instruments such as the CISG Advisory Council Opinions may serve as a guide to uniform interpretation, they do not carry equal weight in all jurisdictions.[14] Some courts regularly refer to international precedent and scholarly writings, while others rely on principles from national rules.[15] This absence of methodological uniformity contributes to the unpredictability of the remedial landscape.[16]

The main purpose of this thesis is critically assessing the consistency and predictability of remedies for breach of international sales contracts under the CISG, especially how inconsistent judicial and arbitral decisions affect cross-border commercial certainty. In pursuing this aim, it will examine the Convention's rules of remedies, in particular those concerning damages, avoidance, and fundamental breach as they are interpreted and applied by courts and arbitral tribunals across various national jurisdictions.

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[11] Schwenzer (n 7) 108–111; Stefan Kröll, Loukas Mistelis and Pilar Perales Viscasillas (eds), *UN Convention on Contracts for the International Sale of Goods (CISG): Commentary* (2nd edn, Beck/Hart 2024) arts 25, 38–39, 46, 62, 74; John O Honnold and Harry M Flechtner, *Uniform Law for International Sales* (4th edn, Kluwer Law International 2009) chs 4–7; CISG Advisory Council Opinion No 2, *Examination of the Goods and Notice of Non-Conformity: Articles 38 and 39* (2004); CISG Advisory Council Opinion No 5, *The Buyer's Right to Avoid the Contract in Case of Non-Conforming Goods or Documents* (2005); CISG Advisory Council Opinion No 6, *Calculation of Damages under CISG Article 74* (2006); CISG Advisory Council Opinion No 14, *Interest under Article 78 CISG* (2013).
[12] Article 7(1) United Nations Convention on Contracts for the International Sale of Goods (adopted 11 April 1980, entered into force 1 January 1988) 1489 UNTS 3.
[13] Joshua Karton and Lorraine de Germiny, 'Can the CISG Advisory Council Affect the Homeward Trend?' (2009) 13 *Vindobona Journal of International Commercial Law and Arbitration* 72.
[14] Joshua DH Karton and Lorraine de Germiny, 'Has the CISG Advisory Council Come of Age?' (2009) 27 *Berkeley Journal of International Law*, 452–456.
[15] Joshua DH Karton and Lorraine de Germiny, 'Can the CISG Advisory Council Affect the Homeward Trend?' (2009) 13 *Vindobona Journal of International Commercial Law and Arbitration*, 72–79.
[16] Andreas Ehlers, 'Establishing a Uniform Interpretation of the CISG' (2013) 3 *Nordic Journal of Commercial Law* 1, pp 2–6.

Specifically, this study aims to identify the main areas of disagreement in interpretation, assess their impact on the uniform application of the Convention, and propose practical measures to enhance legal predictability for contracting parties. For that purpose, the study uses a doctrinal legal approach and, in addition to an examination of the CISG provisions, puts particular emphasis on conducting a systematic analysis of preceding case law from several jurisdictions, including Germany, the United States, and certain European states.

This comparative methodology is also supported by investigation of primary materials, such as CISG provisions, UNCITRAL Digest, CLOUT case law and Advisory Council Opinions, as well as secondary sources including authoritative commentaries and academic literature. By integrating doctrinal analysis with comparative case law evaluation from multiple jurisdictions, the study aims to provide practical insights into the functioning of the CISG's remedial framework in international practice and to explore ways in which its application can be made more coherent and predictable.

CHAPTER 2

The CISG Framework and Its Objectives

2.1 History, Background, and Purpose of the CISG

The United Nations Convention on Contracts for the International Sale of Goods (CISG) represents one of the most effective and influential instruments of uniform law in the sphere of International Commercial Law.[17] The International Institute for the Unification of Private Law (UNIDROIT) started initial attempts in this area by developing two conventions, which became known as the Uniform Law on the International Sale of Goods (ULIS) and the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF), which were adopted at The

[17] Ulrich G Schroeter, 'The 1980 Vienna Sales Convention (CISG) as Standard Setter for International Sales Law and as a Model for Reform Legislations' (2024) 17(2) *NUJS Law Review* 1.

Hague in 1964.[18] The 1964 Conventions introduced new concepts, but their wide acceptance remained out of reach because of their Western European drafting approach and the absence of socialist and developing states during the negotiation process and their failure to adapt to various legal systems.[19] The United Nations Commission on International Trade Law (UNCITRAL) undertook a comprehensive redrafting process in 1968 to develop a legal framework that would unite all legal systems through a fair combination of civil law, common law, and socialist law principles. [20]

The Convention was adopted in Vienna on 11 April 1980 and after receiving the requisite number of ratifications, came into force in 1988; it was designed to improve the efficiency level of international sales law and harmonize the legal framework of international sales transactions.[21] Today, the CISG is in effect in over ninety contracting states, including a wide range of civil law, common law, and mixed legal systems.[22] This broad geographical scope demonstrates that a substantial part of international sales of goods is covered by the Convention. The primary purpose of the CISG is to replace divergent national sales laws with a unified legal regime to avoid conflict-of-law complications and unpredictability in cross-border transactions.[23] Thus, through the mediation of the neutral international provisions of the CISG, national legal systems became less dominant, and commercial expectations became more similar across jurisdictions.[24] Reduced transaction costs increased legal certainty, and more effective global supply chains are all results of this harmonizing effect.[25]

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[18] Peter Schlechtriem, *Uniform Sales Law – The UN-Convention on Contracts for the International Sale of Goods* (Manz 1986), ch 1 (historical overview of ULIS/ULF and transition to CISG).
[19] Honnold, *Uniform Law for International Sales* (3rd edn, 1999), paras 9-10; Michael P Van Alstine, 'Consensus, Dissensus and Contractual Obligation under the CISG' (1996) 37 *Virginia Journal of International Law* 1, 7–8.
[20] Van Alstine, 'Consensus, Dissensus and Contractual Obligation under the CISG' 8-9.
[21] United Nations, 'United Nations Convention on Contracts for the International Sale of Goods (CISG), Vienna, 11 April 1980' (Travaux préparatoires/Introductory Note, UN Audiovisual Library of International Law); John O Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (3rd edn, Kluwer Law International 1999) §1 (pp 1–3).
[22] United Nations Commission on International Trade Law (UNCITRAL), 'Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)' (UNCITRAL, current to November 2023) <https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status> accessed 25 November 2025.
[23] UNCITRAL, *Official Records of the Vienna Diplomatic Conference* (1980) 15; John Honnold and Harry Flechtner, *Uniform Law for International Sales* (4th edn, Kluwer 2009) 41-42.
[24] Christiana Fountoulakis, 'The Parties' Choice of "Neutral Law" in International Sales Contracts' (2005) 7 *European Journal of Law Reform* 314.
[25] Ibid 315.

2.2 Scope of Application and Party Autonomy

The Convention's remedial system requires an understanding of its application scope and the level of flexibility parties have when signing the agreement.[26] The evaluation of cross-border dispute coherence and predictability is essential for parties to understand when the CISG applies and to what extent they can modify its provisions.[27] The Convention is primarily defined by its scope of application, as stated in Article 1: The CISG is applicable to contracts for the international sale of goods if the parties' places of business are in different Contracting States or when private international law rules lead to the application of a law from a Contracting State.[28]

The Convention achieves its goal of legal harmonization in international trade through two crucial criteria, which determine its direct application based on parties' location under Article 1(1)(a) and indirect application through conflict of laws rules under Article 1(1)(b).[29] In practice, courts need to establish two things during their proceedings to determine (i) if the contract falls under the "sale of goods" category and (ii) which parties' business locations and legal conflict rules apply to the Convention, including in situations where a reservation under Article 95 has been made.[30]

The application of the Convention is further limited by the substantive and transactional exclusions clearly set out in Articles 2 and 3. These rules are expressly limited to commercial transactions, so they do not apply to certain transactions such as consumer sales, auctions, court sales, and certain goods like shares, securities, and investment paper, ships, aircraft, or electricity.[31] The justification for these exceptions is multilayered. These exclusions are based on both policy assumptions regarding consumer protection and the regulation of financial products, as well as on

[26] CISG-Advisory Council Opinion No 17, *Limitation and Exclusion Clauses in CISG Contracts* (Rapporteur: Harry Flechtner, 2013) paras 2.15–2.16, 2.26.
[27] CISG-Advisory Council Opinion No 16, *Exclusion of the CISG under Article 6* (2014) paras 2.1–2.6.
[28] United Nations Convention on Contracts for the International Sale of Goods (adopted 11 April 1980, entered into force 1 January 1988) 1489 UNTS 3, art 1(1).
[29] United Nations Convention on Contracts for the International Sale of Goods art 1(1)(a)–(b); Marlene Wethmar-Lemmer, 'Applying the CISG via the Rules of Private International Law: Articles 1(1)(b) and 95 of the CISG – Analysing CISG Advisory Council Opinion 15' (2018) 49 *Comparative and International Law Journal of Southern Africa.*
[30] Marlene Wethmar-Lemmer, 'Applying the CISG via the Rules of Private International Law: Articles 1(1)(b) and 95 of the CISG – Analysing CISG Advisory Council Opinion 15' (2016) 49 *Comparative and International Law Journal of Southern Africa*, 63–65.
[31] United Nations Convention on Contracts for the International Sale of Goods, art 2.

technical limitations arising from the drafting process of the Convention.[32]

In particular, the exclusion of consumer sales (Article 2(a)) recognizes the necessity of particular, frequently mandatory domestic consumer protection laws that would be compromised by harmonization.[33] Similarly, the exclusion of particular goods, including financial instruments and ships, stems from domestic regulatory systems that operate under their specialized frameworks and existing international agreements.[34] The main focus continues to be on standard business deals, which involve commodity or manufactured goods transactions between commercial enterprises.[35] Also, commentators explain that certain matters proved too controversial and subject to strong national control to be harmonized at the time, which led to a deliberate decision to keep them outside the scope of the CISG.[36]

Within its scope, the CISG regulates the formation of contracts and the rights and obligations of buyers and sellers; however, it leaves matters concerning validity and property effects to domestic law.[37] This internal separation is commonly referred to as the "internal gap" within the CISG.[38] The Convention intentionally avoids defining a definition for "validity", which contains matters such as fraud, duress, capacity, or illegality, since these vary according to national public policy and moral considerations.[39] Article 4(b) excludes validity and effects on property in the goods (ownership, third-party rights) to prevent the CISG from disrupting complex domestic

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32 United Nations Convention on Contracts for the International Sale of Goods, art 2; Jacob S Ziegel, 'Article 2' in *Commentary on the UN Convention on the International Sale of Goods (CISG)* (Pace Institute of International Commercial Law 1999) 2–3.

33 Commentary on the Draft Convention on Contracts for the International Sale of Goods, prepared by the Secretariat, UN Doc A/CONF.97/5 (in United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980, *Official Records: Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committees* (UN 1991)). < Commentary on the Draft Convention on Contracts for the International Sale of Goods, prepared by the Secretariat (UN Doc. A/CONF.97/5), in: *United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March – 11 April 1980, Official Records: Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committees*, New York: United Nations (1991), pp. 14 et seq., at pp. 15—16 > accessed 26 November 2025.

34 Secretariat Commentary, UN Doc A/CONF.97/5.; Schlechtriem, *Uniform Sales Law* (1986) (n18) 29-30.

35 Schlechtriem, *Uniform Sales Law* (1986) (n18) 31-32.

36 Stefan Kröll, 'Selected Problems Concerning the CISG's Scope of Application' in *United Nations Convention on Contracts for the International Sale of Goods (CISG): 2012 Digest of Case Law* (UNCITRAL 2012) 39.

37 United Nations Convention on Contracts for the International Sale of Goods, art 4; Helen E Hartnell, 'Rousing the Sleeping Dog: The Validity Exception to the Convention on Contracts for the International Sale of Goods' (1993) 18 *Yale Journal of International Law* 3-4.

38 Harry M Flechtner, 'The United Nations Convention on Contracts for the International Sale of Goods (CISG)' (UN Audiovisual Library of International Law, Lecture II, 2012) 2.

39 CISG-Advisory Council Opinion No 23, *Mistake, Fraud, Misrepresentation and Initial Impossibility in CISG Contracts* (Rapporteur: Pascal Hachem, 2024) paras 1.14–1.15; Helen E Hartnell, 'Rousing the Sleeping Dog: The Validity Exception to the Convention on Contracts for the International Sale of Goods' (1993) 18 *Yale Journal of International Law*, 7-8.

security and insolvency laws.[40] This division also preserves the balance between international harmonization and national legal autonomy, thereby the Convention does not interfere with areas traditionally reserved for domestic regulation.[41] This pragmatic compromise ensures wider international acceptance by reducing concerns about interference with fundamental domestic legal principles.

One of the central structural key elements underlying the parties' arguments is the concept of party autonomy, recognized in Article 6 of the CISG.[42] Most importantly, the functioning of the CISG as a whole is based on the foundational principle of party autonomy; since it is not only a central concept of modern contract law, but also a general principle of the Convention, and the default character of the CISG, its non-binding nature, and the interpretive approach under Articles 6 and 7 are all based on this principle.[43] This rule sets out the principle of freedom of contract as paramount, shaping the specific will of the contracting parties above the Convention's default rules.[44] The Parties may exclude the Convention in whole or in part, derogate from it, or include its provisions by implicit reference to a law of a Contracting State.[45] It gives experienced commercial parties the possibility to select the legal system that best fits their transaction, either by carefully customizing the rules of the CISG or by choosing a particular national law (such as the legislation of State X).[46] This freedom confirms that the CISG operates as a default regime responsive to commercial practice, rather than an obligatory structure.

In practice, party autonomy allows parties to harmonize CISG with established trade practices and contractual risk-allocation mechanisms such as INCOTERMS and limitation clauses.[47] In addition to the general provisions of the CISG, the usage of well-known trade terms like INCOTERMS (e.g., FOB, CIF) provides a predefined structure for critical issues as delivery

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[40] Till Maier-Lohmann, *Property in Goods and the CISG* (Fachmedien Recht und Wirtschaft 2024) ch 6.
The CISG does regulate passing of risk between parties (Articles 66–70), but does not regulate the transfer of title/ownership.
[41] Ibid.
[42] Jonathan M Graves, 'CISG Article 6 and Issues of Formation: The Problem of Circularity' (2011) 59 *Annals of the Faculty of Law in Belgrade – International Edition*, 128; Francesca Ragno, 'The CISG and the Choice of Law: Two Worlds Apart?' (2015) 35 *Journal of Law and Commerce* 245-246.
[43] Flechtner (n 38) 2-3; İbrahim Gül, 'Freedom of Contract, Party Autonomy and Its Limit under CISG' (2016) 6 *Hacettepe HFD* 77, 80–82.
[44] Gül (n 43) 82-83.
[45] United Nations Convention on Contracts for the International Sale of Goods, arts 6; 12.
[46] Ragno (n 42) 265.
[47] Franco Ferrari, 'The Interplay Between Incoterms® and the CISG'(2012) *Journal of Law and Commerce* 1, 3-5.

and the passing of risk.[48] Moreover, parties frequently adapt the standard remedial regime, often with liquidated damages provisions or particular warranty disclaimers, thereby adjusting their risk exposure in ways which Article 6 explicitly sanctions.[49] The CISG achieves both predictability and flexibility by combining consistent default standards while allowing the parties to adapt these rules to particular commercial contexts.[50] A major factor in the CISG's developing status as the globally dominant law for international sales contracts is its structural design, which strikes a balance between uniform regulations and contractual freedom. This strengthens the CISG's position as an impartial and useful tool for regulating cross-border sales contracts.[51]

2.3 General Principles and Objectives: Uniformity, Predictability, and Commercial Functionality

The CISG requires interpretation through its international nature and its purpose to achieve uniform application of its provisions according to Article 7.[52] This requirement for autonomous, internationally minded interpretation is essential and serves as a vital deterrent against the natural tendency of national judges and arbitrators to interpret the CISG in terms of relevant domestic sales laws (the so-called "homeward trend").[53] The interpretive requirement not only prevents courts from using domestic legal reasoning, but also encourages them to adopt an autonomous terms based on the Convention itself.[54] It is significant to focus on uniformity to avoid forum shopping; divergent interpretations across jurisdictions would quickly undermine the usefulness of the CISG and return international trade to the very unpredictability the Convention was designed

[48] Juana Coetzee, 'The Interplay Between Incoterms® and the CISG' (2013) 35 *Journal of Law and Commerce*, 6-8.
[49] CISG Advisory Council Opinion No 16, 'Exclusion and Limitation of Liability under the CISG' (2014) paras 1.17, 2.15, 2.21.
[50] Chandra E and Lewiandy L, *'Ratifying the CISG: Establishing Default Rules as Legal Certainty for International Sales Contract'* (2024) 7 Awang Long Law Review, 5.
[51] Ibid 6.
[52] United Nations Convention on Contracts for the International Sale of Goods, art 7(1).
[53] Bruno Zeller, 'Analysis of the Cultural Homeward Trend in International Sales Law' (2021) 10(1) *Victoria University Law and Justice Journal*, 133–136.
[54] Alexander Komarov, 'Internationality, Uniformity and Observance of Good Faith as Criteria in Interpretation of CISG: Some Remarks on Article 7(1)' (2005) 25 *Journal of Law and Commerce* 75, 78-79; Franco Ferrari, *Contracts for the International Sale of Goods: Applicability and Applications of the 1980 United Nations Sales Convention (Martinus Nijhoff Publishers 2012).* 9-10.

to overcome. [55]

Article 7(1) refers the courts to the general principles of the Convention as well as its language:[56]

> "(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade."[57]

Courts implement uniformity through their application of general principles, which include full compensation subject to foreseeability requirements, damage reduction, and cooperation duties to fill internal gaps.[58] These implied general principles, such as the principle of full compensation (Article 74), the duty to mitigate losses (Article 77), and good faith (although Article 7(1) includes it as an interpretive standard, but it is debatable whether this implies a general duty for the parties), are derived from specific provisions of the Convention and serve to fill the internal gaps in cases where a particular matter falls within the scope of the CISG but is not specifically bound by a given article.[59]

In contrast to the internal gaps, Article 7(2) addresses the external gaps.[60] When general principles do not exist, Article 7(2) requires interpreters to apply the law determined by private international law to maintain consistency between international and domestic legal systems.[61] This two-step approach ensures that if the CISG is silent and cannot be resolved by analogy with its general principles, the dispute is referred back to the applicable domestic law.[62] This upholds the finality of dispute resolution while acknowledging the Convention's scope.

Also, in accordance with Article 9, the parties are presumed to have included in their contract any trade usage that they knew or should have known (unless they specifically agree

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[55] Herbert I Lazerow, 'Uniform Interpretation of CISG' (2019) 52 *International Lawyer* 369, 389-391.
[56] Ingeborg Schwenzer, 'Interpretation and Gap-Filling under the CISG' (2014) 46 *Victoria University of Wellington Law Review,* 109.
[57] United Nations Convention on Contracts for the International Sale of Goods, art 7(1).
[58] Camilla Baasch Andersen, 'General Principles of the CISG – Generally Impenetrable?' (1995) *Journal of Law and Commerce* (CISG Database, Pace University) 15-16.
[59] CISG-Advisory Council Opinion No 6, *Calculation of Damages under CISG Article 74* (2006) para 1; Mads Bryde Andersen, 'General Principles of the CISG – Generally Impenetrable?' in Camilla B Andersen and Ulrich G Schroeter (eds), *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H Kritzer* (Wildy, Simmonds & Hill 2008), 29-31. <https://iicl.law.pace.edu/sites/default/files/cisg_files/andersen6.html> accessed 30 November 2025.
[60] Ibid 18.
[61] Andersen (n 56); United Nations Convention on Contracts for the International Sale of Goods, art 7(2); Schwenzer (n 56)116-117.
[62] Schwenzer (n 56) para 7.3.1, 115

otherwise), as long as the usage is widely recognized and consistently observed in international trade by parties involved in contracts of that kind.[63] This incorporation of trade usage (Article 9(2)) and practices existing between the parties (Article 9(1)) serves as an important mechanism for adapting the Convention to global trade realities, guaranteeing that CISG interpretation is in line with business realities and industry-specific expectations and ensuring that contract terms are understood in context.[64] In addition, international soft-law instruments, including the UNIDROIT Principles of International Commercial Contracts, frequently play a persuasive role in resolving interpretive disputes and achieving functional uniformity in international commercial law.[65] These instruments, developed by leading experts, often synthesize the general principles of commercial law and are used by courts and arbitrators to strengthen their decisions.[66]

The CISG establishes several main goals to create uniform legal frameworks between countries that participate in international sales transactions.[67] A key means of achieving this objective is the requirement to interpret the Convention autonomously of domestic legal doctrines and classifications.[68] This uniformity, which stems from Article 7, directly supports the notion of predictability.[69] The Convention establishes predictability through objective standards, which include foreseeability in damages and specific notice procedures for non-conformity to minimize different judicial decisions.[70] These standardized rules improve consistency among jurisdictions and restrict judicial authority. Furthermore, the Convention strengthens trust and fairness in cross-border transactions by incorporating the observance of good faith in international trade as an interpretive standard under Article 7(1).[71] Neutrality is achieved through its avoidance of domestic

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[63] United Nations Convention on Contracts for the International Sale of Goods, art 9; Joseph Lookofsky, *Understanding the CISG* (5th edn, DJØF 2021), 44-45.

[64] United Nations Convention on Contracts for the International Sale of Goods, art 9; Lookofsky (n 37) 44–45.

[65] UNIDROIT, *UNIDROIT Principles of International Commercial Contracts* (2016) Preamble.

[66] Michael Joachim Bonell, 'The UNIDROIT Principles of International Commercial Contracts and Transnational Law' (2000) 36 *Uniform Law Review* 201-202.

[67] United Nations Convention on Contracts for the International Sale of Goods Preamble; Harry M Flechtner, 'Convention on Contracts for the International Sale of Goods (CISG)' (UN Audiovisual Library of International Law, Outline, 2012) 1–7; Carolina Saf, 'A Uniform Law within the Sphere of Conflict of Laws' (2009), 95-96.

[68] Schwenzer (n 56), 110.

[69] John O Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (3rd edn, Kluwer Law International 1999) para 17.

[70] United Nations Convention on Contracts for the International Sale of Goods, arts 38, 39, 74; CISG Advisory Council Opinion No 2, *Examination of the Goods and Notice of Non-Conformity: Articles 38 and 39* (7 June 2004) paras 3.1–3.5; CISG Advisory Council Opinion No 6, *Calculation of Damages under CISG Article 74* (10 November 2006) paras 1–4, <https://cisgac.com/opinions/cisgac-opinion-no-2/> accessed 2 December 2025.

[71] Alexander S Komarov, 'Internationality, Uniformity and Observance of Good Faith as Criteria in Interpretation of CISG: Some Remarks on Article 7(1)' (2005) 25 *Journal of Law and Commerce*, 82–83.

legal preferences, which results in a balanced legal framework that different legal systems can accept.[72] Because of its impartiality, it is a default law that is equally acceptable to common law, civil law, and socialist legal systems.[73] Additionally, minimizing negotiation and compliance costs is a key functional goal that enables businesses to perform effectively under a common legal framework regardless of the governing forum.[74] By providing a ready-made set of standard norms, the CISG significantly reduces the transaction costs involved in negotiating every detail of the contract's governing law.[75] This efficiency is especially important for small and medium-sized enterprises engaged in cross-border trade.[76] The Convention thereby supports improved dispute resolution and creates more consistent risk management systems for international business transactions.

2.4 The Central Role of Remedies in the CISG's Effectiveness

The effectiveness of the CISG in international commercial transactions is significantly influenced by the structure and functionality of its remedial provisions.[77] Although the Convention establishes uniform rules governing the formation of contracts and the mutual obligations of buyers and sellers, these substantive norms would be largely theoretical in practice without a coherent and predictable system of remedies to address instances of contractual non-performance.[78] In international sales transactions, remedies constitute the primary legal instruments through which

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[72] Ferrari (n 34) 20-23; GTZ/UNCITRAL, Implementation of the United Nations Convention on the International Sale of Goods (CISG) in Central and Eastern Europe (UNCITRAL 2007) 10–11; Kalyani Jayasekera 'The CISG and Global Trade: Regulating Commercial Transactions in a Harmonised Framework' (2025) 11(5) *Law Journals,* 43, <https://www.lawjournals.org/assets/archives/2025/vol11issue5/11101.pdf> accessed 2 December 2025.
[73] Bruno Zeller, 'The Significance of the CISG for the Harmonisation of the Law of International Sales' (Victoria University of Technology, Working Paper, 1999) 1–2, <https://vuir.vu.edu.au/id/file/7586> accessed 3 December 2025.
[74] Gilles Cuniberti, 'Is the CISG Benefiting Anybody?' (2006) 39 *Vanderbilt Journal of Transnational Law* 1511, 1519–1522.
[75] UNCITRAL, 'United Nations Convention on Contracts for the International Sale of Goods (CISG)' (United Nations Commission on International Trade Law)
[76] Michelle A Walter, 'The CISG and Cross-Border Access to Commercial Justice for Small Enterprises' (2020) 39 *Journal of Law and Commerce* 160, <https://cisg-online.org/files/commentFiles/Walter_THE-CISG-AND-CROSS-BORDER-ACCESS-TO-COMMERCIAL-JUSTICE.pdf> accessed 3 December 2025.
[77] Schwenzer and Hachem (n 6)., 470–474; Buba Ceesay, 'Finding an Ideal Contract Law Regime for the International Sale of Goods' (2021) 23 *European Journal of Law Reform* 187.
[78] Chengwei Liu, 'Remedies for Non-Performance: Perspectives from CISG, UNIDROIT Principles & PECL' (2013) para 2.3, <https://iicl.law.pace.edu/sites/default/files/cisg_files/chengwei.html> accessed 3 December 2025.

contractual rights are enforced, economic risks are allocated, and legal certainty is achieved.[79] Consequently, the practical effectiveness of CISG as a harmonized legal framework cannot be separated from the effectiveness of remedies in addressing contractual breaches.

Remedies under the CISG fulfill a dual purpose. Firstly, they ensure the enforceability of contractual obligations by offering specific legal responses to instances of non-performance (ex post).[80] Second, they shape the conduct of contracting parties before performance (ex ante) by defining how risks are assessed, valued, and managed during contract formation.[81] In international trade, where parties frequently face disparate legal, economic, and cultural systems, clarity and predictability on the legal consequences of a breach become especially vital.[82] A uniform law that fails to deliver reliable and predictable remedial solutions would reduce confidence in international transactions, encourage parties either to opt out of the CISG or engage in overly complex contractual drafting to compensate for potential aspects of uncertainties.[83] Thus, the remedial framework of the CISG plays a critical role in determining whether the Convention functions as a genuinely effective instrument of international commercial law.

A defining feature of the CISG's remedial regime is its performance-oriented design, which reveals a deliberate policy decision to limit the termination of the contract and encourages its preservation whenever possible.[84] This orientation is also apparent in the Convention's recognition of the right to require performance, the seller's right to cure, and the availability of extra time for performance through the Nachfrist mechanism.[85] Such measures indicate that a breach does not automatically dissolve the contract itself, but rather triggers a set of phased responses aimed at restoring the agreed exchange. From an international trade perspective, this

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[79] Ingeborg Schwenzer, 'Remedies and Damages' in Ingeborg Schwenzer (ed), *International Sales Law* (3rd edn, OUP 2020.

[80] A. W. Katz, 'Remedies for Breach of Contract under the CISG' (2006) 25 *International Review of Law and Economics,* 379 <https://cisg-online.org/files/commentFiles/Katz_25_IntRevLEcon_2005_378.pdf> accessed 5 December 2025.

[81] Richard A. Posner, *Economic Analysis of Law* (9th edn, Wolters Kluwer Law & Business 2014). 114,115.

[82] 'The CISG and Global Trade: Regulating Commercial Transactions in a Harmonized Framework' (2025) 11(5) *International Journal of Law* 44.

[83] Ibid.

[84] Denis Philippe, 'Gap Filling on the Basis of General Principles: Article 7(2) of the CISG and UNIDROIT Principles' (2011), 10; Ceesay (n 77) 187.

[85] CISG arts 46, 47, 48, 62, 63; The Nachfrist mechanism, which derived from German law, allows a party to offer a reasonable extension for performance, which reinforces the CISG's remedial emphasis on protection rather than termination. See CISG arts 47(1), 63(1); John C. Duncan Jr., 'Nachfrist Was Ist? Thinking Globally and Acting Locally: Considering Time Extension Principles of the UN Convention on Contracts for the International Sale of Goods' (2000) *BYU Law Review*, 1374.

strategy improves legal certainty by mitigating the risk of early termination and opportunistic avoidance, especially in complex or long-term transactions where substitute performance would be expensive or impractical.[86]

Furthermore, the CISG recognizes that the contract preservation cannot be absolute. The possibility of avoidance as a remedy for fundamental breach acts as a necessary counterweight to performance-oriented remedies.[87] By limiting "avoidance" to situations where a breach substantially deprives the aggrieved party of what it was entitled to expect, the Convention intentionally sets a strict standard that reflects the distinctive nature of termination as a remedy. This particular design makes explicit the centrality of remedies to the Convention's effectiveness: the definition and application of "fundamental breach" therefore play a crucial role in determining when parties can withdraw from contractual relations and reallocate risks completely.[88] When judges interpret this threshold too narrowly, the remedial system risks leaving injured parties unprotected and forcing them to continue operating in commercially disadvantageous situations.[89] On the other hand, when they interpret it too expansively, the values of predictability and contractual stability are at risk, as the parties can no longer reliably predict when the bargain will be preserved.[90] The efficiency of the CISG in this regard depends on whether the remedial principles are able to achieve a balance between flexibility and predictability in practice.

The power of remedies is further emphasized by their role in reconciling diverse legal systems.[91] One of the principal challenges faced by the drafters of the CISG was how to combine civil law and common law approaches to contractual remedies.[92] While common law systems often favor damages and restrict compulsory performance, civil law systems typically prioritize specific

[86] Chengwei Liu, 'The Nachfrist Mechanism and Avoidance under the CISG, the UNIDROIT Principles and the PECL' (2004) para 2.3.
[87] CISG arts 25, 49, 64: Ulrich Magnus, 'The Remedy of Avoidance of Contract under CISG – General Remarks and Special Cases' in *Thirty-Five Years of Uniform Sales Law: Trends and Perspectives* (UNCITRAL 2015), 423-424.
[88] Ingeborg Schwenzer, 'Avoidance of the Contract in Case of Non-Conforming Goods' (2001) in *25 Years of the CISG* 437-442.
[89] Yasutoshi Ishida, 'Identifying Fundamental Breach of Article 25 and 49 of the CISG' (2020) 41 *Michigan Journal of International Law* 102.
[90] Ibıd.
[91] Ulrich Magnus, 'The CISG's Sphere of Application and General Provisions: Between Civil and Common Law – Best of All Worlds?' (2010) 3 *Journal of Civil Law Studies* 67, 74–76.
[92] Alejandro M. Garro, 'Reconciliation of Legal Traditions in the U.N. Convention on Contracts for the International Sale of Goods' (1989) 23 *International Lawyer,* 453.

performance as the primary remedy.[93] The drafters of the CISG introduced Article 28 as a compromise between the common-law and civil-law legal systems regarding the acceptance of specific performance as a general remedy, due to a significant gap in their respective approaches to specific performance.[94] Although the Convention holds the principle of requiring performance, Article 28 states that a court may refuse specific performance if the remedy is not available under its respective domestic law.[95] Although the Convention aims to provide autonomous, internationally oriented remedies, this compromise reflects sensitivity to common law procedural traditions while also bringing forum-dependence to the application of specific performance.[96] As a result, the coherence of the CISG's remedial system depends not only on its internal design but also on how courts and arbitral tribunals apply its remedies within their existing procedural environments.

Moreover, the damages under the CISG further illustrate the centrality of remedies for the effective execution of the Convention. The effectiveness of the CISG regime thus depends on how well the general principles on damages are formulated and uniformly applied, which are the most often invoked remedies in practice.[97] By linking damages to predictable losses at the time of contract conclusion, the Convention aims for ex ante predictability and discourages excessive claims. Standardized approaches for assessment of compensation in cases of adequate substitution or reference to market prices give parties and the adjudicators structured tools for quantifying damage due to the globally fluctuating markets.[98]

Also, remedies under the CISG are importantly for procedural compliance and good faith in cross-border sales transactions. A number of remedial rights depend on timely notice or reasonable conduct, in cases involving non-conforming goods, avoidance, and mitigation of loss.[99]

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[93] CISG art 46(1); Magnus (n 91) 76; CISG-AC Opinion No 21, 'Delivery of Substitute Goods and Repair of Non-Conforming Goods (Articles 46(2) and 46(3))' (Rapporteur: Petar Šarčević, 2020) paras 2.2–2.3

[94] CISG 46, 62; Hedayatollah Shenasaei, Maggie Qin, Faramarz Shirvani 'Limitations of Specific Performance in the China Contract Law and under the CISG' (2017) 5 *International Journal of Social Science and Humanities Research,* 774. <https://www.researchpublish.com/upload/book/Limitations%20of%20Specific%20Performance-4934.pdf> accessed 8 December 2025.

[95] CISG art 28.

[96] Alejandro M Garro, 'Reconciliation of Legal Traditions in the United Nations Convention on Contracts for the International Sale of Goods' (1989) 23 *International Lawyer* 459-460. <https://cisg-online.org/files/commentFiles/Garro_23_IntlL_1989_443.pdf > accessed 8 December 2025.

[97] Karin Lantto, 'The CISG and its Provisions on Damages' (LLM thesis, Lund University 2009) 47.

[98] CISG arts 75, 76; CISG-AC Opinion No 8, 'Calculation of Damages under CISG Articles 75 and 76' (Rapporteur: John Y Gotanda, 25 May 2004) paras 1.2.2, 2.1, 4.1–4.1.5.

[99] CISG arts 39, 49, 77; Fabio Bortolotti, 'When Is the Buyer Entitled to Avoid the Sales Contract and How Can the

While encouraging good faith and transparency, such sections reduce the scope for opportunistic litigation and strategic silence.[100] This is important in representing the Convention's larger goal of fostering trust and justice in international trade, although good faith is not specifically mentioned as a general duty immediately applicable to the parties.

Ultimately, remedies constitute the area where the CISG's general principles are tested by the challenges of real-world commerce. Concepts such as uniformity, reasonableness, and foreseeability obtain a concrete meaning primarily through their application in disputes over remedies. Therefore, inconsistencies in the interpretation or implementation of remedies are more threatening to the effectiveness of the CISG than in other areas of contract law. If remedies are applied coherently and predictably across jurisdictions, the CISG succeeds in ensuring legal certainty and lowering transaction costs in international trade.[101] However, if the remedial outcomes of cross-border sales disputes are heavily determined by national legal systems or judicial discretions, then the Convention's uniformity promise is not fulfilled.

CHAPTER 3

Remedies Available Under the CISG – A Systemic Analysis

3.1 Structure and Operation of the CISG's Remedial System

The CISG aims to provide a comprehensive, systematically structured system of remedies

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Seller Prevent It? An Overview of Case Law under the CISG' (IDI Project, 29 June 2022) <https://www.idiproject.com/news/when-is-the-buyer-entitled-to-avoid-the-sales-contract-and-how-can-the-seller-prevent-it-an-overview-of-case-law-under-the-cisg/> accessed 8 December 2025; Peter Schlechtriem and Pilar Perales Viscasillas, 'Avoidance of CISG Sales Contracts due to Non-Conformity of the Goods' (2006) 18 *Pace International Law Review* 89 <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1073&context=pilr> accessed 9 December 2025; Helmut Koziol, 'Reduction in Damages Acoording to Article 77 CISG' in *UNCITRAL Digest* (2012) 386.

[100] Ishida (n 89) 95–101.

[101] UNCITRAL/HCCH/UNIDROIT, *Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts* (2022) 6, para 19; UNCITRAL, 'CISG' (UNCITRAL) (n75).

designed to promote uniformity and commercial practicability in cross-border sales transactions, while protecting the contractual expectations of both buyers and sellers.[102] It operates under the principle of functional symmetry, intended to ensure that each party takes symmetrical and parallel actions in response to a violation committed against it.[103]

At the core of the CISG's remedial system lies the protection of the aggrieved party's expectation interest. Articles 74 to 77 of the CISG are mainly used to accomplish this objective, which allows for full compensation of loss, based on foreseeability and the duty to mitigate.[104] As a result, damages are among the most frequently invoked remedies under the Convention's framework, which can address a variety of non-performance issues without necessarily dissolving the contractual relationship.

Structurally, the CISG's remedies are based on two core provisions, which are Article 45, governing the buyer's remedies, and Article 61, regulating the seller's remedies.[105] These clauses serve as parallel entry points into the remedial system and establish that a breach of contract gives rise to a range of potential legal responses rather than a single consequence.[106] On this basis, the Convention sets out a system of adjustments that can be divided into monetary remedies, termination-based remedies, and performance-oriented remedies, supplemented by mechanisms such as price reduction under Article 50 and interest on sums in arrears pursuant to Article 78 of the CISG.[107] This structure emphasizes that the CISG's remedial regime is not merely a set of measures but a system that aims to maintain a balance among the parties involved.

While the CISG does not impose a strict hierarchy of remedies, its design restricts avoidance of the contract and offers several options that facilitate contract preservation.[108] Its structure, while not mandating observance to a specific order of remedies, implicitly favors

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[102] UNCITRAL, 'International Sale of Goods (CISG) and Related Transactions' (United Nations Commission on International Trade Law); Schwenzer and Hachem (n 6) 470.
[103] Liang Chengwei, 'Comparison of CISG Article 45/61 with PECL Article 9:501 and UCC § 2-703' (2004) *Nordic Journal of Commercial Law*, 3–5 <https://journals.aau.dk/index.php/NJCL/article/view/3066/2592> accessed 11 December 2025.
[104] CISG-AC Opinion No 6, 'Calculation of Damages under CISG Article 74' (Rapporteur: John Y Gotanda, 2006) para 1.1; Ingeborg Schwenzer and Pascal Hachem, 'The Scope of the CISG Provisions on Damages' (2008) 22 *Pace International Law Review* 92-93; CISG arts 74-77.
[105] CISG arts 45, 61.
[106] Liang Chengwei, 'Comparison of CISG Article 45/61 with PECL Article 9:501 and UCC § 2-703' (2004) *Nordic Journal of Commercial Law* 4.
[107] Schwenzer and Hachem (n 104) 92-96; CISG arts 25, 46, 49, 50, 62, 64, 74-78.
[108] Huber (n 4) 14–16, 18–21; Jianming Shen, 'The Remedy of Requiring Performance under the CISG' (1996) 13 *Arizona Journal of International and Comparative Law* 261-262 <https://cisg-online.org/files/commentFiles/Shen_13_ArizJIntl&CompL_1996_253.pdf> accessed 11 December 2025.

responses that preserve the contractual relationship before termination.[109] Performance-based remedies, including the right to require performance, repair, replacement, or cure, may be exercised where appropriate to the situation and are typically considered for breach before termination.[110] The compatibility of compensation and performance is further reflected in the fact that monetary remedies, especially damages, may be claimed cumulatively with performance-oriented remedies.[111] By contrast, a party can avoid the contract only if the breach is fundamental, as discussed in Chapter 2. This demonstrates the exceptional role of avoidance in the remedial architecture and reinforces the Convention's preference for contractual continuity.

The operation and interaction of remedies under the CISG are influenced by main doctrines such as fundamental breach, notice requirements, cure, and mitigation of loss.[112] These concepts act as thresholds, determining the availability of certain remedies and guiding their application in practice. In this way, the CISG responds to infringements in a graduated manner, associating legal consequences with the seriousness and impact of the non-performance.[113] Instruments such as the Nachfrist mechanism also support this framework by clarifying when a delay in performance turns into a legally meaningful breach.

Finally, the remedial regime is extensively dependent on open-textured standards, most notably the notions of fundamental breach, reasonableness, and foreseeability[114]. By open-textured standards, the CISG refers to broadly defined legal concepts that require contextual, case-specific interpretation rather than mechanical application.[115] Nevertheless, its flexible character permits interpretative discretion, which may affect the level of consistency and predictability in practice.[116] Therefore, the consistent application of these standards plays a decisive role in whether the CISG's

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[109] Huber (n 108) 18–19; Shen (n 108) 261–262.
[110] CISG 46, 62; Chengwei Liu, 'The Right to Performance and its Limits' (2004) para 8.2 <https://iicl.law.pace.edu/sites/default/files/cisg_files/chengwei3.html> accessed 12 December 2025.
[111] CISG arts 45(2), 61(2); Harry M. Flechtner, 'Buyers' Remedies in General and Buyers' Performance-Oriented Remedies' in Franco Ferrari (ed), *The CISG and its Impact on National Legal Systems* (Sellier 2008) 341 para b <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/flechtner.pdf> accessed 12 December 2025; CISG-Advisory Council, 'Opinion No 10: Agreed Sums Payable upon Breach of an Obligation' (31 October 2012) para 8(a) <https://cisgac.com/opinions/cisgac-opinion-no-10/> accessed 12 December 2025
[112] Magnus (n 87) 425-427; Bashar H Malkawi, 'CISG: The Relation among Cure, Fundamental Breach, and Avoidance' (2020) 93 *Journal of Law, Policy and Globalization* 26, 28-29 <https://www.iiste.org/Journals/index.php/JLPG/article/download/51344/53044> accessed 12 December 2025.
[113] Ingeborg Schwenzer, 'The Right to Avoid the Contract' (2012) 60 *Belgrade Law Review* 207.
[114] Peter Huber and Alastair Mullis, *The CISG: A New Textbook for Students and Practitioners* (Sellier 2007) 159-160, 213–216, 271–273.
[115] Ibıd.
[116] Huber (n 4) 34; Schwenzer (n 2) 431-432.

remedial framework operates as a truly uniform system.

3.2 Damages under the CISG

Damages are the most frequently used remedy under the CISG and play a central role in fulfilling its objective of protecting the expectation interests of the injured party.[117] In contrast to termination-based remedies, damages are generally available regardless of whether or not the breach is fundamental and may be claimed independently or in conjunction with performance-based remedies.[118] Therefore, this regime represents the CISG's primary mechanism for resolving contractual imbalances while preserving contractual relations where possible.[119] Articles 74-77 of the Convention combine elements familiar from both civil law and common law traditions, creating a unified framework governing the scope, quantification, and limitations of damages.[120] At the doctrinal design level, this framework shows a high degree of internal coherence. However, its reliance on open-textured standards, particularly foreseeability, reasonableness, and mitigation, raises serious concerns regarding predictability in cross-border application.

3.2.1 The Full Compensation Principle

Article 74 of the CISG is the main legal principle of full compensation, which entitles the aggrieved party to receive compensation equal to the damage suffered as a result of the violation, including loss of profits.[121] The primary objective is to put the injured party in such a financial

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[117] Schwenzer and Hachem (n 104) 92; CISG-Advisory Council, 'Opinion No 8: Calculation of Damages under CISG Articles 75 and 76' (24 May 2020) paras 1.1.2, 3.1 <https://www.trans-lex.org/500158> accessed 14 December 2025.; Ingeborg Schwenzer, 'A Fair Balance of the Interests of the Seller and the Buyer' (2016) 7 *NJCL* 79, 87–88.
[118] Flechtner (n 111) 340-342.
[119] G E Fisher, 'Remedies for Breach of Contract under the International Sales Convention' (1997) 1 *Macquarie Law Journal* 242–243.
[120]Fisher (n 119) 242-243; K Schwartz, 'Specific Performance and Open Price Contracts Under the UCC and the CISG' (1991) 6 University of Miami International and Comparative Law Review 366.
[121] CISG art 74.

state as it would have already been if the contract had been properly performed.[122] In terms of coherence, the principle of full compensation integrates seamlessly with the overall remedial architecture of the CISG. It complements the performance-oriented approach of the Convention by offering economic redress without necessarily breaking the contractual relationship and applies equally for buyers and sellers.[123] The clear inclusion of lost profits further supports the idea that the CISG adopts a commercially realistic approach to contractual harm. This point is especially important in international sales transactions, because contractual planning heavily relies on expected profits and market opportunities.

However, the principle of full compensation is not absolute under the CISG. It is subject to specific restrictions intended to limit damages within commercially reasonable risk limits and to avoid excessive or unexpected liability.[124] These limitations, particularly foreseeability and mitigation, ensure that full compensation remains legally certain and predictable.

3.2.2 Foreseeability and Its Limits

The foreseeability requirement in the second phrase of Article 74 of the CISG's damages framework, serves as the main limiting factor that works closely with the rest of the remedial system. It confines the recovery to the losses the breaching party foresaw or should have reasonably foreseen at the time when the contract was made.[125] By focusing on this time, the rule enables parties to evaluate risks in advance, reinforcing the Convention's emphasis on ex ante risk allocation. In terms of consistency, the foreseeability rule plays an important role in ensuring that the damage regime is consistent and stable. It prevents recourse to liability from being extended retroactively on the basis of information that emerged only after the breach, and it links the

[122] Schwenzer and Hachem (n 104) 92-93; CISG-AC Opinion No 8 (n 117) paras 1.1.2, 3.1; Ingeborg Schwenzer (n 117) 87–88.
[123] CISG arts 45(1)(b), 61(1)(b), 74; CISG Advisory Council, *Opinion No 6: Calculation of Damages under CISG Article 74* (2006) paras 1.1, 3.1, 8.1. <https://cisg-online.org/files/ac_op/CISG_Advisory_Council_Opinion_No_6.pdf > accessed 15 December 2025.
[124] Yasutoshi Ishida, 'What Does "Foreseeable" Mean? The Scope of Damages under CISG Articles 74–77' (2022) 40 *Journal of Law and Commerce* 236–239, 246–248. <https://cisg-online.org/files/commentFiles/Ishida_40_JLCom_2022_235.pdf> accessed 15 December 2025.
[125] Ishida (n 124) 235–237, 247–248; Nguyen Thi Quynh, 'Comparing Foreseeability in Contractual Damages under the CISG, UNIDROIT Principles and Principles of European Contract Law' (2024) 11 *Pázmány Law Review* 148–149, 151–152.

damages to the risks the parties could have reasonably anticipated when entering into the contract.[126]

In practice, the requirement to foresee has substantially appeared as a significant source of interpretative divergence. While the rule is theoretically clear, courts vary in their evaluation of the level of knowledge that should be attributed to the breaching party at the time of contract conclusion, the degree of precision required for a loss to be considered foreseeable, and whether general commercial awareness is sufficient to include consequential losses.[127] These distinctions are typically influenced by domestic rules on causation and remoteness, which may implicitly affect the uniform application of the CISG.[128] As a result, although foreseeability is supposed to enhance predictability at a conceptual level, its involvement in cross-border disputes can lead to a lack of certainty, especially in cases of complex loss structures or unstable market conditions.

3.2.3 Mitigation of Loss

Article 77 imposes an obligation on the affected party to take reasonable measures to mitigate the loss resulting from the breach. In case of failure to take these measures, the breaching party is entitled to a decrease in the amount of damages recoverable to the extent that the loss could have been avoided.[129] The article embodies a shared normative assumption underlying contract law systems that losses should not be unnecessarily increased and that both parties should be responsible for limiting the economic consequences of the breach.

The requirement to mitigate within the CISG's remedial framework is an instrument of the Convention's performance-oriented and cooperative approach that discourages the aggrieved party's strategic passivity and opportunistic behavior, and aligns damages with actual,

[126]Djakhongir Saidov, 'Methods of Limiting Damages under the Vienna Convention on Contracts for the International Sale of Goods' (2002) 14 Pace International Law Review 333–337, 339–342; Nguyen (n 125) 148–149, 151–152; Ishida (n 124) 236–237, 247–248; Huber and Mullis (n 114) 271–273.
[127] Damon Schwartz, 'The Recovery of Lost Profits under Article 74 of the U.N. Convention on the International Sale of Goods' (2006) Nordic Journal of Commercial Law 2-7; Saidov (n 126) 331–341; Nguyen (n 125) 154-155.
[128] Alastair Mullis, 'Twenty-Five Years On – The United Kingdom, Damages and the Vienna Sales Convention' (2007) 71 Rabels Zeitschrift für ausländisches und internationales Privatrecht 39–43, 46–47.
[129] CISG art 77.

economically justified loss.[130] Besides, the mitigation rule is a symmetrical provision; it is applicable regardless of whether the injured party is a buyer or a seller, further supporting the internal balance of the remedial system.[131]

At the same time, the open-textured standard of “reasonableness" as stated in Article 77 introduces interpretative discretion. Determining which mitigation measures are acceptable in a particular commercial context depends on factors such as market conditions, availability of substitute transactions, and the timing of the remedial action.[132] Since courts across jurisdictions apply these factors differently, predictability may be affected in practice.[133] Although the conceptual framework of the mitigation requirement is clear, its implementation often depends on factual assessments that limit the parties’ ability to accurately predict outcomes.

3.2.4 Calculation of Damages: Substitute Transactions and Market Price (Articles 75 and 76)

Articles 75 and 76 of the CISG list exact procedures for calculating damages in cases where the contract has been avoided. In the case where the injured party has entered into a substitute transaction, Article 75 is applicable, which enables damages to be calculated on the basis of the difference between the contract price and the substitute price, along with any other loss recoverable under Article 74. Article 76 applies in cases where there is no substitute transaction and permits the determination of damages by reference to the difference between the contract price and the market price at the relevant time and place.

These provisions substantially increase the consistency and predictability of the damage regime by providing clear and objective criteria for assessment of loss. As the CISG ties damages to observable market data or actual substitute transactions, it diminishes the evaluation of

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130 Peter Riznik, ‘Some Aspects of Loss Mitigation in International Sale of Goods’ (2010) 14 Vindobona Journal, 268–270. <https://iicl.law.pace.edu/sites/default/files/bibliography/riznik1.pdf> accessed 16 December 2025.; Liu *(*n 78) ch 14.5.1; Schwenzer (n 2) 1109 art 77 para 4.

131 UNCITRAL Secretariat, Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods: Article 77 (2016) paras 1–2, 9–15.

132 CISG-AC Opinion No 8, *Calculation of Damages under CISG Articles 75 and 76* (24 May 2020) paras 2.3.1–2.3.3; Helmut Koziol, ‘Reduction in Damages According to Article 77 CISG’ (2005–2006) 25 *Journal of Law and Commerce* 385–389.

133 Schwartz (n 127) 5.

speculation and thus contributes to the transparency of damage calculation.[134] In this respect, Articles 75 and 76 represent a conscious move towards uniformity of outcomes in the fluctuating international markets.

Nevertheless, there are still some situations where the practicality of the measure is in question. Questions frequently arise regarding the precise definition of an “appropriate” substitute transaction, the determination of the relevant market, and the timing of market price assessment.[135] Divergent judicial views on these matters may impact predictability, especially in unstable or non-transparent markets. Despite these challenges, Articles 75 and 76 act as a kind of compass compared to many other parts of the CISG and demonstrate the Convention's ability to combine flexibility with structured remedial solutions.

3.2.5 Evaluation: Coherence and Predictability of The Damages Regime

The CISG's damages regime, as a whole, demonstrates a high degree of internal coherence. The principle of full compensation, subject to foreseeability and mitigation, closely aligns with the Convention's broader objectives of fairness, commercial rationality, and contractual stability. Also, the existence of standardized methods of calculation enhances systemic consistency of the regime and facilitates the uniform application in international sales disputes.

On the other hand, the predictability of practice is less consistent. Although the doctrinal framework includes clear guidelines, reliance on open-textured standards and case-by-case evaluations leaves the possibility of different interpretations across jurisdictions. Differences in judicial methodology, evidentiary standards, and the influence of domestic law may lead to divergent outcomes, particularly in complex cases concerning consequential loss or disputed

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[134] Jonathan Yovel, ‘An Analysis of Market-Based Damages for Breach of Contract in the CISG and PECL’ (2006) 1–3. <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1275&context=pilr> accessed 17 December 2025.

[135] CISG Advisory Council, ‘CISG-AC Opinion No 8: Calculation of Damages under CISG Articles 75 and 76’ paras 2.4.1, 2.4.3; UNCITRAL Secretariat, *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods: Article 75* (2016) paras 8–11 <https://cisg-online.org/media/O3F85T5L/2016_UNCITRAL_CISG_Digest_Article_75.pdf> accessed 18 December 2025; UNCITRAL Secretariat, *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods: Article 76* (2016) paras 8–11 <https://cisg-online.org/media/789A4DXH/2016_UNCITRAL_CISG_Digest_Article_76.pdf > accessed 18 December 2025.

mitigation efforts.

Accordingly, the damages provisions illustrate CISG achievements in terms of coherence at the level of legal design, as well as challenges in ensuring consistent and predictable application in practice. This tension between structured rules and interpretative discretion is one of the recurring themes within the remedial system of CISG, and this will be evident in the discussion of termination-based and performance-oriented remedies in the following sections.

3.3 Avoidance of Contract and Fundamental Breach

Avoidance of contract is the most disruptive remedy available under the CISG. In contrast to damages or performance-oriented remedies, avoidance ends the contractual relationship and discharges the parties from their primary obligations, subject only to restitutionary consequences.[136] For this reason, the Convention considers avoidance as an exceptional response to a breach and subjects its availability to strict conditions. At the core of this structure is the concept of fundamental breach, which serves as a gatekeeping mechanism that determines when termination is justified.[137] Thus, the consistency and predictability of the CISG's remedial system ultimately depend on how the notions of avoidance and fundamental breach are interpreted and applied in practice.

3.3.1 Avoidance as an Exceptional Remedy (Articles 49 and 64)

Articles 49 and 64 define the buyer's and seller's rights to avoid the contract, respectively. Both provisions have a common structure: avoidance is only available in cases of fundamental breach or, alternatively, if the other party fails to perform within the additional period specified

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[136] CISG art 81; Magnus (n 87) 430-433; CISG Advisory Council, 'CISG-AC Opinion No 9: Consequences of Avoidance of the Contract' (15 November 2008) paras 1.1, 3.7 <https://cisgac.com/opinions/cisgac-opinion-no-9/> accessed 19 December 2025.

[137] CISG arts 25, 49(1)(a), 64(1)(a); G.E. Fisher, 'Remedies for Breach of Contract under the United Nations Convention on Contracts for the International Sale of Goods' (1997) 239-241.

under the Nachfrist mechanism (additional time for performance)[138]. This symmetrical formulation reflects the CISG's understanding of reciprocity and balance between buyers and sellers.

From a systemic perspective, the restricted availability of avoidance embodies the Convention's general performance-oriented logic. By allowing termination of a contract only in cases that meet strict conditions, the CISG aims to preserver contractual relations wherever possible and to prevent the risk of parties withdrawing from the contract for opportunistic reasons.[139] This policy choice is particularly important in international sales, as early termination may impose disproportionate economic costs and undermine commercial reliance on long-term trade relationships.[140]

At the level of doctrinal coherence, this design is consistent within the system. The Convention's emphasis on continuity, corrective performance, and compensation rather than immediate dissolution of contractual relations is in line with the exceptional nature of the avoidance. However, the effectiveness of this design depends on the clarity and predictability of the criteria governing when avoidance is permitted. This gives the definition of "fundamental breach" under the special provision of Article 25.

3.3.2 Fundamental Breach as a Gatekeeping Mechanism (Article 25)

Article 25 defines a fundamental breach as one that results in such a serious detriment to the other party that it is effectively deprived of what it was entitled to expect from the contract, unless the breaching party did not foresee the outcome, and a reasonable person of the same kind would not have foreseen it. The definition combines an objective element of deprivation with a

[138] CISG arts 49(1)(a), 64(1)(a), 49(1)(b), 64(1)(b); Fisher (n 137) 248; CISG Advisory Council, 'CISG-AC Opinion No 9: Consequences of Avoidance of the Contract' (15 November 2008) para 3.1 <https://cisgac.com/opinions/cisgac-opinion-no-9/> accessed 19 December 2025.
[139] Robert Koch, 'The Concept of Fundamental Breach of Contract under the United Nations Convention on Contracts for the International Sale of Goods (CISG)' (Institute of International Commercial Law, Pace University School of Law, 1998) 243-245 <https://iicl.law.pace.edu/sites/default/files/cisg_files/koch.html > accessed 20 December 2025; Magnus (n 87) 424-425; Ishida (n 89) 95–98; Keller, 'Favor Contractus' in *Festschrift für Kritzer* (2008) 258 <https://cisg-online.org/files/commentFiles/Keller_Favor_contractus_FS_Kritzer_2008_247.pdf> accessed 20 December 2025.
[140] Magnus (n 87) 423; Keller (n 139) 249.

foreseeability qualifier, thereby connecting termination with legitimate contractual expectations and ex ante risk allocation.

In terms of coherence, Article 25 is performing an important stabilizing function within CISG's remedial system. By linking avoidance to substantial deprivation rather than formal non-performance, the Convention takes a functional and commercially oriented approach, which is focused on the practical consequences of the breach.[141] This reasoning is supported by the inclusion of a foreseeability requirement, which prohibits termination if the consequences of the breach were not foreseeable to the breaching party at the time the contract was concluded.[142] As a result, the fundamental breach reflects the CISG's broader commitment to balancing flexibility with legal certainty.

On the other hand, the notion of fundamental breach has been one of the most debated and unpredictable concepts in the Convention's practical application. Due to the open-textured nature of the concept, courts and tribunals must consider the contractual purpose, market conditions, and the seriousness of the breach to the aggrieved party when assessing whether there has been a "substantial deprivation".[143] Judicial practice diverges on whether the main focus should be the objective importance of the obligation breached, the subjective purpose of the contract, or the availability of cure and substitute performance.[144] The distinctions in how courts understand fundamental breach are often shaped by domestic doctrinal traditions, for instance, by the presence of concepts similar to "material breach" or "essential obligation" in national contract law.[145]

Consequently, although Article 25 establishes a conceptually clear explanation for termination, its application has led to different results across jurisdictions.[146] Cases with identical scenarios may be considered fundamental in some courts and not in others, which may impact the predictability of avoidance as a remedial option.[147] Such inconsistency poses unique difficulties

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[141] Koch (n 139) 262-268.
[142] Darren Peacock, *Avoidance and the Notion of Fundamental Breach under the CISG* (International Trade & Business Law Review, 2000) 104–105 <https://classic.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/journals/IntTBLawRw/2003/4.pdf> accessed 21 December 2025.
[143] Mojtaba Sadeghi Moghadam, 'The Buyer's Right to Avoid the Contract due to Non-Conformity of the Goods under the CISG' (2016) 2 *International Journal of Law* 34–36.
[144] Magnus (n 87) 424–426; Moghadam (n 143) 35–37.
[145] Eduardo Grebler, 'Fundamental Breach of Contract under the CISG: A Controversial Rule' (2007) *ASIL Proceedings* 409–412 <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/1D5281876398A940871B8E10B60AE96B/S0272503700026240a.pdf/fundamental_breach_of_contract_under_the_cisg_a_controversial_rule.pdf> accessed 21 December 2025.
[146] Ibid.
[147] Ibid.

for contracting parties who wish to assess in advance whether contract termination is feasible in the event of a breach.

3.3.3 Notice, Timing, and Loss of the Right to Avoid

Besides the substantive threshold of a fundamental breach, the CISG also limits the procedural aspects of the avoidance, which basically shape its predictability. Articles 49(2) and 64(2) state that the party suffering from the breach has to declare avoidance within a reasonable time, especially where the breach is a delay in performance or the non-conformity of the goods.[148] If the injured party is unable to meet these time limits, then the right of avoidance may be lost.

The rules concerning notice and timing contribute to the internal coherence of the remedial system by reflecting the Convention's emphasis on transparency and procedural fairness.[149] They discourage deliberate delay in action and ensure that the party in the breach is promptly notified of the legal consequences of non-performance. The reasoning behind the time limit is that too much time could allow a party who intends to abuse the system to speculate on prices in a volatile market or incur unnecessary costs.[150] In addition, the interaction between avoidance and the Nachfrist mechanism adds an extra layer of structure by clarifying when continued non-performance escalates into a breach that justifies termination.[151]

However, the requirement of reasonableness in assessing the time for avoidance declarations brings an additional layer of interpretive discretion. Courts have different opinions on what constitutes a reasonable period, having regard to the circumstances, such as the nature of

[148] CISG arts 49(2), 64(2); Alejandro Osuna, 'Dealing with Avoidance and Its Consequences: Articles 49(2), 64(2), and 81 through 88' in Ronald A Brand (ed), *Drafting Contracts under the CISG* (Kluwer Law International 2007) 486-489 <https://cisg-online.org/files/commentFiles/Osuna_in_Drafting_Contracts_under_the_CISG_2007_481.pdf> accessed 22 December 2025.
[149] Osuna (n 148) 486-489; Troy Keily, 'Good Faith and the Vienna Convention on Contracts for the International Sale of Goods (CISG)' (1999) *Vindobona Journal of International Commercial Law and Arbitration* 24–27.
[150] Osuna (n 148) 486.
[151] Chengwei Liu, 'Additional Period (Nachfrist) for Late Performance: Perspectives from the CISG, UNIDROIT Principles, PECL and Case Law' (Institute of International Commercial Law, Pace University School of Law) para 4.2 <https://iicl.law.pace.edu/sites/default/files/cisg_files/liu4.html#iv> accessed 22 December 2025; Buba Ceesay, 'Finding an Ideal Contract Law Regime for the International Sale of Goods' (2021) 24 European Journal of Law Reform 191; Fisher (n 137) 248-249.

the goods, market instability, and the parties' prior conduct.[152] As with the fundamental breach, these assessments rely heavily on the facts of the case and may be affected by local procedural traditions. While the notice and timing rules can be seen as a system-level improvement in terms of coherence, they may still contribute to uncertainty in cross-border applications.

3.3.4 Evaluation: Predictability of Avoidance and Fundamental Breach

Taken together, the rules on avoidance and fundamental breach form a remedial system that is theoretically coherent but is fragile in practice. The CISG distinctly places avoidance as a remedy that is used only in cases where it is no longer commercially justifiable to continue performing the contract. The concept of a fundamental breach establishes a flexible and functionally oriented threshold. It confines avoidance to situations in which the breach results in a substantial loss of the injured party's contractual expectations and is covered by the risk that was reasonably foreseeable at the time of conclusion of the contract.

Still, this flexibility also has its disadvantages. The absence of precise defining criteria and the use of open-textured standards that give courts and arbitral tribunals a wide range of interpretative discretion impose this limitation. As a result, predictability varies depending on the case, particularly in borderline situations involving partial non-performance, delayed performance, or defects that are, at least in principle, capable of cure. In such cases, courts have to weigh contractual purpose, remedial proportionality, and commercial reasonableness on a case-by-case basis, which increases the risk of divergent outcomes.

Avoidance under the CISG is an example that reveals the tension between coherence and predictability that the Convention's remedial system is still fighting. The internal logic behind the system of termination as a last resort is quite clear, but parties' practical ability to anticipate its availability in different legal systems is still limited. This conflict will reappear when discussing performance-oriented remedies, especially with respect to the influence of domestic procedural

[152] CLOUT case No. 124 [Bundesgerichtshof, Germany, 15 February 1995] (five months – not reasonable); CLOUT case No. 282 [Oberlandesgericht Koblenz, Germany, 31 January 1997] (eight weeks – too late); CLOUT case No. 481 [Court d' Appel Paris, France, 14 June 2001] (eight months - untimely); CLOUT case No. 165 [Oberlandesgericht Oldenburg, Germany, 1 February 1995] (five weeks - reasonable); CLOUT case No. 225 [Cour d'appel, Versailles, France, 29 January 1998] (after several extensions of time for performance - timely); CLOUT case No. 246 [Audiencia Provincial de Barcelona, Spain, 3 November 1997] (48 hours - timely).

constraints under Article 28.

3.4 Specific Performance under the CISG

Specific performance is a unique institution in the CISG's system of remedies. As opposed to damages, which provide monetary compensation, or avoidance, which terminates the contractual relationship, specific performance is a remedy that preserves the contract by requiring the breaching party to fulfill its original obligations.[153] In this way, the remedy reflects the Convention's comprehensive performance-oriented approach and preference for maintaining contractual relations whenever possible.

The CISG grants both buyers and sellers the right to request performance. Article 46 specifically states that the buyer may require the seller to perform his obligations if the seller delivers non-conforming goods or refuses to repair or replace them, subject to certain restrictions.[154] Accordingly, Article 62 allows the seller to require the buyer to pay the price, take delivery, or perform other contractual duties.[155] This symmetrical formulation is consistent with the general framework of the CISG's remedial system and upholds the reciprocity principle between the parties. In terms of coherence, the inclusion of specific performance as the primary remedy is consistent with the Convention's goal of safeguarding expectation interests and restoring contractual balance, rather than encouraging termination.[156]

From a functional perspective, specific performance acts as a stabilizing tool within the CISG structure. The Convention seeks to minimize disruptions in international sales relations by giving the aggrieved party the right to insist on the performance of the contract, rather than immediately dissolving it or demanding compensation for damages.[157] The approach is particularly

[153]Ewan McKendrick, *Contract Law: Text, Cases and Materials* (5th edn, Oxford University Press 2020) 924-925 <https://studylib.net/doc/25848491/contract-law--text--cases--and-materials---pdfdrive--> accessed 23 December 2025.; Schwenzer (n 2) 738-741, 906-912; Pilar Perales Viscasillas, 'Contractual Remedies for Breach of Contract under the CISG and a Comparison with the Guatemalan Civil Code' (2023) Treaty Examiner (online) <https://treatyexaminer.com/contractual-remedies-cisg/> accessed 23 December 2025.
[154] CISG art 46; UNCITRAL, CISG Digest 2016: Article 46 – Buyer's Right to Performance (UNCITRAL 2016).
[155] CISG art 62; UNCITRAL, UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods, 2016, art 62, 287.
[156] Fisher (n 137) 242–244; Liu (n 78) ch 3.
[157]Flechtner (n 111) 342-343.

applicable to transactions involving unique goods, long-term supply arrangements, or markets where substitute performance is costly or impractical.[158] In such contexts, a commercial agreement may be fulfilled more effectively through specific performance than simply paying monetary compensation.

On the other hand, Article 28 of the CISG significantly shapes the role of specific performance by explicitly applying the adaptation of domestic procedural constraints. This provision permits courts to decline specific performance if such a remedy would not be granted under their domestic law in the case of similar contracts not governed by the Convention.[159] Therefore, Article 28 is an intentional compromise between civil law systems, where specific performance is typically regarded as a primary remedy, and common law systems, which typically favor damages and treat compulsory performance as exceptional.[160]

Furthermore, Article 28 creates a certain degree of structural tension within the remedial system from the internal coherence point of view. In fact, the CISG grants a substantive right to performance under Articles 46 and 62. However, the enforceability of that right is "conditioned" on the procedural rules and remedial traditions of the forum.[161] Such a duality compromises the uniform reasoning of the Convention and distinguishes specific performance from other remedies, such as damages, whose availability is not explicitly dependent on domestic law.

The potential consequences of this compromise are especially crucial for the predictability of international disputes. Even though the same substantive CISG provisions are applied, parties may experience quite different remedial outcomes because the practical availability of specific performance varies depending on the forum seized.[162] In jurisdictions that are receptive to orders of performance, the remedy may play a meaningful role in contract preservation. Whereas in courts that are hesitant to compel performance, the right recognized by the CISG might be considered only as a theoretical entitlement. This dependence on the forum makes it difficult for parties to be certain whether specific performance will be a realistic option in the event of a breach.

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[158] Shen (n 108) 277-282; CISG Advisory Council, *Opinion No 21: Delivery of Substitute Goods and Repair under Article 46 CISG* (CISG-AC, 2022) para 3.11 <https://cisgac.com/opinions/cisgac-opinion-no-21/?utm_source=chatgpt.com> accessed 23 December 2025.; Flechtner (n 111) 346-347.
[159] CISG art 28; UNCITRAL, UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods, 2016, art 28; Schwenzer (n 2) 'Article 28' paras 1-3.
[160] Schwenzer (n 2) 'Article 28' paras 1-3.
[161] Admire Takawira, 'Specific Performance as a Remedy for Contractual Breach under the CISG' (Pace IICL, 2010) para 2.5.3
[162] Marton Király, 'Specific Performance – and the International Unification of Sales Law' (2023) 69(2) *Acta Universitatis Carolinae Iuridica*, 133–135

Thus, specific performance under the CISG serves as a broader compromise between coherence and predictability characterizing the remedial framework as a whole. Theoretically, the substantive right to performance is logically integrated in the Convention's performance-oriented arrangement. However, on a practical level, its enforcement remains uneven across jurisdictions.[163] This structural compromise enhances the Convention's acceptability across legal systems but limits the predictability of the results of remedies in practice.

3.5 Price Reduction (Article 50)

Price reduction represents a distinctive remedy of the CISG remedial system. In contrast to avoidance and damages, price reduction enables the buyer to adjust the contract price in proportion to the reduced value of non-conforming goods without the seller's approval.[164] This remedy is consistent with the Convention's objective of preserving contractual relationships while giving a precise response to non-performance.

Moreover, Article 50 provides that the buyer may reduce the price if the goods delivered do not conform to the contract, regardless of whether the non-conformity constitutes a fundamental breach. The reduction is calculated based on the ratio between the value of the goods as delivered and the value they would have had if they had been conforming at the time of delivery.[165] By connecting the remedy directly to an objective value comparison, Article 50 creates a structured, independent process that functions without regard to fault and does not require proof of loss in the same manner as damages.[166]

In terms of the internal consistency of the remedial system, the price reduction is consistent

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[163] Admire Takawira, 'Specific Performance as a Remedy for Contractual Breach under the CISG' (Pace IICL, 2010) ch 4.3.

[164] CISG art 50; Chengwei Liu, 'Price Reduction under the CISG, UNIDROIT Principles and PECL' in *Remedies for Non-performance: Perspectives from the CISG, UNIDROIT Principles & PECL* (Pace IICL 2003) ch 4 <https://iicl.law.pace.edu/sites/default/files/cisg_files/chengwei2.html#iv> accessed 24 December 2025; Yusuf Obeidat, 'The Remedy of Price Reduction under CISG: With Special Reference to Jordanian Civil Law and English Sale of Goods Law' (2018) 32(76) *Journal of Sharia and Law* 39–41 <https://cisg-online.org/files/commentFiles/Obeidat_Journal-of-Sharia-and-Law_2018_No76_Art9.pdf> accessed 24 December 2025.

[165] CISG art 50; UNCITRAL, *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods*, 2016, art 50.

[166] Liu (n 164) ch 4; UNCITRAL Digest (2016) art 50 para 4; William Sondahl, 'Understanding the Remedy of Price Reduction' (2003) 21 *Journal of Law and Commerce* para 2.

with the performance-oriented architecture of the CISG. It offers a corrective adjustment that maintains the contractual framework while changing the economic consequences of the non-conformity. This coherence is further illustrated by the connection between price reduction and damages. Although both remedies may address non-conforming performance, they perform different functions. Price reduction is exclusively concerned with the decreased value of the goods, while damages are intented to compensate the injured party for broader losses resulting from the breach. The CISG allows these remedies to coexist, except for the prohibition of double recovery.[167] This functional separation helps in the internal consistency of the remedial system, as buyers are allowed to choose the remedy that best suits the nature of the breach and the commercial context.[168]

In addition, a price reduction is often considered a comparatively predictable remedy under the CISG in terms of predictability. Its application depends on a relatively limited number of criteria and relies on objective valuation rather than open-textured standards, such as reasonableness or foreseeability.[169] As a result, the remedial outcome is, in principle, more predictable for the contracting parties, especially in cases of measurable quality defects or deviations from contract specifications.

Nevertheless, predictability under Article 50 is not absolute. Practical difficulties may arise in determining appropriate values of conforming and non-conforming goods to use for price comparisons, particularly in volatile markets or where reliable valuation data is unavailable. Additionally, disputes may arise where the buyer combines price reduction with a claim for damages, as courts must ensure that the combined use of these remedies does not result in double recovery.[170] Despite these challenges, the interpretative margin linked to Article 50 is still more restricted than that for avoidance or damages.

The price reduction thus represents a corrective measure under the CISG that combines high internal coherence with relatively strong predictability in application. Its organized and proportionate character contrasts with the open-textured thresholds determining fundamental breach and the forum-dependent enforcement of specific performance. At the same time, its

[167] UNCITRAL Digest (2016) art 50 para 8; Liu (n 164) ch 3.3.
[168] UNCITRAL Digest (2016) art 50 para 2.
[169] Sonja Jansen, 'Price Reduction under the CISG: A 21st Century Perspective' (2014) 32 *Journal of Law and Commerce* 379 <https://cisg-online.org/files/commentFiles/Jansen_32_JLCom_2014_325.pdf> accessed 24 December 2025.
[170] UNCITRAL Digest (2016) art 50 para 8; Liu (n 164) ch 3.3.

limited scope confirms that predictability within the CISG is often the result of technical precision rather than of remedial flexibility. Therefore, price reduction occupies a complementary role within the Convention's remedial system, offering stability in narrowly defined situations while leaving more complex breaches to remedies that involve a higher degree of interpretative discretion.

CHAPTER 4

Interpretation and Application in Practice

4.1 Methodology of Case Law Analysis

This chapter adopts a qualitative and comparative approach to case law analysis to evaluate the predictability of remedies under the CISG. It concentrates on the identification of recurring interpretative patterns that influence remedial outcomes in cross-border disputes. This methodological choice corresponds to the thesis's concern with predictability from an ex ante perspective: whether contracting parties can reasonably anticipate the application of CISG remedies in comparable factual situations across different forums.

The analysis mainly focuses on Germany and the United States, chosen for their doctrinal relevance, significant CISG case law, and availability of authoritative decisions. In particular, German case law is appropriate for examining the coherence of remedial interpretation, as it is methodically engaged with the Convention and frequently relies on Article 7 and international sources, whereas US decisions apply CISG remedies in a common law framework, where domestic concepts may have a stronger influence on judicial reasoning. Together, these two jurisdictions form a significant basis for assessing forum-dependent variation in predictability.

The majority of the cases examined are taken from CLOUT, CISG-online, and published national decisions, selected for their relevance to key remedial issues and for the clarity of the judicial reasoning. Individual cases are presented illustratively rather than descriptively, with factual detail limited to what is required to comprehend the remedial problem at issue, while the focus is on judicial reasoning and its consequences for the availability, scope, and interaction of remedies. Through the comparison of the application of similar CISG provisions in comparable contexts, this chapter determines whether the Convention's remedial system produces sufficiently predictable results or whether different interpretative approaches still create uncertainty for contracting parties.

4.2 Divergent Interpretations of Fundamental Breach

A fundamental breach is a decisive threshold determining contract avoidance under the CISG and therefore plays a crucial role in determining the predictability of termination as a remedial option. Article 25 provides a unified definition based on substantial deprivation and foreseeability; however, judicial practice demonstrates that its application varies across jurisdictions.[171] These are not primarily doctrinal disagreements, but rather variations in judicial methodology that influence how predictably avoidance can be anticipated in cross-border disputes. This methodological divergence is consistently evident in reported national court decisions and arbitral awards applying Article 25, as documented for example, in the UNCITRAL Digest and CISG-Advisory Council materials.[172]

To start with, German courts generally apply a restrictive and functionally oriented interpretation of fundamental breach.[173] Court decisions tend to prioritize contract preservation and assess substantial deprivation in light of the overall commercial purpose of the contract and the possibility of continued performance.[174] German courts typically examine whether the breach makes performance commercially worthless for the suffering party, instead of focusing on the formal significance of the breached obligation.[175] Particular attention is paid to the availability of cure, substitute performance, or price adjustment, which suggests that they operate within a performance-oriented remedial policy of the CISG.[176] Therefore, courts only rule on avoidance of

[171] CISG art. 25; Fisher (n 137) 239-241.
[172] UNCITRAL Digest (2016) 114-115; CISG-Advisory Council Opinion No 21, *Hardship under the CISG* (2020) paras 3.20–3.22.
[173] Schwenzer (n 2) 418-419.
[174] Schwenzer (n 88), 437-440.
[175] Bundesgerichtshof, 24 September 2014, *Hungarian injection moulding tools case* (VIII ZR 394/12) CISG-Online 2545, paras [a]–[b] <https://cisg-online.org/files/cases/8459/translationFile/2545_22899445.pdf> accessed 25 December 2025; Schwenzer (n 88), 437-439.
[176] Chengwei Liu, 'Cure by Non-Conforming Party: Perspectives from the CISG, UNIDROIT Principles, PECL and Case Law' (2nd edn, 2005) paras 3-4 <https://iicl.law.pace.edu/sites/default/files/cisg_files/chengwei1.html >

a contract if the breach causes a serious and irreversible breach of the contract. German higher regional courts' rulings, which consistently treat avoidance as a last resort (*ratio ultima*) and prefer corrective performance when commercially beneficial, indicate this strategy.

This approach is exemplified by the Bundesgerichtshof's *Cobalt Sulphate* decision (CLOUT Case No 171, 3 April 1996, VIII ZR 51/95).[177] In this case, the Dutch seller claimed payment of the purchase price, while the German buyer attempted to avoid the contract on the grounds of claimed quality defects, inconsistencies in the origin of the goods, and irregularities in the accompanying certificates. The court acknowledged that the goods did not fully conform to the contractual description, but it found that the buyer had failed to prove that the cobalt sulphate could not be used for its intended purpose or resold on the German or any other market. The Bundesgerichtshof therefore concluded that the buyer had not been "substantially deprived" of what it was entitled to expect under Article 25 CISG, and also, he was not entitled to avoid the contract under Article 49 CISG.[178] In its reasoning, the court made it clear that avoidance was inappropriate when the contract's economic purpose could be fulfilled through continued performance, and that remedies including price reduction or damages compensation could adequately address documentation irregularities and quality deviations. The decision thus illustrates the German tendency to interpret fundamental breach restrictively and to reserve termination for situations of clear and irreversible commercial uselessness of the goods.

Such a cautious approach is one of the useful factors to keep the use of Article 25 relatively stable from the perspective of predictability. It is reasonable for contracting parties to anticipate that termination will be upheld only in situations involving substantial and lasting deprivation. At the same time, the contextual nature of the assessment means that outcomes depend on the facts. Predictability is therefore achieved not through strict criteria, but through a consistent judicial reluctance to treat avoidance as an automatic response to non-performance.

By contrast, United States courts typically favor a more flexible interpretation of fundamental breach when assessing the seriousness of non-performance under the CISG.[179] Judicial reasoning frequently places greater emphasis on the seriousness of the breach and its direct

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accessed 25 December 2025; Jonathan Yovel (ed), *Guide to CISG Article 48* (Pace Law School CISG Database, 2005) paras 1-2, 4 <https://iicl.law.pace.edu/sites/default/files/cisg_files/peclcomp48.html> accessed 25 December 2025.

[177] *Bundesgerichtshof* (Germany), 3 April 1996, VIII ZR 51/95 (Cobalt sulphate case), CLOUT Case No 171.

[178] CISG arts 25, 49.

[179] Ishida (n 89) 80–82.

impact on a party's contractual expectations. Even where corrective performance was still possible, defects or delays have occasionally been evaluated as fundamental because they disrupted the buyer's production process or its ability to meet subsequent contractual obligations, particularly in US cases discussed in the UNCITRAL Digest.[180] In these decisions, courts focused on the loss of reliability and the negative effects on the buyer's contractual network, rather than insisting that the seller be afforded further opportunities to cure.

A frequently cited example is the case of *Delchi Carrier SpA v Rotorex Corp* (CLOUT Case No 85, 9 September 1994), decided by the US Court of Appeals for the Second Circuit.[181] In this case, the buyer purchased air-conditioning compressors that had a substantially lower cooling capacity and significantly higher energy consumption than the sample model and contractual specifications. Despite the seller's claim that the defects could be fixed, the court ruled that the non-conformity constituted a fundamental breach under the CISG because the compressors deprived the buyer of the level of performance it was entitled to expect, caused losses in sales volume, and undermined its own production and delivery obligations towards third parties.[182] The court accepted that in an international manufacturing context, it was predictable that defective core components would interfere with production and sales, and that a suggested cure did not prevent a fundamental breach where it was unclear, delayed, and failed to restore commercial reliability. It focused on the commercial consequences of the defect and the disruption of the buyer's business planning, rather than on whether continued performance or cure was still theoretically possible. The decision shows a willingness to treat serious non-conformity as undermining the buyer's contractual expectations where confidence in future performance has been lost, even though it did not express a structured Article 25 analysis comparable to German case law.

Similar reasoning appears in other US CISG cases involving delays or quality defects in key components, where courts have assessed fundamental breach by reference to the practical impact on the buyer's operations rather than by applying a restrictive deprivation test.[183] As noted

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180 Ishida (n 89) 81-83; Andrew Babiak, 'Defining "Fundamental Breach" under the United Nations Convention on Contracts for the International Sale of Goods' (1992) 6 *Temple International and Comparative Law Journal* 118–119; UNCITRAL Digest (2016) Art 25.

181 *Delchi Carrier SpA v Rotorex Corp* (United States Court of Appeals for the Second Circuit, 9 September 1994) 71 F 3d 1024 (2d Cir); CLOUT Case No 85.

182 CISG arts 25, 49, 74.

183 *Valero Marketing & Supply Co v Greeni Oy* (US District Court for the District of New Jersey, 4 April 2006) (CISG); *Chicago Prime Packers, Inc v Northam Food Trading Co* (US District Court for the Northern District of Illinois, 21 May 2004) (CISG-online 851); UNCITRAL Digest (2016) Art 25.

in the UNCITRAL Digest, US courts have occasionally treated serious delivery delays as justifying avoidance where timing was critical to the buyer's contractual purpose, even absent an express "time-is-of-the-essence" clause.[184] In these decisions, termination was justified not because performance had become impossible, but because continued uncertainty was incompatible with the buyer's commercial planning and risk allocation.

This kind of approach highlights a lower tolerance for continued contractual uncertainty and a stronger remedial culture focused on damages and risk reallocation. Scholars commonly explain that this case law is linked to domestic concepts such as "material breach" and "substantial impairment", which may affect how US courts' assessment of non-performance under the CISG.[185] Because of this, the US courts formally apply Article 25 of the Convention, but domestic notions may shape their determination of "substantial deprivation". Forum dependence complicates ex ante risk assessment for contracting parties, especially in borderline cases of partial non-performance, delays, or curable defects.

Overall, judicial practice confirms that a fundamental breach serves as a coherent but also flexible gatekeeping mechanism. The internal logic of Article 25 is widely accepted, but its application depends significantly on the interpretative methodologies and remedial preferences of the national systems. This does not undermine the structural coherence of the CISG's remedial design, but it does constrain the predictability of avoidance as a remedy in international disputes. Fundamental breach therefore exemplifies the broader tension explored in this thesis between uniform legal standards and forum-dependent outcomes in practice.

4.3 Foreseeability and Mitigation in Practice

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[184] A "time is of the essence" clause is a contractual provision (mainly common law) in which the parties establish timely performance as a core obligation of the contract, such that delay in itself may constitute a serious breach that may justify termination. *See* Scott E. Barat & James P. Bobotek, 'Time Is of the Essence: Be Careful What You Ask For' (2000) 36 Procurement Law 10.

[185] Sarah Howard Jenkins, 'Rejection, Revocation of Acceptance, and Avoidance: A Comparative Assessment of UCC and CISG Goods-Oriented Remedies' (2013) 22 *Minnesota Journal of International Law* 154-155, 158-159 <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1288&context=mjil> accessed 26 December 2025; Babiak (n 180) 118-120; Catherine Piché, 'The Convention on Contracts for the International Sale of Goods and the Uniform Commercial Code: Remedies in Light of Remedial Principles Recognized under U.S. Law' (2003) 28 *North Carolina Journal of International Law and Commercial Regulation* 525–526, 531-532 <https://cisg-online.org/files/commentFiles/Piche_28_NCJIntlLComReg_2002_519.pdf> accessed 26 December 2025.

The judicial implementation of the duty to mitigate under Article 77 CISG and the foreseeability limitation under Article 74 CISG demonstrates that, despite their conceptual coherence, open-textured standards may lead to divergent remedial outcomes in practice.[186] Both provisions serve a clear systemic function: foreseeability confines liability to risks that were or should have been known at the time of contract conclusion, while mitigation prevents losses from being unnecessarily aggravated following a breach. Together, they are intended to strengthen ex ante risk allocation and encourage economically efficient behavior by both parties. In practice, however, courts apply these standards unevenly, notably when it concerns the degree of reasonable conduct expected of the aggrieved party and the knowledge assigned to the breaching party.[187]

Moreover, divergence is most evident in the application of consequential and lost-profit damages under the foreseeability rule. Some courts interpret foreseeability narrowly, stating that a loss is foreseeable only where specific information or clear communication was provided at the time of contract formation. This restrictive approach is illustrated in German case law, namely the decision of *Landgericht Darmstadt* (CLOUT Case No 343, 9 May 2000), where the court confined recovery to losses directly linked to the contractual transaction and rejected broader claims for lost turnover and reputational harm in the absence of specific disclosure.[188] The court emphasized the absence of explicit communication and sufficient proof of the alleged losses, treating general awareness of commercial risk as inadequate for establishing foreseeability under Article 74 CISG. This reasoning reflects a transaction-focused and certainty-oriented approach, which prioritizes clearly allocable risks over expansive compensatory claims.

Other decisions adopt a broader commercial viewpoint, treating certain losses, such as lost resale profits, production downtime, or logistical costs, as foreseeable when they naturally arise from the commercial context of an international sales transaction. This reasoning is exemplified by US case law, most notably *Delchi Carrier SpA v Rotorex Corp*, in which the court accepted lost profits and related consequential losses as foreseeable consequences of non-conforming performance.[189] These contrasting methodologies significantly affect the predictability of damages, since parties may face materially different liability exposure depending on whether

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[186] CISG arts 74, 77; Ishida (n 124) 236; Saidov (n 126) 333-335, 350-354.
[187] Saidov (n 126) 334-335, 353-354; Ishida (n 124) 238-239; Nevena Riznik, 'Unresolved Damages Issues of the CISG: A Comparative Perspective' (2006) 18 SA Merc LJ para 4.2.1 <https://iicl.law.pace.edu/sites/default/files/cisg_files/riznik.html> accessed 27 December 2025.
[188] Landgericht Darmstadt (Germany), 9 May 2000, 10 O 72/00, CLOUT Case No 343.
[189] Delchi (n 181).

courts prioritize explicit knowledge or general commercial awareness.

The application of the mitigation principle under Article 77 CISG illustrates comparable inconsistencies.[190] It is widely agreed by the courts that the injured party must take reasonable steps to reduce the loss; nevertheless, the extent of this obligation is interpreted unevenly in practice. Several decisions of German Oberlandesgerichte, notably OLG Düsseldorf and OLG Hamburg, have held that failure to arrange a substitute transaction or alternative sources within a reasonable time constitutes a breach of the mitigation duty and results in a reduction of recoverable damages. *OLG Düsseldorf* (CLOUT Case No 130, 14 January 1994, 17 U 146/93) was decided the buyer's resale of winter shoes on the Italian market was considered a substitute transaction and examined whether the resale was made within a "reasonable time" according to Articles 75 and 77 CISG, stressing that a delayed or improper resale could be a ground for reduction of damages.[191] In *OLG Hamburg* (CLOUT Case No. 277, 28 February 1997, 1 U 167/95), the court state that the buyer was required to conclude a substitute purchase of iron-molybdenum within a short period after the seller's non-delivery. It also found that the buyer who substituted within two weeks was deemed to have fulfilled his mitigation obligation, thereby placing the risk of a market price increase on the seller only in a situation where the buyer had acted promptly.[192] In these cases, courts pointed out the availability of substitute goods on the market and the capacity of the injured party to act without assuming excessive commercial risk.

Other decisions, on the other hand, adopt a more expansive contextual approach that considers market fluctuations, information asymmetries, financial constraints, and the risks of mitigation. Such flexible reasoning is particularly observed in US decisions presented in the UNCITRAL Digest, where courts seem more reluctant to penalize injured parties for delayed or incomplete mitigation when immediate action would have caused serious commercial uncertainty or risk.[193] This approach is illustrated, for example, in *Chicago Prime Packers, Inc. v Northam Food Trading Co* (CLOUT Case No 577, 25 May 2003), where the court's judgment of the parties' behavior was closely dependent on the perishability of the goods, the timing of discovery, and the practical realities of the supply chain.[194] The ruling demonstrates a deep understanding of the

[190] CISG art 77.
[191] Oberlandesgericht Düsseldorf (Germany), 14 January 1994, 17 U 146/93, CLOUT Case No 130.
[192] Oberlandesgericht Hamburg (Germany), 28 February 1997, 1 U 167/95, CLOUT Case No 277.
[193] UNCITRAL Digest (2016) art 77; Eric C Schneider, 'Consequential Damages in the International Sale of Goods: Analysis of Two Decisions' (1995) 16 U Pa J Intl Bus L 625-627, 640–643.
[194] Chicago Prime Packers (n 183).

reasonableness standard under the CISG based on the facts, highlighting concrete commercial conditions rather than abstract or rigid expectations. Fact-based investigations that vary widely across jurisdictions are used to evaluate mitigation, since there are no uniform standards for defining reasonableness.[195]

These divergences have important implications for predictability. An inconsistent interpretation has a particularly visible effect on the economic consequences of a breach, as foreseeability and mitigation directly affect the quantity of damages rather than their availability. Uncertainty over which losses will be foreseeable and which mitigation measures will be adequate further complicates contract planning and risk assessment for contracting parties. The practical use of Articles 74 and 77 reveals that predictability depends more on the interpretative methods applied by courts and tribunals than on doctrinal clarity. Consequently, foreseeability and mitigation illustrate a recurring tension in the CISG's remedial system: a well-structured normative framework that produces uneven outcomes when applied through differing national understandings of proof, causation, and reasonableness.

4.4 Role of Arbitration

Arbitral practice plays a very special and increasingly influential role in the practical application of CISG remedies, particularly in terms of coherence and predictability in international trade disputes. Arbitral tribunals, unlike national courts, are not part of a single domestic legal system, thus they are less bound by local procedural traditions or deeply rooted remedial doctrines.[196] Because of its structural position, arbitration can function as a forum where the CISG is more often interpreted autonomously and in a closer alignment with Article 7(1). ICC awards

[195] Peter Riznik, 'Some Aspects of Loss Mitigation in International Sale of Goods' (2010) 14 *Vindobona Journal of International Commercial Law and Arbitration* 270–272, 282.

[196] Larry A DiMatteo, 'Soft Law and the Principle of Fair and Equitable Decision Making in International Contract Arbitration' (2013) *Chinese Journal of Comparative Law* 4-6; Luca Radicati di Brozolo, 'International Arbitration and Domestic Law' in Giuditta Cordero-Moss (ed), *International Commercial Arbitration: Different Forms and Their Features* (Cambridge University Press 2013) 40–43; Luca Radicati di Brozolo, 'International Arbitration and Domestic Law' in Giuditta Cordero-Moss (ed), *International Commercial Arbitration: Different Forms and Their Features* (Cambridge University Press 2013) 7-8 <https://www.cambridge.org/core/books/international-commercial-arbitration/international-arbitration-and-domestic-law/7A1BA36161236B79EAB1D953A14E3A67> accessed 28 December 2025.

that reference foreign decisions and CISG commentary when analyzing damages and avoidance are an example of how arbitral awards often demonstrate a greater willingness to engage with international case law, comparative reasoning, and scholarly commentary when determining the availability and scope of remedies.

In practice, arbitral tribunals seem to focus more on the functional objectives of the CISG's remedial system than on formal doctrinal classifications, especially in the areas of damages, foreseeability and mitigation. For example, in ICC Award No 8128 (1995), the tribunal addressed a claim for damages resulting from non-performance under a sales contract governed by the CISG and examined the compensation mainly under Article 74 CISG.[197] It clearly relied on Article 77 CISG to lower the amount that could be recovered, stating that the injured party had failed to take reasonable measures to limit its loss by concluding a timely substitute transaction. By this, the tribunal considered mitigation not as a formal procedural step but as a substantive mechanism for restricting recovery to losses that were economically avoidable in the ordinary course of trade.

In addition, in ICC Award No 8740 (1996) the tribunal calculated damages by reference to the difference between the contract and substitute prices, but it refused an abstract damages calculation under Article 76 (finding no relevant "current price" for coal).[198] Instead, it applied Article 75 and awarded damages by reference to the price difference arising from the buyer's identifiable cover purchase. The tribunal delivered its judgment in explicitly autonomous CISG terms, also linking compensation to the requirements Article 74. In the award, the tribunal expressly treated the buyer's operational response to late delivery as reasonable mitigation, reinforcing that recoverable loss should reflect commercially realistic steps taken to limit harm rather than hypothetical or speculative loss claims.

Arbitration offers not only advantages but also limitations, from a predictability perspective. On the one hand, the more uniform, CISG-oriented interpretative methodology applied by many arbitral tribunals may enhance foreseeability for commercial parties, especially in sectors where arbitration clauses are standard, and awards tend to follow established lines of CISG reasoning on damages, avoidance and specific performance.[199] However, the confidentiality of proceedings and the restricted publication of arbitral awards limit the precedential value of

[197] ICC Award No 8128 (1995) (ICC International Court of Arbitration, Basel), CISG-online 526.
[198] ICC Award No 8740 (1996) (ICC International Court of Arbitration, Paris), UNILEX CISG Case 462.
[199] André Janssen and Matthias Spilker, 'The Application of the CISG in the World of International Commercial Arbitration' (2013) 77 *RabelsZ* 131, 134–136, 143–145.

arbitral practice, which diminishes its ability to provide broadly accessible interpretive guidance comparable to published court decisions.[200] Therefore, arbitration may promote coherence in individual disputes and among repeat participants, yet its capacity to secure predictability across jurisdictions is still only partial.

Nevertheless, arbitral practice is highly relevant for assessing the CISG's effectiveness in real-world commercial settings. Arbitration reflects the dispute-resolution preferences of international traders and provides insight into how CISG remedies are applied when domestic legal biases are relatively minimized, and parties deliberately choose a neutral, international forum. The idea that the CISG's remedial framework can operate coherently when interpreted autonomously in accordance with Article 7(1) is supported by the relative methodological consistency observed in arbitral reasoning.[201] Still, the contrast between arbitral and judicial methods highlights that predictability under the CISG is shaped not only by the text of the Convention, but also by the institutional context in which disputes are resolved. Accordingly, arbitration plays both a corrective and a comparative purpose: it can foster greater uniformity by decreasing the impact of domestic legal viewpoints, while also highlighting the limits of predictability within the CISG's diverse enforcement environment.

CHAPTER 5

Comparative Perspectives on CISG Remedies

The chapter before has mainly focused on the application of CISG remedies, which are based on a unified normative framework but produce various outcomes in judicial and arbitral practice. Such differences cannot be fully explained by the text of the Convention alone. Hence, this chapter adopts a comparative approach to examine how domestic remedial traditions affect the interpretation and practical application of CISG remedies in practice. The focus lies on identifying structural similarities and tensions between the CISG's remedial design and the

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[200] Gabrielle Kaufmann-Kohler, 'Arbitral Precedent: Dream, Necessity or Excuse?' (2007) 23(3) *Arbitration International*, 362–365.
[201] CISG art 7(1).

underlying remedial cultures of selected jurisdictions. By examining the approaches of Germany and the United States, this chapter seeks to explain why the open-textured CISG standards are applied differently across forums and to investigate how these internal influences affect the achievement of the Convention's objectives of uniformity and predictability, as stated in Article 7(1).

5.1 CISG and German Law (BGB): Performance Orientation and Contract Preservation

The remedial orientation in German judicial practice that implements the CISG has a strong emphasis on contract preservation and the importance of performance, which is in line with the internal logic of the remedial framework of the Convention.[202] Such a preference explains why German courts tend to apply CISG remedies, particularly those relating to damage and avoidance, in a relatively structured and predictable manner. This remedial system is reflected in the structure of the BGB, where withdrawal (*Rücktritt*) is generally conditioned on an additional period for performance (a functional *Nachfrist*) under § 323(1) BGB, unless continued performance has clearly lost its contractual purpose.[203] Even where the breach is serious, German doctrine typically frames the remedial sequence around whether performance can still be carried out in a commercially meaningful way before allowing the contract to be dissolved.[204] This orientation is consistent with the CISG's performance-based architecture, which makes avoidance an exceptional remedy (Articles 49, 64) and resolves disputes through mechanisms of additional time (Articles 47, 63) and cure (Article 48) before termination becomes available.[205]

From a comparative standpoint, the German approach shows a high level of functional

[202] Bundesgerichtshof, *Hungarian Injection Moulding Tools Case* (VIII ZR 394/12, 24 September 2014) CISG-Online No 2545; CISG Advisory Council Opinion No 21, 'Article 49 CISG – Avoidance in Case of Non-Conforming Goods or Documents' (2020) paras 3.2–3.4; Schwenzer (n 88), 437-441.
[203] Bürgerliches Gesetzbuch (BGB), § 323(1)-(2); Manfred Lowisch, 'New Law of Obligations in Germany' (2002) 20 *Ritsumeikan Law Review* 150; Peter Schlechtriem, 'Subsequent Performance and Delivery Deadlines – Avoidance of CISG Sales Contracts due to Non-Conformity of the Goods' (2006) 18 *Pace International Law Review* 90.
[204] Peter Schlechtriem, 'Termination and Adjustment of Contracts' (1999) 1(3) *European Journal of Law Reform* 306-308.
[205] CISG arts 47, 48, 49, 63, 64; Magnus (n 87) 424-426.

compatibility between CISG standards and domestic remedial concepts. German contract law usually prioritizes the preservation of contractual relationships, the availability of cure, and the proportionality of remedial responses.[206] When German courts deal with open-textured CISG provisions, most notably fundamental breach under Article 25, as well as foreseeability and mitigation under Articles 74-77, they generally interpret these concepts from a perspective that supports continuity and economic efficiency.[207]

In practice, the notion of "substantial deprivation" is assessed in a manner closely resembling the BGB's functional balancing between the gravity of non-performance and the possibility of preserving the contract's economic purpose.[208] As a result, remedies such as damages and price reduction are frequently preferred over avoidance where the continued or corrected purpose can still be achieved, even in the cases of defective or delayed performance. Termination is therefore not triggered by breaches that remain economically manageable through corrective measures, an outlook that is closely consistent with the CISG's performance-preserving orientation and its suspicion of opportunistic termination in volatile market contexts.[209] This interpretative tendency is not a resistance to the CISG's international character, but rather a structural adaptation between domestic remedial expectations and the Convention's performance-oriented design.

Therefore, the predictable nature of German CISG case law stems more from the structural coherence between the CISG's remedial regime and domestic expectations of contractual stability than from the clarity of the Convention's provisions. Since German courts are accustomed to comparing the severity of breach with the feasibility of continued performance, they tend to apply CISG remedies in a methodical and restrained manner, specifically in borderline cases involving partial non-performance or curable defects.[210] This interpretative style reduces the likelihood of sudden or forum-dependent remedial shifts and enhances foreseeability for contracting parties by signaling that termination will generally be reserved for situations of serious and irreversible

[206] Schlechtriem (n 204) 306-308.
[207] CISG arts 25, 74-77; Bundesgerichtshof (Germany), *BGHZ* 202, 258 (24 September 2014) (VIII ZR 394/12) ('CISG – Begriff der wesentlichen Vertragsverletzung (Art 25 CISG)') <https://lorenz.userweb.mwn.de/urteile/viiizr394_12.htm?utm_source> accessed 30 December 2025.
[208] Huber and Mullis (n 114) 213-215; Leonardo Graffi, 'Case Law on the Concept of "Fundamental Breach" in the Vienna Sales Convention' (2003) 3 *International Business Law Journal* 338-340 <https://heinonline.org/HOL/Page?handle=hein.journals/ibuslj19&id=338> accessed 30 December 2025.
[209] UNCITRAL, *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* (2016) art 49 para 17.
[210] Stefan Kröll, Loukas Mistelis and Pilar Perales Viscasillas (eds), *UN Convention on Contracts for the International Sale of Goods (CISG): A Commentary* (2nd edn, CH Beck/Hart 2018) art 25, paras 47-49; Magnus (n 87) 425-426.

disruption.

A brief doctrinal example illustrates how this "preservation-first" logic translates into CISG application. In the Bundesgerichtshof's *Cobalt Sulphate* decision (as discussed in more detail in Chapter 4.2), the buyer's attempt to avoid the contract was rejected on the ground that the alleged defects did not render the goods commercially unusable and that alternative remedies, most notably price reduction and damages, were sufficient to restore the contractual balance.[211] The significance of the decision lies less in its specific facts than in its reasoning style: termination was found inappropriate where the economic purpose of the contract could still be achieved through continued performance or compensatory remedies.[212] This approach closely mirrors the German doctrinal instinct, reflected in the logic of § 323 BGB, that termination is justified only where continued performance no longer offers a reasonable way to secure the contractual bargain.[213]

At the same time, the German experience highlights important questions for uniformity under the CISG. While German jurisprudence often appears exemplary in its adherence to the Convention's performance-oriented aim and autonomous reasoning, it also demonstrates how domestic remedial traditions can shape the application of CISG standards without clearly departing from the Convention's framework. German courts do not reject the CISG's international character; instead, they implement its flexible standards in line with familiar expectations concerning the sequencing of remedies, the centrality of cure, and the exceptional character of termination. The resulting consistency in outcomes therefore does not necessarily reflect a universally shared interpretative methodology but may be the product of a structural compatibility between domestic remedial culture and the design of the CISG. From this perspective, German predictability can be interpreted as both evidence of the Convention's functional success and an example of how a subtle "homeward trend" may operate. It supplements CISG's open-textured standards with reasoning patterns already present in domestic remedial structures rather than contradicting the CISG. This dynamic becomes more apparent when German practice is contrasted with jurisdictions whose remedial traditions diverge more sharply from the CISG's emphasis on contractual continuity and proportionality.

[211] BGH Cobalt Sulphate case (n 177).
[212] Ibid.
[213] BGB § 323(1).

5.2 CISG and US Law (UCC): Damages Orientation and Material Breach

United States (US) courts applying the CISG typically address a contract breach within a remedial culture, in which damages serve as the ordinary and primary response to non-performance.[214] This mindset is consistent with US sales law under the Uniform Commercial Code (UCC), where monetary compensation is the default remedy and performance-based relief has a limited role.[215] Under the UCC, concepts such as material breach and substantial impairment are commonly applied to determine the extent of a breach, particularly when installment contracts and revocation of acceptance are involved (§2-608 and §2-612 UCC).[216] Instead of focusing on the conceptual preservation of the contractual relationship, these domestic notions highlight the practical impact of the non-performance on the buyer's contractual expectations. Such remedial reasoning often guides how US courts interpret the open-textured CISG standards.

This background helps explain why US CISG jurisprudence often adopts an impact-based understanding of fundamental breach from a comparative standpoint. Instead of concentrating mainly on whether the performance can still remain objectively possible, courts are more likely to examine if the breach has undermined the reliability of the transaction or disrupted the business planning of the aggrieved party. This approach is illustrated by *Delchi Carrier SpA v Rotorex Corp* (as discussed in more detail in Chapter 4.2), where defective compressors were regarded as a fundamental breach of the contract because they disrupted the buyer's production process and downstream obligations, even though corrective performance was theoretically possible.[217] The case exemplifies how US courts assess "substantial deprivation" under Article 25 by reference to commercial consequences and loss of confidence in future performance.[218] Such an evaluation is closely identical to domestic concepts of substantial impairment.

The same damages-oriented approach heavily influences the application of Articles 74 and

[214] Fisher (n 119 248-250; CISG-Advisory Council, 'Opinion No 6: Calculation of Damages under CISG Article 74' (2006) paras 1-3; Huber and Mullis (n 114) 186; Eric C. Schneider, 'Consequential Damages in the International Sale of Goods: Analysis of Two Decisions' (2011) 16 *Journal of Damages in International Arbitration* 656.
[215] Uniform Commercial Code § 2-712, 2-715 and 2-716 (Am Law Inst & ULAA 2022).
[216] UCC §2-608, §2-612; Elizabeth Hayes Patterson, 'UCC Section 2-612(3): Breach of an Installment Contract and a Hobson's Choice for the Aggrieved Party' (1987) 48 Ohio St LJ 177, 179-180; Robert D Olson, 'Substantial Performance under the Uniform Commercial Code' (2019) 19 *Wyoming Law Review* 182-186.
[217] Delchi (n 181).
[218] Ishida (n 89) 80-84.

77 of the CISG in US practice.[219] Damage quantification, foreseeability, and mitigation analysis serve to deal with transactions that may not be terminated early because the damage must be avoided. US courts are clearly willing to award consequential and lost-profit damages when they naturally arise from the breach and are consistent with the commercial context of the transaction, provided that the losses are within the parties' risk horizon at the time of contracting.[220] At the same time, market volatility, information constraints, and the commercial risk associated with immediate substitute transactions are taken into account when evaluating reasonable and context-specific mitigation requirements.[221] Decisions such as *Chicago Prime Packers v Northam Food Trading* (discussed in Chapter 4.3) are an example of this approach, where foreseeability and mitigation were judged with reference to realistic market activity rather than precise expectations of rapid cover.[222]

Moreover, these interpretative patterns certainly cannot be considered as a resistance to the CISG as an international instrument. US courts generally apply the Convention's provisions explicitly and recognize its governing role.[223] Still, although Article 7(1) seeks to foster uniformity in interpretation, the flexibility of the CISG standards allows domestic remedial preferences, especially the primacy of damages and the emphasis on commercial impact, to shape their practical application.[224] Consequently, US CISG jurisprudence tends to produce flexible and economically responsive outcomes, which can result in a wider range of remedial variability in cross-border cases involving delay, partial non-conformity, or curable defects.

When it comes to predictability, this strategy shows both positive and negative aspects. Parties used to a damages-based legal environment may consider US CISG determinations commercially sensible and responsive to economic reality. However, the reduced emphasis on contract preservation and the consequence-based interpretation of fundamental breach make it more difficult to anticipate precisely when termination will be available under the CISG. Thus, the US experience highlights how the use of a formally uniform remedial framework can be reshaped

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219 Schneider (n 214) 623-624.
220 Ishida (n 124) 243-249.
221 CISG-Advisory Council, 'Opinion No 8: Calculation of Damages under CISG Articles 75 and 76' (2008) paras 2.1–2.3, 4.1
222 Chicago Prime Packers (n 183).
223 Marlyse McQuillen, 'The Development of a Federal CISG Common Law in U.S. Courts: Patterns of Interpretation and Citation' (2007) 61 *University of Miami Law Review* 512, 524-525.
224 CISG art 7(1); Inma Conde, '"Regard is to be had": The Legislative Intent of Article 7(1) of the CISG (Part 1)' (2023) 15(1) *European Journal of Commercial Contract Law* 4-5.

by domestic remedial culture. It supports the thesis's broader conclusion that predictability under the CISG depends on both textual coherence and the interpretive traditions used to apply its standards.

5.3 Comparative Assessment: Convergence, Divergence, and the Homeward Trend

A comparative analysis of the German and US approaches to CISG remedies reveals a complex interaction between divergence at the level of practical application and convergence at the level of formal doctrine. At the stage of formal doctrine, both the German and the US courts apply the same CISG provisions, recognize the international character of the Convention, and rely on shared remedial concepts such as fundamental breach, foreseeability, and mitigation. In this sense, the CISG has effectively managed to establish a common remedial vocabulary and a consistent normative framework. The divergences identified in practice therefore do not stem from rejection of the Convention, but from differences in how its flexible standards are implemented within distinct domestic remedial cultures. This directly addresses the central concern of this thesis, namely that coherence at the level of legal design does not automatically translate into predictability of remedial outcomes.

The most notable divergence is how much importance is given to the contract preservation as opposed to the economic impact. German jurisprudence usually organizes remedies within a performance-oriented framework that prioritizes cure, proportionality, and preservation of the contractual exchange. On the contrary, US jurisprudence quite often analyzes breaches in terms of how the injured party's commercial expectations were affected, thereby relegating protection mechanisms to the background. This contrast is visible, for example, in the restrictive German approach to avoidance reflected in the *Cobalt Sulphate*[225] decision and the more impact-driven assessment of fundamental breach adopted by the US court in *Delchi Carrier v Ro*torex[226]. Although both courts formally applied Article 25 CISG, their reasoning demonstrates how domestic remedial traditions impact the evaluation of "substantial deprivation" and the criteria for termination.

[225] BGH Cobalt Sulphate case (n 177).
[226] Delchi (n 181).

Similar characteristics can be observed in the application of the damages regime. German courts integrate foreseeability and mitigation into a disciplined framework aimed at containing liability and preserving contractual balance, whereas US courts frequently treat these concepts as instruments of practical commercial risk allocation. On the one hand. this is reflected in German decisions limiting recovery where losses could have been avoided through timely substitute transactions, and on the other hand, in US decisions where mitigation and foreseeability were reviewed with close attention to market conditions and commercial uncertainty.[227] In both cases, the same CISG provisions are applied, yet the underlying remedial logic differs in ways that affect both the scope of recoverable loss and the foreseeability of outcomes. In functional terms, German courts tend to use performance and price reduction to contain the effects of breach, while US courts prefer to accept termination and shift the core dispute into the scope of damages.

Forum-sensitivity is also visible in the Convention's treatment of specific performance. Articles 46 and 62 provide a substantive right to seek performance, but Article 28 allows courts to refuse a remedy where it is not available under domestic law, introducing a structural mechanism through which remedial culture can shape outcomes even under a formally uniform text.[228]

These patterns represent a subtle version of the homeward trend operating at a methodological rather than doctrinal level, despite Article 7(1)'s mandate to promote uniformity of interpretation and respect the international character of the Convention.[229] Courts interpret CISG standards in ways that align with familiar remedial assumptions, rather than openly revert to domestic law. In Germany, it leads to a limited application of the avoidance and an increased focus on cure and proportionality; in the US, it is reflected in a greater preference to push remedial disputes into damages assessments and to prioritize commercial impact over contractual continuity. The resulting divergence does not undermine the CISG's internal coherence, but it produces forum-sensitive consequences that are difficult to predict ex ante for parties seeking to price legal risk at the contract formation stage.

Furthermore, the comparative findings suggest that the CISG's objective must be understood in qualified terms, from the perspective of uniformity. Uniformity does not require identical results across jurisdictions, but it implies a common interpretative methodology that

[227] Chicago Prime Packers (n 183).
[228] CISG arts 28, 46, 62; UNCITRAL, *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods (CISG)* (2016) Art 28.
[229] Zeller (n 53) 134-137; Schwenzer (n 7) 103-108.

limits forum-dependent variation, as stated in Article 7(1). In practice, sophisticated parties often rely on Article 6 CISG and detailed contractual drafting to restore some degree of ex ante certainty.[230] Where domestic remedial traditions closely align with the CISG's performance-oriented design, as in Germany, predictability is higher, not because the rules are more certain, but judicial instincts and Convention logic reinforce one another. Where such adaptation is weaker, as in the US, flexibility increases, but predictability decreases correspondingly in borderline cases.

Arbitral practice, as specified in Chapter 4.4, partially opposes these tendencies by adopting more explicitly autonomous CISG reasoning and engaging more systematically with international sources. Nevertheless, the limited publication and precedential visibility of arbitral awards restrict their potential to satisfy remedial expectations outside specific commercial sectors. Overall, the comparative analysis supports the main argument of this study: while the CISG proposes a coherent remedial framework, the interaction between open-textured standards, domestic interpretative traditions, and institutional context reduces its capacity to deliver predictable results in cross-border disputes. Hence, predictability under the CISG does not simply derive from textual uniformity, but from the extent to which courts and tribunals converge in their interpretative method when applying the Convention in practice.

CHAPTER 6

Evaluating Coherence and Predictability in Cross-Border Disputes

6.1 Overall Coherence of the CISG Remedial Framework

An assessment of the CISG's remedial regime indicates a system that is largely coherent in its internal design, despite its practical application resulting in inconsistent outcomes across jurisdictions. In this regard, coherence does not require mechanical uniformity or exhaustive precision in every provision. Instead, it refers to the existence of a coherent remedial logic in which

[230] CISG art 6; William P Johnson, 'Understanding Exclusion of the CISG: A New Paradigm of Determining Party Intent' (2011) 59 *Buffalo Law Review* 220-222.

potential solutions for breaches are functionally complementary, systematically connected, and guided by common normative objectives. According to this view, the CISG offers an organized and transparent framework that balances performance, compensation, and termination, thus making it suitable for international commercial transactions.

At the heart of this consistency is the Convention's performance-oriented framework. The CISG does not treat a breach as an automatic trigger for termination of the contract. In fact, it mainly offers a set of remedies that give priority to the continuation of the contractual exchange as long as it remains commercially feasible. Besides damages, remedies such as cure, substitute performance, and price reduction are also applicable to preserve the economic purpose of the contract, whereas avoidance is intentionally kept only for cases of fundamental breach. While the Convention does not explicitly set a hierarchy of remedies, its structure implicitly favors corrective and compensatory measures over termination. The interaction of Articles 45 and 61 as entry points to the remedial system, together with the linking concepts of fundamental breach (Article 25), foreseeability (Article 74), and mitigation (Article 77), significantly underlines the consistent nature of the CISG's approach to non-performance.

One of the most explicit signs of the remedial framework's consistency is its continuous protection of the expectation interest. The CISG's remedies are designed to put the injured party in the same situation that they would have been in if the contract had been properly performed, while restricting recovery to losses that were foreseeable and reasonably unavoidable. This dual commitment to full compensation and limitation of liability reflects an internally consistent understanding of risk allocation. Therefore, damages, avoidance, and performance-oriented remedies should not be treated as competing responses, but as closely related instruments under a shared normative framework aimed at maintaining commercial balance between the parties.

In addition, the system's overall coherence is not undermined by the application of open-textured standards as fundamental breach and reasonableness. On the contrary, these standards play a functional role within the design of the CISG by enabling the remedial framework to adapt to various legal and commercial environments. The Convention intentionally avoids from strict classification, in favor of flexible criteria that can accommodate the complexity of international trade. As a result of this flexibility, interpretative divergence arises in the practice; however, this does not lead to internal contradictions or normative inconsistency. The remedial provisions of the CISG keep pointing toward proportionality of response, preservation of contractual value, and rational allocation of commercial risk.

The analysis in previous chapters reveals that the divergence in practice is mainly at the level of application, rather than design. The differences between jurisdictions are a result of different interpretative methodologies and remedial cultures, not a lack of structural coherence of the Convention. Even when courts make distinct decisions in similar factual cases, they usually refer to the same core CISG concepts and remedial objectives. This means that the CISG provides a coherent normative framework capable of guiding remedial reasoning across legal systems, even if it may not always produce the identical results.

To sum up, the CISG's remedial regime can be evaluated as coherent in both its internal structure and its foundational normative orientation. Its principal challenge is not doctrinal fragmentation or conceptual inconsistency, but how practically the flexible standards are operationalized by the courts and tribunals that belong to different legal traditions. This distinction is critical for the overall evaluation of the Convention: a coherent remedial system may still impose certain limits on predictability, but such limits do not undermine the systemic integrity of the CISG's design. The question of predictability therefore turns not on whether the CISG remedies form a coherent system, but on how consistently that system is interpreted and applied in practice (an issue addressed in the following section).

6.2 Predictability in Practice: Strengths and Structural Limits

Although the remedial framework of the CISG can be considered as consistent in its internal structure, its actual predictability in practice presents a more complicated picture. Predictability in international contract law is not about imposing the same results in different courts of law across jurisdictions. It is about that contracting parties must be able to reasonably foresee how disputes shall be resolved in comparable factual situations. This section argues that the CISG constitutes a moderate but incomplete level of predictability. The remedial regime gives systematic guidance for the risk assessment, yet it is still limited by methodological and institutional constraints that reduce the consistency of outcomes in cross-border disputes.

One of the main reasons for these limits is the Convention's reliance on open-textured standards. Terms such as fundamental breach, foreseeability, mitigation, and reasonableness have been purposely kept flexible so that diverse commercial circumstances can be taken into consideration. This flexibility makes the CISG more adaptable and functionally relevant, however, it also leaves the interpretation open that various courts fill in differently. As discussed in the previous chapters, similar factual scenarios may be judged in different ways depending on the courts' preference for contract preservation, damages-based risk allocation, or the practical impact of the breach. These inconsistencies do not arise from doubt regarding the applicable law, but from a difference in how the flexible standards are implemented in practice, either more broadly or more narrowly.

Predictability is also influenced by the institutional context in which CISG disputes are resolved. National courts, as they generally operate within established procedural frameworks and domestic remedial cultures, integrate CISG standards into familiar patterns of reasoning. This integration often occurs indirectly, especially when internal concepts such as materiality, proportionality, or causation correspond to the open CISG definitions. Thus, even in circumstances in which courts formally recognize the international scope of the Convention, remedial decisions may reflect forum-specific priorities. For contracting parties, this forum sensitivity complicates assessing the risks in advance, because the availability and extent of remedies may depend not only on the facts of the breach, but also on the interpretative habits of the deciding body.

Arbitration partly balances this variability of the situation. As Chapter 4 illustrates, arbitrators often apply CISG remedies in a more autonomous and internationally oriented manner, specifically referencing scholarly commentary and comparative case law. In certain commercial sectors, notably those in which arbitration clauses are standard and parties operate in repeat-player environments, this methodological consistency may be useful to increase the predictability of transactions. In any case, the ability of arbitration to increase overall predictability is constrained due to the confidentiality of proceedings and the restricted publication of awards. While arbitration may encourage compliance in individual disputes, it does not create a sufficiently clear precedent to stabilize expectations across jurisdictions.

Moreover, it should be noted that the observed limits of predictability do not mean arbitrariness. Decisions of courts and arbitrators applying the CISG follow recognizable characteristics associated with domestic remedial tendencies. For instance, German practice is more reluctant to contract termination and generally favors performance-oriented solutions. In contrast, the US practice focuses more on damages and the commercial impact of the breach. Even if exact results remain unknown, experienced parties can predict the potential interpretative direction once these tendencies are recognized. Predictability of the CISG thus mainly refers to maintenance of the line of reasoning rather than fixed rules.

From a normative perspective, this qualified predictability also involves a structural trade-off that is part of the CISG's design. By giving priority to flexibility and functional equivalence instead of insisting on strict uniformity, the Convention achieves worldwide acceptance at the cost of remedial variability. This design facilitates the CISG's adaptability across different legal traditions, but it also undermines its capacity to provide completely adapted remedies. Therefore, predictability depends not only on how clear the text of the Convention is but also on how far the courts agree on their methods of interpretation when applying the flexible standards.

As a result, it can be claimed that in practice, the CISG provides a moderate but insufficient level of predictability. Although it fails to eliminate forum-dependent uncertainty, its remedial procedure allows parties to analyze legal risk within a coherent framework. Such a consideration does not reject the Convention as a uniform sales law; on the contrary, it shows that interpretative discipline, comparative reasoning, and institutional transparency still matter a lot in increasing legal certainty. The remaining question is no longer whether the CISG remedies are absolutely predictable, but whether the existing degree of predictability is sufficient to facilitate reliable commercial planning in the international trade sphere (a question addressed in the final evaluative balance of this thesis).

6.3 Structural Limits, Critiques, and International Constraints

The previous evaluation has demonstrated that the remedial framework of the CISG is coherent in design and capable of offering an organized, but also incomplete level of predictability in practice. Still, an extensive examination must also address the structural weaknesses and objections to the remedial system of the Convention. These boundaries do not arise mainly from doctrinal inconsistency or conceptual failure, but from deliberate design choices and the institutional environment in which the CISG functions. For analytical clarity, they can be understood as normative, institutional, and informational constraints that shape the Convention’s practical effectiveness.

A major normative constraint concerns the CISG’s reliance on open-textured standards.

Open-textured concepts are purposefully formulated in flexible terms to accommodate a variety of commercial practices and legal traditions. This flexibility strengthens the Convention's adaptability, functional relevance, and international acceptance, but at the same time lowers the level of certainty that parties and courts can rely on beforehand. As illustrated in earlier chapters, such standards are highly vulnerable to varying interpretations depending on domestic remedial cultures. Nevertheless, this conceptual vagueness should not be understood as a defect in the CISG's architecture. On the contrary, it is a deliberate compromise between precision and universality: a stricter, rule-based Convention would have created greater predictability, but its global acceptance and the practical usability in diverse legal and commercial environments would likely be significantly lower.

A further institutional constraint concerns enforcement and evidential issues in the application of remedies, particularly in the context of damages. The determination of loss under Articles 74-77 involves a detailed review of the facts of causation, foreseeability and mitigation, which are rarely available in cross-border disputes. These problems are further increased by variations in procedural rules, evidentiary standards, and litigation culture across jurisdictions. Internal approaches to the burden of proof, admissibility of evidence, and causation determine the practical value of the substantive CISG norm, regardless of its conceptual clarity. Consequently, predictability may be impaired not by the CISG itself, but by the varied procedural systems in which it is applied.

An additional informational constraint constitutes the accessibility and circulation of interpretative knowledge regarding the CISG in practice. On the one hand, tools such as the UNCITRAL Digest, CLOUT case law, and CISG Advisory Council Opinions certainly contribute to promoting uniform interpretation, but their impact is still uneven across jurisdictions. Some courts and tribunals prefer to depend more on domestic precedent or their own established methodological habits, while others actively engage with international sources and comparative reasoning. This asymmetry restricts the CISG's ability to produce a stable and widely shared interpretative practice and may disadvantage parties with limited access to international jurisprudence. Arbitration, although it is methodologically consistent and internationally oriented in general, is similarly constrained due to the confidentiality and selective publication of awards. Arbitration may increase predictability for the individual disputing parties, but it has a minimal effect on stabilizing expectations for the wider international commercial community.

Additionally, scholarly debates have had various reactions to these issues. Some commentators support using soft-law instruments and international case law more frequently to promote stronger interpretive discipline, while others emphasize the importance of clearer treaty drafting and private ordering to reduce doctrinal flexibility.[231] However, proposals for formal reform of the CISG's remedial provisions remain limited and controversial. Due to the Convention's broad recognition and the functional coherence of its system of remedies, extensive legislative revision is neither a realistic nor a necessary measure. The principal challenge lies in ensuring a better interpretative and institutional environment, rather than in reshaping the remedy system.

Taken together, these critiques basically show that the remedial system of the CISG operates within clearly defined structural boundaries. The level of predictability that can be achieved is undoubtedly impacted by flexibility, the diversity of enforcement forums, and decentralized interpretation. However, these boundaries do not undermine the Convention's effectiveness. In fact, they emphasize the conditions under which the Convention performs best: where the courts and tribunals give genuine consideration to its international character, where comparative reasoning is welcomed, and where parties manage legal risks through precise contractual drafting and informed forum selection. Thus, the CISG's remedial framework is not fragile, but its full potential depends on interpretative practice rather than textual refinement.

6.4 Overall Assessment: Effectiveness of CISG Remedies in Cross-Border Disputes

While the CISG's reformative framework is not perfect, it is fundamentally effective when considering its doctrinal design, its application in comparative case law, and its interaction with domestic legal systems. The Convention succeeds in providing parties with a widely reliable remedial vocabulary that is applicable across legal traditions and offers a coherent and commercially useful framework for addressing breaches in international sales contracts. At the same time, predictability remains uneven in practice. This is not due to a lack of correction

[231] Schwenzer (n 56) 116-118; Larry A DiMatteo and André U Janssen, 'Interpretive Uncertainty: Methodological Solutions for Interpreting the CISG' (2012) 62-64; H Allen Blair, 'Hard Cases under the CISG' (2011) 21 *Duke J Comp & Int'l L* 271–273; Ulrich G. Schroeter, 'Uniformity and Standardized Flexibility Under the CISG' (2025) 22 *UCLA Journal of Islamic and Near Eastern Law* 196-197.

experience, but rather to the CISG's open-textured standards, decentralized enforcement structure, and various interpretation settings, which result in forum-sensitive decisions in cross-border cases. The CISG's effectiveness therefore stems from the combination of systemic coherence and practical adaptability, while its limitations result from the design elements that enabled its widespread international adoption.

The remedial regime of the CISG is successful from a systemic standpoint because it incorporates various remedial measures into an internally connected architecture that aligns with the economic logic of international trade. Instead of a single consequence of a breach, the Convention thus establishes a set of remedies that can be applied proportionately depending on the type and degree of non-performance. This arrangement is based on functional equivalence between buyer and seller remedies, thereby preserving the neutrality of the regime and lowering the risk of remedial consequences that depend on the party's status rather than the contractual substance. The coexistence of performance-based remedies, monetary relief, and termination in a single framework allows the CISG to restrict the domestic gap-filling, despite both ordinary transactional disputes and serious breaches of the contractual exchange. This systemic integration supports commercial practicality; parties may continue performance, modify the price, seek damages, or terminate when disruption exceeds a critical threshold under the same international instrument.

The effectiveness of the CISG is also demonstrated by its protection of the expectation interest and the application of principled limitations on liability that reflect a rational risk allocation. In addition to compensating for loss and lowering the incentives for opportunistic termination, damages serve as the main "stabilizing" remedy of the system. Furthermore, due to the duty to mitigate and the foreseeability limitation, compensation is confined to damages that are reasonably avoidable after breach and commercially assessable at the time of contracting. These processes encourage economically beneficial behavior and strengthen ex ante risk allocation, both during performance and after a breach. In terms of design, such a balance properly combines full compensation with reasonable limits on liability and adapts the damages regime to different commercial contexts, for example, complex supply chains and fluctuating markets. In international commerce, where replacement transactions are expensive and relationships are often continuing, this damage-centered stability is normatively adequate.

Nonetheless, the CISG's success should not be measured only from the level of doctrinal coherence. In practice, its performance is largely influenced by how courts and tribunals apply the

Convention's flexible standards. The CISG purposefully employs open-textured standards (e.g., fundamental breach, reasonableness, foreseeability, and adequate mitigation) to enable contextual evaluation across diverse commercial contexts. Such a methodological decision is reasonable for an international instrument, but at the same time it permits interpretation variation, especially in borderline cases rather than clear non-performance. The framework is consistent but not entirely definitive; it guides adjudicators toward proportionality and commercial rationality while permitting various methodological paths to achieve that goal. Hence, the predictable use of the CISG depends not only on its rules but also on the interpretative discipline and the willingness of the decision-makers to treat the Convention as an autonomous body of law.

This interaction between clear structure and diverse application can be particularly recognized in the operation of avoidance. The CISG expresses a preference for maintaining trading relationships and contractual stability by regulating termination through the gatekeeping concept of fundamental breach. However, the court's decision to grant avoidance may be based on a different assessment of "substantial deprivation" depending on whether it prioritizes damage-oriented risk reallocation, commercial effect, or contract preservation. One jurisdiction may approve termination when reliability is compromised or continued performance creates unacceptable uncertainty, while another may reserve avoidance for obvious and permanent violations. This does not indicate that the CISG's remedial logic has failed, but it illustrates that predictability is constrained by interpretative methods. The Convention may provide guidance on proportionate consequences, but it cannot completely eliminate forum sensitivity when its standards are applied across different remedial cultures.

A comparative view confirms that these differences are not random but rather follow a specific pattern. They are a structural expression of the "homeward trend", reflecting the influence of domestic remedial assumptions on the implementation of international norms. As an example, CISG is typically used in German practice through a performance-oriented, contract-preserving methodology that aligns closely with resembles the remedial architecture of the Convention. Thus, it generates relatively stable patterns, particularly when it comes to the exceptional nature of avoidance and a preference for compensatory or corrective solutions. On the contrary, the United States practice typically functions within damages-centered remedial culture and uses risk allocation and commercial impact to determine the gravity of breaches. It considers the CISG's open standards as consistent with internal concepts such as material breach or substantial impairment. The result is methodological divergence, courts apply the identical provisions but fill in the gaps with different reasoning styles. For contracting parties, this produces mutually exclusive directions of reasoning within the forums but diminishes cross-forum predictability of outcomes in borderline cases.

The institutional aspect of dispute resolution further shapes the overall performance of the CISG. Arbitration generally adopts a more international approach to interpretation, with tribunals explicitly drawing on comparative sources, international case law, and scholarly commentary. On the other hand, arbitration is also a drawback of decentralized uniform law. Arbitration awards are less visible due to their confidentiality and selective publication, which reduces their capacity to stabilize expectations outside of the immediate dispute or within a particular commercial community. While national court decisions are more publicly accessible and potentially more precedent forming, they exist in various procedural environments that shape proof, causation assessments, and remedial instincts. As a result, the CISG performs in a varied enforcement landscape where predictability is dependent on both the forum administering the rules and the substantive rules themselves.

A further dimension of effectiveness is whether the CISG remedies offer balanced protection to both buyers and sellers. The Convention has symmetrical remedial procedures and a number of methods that allow both parties to respond appropriately to breaches on a formal level. Under the CISG, buyers may require performance (Art. 46(1)), demand repair or replacement (Arts. 46(2)-46(3)), reduce the price (Art. 50), claim damages (Arts. 45(1)(b); 74-77) or avoid the contract (Art. 49(1)) where deprivation is fundamental (Art. 25). Sellers may require payment and performance (Art. 62), exercise their right to cure within the structure of the Convention (Art. 48), and claim damages (Arts. 61(1)(b); 74-77) or avoid the contract (Art. 64(1)(a)) where the buyer's breach is at the level required (Art. 25). This neutrality is a valuable strength, in cross-border disputes where parties are looking for a universal legal framework. However, sufficiency is determined by several factors, including the availability of evidence, the enforceability of awards or judgments, and the clarity of damage quantification in practice. These practical restrictions essentially regulate the actual protective potential of remedies and contribute to the variety of findings, rather than indicating issues with the CISG's range of treatments.

Overall, the CISG is effective in achieving coherent remedial harmonization across legal systems, but it is only partially successful in delivering uniform predictability among jurisdictions.

The remedial system set out by the Convention serves as a logical framework for allocating risk and resolving disputes that is suitable for international sales. It remains capable of producing commercially feasible results through autonomous interpretation in light of its international character. The primary weakness is not in the doctrinal design but in the convergence of interpretations. The Convention's promise of uniform application becomes challenging to fully achieve when courts and arbitral tribunals apply open-textured standards in accordance with domestically inflected approaches. The most reasonable overall conclusion is that while CISG remedies are coherent, balanced, and practically applicable, legal certainty in cross-border conflicts is generally obtained by recognizable interpretive patterns rather than strict cross-forum uniformity of outcomes. The final conclusions and recommendations of this thesis are based on this dual nature, which defines both the advantages and the limitations of the CISG's remedial regime: qualified predictability and coherent design.

CHAPTER 7

Conclusion

The main focus of this thesis is to examine whether the CISG provides a coherent and predictable framework of remedies for breaches of international sales contracts. A detailed analysis of the Convention shows that it offers a system of remedies that is structurally consistent and commercially effective at the design level. The architecture of its remedies is designed to balance performance-oriented responses, monetary compensation, and termination as a measure of last resort, supported by limiting principles that allocate a rational risk allocation. In this sense, the CISG succeeds in creating a universally applicable remedial language that connects different legal traditions and allows parties to address non-performance without relying on fragmented domestic regimes.

The central qualification concerns predictability in practice. This thesis has argued that the CISG's flexible standards, especially those governing the seriousness of the breach, recovery of loss, and reasonable conduct after the breach, are capable of producing stable outcomes where interpretative methods converge. At the same time, they also permit forum-sensitive variation, in which domestic remedial cultures affect the application of these standards. The final view is related to conditional predictability: although the CISG generally offers recognized interpretative routes, it may not guarantee the same results across jurisdictions in cross-border cases, especially where the decision between preservation and termination depends on contextual considerations. The effectiveness of the CISG therefore depends not only on its normative structure but also on the interpretative environment in which it operates.

The main finding of the comparative analysis is that divergence is rarely the result of a deliberate rejection of the international character of the CISG. Instead, it arises from methodological diversity, as courts and tribunals tend to adapt the Convention to familiar domestic contract law traditions, primarily when applying open-textured standards. This dynamic does not undermine the CISG's coherence, but it constrains its ability to deliver strong legal certainty through cross-forum uniformity. Thus, the findings support a subtle conclusion: the CISG provisions are sufficiently comprehensive to protect both buyers and sellers within a coherent framework, but their predictability remains uneven due to the decentralized application of flexible standards that preserve domestic interpretative priorities.

From a practical perspective, this assessment has several implications for contracting parties, and for the broader interpretative practice under the CISG. The following recommendations are not intended to propose reforms to the text of the Convention, as such changes would be neither realistic nor necessary for the overall functional success of the CISG. Instead, they focus on interpretive and practical steps to enhance predictability within the existing framework.

Firstly, greater interpretative discipline under Article 7(1) is necessary to mitigate methodological fragmentation. When applying the CISG, courts should engage more consistently with its international character as an operative directive rather than merely as a formal statement. This implies treating the Convention as an autonomous body of law and interpreting its open-textured standards through internationally oriented reasoning. This involves an increased willingness to refer to international sources such as the UNCITRAL Digest, CLOUT case law, and CISG Advisory Council Opinions, when interpreting fundamental breach, foreseeability, and mitigation in practice. Such sources are not binding, but they provide an accessible way to promote convergence in reasoning, which is an essential element for enhanced predictability.

Second, both the transparency and accessibility of interpretative practices should be strengthened. The decentralized structure of the CISG makes it particularly dependent on the existence of consistent interpretative guidance. If more decisions are published in a way that allows them to be easily found and compared, including arbitration awards where possible, it would contribute to the stabilization of expectations. Although confidentiality is one of the main characteristics of arbitration, even limited publication of anonymized awards or reasoned extracts, in cases where consent is given, could increase the visibility of arbitral reasoning and reduce information asymmetries between repeat players and occasional market participants. Improved accessibility does not mean uniform outcomes, but it gives parties and adjudicators the opportunity to identify interpretative patterns and thereby supports legal certainty ex ante.

Third, parties should actively manage remedial risk by carefully drafting the contract and strategically selecting the dispute resolution forum under Article 6 of the CISG. The findings of the thesis suggest that predictability is often shaped not only by the text of the CISG, but also by the interpretative tendencies of the forum. Parties can minimize uncertainty by drafting clauses that clarify the commercial purpose, allocate risk more transparently, and specify the practical consequences of delay or non-conformity. Well-drafted notice provisions, defined quality standards, and specific rules for substitute performance can undermine interpretative discretion and lead to more consistent outcomes. Alternatively, the strategic selection of dispute resolution methods, such as arbitration under certain rules or litigation in a specific jurisdiction, may align with the parties' preferred remedial focus and predictability requirements.

Fourth, commercial actors and legal advisers should consider the CISG not just as a last resort default, but also as a practical framework. The Convention is often applied indirectly, and sometimes intentionally, without regard to its remedial structure. By getting more involved with CISG remedies, notably knowledge of how performance rights, damages limitations, and termination conditions interact, can make contracting more efficient and lower the chances of remedial surprises. This involves not just choosing the CISG as the applicable law, but also understanding how its remedial logic works in practice, including the evidentiary requirements for damages and the contextual nature of the fundamental breach.

In conclusion, this thesis has demonstrated that the CISG provides a coherent and balanced remedial system that is well-suited to international sales; however, its ability to ensure predictability across jurisdictions is still conditional. A large part of coherence is secured by the internal structure of remedies and their common normative objectives. By contrast, predictability relies on similar interpretative conclusions, transparent judicial reasoning, and the parties' ability to manage risks. Therefore, the CISG is a successful instrument for international trade, not because it eliminates any kind of uncertainty, but it sets out a common remedial framework within which uncertainty can be effectively managed. Strengthening the practical predictability of the Convention does not mean changing its provisions. It requires strengthening the international interpretation and improving the availability of judicial reasoning so that parties can anticipate outcomes with greater confidence in the divergent legal environment in which the CISG operates.

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