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Normative Gaps and Interpretative Challenges: Interest Rates Determination under Article 78 of CISG in Cases Of Delayed Payment

Msokele Method Akilimali^{1*}

¹ The Open University of Tanzania, P. O. Box 23409, Dar es Salaam, Tanzania.

* Author's ORCID ID: <https://orcid.org/0009-0002-3113-5947>; Email: msokelemethod72@gmail.com

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Delays in payment in international commercial dealings, which may either be intentional or as a result of force majeure, raise important legal questions on how the financial rights of the other party to the contract, particularly the right to interest, can be determined. While Article 78 of the United Nations Convention on Contracts for the International Sale of Goods (CISG) imposes an obligation on the debtor to pay interest on sums in arrears, it notably fails to specify critical elements of interest rate determination, for instance, the applicable interest rate or the method of its calculation. This omission has led to diverse interpretations in the legal practice. Thus, courts, arbitral tribunals, and scholars across jurisdictions have tried to fill this gap in different ways, others apply domestic interest rates, while others referring to commercial practices, or using international benchmarks, or applying the law of the place of payment, however, these diverse approaches adopted by courts, and arbitral tribunal undermine the CISG's core objectives of uniformity, legal certainty, and predictability in international commerce, hence, discourages parties from entering into cross-border commercial contracts, thereby weakening trust in the CISG regime. This study employs doctrinal and non-doctrinal methodology in data collection. It has been revealed that the diverse approaches adopted by courts, arbitral tribunals, and various scholars as gap-filling under Article 78 of CISG have led to jurisdictional inconsistencies, a lack of uniformity, and unpredictable cash flow, just to name a few. Thus, this article proposes a principled approach that reconciles CISG's uniformity goals with practical commercial realities, thus promoting legal certainty in international trade.

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INTRODUCTION

Due to globalisation, which has made the world into a small village as a result of the development of technology, people across different jurisdictions are closely linked; henceforth, international trade has become more reliable for global economic growth.¹ Commercial actors from diverse sides of the world daily enter into cross-border sales contracts through relying on standardised legal instruments to operate their business transactions; hence, the United Nations Convention on Contracts for the International Sale of Goods (CISG) was adopted in that regard.²

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is widely regarded as a milestone in the harmonisation of international sales law with the aim of meeting the demands of legal uniformity in cross-border trade.³ It was adopted as a weapon to provide a consistent and predictable legal foundation for international sales transactions.⁴ Its primary objective is to provide a uniform legal framework that transcends the divergences of domestic legal traditions, thereby facilitating international trade and reducing transaction costs.⁵

However, even with its wide adoption and essential role in facilitating global trade, the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not without gaps. Among the noticeable gaps is the provision of Article 78, which allows for interest on delayed

payments; however, it omits to prescribe the applicable interest rate or the method for its determination.⁶

This *lacuna* in the methods of interest rate determination has created legal uncertainty in the sphere of international commercial business. Thus, courts, arbitral tribunals, and various scholars across different jurisdictions have developed their own ways of filling this gap⁷. For instance, some turn to national laws, and others use soft law instruments like the International Institute for the Unification of Private Law (UNIDROIT) Principles.⁸ The resultant fragmentation not only complicates dispute resolution but also undermines the CISG's core objective, which is the promotion of legal uniformity.⁹

For instance, when two parties in different jurisdictions are bound by the United Nations Convention on Contracts for the International Sale of Goods (CISG) but receive completely different outcomes from different courts for similar breaches, hence; legal uniformity and predictability will not and cannot be achieved. This can be observed in trade relationships often involved Small and Medium-sized Enterprises (SMEs) and developing country actors, which they can easily be exploited due to legal uncertainty of Article 78 of United Nations Convention on Contracts for the International Sale of Goods (CISG) since it led to unpredictable cash flow, increased legal costs, limited access to

¹ Schlechtriem, P. and Schwenzer, I., *Commentary on the UN Convention on the International Sale of Goods (CISG)*, 4th edn, (OUP, 2016), 3.

² United Nations Commission on International Trade Law (UNCITRAL), “United Nations Convention on Contracts for the International Sale of Goods (CISG)”, (11 April 1980), 1489 UNTS 3.

³ UNCITRAL, *CISG Digest: Article 78*, UN Doc A/CN.9/SER.C/DIGEST/CISG/78

⁴ Schlechtriem, P. and Schwenzer, I., *Commentary on the UN Convention on the International Sale of Goods (CISG)*, 4th edn, (OUP, 2016).

⁵ Ferrari, F., *The Draft UNCITRAL Digest and Beyond*, (Sellier European Law Publishers, 2004), 441.

⁶ Lookofsky, J., *Understanding the CISG*, 5th edn, (DJØF Publishing 2020) 253-256.

⁷ Bianca, C.M. and Bonell, M.J. (eds), *Commentary on the International Sales Law*, (Giuffrè 1987) 546.

⁸ Ferrari, F., “Comparative Ruminations on the Foreseeability of Damages in Contract Law” (1995) 53 *La. L. Rev.* 1257, 1283.

⁹ Preamble of the United Nations Convention on Contracts for the International Sale of Goods, 1980.

capital, investment deterrent, as well as economic instability just to name few.¹⁰

Furthermore, considering various approaches proposed as a basis for calculating interest on delayed payments, including but not limited to Reference Rate like London Interbank Offered Rate (LIBOR), and Secured Overnight Financial Rate (SOFR), Euro Interbank Offered Rate (EURIBOR), or the use of National Law, in most cases, favour developed countries which are strong economically.¹¹ Small and Medium-sized Enterprises (SMEs) and developing country actors might face challenges due to limited financial resources, infrastructure, or negotiating power.¹² For instance, parties from powerful countries (developed countries) may dictate the applicable law or impose interest terms in ways that affect their weaker counterparts.¹³ Therefore, for small businesses and developing country actors, this *lacuna* means losing the compensation they deserve.¹⁴ This dilemma is reflected in the Case Law on UNCITRAL Texts (CLOUT Case), where a German court applied its domestic law to determine the interest rate under Article 78, even though this approach may not have been fair for the non-German party who was involved in the dispute.¹⁵ This illustrates how even judges are forced to make inconsistent and conflicting rulings due to a lack of legal guidance and legal uniformity in the interest rate determination under the United Nations Convention on Contracts for the International Sale of Goods (CISG).

From a wide legal standpoint, this issue disrupts the international principle of *pacta sunt servanda*, which states that the agreement must be kept.¹⁶ The legal gap in the interest rate determination under Article 78 of the United Nations Convention on Contracts for the International Sale

of Goods (CISG) undermines the principle of *pacta sunt servanda*, since the principle requires contractual obligations to be honoured in full, including timely payment. For instance, in *Delchi Carrier v Rotorex*,¹⁷ the court awarded interest but applied domestic law, which highlights the United Nations Convention on Contracts for the International Sale of Goods' interpretative gap.

Despite scholars' attention to this gap, to date, there is no comprehensive and understandable international agreement on how to resolve the same.¹⁸ For instance, some legal scholars advocate for the development of a transnational standard based on Article 7(2) of the United Nations Convention on Contracts for the International Sale of Goods (CISG), which allows the use of general principles,¹⁹ while others suggest the amendment of the United Nations Convention on Contracts for the International Sale of Goods altogether to include a default interest for determining one.²⁰ However, as it stands, the problem continues to affect commercial actors all over the world, especially Small and Medium-sized Enterprises (SMEs) and developing countries.

Thus, this article undertakes a critical examination of the normative gaps and interpretative challenges surrounding Article 78. It provides an overview of the relevant international jurisprudence, evaluates scholarly approaches to gap-filling, and proposes practical solutions to promote consistent and predictable application of interest rate determinations in delayed payment cases under the CISG.

¹⁰ Honnold, J., "Uniform Law for International Sales under the 1980 United Nations Convention", 3rd edn, (1999). *Kluwer Law International*, 522.

¹¹ Ulrich, T., "Uniform Interest Rates under Article 78 CISG", (2022) 33 *Journal of Transnational Law* 167.

¹² Ulrich, T., "Uniform Interest Rates under Article 78 CISG", (2022) 33 *Journal of Transnational Law* 167.

¹³ Zellamages., *Under the Convention on Contracts for the International Sale of Goods*, 2nd edn (OUP, 2009) 149.

¹⁴ Lookofsky, J., *Understanding the CISG*, 5th edn, (DJØF Publishing 2020), 143.

¹⁵ *CLOUT Case No. 123* [Oberlandesgericht München, Germany, 8 March 1995] <https://cisg-online.org/> accessed 28 May 2025.

¹⁶ Enderlein, F, and Maskow, D., *International Sales Law*, (Oceana Publications, 1992), 324.

¹⁷ *Delchi Carrier v Rotorex*, 1995.

¹⁸ Mistelis, L., *CISG and Harmonization of National Contract Laws*, in Ferrari, F (ed), *The 1980 Uniform Sales Law* (Sellier 2003) 21.

¹⁹ Schwenger, I., "The Danger of Domestic Pre-Conceived Views with Respect to the Uniform Interpretation of the CISG" (2005) 36 *VUWLR* 795.

²⁰ Ferrari, F (ed), *The 1980 Uniform Sales Law*, (Sellier 2003) 189-190.

METHODOLOGY

Design

This study adopts a qualitative methodology design combining both doctrinal and non-doctrinal approaches. The doctrinal component entails the critical analysis of legal principles, rules, and precedents that govern the determination of interest rates under Article 78 of the United Nations Convention on Contracts for the International Sale of Goods (CISG). This involves the examination of primary legal sources, including statutes, case laws, treaties, and arbitral decisions. The objective is to interpret, evaluate, and identify *lacunas* or inconsistencies in the legal framework concerning delayed payment and interest rate determination.

The non-doctrinal component supplements the doctrinal analysis by exploring how Article 78 operates in practical terms. Considering the limited domestic application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) within the Tanzanian legal context, the non-doctrinal aspect of this study will be based on data collected from regional and international legal texts such as books and articles. This integrated methodology provides both normative and practical insights into the problem, permitting a comprehensive and balanced analysis.

Data Collection Method

The study employed a documentary review method of data collection through reviewing different literature relevant to the study; hereinafter is the justification of the data collection method.

Documentary Review

Secondary method of data collection as one of the crucial components of the article deployed at large extent to provide a comprehensive foundation for understanding the legal, regulatory, and academic perspectives on the interpretation, practical and operational realities on the methods of interest rate determination due to delayed payments of damages as provided under Article 78 of the

United Nations Convention on Contracts for the International Sale of Goods (CISG). It involved a thorough examination of a wide range of sources, including but not limited to, relevant legislation, Bilateral Investment Treaties (BITs) and Multilateral Investment Treaties (MITs), official government reports, judicial and arbitral decisions, legal articles, legal textbooks, and unpublished materials, and publications from international organizations such as United Nations agencies, such as World Trade Organizations (WTO) and Multilateral Investment Guarantee Agency (MIGA).

Data Presentation and Analysis

This study is pure qualitative; it employed a qualitative data analysis technique through content style of analysis; data are categorised and weighted based on their legal authoritative quality. Qualitative data analysis is preferred due to the nature of the research topic. As such, data obtained from documentary review was intensively reviewed with the view to testing their reliability. These couple of processes were conducted with the view to assist the author to easily determine if the data collected tally with the objective of the study at hand.

Scope of the Study

This study focuses on the analysis of different methods of calculating interest rates under Article 78 of the United Nations Convention on Contracts for the International Sale of Goods (CISG), specifically in cases involving delayed payment of damages. While the United Nations Convention on Contracts for the International Sale of Goods (CISG) is an international instrument with global applicability, the primary focus of this study is to examine the interpretation and implementation of Article 78 from both a global and regional perspective, with specific reference to its relevance and reception within Tanzania and other selected African jurisdictions. The scope includes a comparative analysis of legal interpretations, doctrinal writings, and arbitral or judicial decisions concerning the determination of interest rates under international commercial dispute frameworks governed by the United Nations

Convention on Contracts for the International Sale of Goods (CISG).

RESULTS

The Normative Gap: Silence of Article 78 and Its Consequences

Article 78 of the CISG embodies a serious normative *lacuna* as found in the study. It potentially recognises that a creditor has rights to interest on sums in arrears; however, it notably fails to specify the applicable interest rate or the methods for its calculation. The study found that this silence is not accidental. Drafters were sharply classified over whether to create a specific formula to solve the issue or to leave the issue as it is, as unresolved, whereas, during the *travaux préparatoires*, various proposals sought to incorporate either a fixed formula or a reference to prevailing market rates. However, these were ultimately rejected due to economic policy considerations, notably objections from socialist states that were wary of imposing interest charges perceived as usurious or incompatible with their legal systems.²¹

It should be well noted that, during the Vienna Conference, several proposals that proposed the application of specific statutory rates were rejected due to strong antagonism from certain delegations, specifically socialist states, whose ideas on the introduction of high or floating rates were against their policies on economics.²² The political compromise of this antagonism was to enact the proviso that protects the right to interest in principle and leaves the issue unresolved. This is contrary to the rules on damages given under Articles 74 to 77; however, Article 78 affirms rights without imposing the criteria for calculation.²³

This omission has significant impacts for the CISG as a whole, whereas it first generates legal uncertainty for the parties in disputes. For instance, a creditor cannot predict the rate that will be applied in the event of delayed payment, while he or she knows that the interest is payable.²⁴ On the other hand, the gap under the provision has resulted in inconsistent arbitral tribunals and courts' decisions due to diverse approaches applied, where it undermines the predictability in international law. Furthermore, this normative ambiguity opens the door to forum shopping, as parties may attempt to litigate in jurisdictions with more favourable interest rate regimes.²⁵ The silence of Article 78 describes the paradox of the CISG; a treaty that sought to create legal uniformity with the international sales law, however, leaves some provisions that inevitably reintroduce diversity.²⁶

Fragmented Interpretations: Judicial and Arbitral Challenges

During doctrinal and non-doctrinal reviews, it has been revealed that the silence of the CISG on the interest rate determination and the methods for its calculation due to delayed payment has resulted in the existence of fragmented interpretations in arbitral tribunals and courts' proceedings. Non-existence of direct direction within the CISG, and adjudicators' decisions have resulted in legal inconsistency and legal unpredictability in outcomes. The common approach is to apply the statutory interest rate of the creditors' or debtors' domestic law.

For instance, the Austrian Supreme Court applied the rate given under the creditor's domestic law, arguing that Article 7(2) of the CISG allowed recourse to domestic rules since the CISG itself is quiet; this was adopted in CLOUT Case No. 353.²⁷ Furthermore, in *Delchi Carrier SpA v Rotorex*

²¹ Bianca, C.M. and Bonell, M.J. (eds.), *Commentary on the International Sales Law*, (Giuffrè 1987) 548-550.

²² Bianca, C.M. and Bonell, M.J. (eds.), *Commentary on the International Sales Law: The 1980 Vienna Sales Convention*, (Giuffrè 1987) 546-548.

²³ Honnold, J.O. and Harry M Flechtner, H.M., *Uniform Law for International Sales under the 1980 United Nations Convention*, (2009) *Kluwer Law International*, 503-506.

²⁴ Lookofsky, J., *Understanding the CISG*, 5th edn, (DJØF Publishing, 2020) 251-253.

²⁵ Ferrari, F., *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the UN Sales Convention* (Sellier European Law Publishers 2004) 441-443.

²⁶ UNCITRAL, *CISG Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* (2016) A/CN.9/SER.C/DIGEST/CISG/78.

²⁷ Austrian Supreme Court, 10 November 1994, CLOUT Case No. 353.

Corp, the United States Court of Appeals applied Italian law in adjudicating the case to determine the applicable interest rate.²⁸ These approaches offer to reintroduce domestic diversity into a jurisdiction whose goals was to recover the uncertainties of national disputes of laws and rules.

Some tribunals have resorted to international benchmarks in trying to craft neutral and reasonable solutions. The ICC Arbitral Tribunal awarded interest at one percent, illustrating an interest rate reflecting international commercial practices.²⁹ Arbitral practice recently has also involved EURIBOR and SOFR as bases for calculating interest rates.³⁰ These decisions envisage the willingness of arbitral bodies to check behind national law and ground their arguments in the practical cases of international commerce, whereas soft laws have influenced adjudicative practice.

The UNIDROIT Principles of International Commercial Contracts, specifically Article 7.4.9, provides for “the average bank short-term lending rate to prime borrowers prevailing for the currency of payment” as the means for calculating the standard interest rate.³¹ Several tribunals have applied the principle as the CISG gap-filling, arguing that they attach widely agreed commercial standards which are in line with the CISG’s core objective of uniformity.³² The Principle of European Contract Law (PECL) has similarly been applied for the same reasons.³³

Regardless of these efforts, the absence of a unified approach remains a challenge. The multiplicity of interpretations resulted in

divergent results in similar disputes. This unpredictability propels the legal risks of delayed payments for contracting parties as a result of weakening trust in the CISG as a uniform legal framework.³⁴ This situation opens up a Pandora’s box of forum shopping, since litigants perceive that adopting more favourable approaches to interest rate considerations.³⁵ However, the adjudicative practice in the findings of the study reveals that the interpretative challenge is bestowed by the silence of Article 78. Thus, the courts and tribunals think of workable solutions for a harmonised approach.³⁶

DISCUSSION

The absence of a prescribed interest rate in Article 78 reflects the drafters’ complex negotiations and the need to reconcile divergent national legal approaches to interest on delayed payments.³⁷ This compromise preserved the flexibility of Article 78 but at the cost of creating a legal vacuum regarding the applicable interest rate.³⁸ This *lacuna* leaves parties and adjudicators without clear guidance, leading to inconsistent application and interpretative uncertainty. The absence of a harmonised rule on interest rates undermines legal certainty, arguably contravening the CISG’s overarching purpose to establish uniform rules for international sales contracts.³⁹ Furthermore, this normative ambiguity opens the door to forum shopping, as parties may attempt to litigate in jurisdictions with more favourable interest rate regimes.⁴⁰

²⁸ Delchi Carrier SpA v Rotorex Corp 71 F.3d 1024 (2d Cir. 1995).

²⁹ ICC Arbitration Case No. 8128, 1995, ICC International Court of Arbitration Bulletin Vol. 10 No. 2 (1999) 63.

³⁰ Ferrari, F., *Specific Topics of the CISG in the Light of Judicial Application and Scholarly Writing*, in Ferrari, F., (ed), *The CISG and Its Impact on National Legal Systems* (Sellier European Law Publishers 2008) 226-228.

³¹ UNIDROIT Principles of International Commercial Contracts (2016), article 7.4.9

³² Vogenauer, S. and Kleinheisterkamp, J. (eds), *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)* (OUP 2009) 885-887.

³³ Lando, O. and Beale, H. (eds), “Principles of European Contract Law, Part I and II”, (2000) *Kluwer Law International*, 322-324.

³⁴ Lookofsky, J., *Understanding the CISG*, 5th edn, (DJØF Publishing 2020) 252-256.

³⁵ Ferrari, F., *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the UN Sales Convention* (Sellier European Law Publishers 2004) 445-447.

³⁶ UNCITRAL, *CISG Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* (2016) A/CN.9/SER.C/DIGEST/CISG/78.

³⁷ Honnold, J.O., and Flechtner, H.M., “Uniform Law for International Sales”, (2009), *Kluwer Law International*, 3-5.

³⁸ Lookofsky, J., *Understanding the CISG*, 5th edn, (DJØF Publishing 2020), 251.

³⁹ Ferrari, F., “Comparative Ruminations on the Foreseeability of Damages in Contract Law” (1995) 53 *La. L. Rev.* 440-442.

⁴⁰ UNCITRAL, *CISG Digest: Article 78*, UN Doc A/CN.9/SER.C/DIGEST/CISG/78.

Pathways to Harmonisation towards Predictable Interest Rate Determination

CISG's General Principles (Full Compensation, Good Faith, Commercial Reasonableness).

The reliance on the CISG's general principles is one of the good pathways toward harmonisation in interest rate determination under Article 78. The CISG under Article 7(2) provides a room for adjudicators to fill the gap before resorting to national laws. This approach reinforces its aims of enhancing legal uniformity in international sales law.⁴¹ The principle of full compensation is the centre of the CISG framework. Article 74 illustrates that damages must comprise "a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach." Regardless of that, Article 78 does not refer to damages; commentators interpret the right to interest as a corollary of Article 74, because creditors risk a financial loss when deprived of the use of money.⁴² Therefore, the interest rate works as a means of recovering the creditor to the position they would have occupied had the debtor performed as required.⁴³

On the other hand, the principle of good faith underpins the CISG, as expressed under Article 7(1). The principle of good faith obligates parties to work in a manner that is fair when dealing in international trade. In the circumstance of delayed payment, good faith supports the award of interest at a rate that fairly compensates the creditor.⁴⁴ By using an interest rate reflective of trade practice, adjudicators are obligated to ensure that the creditor is not affected by the debtor's delays.

Furthermore, the principle of commercial reasonableness is administered through different provisions of the CISG, for instance, those administering damages and performance. The

principle of commercial reasonableness obligates that ways used under the CISG should reflect the reality of international commercial trade. In the circumstances of Article 78, the principle illustrates the reliance on internationally acknowledged benchmarks as they mirror prevailing market conditions and provide predictability.⁴⁵ These benchmarks are preferable to arbitrary national statutory rates, which are too high or low when viewed in transnational environments.⁴⁶

Together, the three provided principles are a reflective and coherent interpretative framework for filling the *lacunae* in Article 78. By grounding interest rate considerations in full compensation, good faith, and commercial reasonableness, tribunals and courts may achieve impacts that are consistent with the CISG's goals and advocacy for harmonisation in international sales law. This principled approach demonstrates that the CISG continues to work as a right instrument of legal certainty in global commerce.⁴⁷

Reliance on Trade Usages and International Commercial Benchmarks

Reliance on trade applications and international commercial benchmarks provides a practical and trade-oriented pathway to harmonisation. The CISG under Article 9 clearly advocates that parties are bound by "any application of which the parties are aware or ought to have known and which in international trade is widely known to, and regularly viewed by, parties to contracts of the category involved."⁴⁸

This recognition of commercial application gives the CISG's openness to the practices of the international marketplace in an aspiration to integrate law with trade reality. International arbitral practice has invoked benchmark rates as a

⁴¹ Article 7(2) of the United Nations Convention on Contracts for the International Sale of Goods, 1980.

⁴² Schwenzer, I. Schlechtriem, P., *Commentary on the UN Convention on the International Sale of Goods (CISG)*, 5th edn, (OUP 2022) 1174-1175.

⁴³ Honnold, J.O. and Flechtner, H.M., "Uniform Law for International Sales under the 1980 United Nations Convention", (2009) *Kluwer Law International* 2009, 505.

⁴⁴ Lookofsky, J., *Understanding the CISG*, 5th edn, (DJØF Publishing 2020) 252-253.

⁴⁵ ICC Arbitration Case No. 8128, 1995, ICC International Court of Arbitration Bulletin Vol. 10 No. 2 (1999) 63.

⁴⁶ Ferrari, F., *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the UN Sales Convention* (Sellier European Law Publishers 2004) 445-447.

⁴⁷ UNCITRAL, *CISG Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* (2016) A/CN.9/SER.C/DIGEST/CISG/78.

⁴⁸ Article 9 of the United Nations Convention on Contracts for the International Sale of Goods, 1980.

commercial application capable of covering the Article 78 *lacuna*. Linking interest rates to international benchmarks ensures legal certainty by giving a predictable and objective standard across jurisdictions and also reflects economic reality.⁴⁹ Reliance on benchmarks limits the distortions made by national statutory rates, which vary depending on domestic monetary policy.⁵⁰ By turning to widely applied market indicators, adjudicators reduce the risk of inconsistency.

Soft law instruments bolster the use of commercial usages. Article 7.4.9 of the UNIDROIT Principles describes the range of the bank's short-term lending rate to prime borrowers in the currency of payment as the applicable standard.⁵¹ The Principles of European Contract Law apply a comparable formula, advocating the significance of aligning legal considerations with economic practice.⁵² These instruments have been cited by tribunals as persuasive evidence of existing transnational consensus. By integrating trade applications and international benchmarks into Article 78 adjudication, courts and tribunals achieved greater consistency when administering fidelity to the CISG's goals. This balances the obligations for predictability with respect for commercial practice, providing a pathway toward uniformity that limits the rigidity of a fixed statutory rule and the unpredictability of national approaches.⁵³

Domestic Law as a Measure of Last Resort

The CISG's general principles and international trade applications give the most relevant methods of covering the *lacuna* in Article 78; there are instances in which reliance on national law becomes unavoidable. Article 7(2) of the CISG allows recourse to "the law applicable by virtue of

the rules of private international law" where there are no general principles of the Convention that can be discerned.⁵⁴

This approach reflects the drafters' recognition that the Convention cannot govern all issues, and that residual *lacuna* can occasionally obligate to be resolved by reference to domestic legal systems. Judicial practice illustrates this fallback significance. In *Delchi Carrier SpA v Rotorex Corp*, the United States Court of Appeals for the Second Circuit applied Italian law to consider the appropriate interest rate.⁵⁵

Also, in CLOUT Case No. 353, the Austrian Supreme Court observed to the creditor's national laws in the absence of an international standard.⁵⁶ These cases show that the recourse to national laws has been applied in practice where tribunals considered the CISG insufficient.

Furthermore, reliance on domestic law must be viewed with caution. Excessive dependence on domestic systems risks undermining the CISG's primary goals of boosting uniformity in international sales law.⁵⁷ Domestic statutory interest rates are usually shaped by local monetary and domestic economic concerns.⁵⁸ Such disparities cause inconsistent outcomes, exposing contracting parties to the very uncertainty the CISG was designed to eradicate.

Domestic law believes that law should be treated as a measure of last resort, only to be useful where the CISG's general principles can trade application can provide directions. By subordinating National laws to international principles and benchmarks, courts and arbitral tribunals can protect the Convention's uniformity.⁵⁹ This approach respects Article 7(2)

⁴⁹ Schwenzer, I. and Schlechtriem, P., *Commentary on the UN Convention on the International Sale of Goods (CISG)*, 5th edn, (OUP 2022) 1178-1179.

⁵⁰ Ferrari, F., *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the UN Sales Convention* (Sellier European Law Publishers 2004) 447.

⁵¹ UNIDROIT Principles of International Commercial Contracts (2016), art 7.4.9.

⁵² Lando, O. and Beale, H. (eds.), "Principles of European Contract Law, Part I and II", (2000) *Kluwer Law International*, 322-324.

⁵³ Lookofsky, J., *Understanding the CISG*, 5th edn, (DJØF Publishing 2020) 253-256.

⁵⁴ Article 7(2) of the United Nations Convention on Contracts for the International Sale of Goods, 1980.

⁵⁵ *Delchi Carrier SpA v Rotorex Corp* 71 F.3d 1024 (2d Cir. 1995).

⁵⁶ Austrian Supreme Court, 10 November 1994, CLOUT Case No. 353.

⁵⁷ Ferrari, F., *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the UN Sales Convention* (Sellier European Law Publishers 2004) 445-447.

⁵⁸ Schwenzer, I. and Schlechtriem, P., *Commentary on the UN Convention on the International Sale of Goods (CISG)*, 5th edn, (OUP 2022) 1180-1181.

⁵⁹ Lookofsky, J., *Understanding the CISG*, 5th edn, (DJØF Publishing 2020) 254-256.

while avoiding the erosion of the CISG's autonomous character.

Call for Institutional Guidance: UNCITRAL, Arbitral Institutions, and Judicial Consistency

This is all about the urgent need for institutional governance to mitigate the legal uncertainty surrounding Article 78. The CISG's general principles and trade effectiveness look on consistent application by adjudicators. Some of the tribunals look to national laws, others to international benchmarks, and others invoke soft law instruments. All these diversities of approaches infringe the uniformity of the CISG that was aimed to secure, and leave trade actors uncertain on their rights and responsibilities in cases of delayed payment.⁶⁰

UNCITRAL, as the custodian of the CISG, should provide the best outline so as to give authoritative clarification. It's digests of case law that have already contributed importantly to the harmonisation of CISG interpretation,⁶¹ but the intended interpretative document specifically addressing Article 78 should go further.⁶² This could provide judges and arbitrators with a clearer framework.

Arbitral institutions can play a transformative role, provided that a huge proportion of CISG conflicts are resolved through arbitration. Incorporating the market benchmark as the presumptive standard for interest, subject to party negotiation, arbitral institutions can eliminate inconsistency.⁶³

This measure is required to align arbitral practice with the economics of international trade, while providing parties with high confidence in the predictability of arbitral awards. The role of judicial consistency, Courts and arbitral tribunals must be mobilised to involve with comparative

jurisprudence and to sketch upon resources. Greater reliance on transnational precedents advocates harmonisation and also limits the temptation of adjudicators on familiar national rules.⁶⁴

The wider lesson is that harmonisation under Article 78 cannot be seen through discriminatory judicial decisions or arbitrated tribunals. Without institutional assistance, fragmentation must persist, leaving trader actors to grapple with uncertainty and uneven results. Institutional governance provides the most effective method to close this interpretative *lacuna*. Ultimately, that guidance must protect the CISG's primary aims to provide a reliable and uniform framework for international trade.⁶⁵

CONCLUSION

Article 78 CISG's silence on the applicable interest rate for delayed payments has created normative gaps and interpretative challenges that undermine the CISG's core objective of uniformity. The resulting fragmentation in judicial and arbitral practice highlights the pressing need for a harmonised approach. This article has argued that adopting interpretative methods grounded in CISG principles, supported by international trade usages and soft law, can effectively fill this gap and enhance predictability in international sales contracts. Contracting parties, tribunals, and legislators should heed this approach to safeguard legal certainty and facilitate smoother international commercial transactions.

Recommendations

To address the challenges posed by Article 78's silence on interest rate determination on delayed payments, the following recommendations are proposed:

⁶⁰ UNCITRAL, CISG Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods (2016) A/CN.9/SER.C/DIGEST/CISG/78.

⁶¹ UNCITRAL, CISG Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods (2016) A/CN.9/SER.C/DIGEST/CISG/78.

⁶² Ferrari, F., *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the UN Sales Convention* (Sellier European Law Publishers 2004) 449-450.

⁶³ Bonell, M.J., *An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts*, 3rd edn, (Transnational Publishers 2005) 217-218.

⁶⁴ Lookofsky, J., *Understanding the CISG*, 5th edn, (DJØF Publishing 2020) 255-256.

⁶⁵ Schwenzer, I. and Schlechtriem, P., *Commentary on the UN Convention on the International Sale of Goods (CISG)*, 5th edn, (OUP 2022) 1182.

Contractual Clarity

Parties should proactively include explicit interest rate clauses in contracts to preclude interpretative disputes and enhance certainty.

Arbitral Rules Development

Arbitral institutions should develop default interest rate provisions referencing internationally recognised benchmarks, thereby providing consistent default rules in arbitration.

Judicial Consistency

Courts should adopt methodologies grounded in CISG's general principles or trade usages to promote uniformity.

UNCITRAL Guidance

UNCITRAL could issue interpretative notes or guidelines clarifying Article 78 application, thereby reducing uncertainty and fostering global harmonisation.

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