PASSING OF RISK ACCORDING TO THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS AND THE NEW TURKISH CODE OF OBLIGATIONS FROM A COMPARATIVE PERSPECTIVE

Seda İrem ÇAKIRCA*

ABSTRACT

The United Nations Convention on Contracts for the International Sale of Goods (CISG) entered into force in Turkey on 01 August 2011, making the CISG an applicable national law regarding the international sale of goods, therefore rules on passing of risk according to CISG and its consequences have special importance for Turkish law. On the other hand, when the new Turkish Code of Obligations (TBK) numberred 6098, enters into force rules on passing of risk will fundamentaly change analogous with the CISG. In this respect, this paper aims to analyse the diferrences and correspondencies between the CISG and the TBK.

Key Words: *Passing of risk, The United Nations Convention on Contracts for the International Sale of Goods, international trade, sale contract, Turkish Code of Obligations.*

BİRLEŞMİŞ MİLLETLER ULUSLARARASI SATIM SÖZLEŞMESİ VE YENİ TÜRK BORÇLAR KANUNU'NA GÖRE HASARIN GEÇİŞİNİN KARŞILAŞTIRMALI OLARAK İNCELENMESİ

ÖZET

01 Ağustos 2011 tarihinden itibaren, Türkiye için iç hukuk niteliğinde olan Birleşmiş Milletler Uluslararası Satım Sözleşmesi'nin (CISG) hasarın geçişine ilişkin kurallarının ve bu kuralların sonuçlarının ortaya konulması, Türk hukuku açısından özel bir önem arz etmektedir. Öte yandan 6098 sayılı Türk Borçlar Kanunu'nun yürürlüğe girmesiyle birlikte, Türk satım hukukunda edim ve karşı edim hasarının alıcıya geçişine dair düzelenmelerde köklü ve CISG ile paralel değişilikler meydana gelmiştir. Bu bağlamda çalışmanın amacı; (CISG) ve yeni Türk Borçlar Kanunu'nun (TBK) hasarın geçişine ilişkin hükümlerini karşılaştırmalı olarak inceleyip, paralellikleri ve farklılıkları ortaya koymaktır.

Anahtar Kelimler: *Hasarın geçişi, Birleşmiş Milletler Uluslararası Satım Sözleşmesi, Uluslararası ticaret, Satım sözleşmesi, Türk Borçlar Kanunu.*

* Resarch Assistant Dr., Istanbul University Faculty of Political Sciences Department of Public Administration, Sub-department of Legal Sciences. icakirca@istanbul.edu.tr .

I. Introduction

In 1928, Ernst Rabel, who was a director of the Kaiser Wilhelm Institute for Foreign and International Law in Berlin, suggested that work on the unification of the law of international sales of goods should be started. In 1936, he published the first volume of his seminal work. "Das Recht des Warenkaufs," providing an analysis of the *status quo* of sales law on a broad comparative basis[1]. His book was also published in two editions in 1935 and 1939 before World War II interrupted any further unification efforts. In January 1951, a diplomatic conference on the unification of sales law was held in the Hague. The debates on new versions, published in 1956 and 1963, came to an end in 1964, when the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULFIS) and the Uniform Law on the International Sale of Goods (ULIS) were both drafted at the Hague[2]. However, ULFIS and ULIS failed to fulfill the great expectations of them because only nine states became party to treaty, while important economies like the US and France did not participate[3].

Nevertheless, in 1966, UNICITRAL (the United Nations Commission on International Trade Law) was established and continued the work towards the unification of sales law, using the ULIS and ULFIS as a groundwork[4]. On 11 April 1980, the United Nations Convention on Contracts for the International Sale of Goods, also known as the Vienna Sales Convention (hereinafter the CISG, or the Convention), was approved in Vienna and came into force on 1 January 1988.

The CISG quickly became one of the most sucessful[5] multinational treaties ever in the field of agreements designed to unify rules traditionally adressed only in domestic legal systems, and it has since been ratified by significant number of states[6], including Turkey. As of today, approximately 80 per cent of the world's trade in goods is therefore governed by the Convention[7].

1 Honsell/Siehr, Preamble N. 1; Schwenzer/Hachem, p. 459.

2 Honsell/Siehr, Preamble N. 2; Posch, §19/4.

3 Pfund, p. 98.

4 Honsell/Siehr, Preamble N. 3; Schwenzer/Hachem, p. 459.

5 It has been often pointed out that the CISG should be considered as a great sucess. See e.g., Ferrari, p. 158.

6 The number of Contracting States has risen to 78. All major trading nations, except the United Kingdom, such as the USA, China, India, Germany and Russia have ratified this convention. A list of contracting states can be found at http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html, (last accessed on 23 May 2012)

7 Schlechtriem/Schwenzer, p. 1; Fountoulakis, p. 8.

The CISG was accepted by the Turkish Parliament on 2 April 2009, and published in the Official Gazette numbered 27545 on 7 April 2010. Turkey deposited the instrument of accession with the United Nations on 1 July 2010. Pursuant to Art. 99 (2) CISG, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of accession, the Convention entered into force in Turkey on 01 August 2011, making the CISG an applicable national law regarding the international sale of goods[8].

The Convention consists of four parts. Part I deals with its sphere of application and general provisions. Part II sets out its rules on the formation of contracts. Part III presents the rights and obligations of the parties, and Part IV the public international law provisions. The Convention does not apply to certain types of sales or to sales of certain goods[9].

The CISG has influenced many international law instruments and national laws[10]. For instance, UNIDROIT Principles of International

[8] The CISG became an applicable national law pursuant to Art. 90 Constitution of the Republic of Turkey. Art. 90 of Constitution of the Republic of Turkey states:
" *D. Ratification of International Treaties (As amended on May 22, 2004)*
ARTICLE 90. The ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey, shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification.
Agreements regulating economic, commercial and technical relations, and covering a period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the state, and provided they do not infringe upon the status of individuals or upon the property rights of Turkish citizens abroad. In such cases, these agreements must be brought to the knowledge of the Turkish Grand National Assembly within two months of their promulgation.
Agreements in connection with the implementation of an international treaty, and economic, commercial, technical, or administrative agreements which are concluded depending on the authorisation as stated in the law shall not require approval of the Turkish Grand National Assembly. However, agreements concluded under the provision of this paragraph and affecting economic, or commercial relations and the private rights of individuals shall not be put into effect unless promulgated.
Agreements resulting in amendments to Turkish laws shall be subject to the provisions of the first paragraph.
International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail." .

[9] It does not apply to consumer sales, and is not concerned with the validity of the contract or the effect which the contract may have on property in the goods sold or the liability of the seller for death or personal injury caused to any person by the goods sold. See Pfund, p. 105-106.

[10] Schwenzer/Hachem, p. 462.

Commercial Contracts, the Principles of European Contract Law (PECL), the EC Directive on Certain Aspects of the Sale of Consumer Goods both rely on the CISG. At a domestic level, the Convention has set an example for revisions of laws of contract of the Baltic States and several Eastern European jurisdictions. The original basic concept for the modernisation of the German law of obligations was also taken from the CISG. Finally, and most notably, the China's contract law, which perhaps will in the long run become increasingly important for international trade, is modelled on the CISG[11].

This article attempts to compare the passing of risk according to the CISG and the new Turkish Code of Obligations (Türk Borçlar Kanunu, hereinafter referred as TBK)[12]. It particularly emphasizes the CISG's huge effect on the TBK. In order to explore the diferrences and correspondencies between the CISG and the TBK, this article first explains, Art. 66-69 CISG, concerning which party should suffer the economic consequences in the case of goods being accidentially lost, damaged or destroyed. Then it discusses the Turkish system regarding the passing of risk, which is regulated in Art. 208 of the Turkish Code of Obligations. The article concludes by comparing the CISG and Turkish law.

II. The Passing of Risk According to the CISG

1. Time of the Passing of Risk (Article 66 CISG)

A decision has to be made as to which party should bear the risk when goods accidentially get lost, damaged or destroyed in the period between concluding and fulfilling a contract. Art. 66 CISG sets out a general rule on passing of risk and its exemption[13].

Thus, Art. 66 CISG, which determines when the passing of risk occurs between the contracting parties, states that the buyer has to pay the purchase price even if the goods are destroyed[14]. Once the seller has performed his or her obligations, the payment risk is passed on the buyer. On the other hand, the final part of the Art. 66 CISG enables the buyer to be discharged from paying the purchase price if the seller's breach of the contract is fundamental[15]. It can

[11] Schlechtriem/Schwenzer, p. 10; Schwenzer/Fountoulakis, p. 22.

[12] The Turkish Parliament enacted a new Turkish Code of Obligations on 11 January 2011. The Code is applicable from 1 July 2012.

[13] Honsell/Schönle/Th. Koller, Art. 66 N. 3.

[14] Honsell/Schönle/Th. Koller, Art. 66 N. 3; Staudinger/Magnus, Art.66 N. 1.

[15] Honsell/Schönle/Th. Koller, Art. 66 N. 10; Staudinger/Magnus, Art. 66 N. 12; Kröll/Miste-

be said that the passing of the risk changes the liability of the seller. Normally, such risks are covered by appropiate insurance, but the party who bears the risk must still deal with the insurance claim[16]. However, the fact that insurance cannot cover all types of risks must not be forgotten.

Although, the concept of 'risk' is not defined in the Convention, Art. 66 CISG's wording makes it easy to understand what should be understood from the 'risk'. According to Art. 66 CISG 'risk' is the accidential reduction shrinkage of goods or theft of goods between concluding and fulfilling the conract[17]. 'Accidental' emphasizes that neither the seller nor the buyer has any involvement in the damage or loss. In other words, risk is understood as loss or damage which is not due to an act or omission of the seller or buyer[18].

Actions by states, such as confiscation, or export and import prohibitions, can also cause loss or damage of goods, but whether Art. 66 CISG is applicable in these cases is debatable. Certain scholars suggest that the scope of application of Art. 66 CISG includes such governmental measures because what caused the loss of, or damage to the goods is irrelevant in this situation[19]. However, the prevailing view states that loss or damage of goods due to govermental measures cannot be taken into account within the scope of Art. 66 CISG because the party which bears the risk of the consequences of govermental measures cannot be insuranced[20]. There are very few types of insurance available for this kind of risk.

The parties' agreement on the passing of risk has an incontrovertible effect on the applicable law. Pursuant to Art. 6 CISG, the parties may exclude the application of the Convention or, subject to Art. 12 CISG, derogate from or vary the effect of any of its provisions[21]. In other words, the parties may exclude the CISG entirely or partially. Except for Art. 12 CISG, all provisions

lis/Perales Viscasillas/ Erauw Art. 66 N. 16.

[16] Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 66 N. 3.

[17] Schwenzer/ Fountoulakis, p. 469, 470; Staudinger/Magnus, Art. 66 N. 5; Erauw, p. 204.

[18] Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 66 N. 1; Honsell/Schönle/Th. Koller, Art. 66 N. 13; MünchKommBGB/Huber CISG, Art. 66 N. 11; Bridge, The Transfer of Risk, p.78; Staudinger/Magnus, Art. 66 N. 6.

[19] Achilles, p. 196.

[20] Schlechtriem, p. 146; Schlectriem/Schwenzer/Hager, p. 636; Akkanat, p. 271; Romein, Chapter 1, A, I, 2; Honsell/Schönle/Th. Koller, Art. 66 N. 19; Bridge, The Transfer of Risk, p. 79; Kröll/Mistelis/Perales Viscasillas/Erauw Art. 66 N. 34 .

[21] Honsell/Schönle/Th. Koller, Art. 66 N. 30; Schwenzer/ Fountoulakis, p. 470; Staudinger/ Magnus, Vorbem zu Art. 66 ff CISG N. 1; Erauw, p. 203.

of the Convention are non-obligatory. Therefore, the courts enforce the contract agreed by the parties with regard to risk allocation. By doing this, the courts take into consideration not only at the language of the contract but also at the specific trade terms, like INCOTERMS[22].

As far as international trade is concerned, the time of passing of risk is mostly decided by the parties in the contract. Exceptionally, when the parties fail to determine anything concerning the passing of risk in the contract, either the provisions of the Convention or national law can be applied[23]. In this respect, INCOTERMS have a special importance, because they can also be chosen in order to regulate the time of passing of risk. Under most of the INCOTERMS clauses, risk passes from the seller to the buyer at the time of delivery depending on the chosen INCOTERM[24]. However, in reality, this has little effect at all, considering the Convention inasmuch as there is compliance between the Convention and INCOTERMS regarding this issue. In other words, the CISG provisions on risk of loss as a default system are perfectly compatible with INCOTERMS 2010 as contractual terms[25].

Definitions of the moment at which risk passes differ from each other, whether it be the moment of concluding the contract, the moment at which ownership passes, or the moment when the goods are handed over[26]. The Convention distinguishes the problem of passing of risk, not only from ownership, but also delivery[27]. For the international sale of goods, it is not appropriate to define the moment of concluding the contract as the moment at which the risk passes. This is because most international sales of goods involve selling at a distance, so it is not always possible to establish exactly when the contract has been signed.

---

[22] Butler, § 5.02.

[23] Atamer, CISG, p. 264

[24] Schwenzer/ Fountoulakis, p. 470; Staudinger/Magnus, Vorbem zu Art. 66 ff CISG N. 7; Erauw, p. 212.

[25] The CISG serves as a general background for the INCOTERMS, which are revised every ten years, and are responsible for the CISG's fine-tuning, Schwenzer/Hachem, p. 477; Ramberg, p. 219-222.

[26] Akkanat, p. 272; Erauw, p. 214; Hager, Einheitliches Kaufrecht, p. 388.

[27] Atamer, CISG, p. 264.

2. Passing of Risk When the Contract Involves Carriage of the Goods (Art. 67 CISG)

Art. 67 CISG governs the passing of risk where a contract of sale involves carriage of the goods[28]. However, Art. 67 CISG's practical significance is limited, since in international trade, the parties usually agree to specific terms (CIF, FOB, 'ex ship') which take priority over the CISG rules by virtue of Art. 6 CISG[29]. In other words, the parties can arrange risk after the carrier has the goods at the ship's rail or when the goods come on board, although one could not seriously consider using such tests in a modern statute. According to Art. 8 CISG, the contract of sale can state this explicitly or implicitly[30].

Art. 67 (1) CISG establishes a distinction between two situations, depending on whether the seller is bound to hand the goods over at particular place or not. Art. 67 (1), sentence 1 CISG clarifies that the risk passes to the buyer when the goods are handed over to the first carrier for transmission to buyer[31], while Art. 67 (1), sentence 1 CISG states that the risk passes to the buyer when the goods are handed over to the carrier in accordiance with the contract of sale. This reference to the contract of sale means only that the contract must provide for carriage of the goods[32], which entails that the seller has no responsibility for loss or damage to the goods during transportation[33].

The placing of transport risk on the buyer after the goods have been handed over to the first carrier is in accordance with an international, widely recognized rule[34]. Then, after the arrival of the goods, the buyer is in a better position than the seller to establish whether any damage has occured as a result of transport[35]. Honnold suggests that, in the case of 'high-tech' goods, which only the seller can repair, the buyer may wish to consider negotiating

---

[28] Honsell/Schönle/Th. Koller, Art. 67 N. 1; MünchKommBGB/Huber CISG, Art. 67 N. 3.

[29] Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 67 N. 2; Cenini/Parisi, p. 165; Staudinger/Magnus, Art. 67 N. 3.

[30] Honsell/Schönle/Th. Koller; Art. 67 N. 16

[31] Honsell/Schönle/Th. Koller; Art. 67 N. 3; Bridge, The International Sale of Goods, N. 8. 54; Staudinger/Magnus, Art. 67 N. 8; Atamer, CISG, p. 265; MünchKommBGB/Huber CISG, Art. 67 N. 11.

[32] Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 67 N. 8; Schwenzer/Fountoulakis, p. 473.

[33] Honsell/Schönle/Th. Koller, Art. 67 N. 6.

[34] Hager, Gefahrtragung, p. 81.

[35] Honnold, p. 8-5, Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 67 N. 3; Cenini/Parisi, p. 165.

the clause, so that responsibility for the goods passes from the seller only after their arrival at their final destination[36].

Under the Convention, the first carrier is not an auxiliary person of the seller but an independent third person[37]. Therefore, risk does not pass to the buyer when the seller loads the goods on his own trucks for delivery to the rail or ocean carrier[38]. That is the seller does not hand over the goods when he/she loads his/her own truck because those trucks are not legally a 'carrier'. Rather, 'handing over' means the moment that the carrier takes the goods into its custody[39]. As long as the goods are still in the seller's custody the risk does not pass to the buyer, so Art. 67 (1), sentence 1 CISG remains inapplicable. This is because the handing over of the goods to the carrier signifies a transfer of the power to control the goods. Consequently, the carrier must have an independent legal identity.

In the case of combined transport by land and sea, the entire transportation process is at the buyer's risk, unless Art. 67 (1), sentence 2 CISG applies, because the CISG focuses explicitly on the handing over of the goods to the first carrier[40]. Within the scope of sentence 1, the realtionship between the seller and buyer is therefore not relevant to establishing the precise moment at which any damage occured. This approach is especially appropriate for modern container transportation, when it will often be impossible to determine exactly the time at which damage occured[41].

Art. 67 (1), sentence 2 CISG states that, if the seller has to hand over the goods to the carrier at a particular place, the risk passes to the buyer when they are handed over to the carrier at that place[42]. This rule is intended for the case where a seller, whose place of bussiness is inland, agrees to deliver the goods at a seaport[43]. Transport overland therefore takes place at the seller's

[36] Honnold, p. 8-5; Cenini/Parisi, p. 165; Staudinger/Magnus, Art. 67 N. 11.

[37] Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 67 N. 6; Honsell/Schönle/Th. Koller, Art. 67 N. 20; Bridge, The Transfer of Risk, p. 87; Schwenzer/ Fountoulakis, p. 474; MünchKommBGB/Huber CISG, Art. 67 N. 10.

[38] Honsell/Schönle/Th. Koller, Art. 67 N. 21; Honnold, p. 8-9.

[39] Schwenzer/ Fountoulakis, p. 474; Staudinger/Magnus, Art. 67 N. 15.

[40] Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 67 N. 5; Honsell/Schönle/Th. Koller, Art. 67 N. 8.

[41] Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 67 N. 5; Schwenzer/ Fountoulakis, p. 476.

[42] Honsell/Schönle/Th. Koller, Art. 67 N. 24; Staudinger/Magnus, Art. 67 N. 22; MünchKommBGB/Huber CISG, Art. 67 N. 14.

[43] Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 67 N. 10.

risk, while sea transport becomes the buyer's risk. In this case, the second sentence of Art. 67 (1) CISG can be applied, regardless of whether the seller uses his own personnel or an independent carrier to transport the goods on the first part of their journey[44].

Art. 67 (1), sentence 3 CISG states that the risk passes to the buyer notwithstanding the fact that the seller may retain documents controlling the disposition of the goods[45]. This rule is particularly relevant in modern transactions conducted without documents because the right to control the disposition of goods follows simply from the contract of carriage[46]. According to this provision, the risk passes without taking into acount who owns the goods pursuant to Art. 4 (b) CISG[47]. Under the CISG, passing of risk occurs independently of the transfer of title. Moreover the risk does not pass to the buyer unless the goods are clearly identified to the contract, whether by markings on the goods themselves, by shipping documents, by notice given to the buyer, or by some other means[48].

Art. 67 (2) CISG aims at protecting the buyer aganist the possibility of a seller presenting lost or damaged goods, or even no goods at all, after a risk situation has occured[49]. This rule lays down that the risk does not pass to the buyer until the goods are clearly identified to the contract[50]. This identification can be accomplished by notice to the buyer but is not a necessity[51].

This rule also leads to a splitting of risk. Under Art. 67, the risk may become split in three cases: if the seller uses his own personnel to transport the goods for part of the way; or is obliged to hand over the goods to the carrier at a particular place or identifies the goods to the contract only after transport has commenced[52].

---

[44] Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 67 N. 11.

[45] Schwenzer/ Fountoulakis, p. 476; Staudinger/Magnus, Art. 67 N. 23; Hager, Einheitliches Kaufrecht, p. 393.

[46] Honsell/Schönle/Th. Koller, Art. 67 N. 33; Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 67 N. 12.

[47] Romein, Chapter 1, B, I, 1, c; Butler, § 5. 04.

[48] Butler, § 5. 04; DiMatteo/Dhooge/Greene/Maurer/Pagnattaro, p. 122; Bridge, The Transfer of Risk, p. 92.

[49] Schwenzer/ Fountoulakis, p. 476.

[50] Honsell/Schönle/Th. Koller, Art. 67 N. 27; Bridge, The International Sale of Goods, N. 8. 55; Atamer, CISG, p. 266; MünchKommBGB/Huber CISG, Art. 67 N. 17.

[51] Bridge, The Transfer of Risk, p. 91.

[52] Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 67 N. 16.

There are no rules laid down concerning the burden of proof. This gap should be filled in conformity with Art. 7 (2) CISG[53], applying the general principle that a person who relies on a rule in his favour must prove that the preconditions for the application of that rule are satisfied. This means that a seller claiming payment of the price must prove that the goods were in accordance with the contract when the risk passed to the buyer. However, the buyer bears the burden of proof if he has paid the price in return for the handing over of documents and now wishes to avoid the contract on account of defects in the goods[54].

3. The Passing of Risk When the Goods Sold in Transit (Art. 68 CISG)

Art. 68 CISG clarifes the exact moment of the passing of risk when the goods sold are in transit. Thus Art. 68, sentence 1 CISG states the general rule that, if the goods are sold in transit, the risk passes to the buyer from the time of the conclusion of the contract[55]. However, Art. 67 (1) CISG cannot be applied in this situation when the goods have not been handed over to an independent carrier in order to transport them to the buyer[56].

Art. 68, sentence 1 CISG can easily be applied when the results of damage are determinable. However, it is unlikely that a particular event can be identified as the cause of the damage. Therefore, it is difficult for the buyer to prove that the loss or damage to the goods happened prior to the conclusion of the contract[57]. Because the scope of this provision includes goods that are sold in transit for the second time to the second buyer, the seller is not selling the same goods to different buyers. Rather, the goods are being sold consecutively in a chain in this respect. From the time of the conclusion of the second contract, the risk passes to the new buyer so Art. 68, sentence 1 CISG again becomes retroactive. Certainly, Art 67 CISG applies at this point and until the goods are handed over to the first carrier the seller bears the risk. By the time the conclusion of the second contract, the first buyer bears the risk,

---

[53] Gaps must be filled in conformity with the Convention's general principles, according to Article 7 (2) CISG. Visser, p. 81-82.

[54] Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 67 N. 17.

[55] Schwenzer/ Fountoulakis, p. 481; Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 68 N. 3; Staudinger/Magnus, Art. 68 N. 5.

[56] Honsell/Schönle/Th. Koller, Art. 68 N. 6; Bridge, The International Sale of Goods N. 8. 54; Staudinger/Magnus, Art. 68 N. 6.

[57] MünchKommBGB/Huber CISG, Art. 68 N. 6.

while the second buyer bears the passing of the risk after the conclusion of the second contract.

With regard to Art. 68, sentence 2 CISG, if the circumstances so indicate, the risk passes at the moment the goods are handed over to the carrier who issued the documents representing the carriage contract[58]. Although Art. 68, sentence 2 CISG is an exception to sentence 1, its significance cannot be denied. However, this matter was regulated differently in Art. 99 ULIS[59]. The ULIS provided that, if goods are sold in transit, the risk should pass retroactively at the moment the goods are loaded on board ship. Art. 99 ULIS was criticised by third world countries[60], which mostly can be described as import oriented countries, because of the buyer's position in this respect. According to Art. 99 ULIS, the buyer bears the risk, even for the period prior to the conclusion of the contract. Consequently, Art. 68, sentence 1 CISG differs from the ULIS in imposing the risk on the buyer only after the conclusion of the contract. This provision prevents any difficulties of proof, while also giving the buyer alone an opportunity to pursue claims stemming from damage occuring while the goods are in transit. At the same time, however, the buyer bears the consequences of any inadequacy in the insurance.

Art. 68, sentence 3 CISG indicates the counter exception to Art. 68, sentence 2 CISG. According to this provision, where the seller is held to have known of any inadequacy or losses of the goods without disclosing them at the time of the conclusion of the contract, then the seller bears the risk of these inadequate or lost goods[61]. The buyer can pursue all remedies available in case of breach of contract (Art. 45 CISG). The third sentence of Art. 68 is necessary only because the second sentence has introduced the anomaly of the risk passing before the contract is made. It is for this reason that there is nothing corresponding to the third sentence in any other provision concerning risk

[58] Honsell/Schönle/Th. Koller, Art.68 N.8; Schwenzer/ Fountoulakis, p. 482; Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 68 N. 4.

[59] Atamer, CISG, p. 267.

[60] Butler, § 5. 05; Atamer, CISG, p. 268.

[61] Honsell/Schönle/Th. Koller, Art. 68 N. 20; Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 68 N. 7; MünchKommBGB/Huber CISG, Art. 68 N. 11.

4. General Residual Rules on Risk

Art. 69 CISG is beyond the scope of the cases governed by Art. 67 and 68 CISG. In other words, Art. 69 CISG applies to all contracts that do not involve the carriage of goods by a 'carrier'[62]. Art. 69 CISG breaks down into two cases: where the goods are to be handed over at the seller's place, and cases where they are to be handed over in some other place[63].

Art. 69 (1) CISG applies when the contract calls for the buyer to come for the goods at the seller's place of business, often called a sale 'ex works'[64]. According to Art 69 (1) CISG, the risk passes to the buyer when he takes over the goods[65]. This provision protects the buyer instead of the seller because in this stituation, the seller still has control of the goods and, because of that, he/she is in a better position to protect the goods and to provide for their insurance[66]. However, if the buyer takes over the goods behind schedule, due to the second part of Art. 69 (1) CISG the risk passes at the moment when such a delay causes a breach of contract, or from the moment when the goods have been placed at the buyer's disposal, whichever is the later[67]. Although Art. 69 (1) CISG does not require a notice from the seller in order for the goods to be at the buyer's disposal, this requirement can be infered from Art. 69 (2) CISG[68].

Art. 69 (2) CISG applies to all other transactions not within Art. 67, 68 or 69 (1) CISG[69]. To put it another way, Art. 69 (2) CISG governs when the contract does not include transportation by a carrier and the buyer is not to take over the goods at the seller's place of business[70]. It therefore deals with cases in which the contract requires the buyer to take over the goods from

---

[62] Honsell/Schönle/Th. Koller, Art. 69 N. 4; Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 69 N. 3; Atamer, CISG, p. 269; Staudinger/Magnus, Art. 69 N. 7.

[63] Bridge, The Transfer of Risk, p. 98.

[64] Schwenzer/ Fountoulakis, p. 485; Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 69 N. 3.

[65] Erauw, p. 214.

[66] MünchKommBGB/Huber CISG, Art. 69 N. 4.

[67] Honsell/Schönle/Th. Koller, Art. 69 N. 7; Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art.69 N.6; Erauw, p. 214; Staudinger/Magnus, Art. 69 N. 18.

[68] Bridge, The Transfer of Risk, p. 99; Kröll/Mistelis/Perales Viscasillas/Raymond Art. 69 N. 4.

[69] Schwenzer/ Fountoulakis, p. 486.

[70] Honsell/Schönle/Th. Koller, Art. 69 N. 15; Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 69 N. 7; Atamer, CISG, p. 270.

a third party, usually from a public warehouse. In this case, the risk passes when delivery is due and the buyer has been made aware of the fact that the goods have been placed at his disposal at that place[71]. In this instance, the seller is not in better position than the buyer to protect and insure the goods, or pursue claims arising out of their loss. The main intention of this provision is to provide equality between the buyer and the seller in regard to the passing of risk in that the risk should pass as soon as the buyer is in a position to take delivery of the goods. Delivery must be completed when due, and the buyer should be made aware that the goods are at his/her disposal at the particular place. One only can assume that the goods have been placed at the buyer's disposal if the seller has done everthing required to allow the buyer to take control of the goods, such as by giving orders to the warehouseman or a delivery notice to the buyer[72].

Art 69 (2) CISG deals not only with cases in which the buyer is bound to take over the goods at a public warehouse in which the seller has custody of the goods but also with the case in which the contract of sale involves carriage of the goods, but out of scope of Art. 67 CISG. It is important to note how the passing of risk takes place when breach of the contract occurs. Under Art. 69 (1) CISG, a breach of the contract must arise from a failure to take delivery. Other breaches of the contract do not affect the passing of the risk. Specifically, a breach which does not make it impossible for the seller to hand over the goods, but removes or suspends his obligation to do so, is not enough. If delivery of the goods is concluded by the seller, but the buyer fails to pay the purchase price, with the result that the seller does not hand over the goods, the buyer's breach does not cause the risk to pass to him.

Art. 69 (3) CISG requires that goods be 'clearly identified to the contract' before risk can pass to the buyer[73]. Like Art. 67, Art. 69 presupposes identification of the goods[74]. As such, the goods are first considered to be placed at the disposal of the buyer when such identification takes place by marking, notice, etc. If the goods are not identified, the risk remains with the seller[75].

---

[71] Butler, § 5. 06; Erauw, p. 214; Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 69 N. 7.

[72] Honsell/Schönle/Th. Koller, Art. 69 N. 15.

[73] Honsell/Schönle/Th. Koller, Art. 69 N. 21 Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 69 N. 9.

[74] Honsell/Schönle/Th. Koller, Art. 69 N. 23; Staudinger/Magnus, Art. 69 N. 24.

[75] Schwenzer/ Fountoulakis, p. 487; Kröll/Mistelis/Perales Viscasillas/Raymond, Art. 69 N. 7.

5. Risk When the Seller is in Breach of Contract (Art.70 CISG)

Art. 70 CISG states that if the seller has committed a fundamental breach of contract, Art. 67, 68 and 69 CISG do not impair the remedies available to the buyer on account of the breach. However, this provision can only be applied when the seller has committed a fundamental breach of contract[76]. The main issue here is whether a breach of contract by the seller will prevent the risk from passing to the buyer.

Art. 70 CISG extends Art. 66 (2) CISG by keeping remedies available when the seller commits a breach of contract and, at the same time, the goods are lost by accident, independently of the breach of contract by the seller. The fact that the seller has committed a fundamental breach of contract, as meant in Art. 25 CISG, does not prevent the risk from passing to the buyer under the provisions of Art. 67-69 CISG.

When the buyer claims those damages he/she can only claim damages which are justified by the fundamental breach of contract, but not the damages which occured accidentally after the risk had passed to the buyer. In other words, if the seller commits a fundamental breach, although the risk has passed, a buyer may elect to insist on the delivery of substitute goods pursuant to Art. 46 (2) CISG, or to avoid the contract pursuant to Art. 49 CISG[77].

When there is a non-fundamental breach of contract, in spite of the breach of contract, the risk passes to the buyer at the time in which the normal conditions for the passing of the risk are fulfilled. That risk cannot be transferred back to the seller retroactively because the remedies for declaring the contract avoided or requiring the seller to remedy the lack of conformity by repair, are excluded in cases in which the breach of contract is not fundamental[78]. Instead, the risk passes normally according to articles 66 et seq. CISG.

This discussion also applies to other breaches of contract by the seller. When the seller is too late in forwarding the goods, they travel at his risk when the buyer can exercise the remedy to declare the contract avoided because of this breach of contract[79].

---

[76] Honsell/Schönle/Th. Koller, Art. 70 N. 3; Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 70 N. 2.

[77] Butler, § 5. 07; Honsell/Schönle/Th. Koller, Art. 70 N. 11; Bridge, The Transfer of Risk, p. 104; Schlectriem/Schwenzer/Hager/Schmidt-Kessel, Art. 70 N. 9; Kröll/Mistelis/Perales Viscasillas/Erauw Art. 70 N. 3.

[78] Honsell/Schönle/Th. Koller, Art. 70 N. 13; Schwenzer/ Fountoulakis, p. 491.

[79] Atamer, CISG, p. 277.

III. Passing of Risk According to the New Turkish Code of Obligations

1.Introduction

The fundamental rules for the passing of risk and benefit according to the new Turkish Code of Obligations are regulated in Art. 208 and Art. 245.

Art. 208 TBK states as follows;

"*The risk and benefit stay with the seller till the transfer of possesion of the goods in the sale of movables and their registration in the sale of immovables, unless the law or the circumstances or the discrete situations that arise from the special conditions that are set forth in the contract so indicate.*

In the sale of movables, if the buyer is in default of acceptance of taking the possession of the goods, the risk and benefit pass to the buyer as if the handing over of the goods' possession had occured.

When the seller forwards the goods on request of the buyer to a different place to the place of performance, the risk and benefit pass to the buyer as soon as the seller has handed over the goods to the carrier."

Art. 208 (1) sets out the rules about the passing of risk in cases where the contract does not include carriage of goods. It indicates the fundamental rule about passing of risk and benefit, while Art. 208 (1) specifies exceptions to this rule. Art. 208 (1) also determines the passing of risk in the sale of goods and immovables separately. Art. 208 (2) denotes the time of passing of risk and benefit in the case of the buyer's default of acceptance of taking possession of the goods. Art. 208 (3) deals with the passing of risk in cases where the contract includes carriage of goods. For the passing of the risk of non-performance there is no special provision concerning the sale of goods.

The provision for the passing of risk is inapplicable when the loss of or damage to the goods or other impossibility to perform has already occured before the conclusion of the contract. Here, Art. 136 TBK applies[80]. The provision for the passing of risk is also inapplicable when the object owed by the debtor is accidentally lost or damaged after final and complete fulfillment of the contract. The creditor then has nothing left to claim from the debtor and he has to perform in return, i.e., pay the purchase price.

[80] Çetiner, p. 104.

2.General Rules About Passing of Risk and Its Exceptions

a) General Rules About Passing of Risk

The general rules about passing of risk have changed in new Turkish Code of Obligations. The former Turkish Code of Obligations, which remains in force until 1 July 2012, regulates the passing of risk differently from new Turkish Code of Obligations.

The Swiss Code of Obligations had a huge influence on the TBK. Specifically, the former Turkish Code of Obligations followed the theory of connecting the passing of risk to the conclusion of the contract like Art. 185 of the Swiss OR[81].

Art. 183 fTBK. states;

"*The benefit and risk of the object pass to the buyer on conclusion of the contract, except where otherwise agreed or dictated by special circumstance.*

Where the object sold is defined only in generic terms, the seller must select the particular item to be delivered and, if it is to be shipped, must hand it over for dispatch.

In a contract subject to a condition precedent, benefit and risk of the object do not pass to the buyer until the condition has been fulfilled."

If a comparision is made between the new and former Turkish Code of Obligations's provisions about the passing of risk, then a fundamental difference can be easily seen. The TBK connects the passing of risk to the conclusion of the handing over of possession of the sold goods, not the conclusion of the contract.

The TBK does not use the term 'handing over' on purpose for the time of the passing of risk because, for movable property, the right does not pass to the new owner only by handing over the sold goods[82]. Rather, the transfer of possession of the sold goods can be completed in various ways, e.g. when parties decided that indirect possession of the goods suffices for delivery, then risk passes to the buyer with this possession contract. Yet more important is that in this context manual delivery is the general rule of handing over the possession and on the contrary other types of handing over the possession should be decided on the contract[83].

[81] Bucher, p. 281.

[82] Çetiner, p. 99; Özdemir, p. 365.

[83] Atamer, Taşınır Satımı, p. 190.

In addition, the distinction between specific obligation and generic obligation does not exist anymore. Art. 208 applies to all types of obligations. In other words, it does not make any difference whether the obligation is specific or generic[84]. Even though there is no distiction between specific obligation and generic obligation, identification must be made like CISG states (Art. 67 (2) and 69 (3) CISG), at generic obligation[85].

Furthermore, there is no longer a special provision about contracts that are subject to a condition precedent[86]. Because Art. 208 (1) TBK is a general norm, and applicable to all kinds of obligations, the new Turkish Code of Obligations excludes the former Turkish Code of Obligations's special provisions for passing of risk in generic obligations and contracts that contain a precedent condition.

The legislators rationale for this change can be simply explained. They wanted to make the TBK compatible with modern legal systems and international treaties. Therefore, the provision about the passing of risk was formulated in a very similiar manner to the modernized German Civil Code (BGB) and the CISG. § 446 BGB and Art. 69 CISG both connect the passing of risk with delivery of the goods sold, where delivery of the goods sold is interpreted broadly[87]. However some differences between CISG and TBK still remain and this differences will be explained in the conclussion.

b) **Exceptions to the General Rule**

(1) **Sale of Immovables**

Passing of risk is regulated separately for the sale of immovables in Art. 245 TBK. Art. 245 TBK:

"*If a certain time is determined in the contract in order to make it possible for the buyer to take delivery of the sold goods after the registration, risk and benefit pass to the buyer with delivery. This provision is still applicable even if the buyer is in default of accceptance of the delivery of the sold goods.*

This contract's validity depends on its conclusion in a written form."

84 Çetiner, p. 99; Özdemir, p. 365.

85 Atamer, Taşınır Satımı, p. 193, 194.

86 Özdemir, p. 365; Atamer, Taşınır Satımı, p. 194.

87 Staudingers/Beckman, §446 N. 7; Çetiner, p. 99.

In general, as Art. 208 (1) TBK states, the passing of risk occurs at the time of registration, but Art. 245 TBK indicates that, if the special conditions that are set forth in the contract so indicate, risk and benefit pass at the time of delivery. Before 2002, § 446 II BGB had a similiar regulation, but German legislators removed this provision completely during the Law of Obligations Reform in 2002[88]. German legislator's ground for this modification was that it is unfair the buyer to bear passing of risk with the registration yet before taking full possesion of the sold immovable.

(2) Default by the Buyer

Art. 208 (2) TBK sets out the rules for the cases where buyer is in default of acceptance of taking possession of the sold goods. In this case, the risk and benefit pass to the buyer as if the handing over of the possession of the sold goods had accured. The buyer who is in default of the acceptance of delivery bears not only the risk of performance but also the risk of price[89]. That means, first of all, that the buyer must bear the lack of the seller's performance because of the loss of, or damage to the goods, eventhough he/she does not have custody of the sold goods. The buyer must also pay the purchase price; that is bear the risk of the price. Any loss of or damage to the goods after the risk has passed to the buyer certainly does not discharge him/her from the obligation both to pay the price and also bear the seller's lack of performance, unless the loss or damage is due to an act or omission of the seller. This rule is very similiar with § 446 S.3 BGB[90].

The most important implication of Art. 208 (2) TBK is that the seller is not responsible for any defect of the sold goods after the risk and benefit have passed to the buyer. Eventhough there is no specific legal regulation about it, the seller is considered to be responsible to the buyer only for the existing defectiveness of the sold goods at the time of the transfer of risk. In other words, acccording to Art. 208 (2) TBK. if the defectiveness of the sold goods is revealed after default by the buyer, the seller is not liable.

Although the TBK does not make a distinction between specific obligation and generic obligation, this distinction still has a significance for the sale of goods. If the contract relates to generic goods, then these goods must be identified. There is no need to express this specifically as in the cases

[88] Çetiner, p. 100; Özdemir, p. 376.

[89] Özdemir, p. 373.

[90] Staudingers/Beckman, § 446 N. 23.

where risk passes to the buyer at the time of taking possession of the sold goods[91]. On the other hand, if the buyer is in default of taking possession of the sold goods then 'identification' would be decisive. Even if the TBK does not cover this situation explicitly, the Turkish legislator's rationale should be considered as the key. As mentioned above, Turkish legislator wanted to make the new Turkish Code of Obligations compatible with the CISG. Art. 69 (3) CISG states that, if the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract. A broad interpretation of Art. 69 (3) CISG can be made in order to make up for Art. 208 (2) TBK's lack regarding the sale of generic goods[92].

(3) Passing of Risk When the Contract Involves Carriage of Goods

When the seller is bound to forward the goods to the buyer, the risk of non- performance passes to the buyer when the goods are poorly forwarded. By handing over the goods to the carrier, the seller avoids the passing of risk because he/she then has fullfilled all his/her obligations according to contract. Generally, it is accepted that identification takes place at the same time as the goods are handed over to the carrier. When such identified goods are lost by accident, impossibility occurs and the seller is discharged from his/her obligation to perform under Art. 136 TBK. With the handing over of the goods to the carrier, the risk of non-performance passes to the buyer. There is no big difference between the new and former Turkish Code of Obligation's regulations about the passing of risk where the contract involves carriage of goods. An expression like 'on request of the buyer' was simply added to Art. 208 (3) TBK. This addition was based on § 447 BGB and its main purpose was to emphasize that the seller cannot forward the goods without the buyer's request or aganist his/her request[93].

Art. 208 (3) TBK firstly requires that the place that the goods are to be forwarded to (place of destination) is different from the place where performance is usually to take place (place of performance). Because of that place of performance is decisive.

The goods must be forwarded at the buyer's request and this may not take place without or against his/her will. Art. 208 (3) TBK is also applicable

[91] Atamer, Taşınır Satımı, p. 194.

[92] Çetiner, p. 102; Atamer, Taşınır Satımı, p. 194.

[93] Staudingers/Beckman, § 447 N. 8; Özdemir, p. 373.

when the forwarding of the goods follows from a contractual obligation or from a trade usage. If the seller forwards the goods without the buyer's request to do so, Art. 208 (3) TBK is inapplicable and the goods travel at the seller's risk until the goods are received by the buyer (Art. 208 (1) TBK).

The handing over of the goods to the carrier signifies a transfer of the power to control the goods. However, there are different views as to whether the carrier must have an independent legal identity or not. According to one point of view[94], it does not make any difference if the carrier is the seller's employee, because the risk and benefits pass to the buyer at the time of identification and sending over the goods. However, the current view of the Turkish Supreme Court is that the carrier must be independent of the seller, because 'handing over' means the moment when the carrier takes the goods into its custody. If the carrier is the seller's employee then it can be said that the seller still has custody of the goods.

(4) Contracts Subject to Condition Precedent

The former Turkish Code of Obligations specifically regulated the passing of risk and benefit when a contract involves a precedent condition with Art. 183 (3) f. TBK. The TBK's provision about the passing of risk does not include a contract subject to a condition precedent. It is obvious that Turkish legislators made this regulation intentionally. This gap can be filled with § 446 BGB regarding to Art. 208 TBK's ground[95].

IV. Comparison and Conclusion

In both the CISG and the TBK, the concept of 'risk' refers to paying the purchase price when the goods have been lost or damaged by accident. Thus, when the damage or loss is due to an act or ommission of the seller, then the buyer will be discharged from his/her obligation to pay the price. In other words, the seller cannot be held responsible for the loss or damage, when the goods are loss or damaged by accident.

The CISG connects the passing of risk to the delivery of the goods to the buyer or to the carrier. In contrast with the CISG, according to the former Turkish Code of Obligations, risk passed to the buyer at the time of the conclusion of the contract. This regulation has changed with the TBK in that now the risk and benefit stay with the seller till transfer of possession of

[94] Akıntürk, p. 140.

[95] Özdemir, p. 373.

the goods in the sale of movables, and registration in the sale of immovables. The reason for this change is to bring Turkish Obligation Law into alignment with the CISG. By the seller transfering of the possession of the goods to the buyer, the buyer acquires custody of the goods. When the buyer gains control of the goods, then he/she will be in a better position to protect the goods from being damaged or lost than the seller, so for that reason he/she should bear the risk of loss or damage.

The CISG[96] states explicitly that the goods must be clearly identified to the contract, whether by marking on the goods, by shipping documents, by notice given to the buyer, or otherwise. While the former Turkish Code of Obligations explicitly included this 'identification' in Art. 183 (2) fTBK, the new regulation does not include this statement. Despite this, it can be assumed from the Turkish legislators' main purpose that there was no intention to make any changes in this particular subject.

When a contract involves carriage of goods where the seller is bound to send the goods to a different place to the place of fulfillment, risk passes to the buyer according to both the CISG and Turkish law at the time of the hand over of the goods to the carrier in accordance with the contract (Art. 67 (1) CISG, Art. 208 (3) TBK.). When the goods are handed over to the carrier, the carrier takes control of the goods.

According to the CISG, the carrier must be independent and self-employed. That means, the carrier should not take orders from the seller. When the carrier is an employee of the seller, then the risk does not pass to the buyer because, in this situation, the goods still remain in the seller's custody.

In contrast, the Turkish legislation, although Art. 208 (3) is based on § 447 BGB, does not specify who the carrier can be. In German law the dominant view contradicts current opinion in the CISG, that risk does not pass to the buyer when the seller uses his/her own employee for the carriage of the goods[97]. In other words, in German law, it is not important whether the carrier is independent from the seller or not. The current view in Turkish law is identical with the CISG and diverges from German law on this point. The most important issue is that the risk stays with the seller as long as he/she has control of the goods.

[96] Art 67 (2) and 69 (3) CISG.

[97] Romein, Chapter 4, B, III; Staudingers/Beckman, § 447 N. 14.

The CISG's aim is to set out fundamental rules governing the international sale of goods. For that reason, it pays special attention to the requirements of international trade. In contrast with the Turkish Code of Obligations deals mostly with national trade, so it does not always take account of international trade's customs. While it cannot be said that the Turkish Code of Obligations intended to exclude international trade from its purview, it nevertheless does not always take sufficient account of international requirements in its articles.

As a matter of fact, Turkish legislators wanted to draft a new Code of Obligations similiar to the CISG and other international trade rules in order to make national and international transactions compatible to one another. Both legal systems primarily accept the agreements of the contracting parties and customs as binding. Art. 208 TBK states distinctly that parties can change the general rule about the passing of risk on their contract. However there are some issues like, the distinction between generic obligation and specific obligation and the 'identification' of generic obligation, make CISG and TBK not exactly alike. In Turkish law when the buyer does not take over the goods at term date then he/she is in default of acceptance. The buyer's default of acceptance and its consequences are regulated by general provisions for default of acceptance.

The system of the CISG is structured clearer than the TBK. In the CISG the passing of risk regulated in the same chapter, Chapter IV. On the other hand in TBK, the rules on passing of risk indistincter than the CISG. One has to look for legislators main purpose in order to figure out what intentionally left as a gap in TBK.

BIBLIOGRAPHY

Akkanat Halil, "Gefahrtragung beim internationalen Versendungskauf nach UN- Kaufrecht", *Annales de la Faculté de Droit d'Istanbul*, Vol.35, No. 52, 2003, pp. 269-281.

Akıntürk Turgut, *Satım Akdinde Hasarın İntikali*, Ankara Üniversitesi Hukuk Fakültesi Yayınları No: 212., Ankara, 1966.

Atamer Yeşim, *Uluslararası Satım Sözleşmelerine İlişkin CISG Uyarınca Satıcının Yükümlülükleri ve Sözleşmeye Aykırılığın Sonuçları*, Beta, İstanbul, 2005 (citied: Atamer, CISG).

Atamer Yeşim, "Taşınır Satımı Sözleşmesi", Türk Borçlar Kanunu Sempozyumu Makaleler-Tebliğler, Ed. Murat İnceoğlu, XII Levha, İstanbul, 2012, pp. 187-221 (cited: Atamer, Taşınır Satımı)

Beckmann Roland Michael, *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen Buch 2 Recht der Schuldverhaeltnisse §§ 433-487; Leasing (Kaufrecht und Leasingrecht)*, Sellier-de Gruyter, Berlin, 2004 (cited: Staudinger/Beckmann).

Bridge Michael, "The Transfer of Risk under the UN Sales Convention 1980 (CISG)", *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H. Kritzer on the Occasion of his Eightieth Birthday*, ed. by Camilla B. Andersen & Ulrich G. Schroeter, 2008, pp. 77-105 (cited: Bridge, The Transfer of Risk).

Bridge Michael, *The International Sale of Goods Law and Practice*, 2. ed., Oxford Univesity Press, 2007 (cited: Bridge, The International Sale of Goods).

Bucher Eugen, "Notizen zu Art. 185 OR (Gefahrtragung durch den Käufer)", *ZSR*, Bd. 89, 1970, pp. 281-294.

Butler Allison E., *A Practical Guide to the CISG: Negotiations Through Litigation*, Aspen Publishers, 2007.

Cenini Marta/Parisi Francesco, "An Economic Analysis of the CISG", *CISG Methodology*, ed. by André Janssen/Olaf Meyeri, Sellier European Law Publishers, 2009, pp. 151-170.

Çetiner Bilgehan, "Yeni Türk Borçlar Kanunu'nda Yarar ve Hasarın İntikali İle Satıcının Ayıptan Sorumluluğuna İlişkin Hükümlerin Değerlendirilmesi", *İÜHFM.*, C.: LXVII, S.1-2, 2009, pp. 97-114.

DiMatteo Larry A./Dhooge Lucien J./Greene Stephanie/Maurer Virginia G./Pagnattaro Marisa Anne, *International Sales Law A Critical Analysis of CISG Jurisprudence*, Cambridge University Press, 2005.

Erauw Johan, "CISG Articles 66-70: The Risk of Loss and Passing It", *25. J.L.& Com. 203*, 2005-2006, pp. 203-217.

Ferrari Franco, "General Principles and International Uniform Commercial Law Conventions: A Study of the 1980 Vienna Sales Convention and the 1988 Unidroit Conventions on International Factoring and Leasing", *Pace Int'l L. Rev. 10*, 1998, pp. 157-185.

Fountoulakis Christiana, "Remedies for breach of contract under the United Nations Convention on the International Sale of Goods", *ERA Forum 12*, 2011, pp. 7-23.

Hager Günter, *Die Gefahrtragung beim Kauf Eine rechtsvergleichende Untersuchung*, Alfred Metzner Verlag, Frankfurt am Main, 1982 (cited: Hager, Gefahrtragung).

Hager Günter, "Gefahrtragung nach UN- Kaufrecht im Vergleich zu EKG und BGB", *Einheitliches Kaufrecht und nationales Obligationenrecht Referate und Diskussionen der Fachtagung Einheitliches Kaufrecht am 16./17. 2. 1987*, ed. by Peter Schlechtriem, Nomos Verlagsgesellschaft, 1987, pp. 387-413 (cited: Hager, Einheitliches Kaufrecht).

Honnold, *Risk of Loss*, Parker School of Foreign & Comparative Law (Galston & Smit eds.), International Sales: The United Nations Convention on Contracts for the International Sale of Goods, New York: Matthew-Bender, 1984; http://www.cisg.law.pace.edu/cisg/biblio/honnold5.html (accessed at 17.05.2012) .

Kommentar zum UN-Kaufrecht Übereinkommen der Vereinten Nationen über Vertraege über den Internationalen Warenkauf (CISG), 2. ed. by Heinrrich Honsell, Springer Verlag, Berlin, Heidelberg, 2010 (cited: Honsell/author).

UN-Convention on Contracts for the International Sale of Goods (CISG), ed. by Kröll Stefan/Mistelis Loukas/Viscasillas Pilar Perales, C.H. Beck, München, 2011 (cited: Kröll/Mistelis/Perales Viscasillas/author) .

Münchener Kommentar zum Bürgerlichen Gesetzbuch, Band 3, Schuldrecht Besonderer Teil, §§ 433-610, Finanzierungsleasing, HeizkostenV, BetriebskostenV, CISG, ed. by Krüger Wolfgang/Westermann Harm Peter, C.H. Beck, München, 2012 (cited: MünchKommBGB/author CISG) .

Magnus Ulrich, *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen Wiener UN-Kaufrecht (CISG*), Sellier-de Gruyter, Berlin, 2005 (cited: Staudinger/Magnus).

Özdemir, Hayrunnisa, "Satış Sözleşmesinde Yarar ve Hasarın İntikali", *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi Özel Hukuk Sempozyumu Özel Sayısı, Prof. Dr. Cevdet Yavuz'a Armağan*, 2011, pp. 359-379.

Posch Willibald, *Bürgerliches Recht Band VII Internationales Privatrecht*, 5. ed., Springer Wien, New York, 2010.

Pfund Peter H., *Contributing to Progressive Development of Private International Law: The International Process and the United States Approach*, Martinus Nijhoff Publishers, 1994.

Ramberg Jan, "To What Extent do INCOTERMS 2000 Vary Article 67 (2), 68 and 69?", *25 J.L. & Com. Vol. 25*, 2005- 2006, pp. 219-222.

Romein Annemieke, The Passing of Risk A comparison between the passing of risk under the CISG and German law, http://www.cisg.law.pace.edu/cisg/biblio/romein.html. (accessed at 17.05.2012) .

Commentary on the UN Convention on the International Sale of Goods (CISG), 3. ed. by. Peter Schlechtriem/Ingeborg Schwenzer, Oxford University Press, 2010 (cited: Schlechtriem/Schwenzer/author).

Commentary on the UN Convention on the International Sale of Goods (CISG), 2. ed. by. Peter Schlechtriem/Ingeborg Schwenzer, Oxford University Press, 2005 (cited: Schlechtriem/Schwenzer/author).

Schlechtriem Peter, *Internationales UN-Kaufrecht*, 2. ed., Mohr Siebeck, 2003.

Schwenzer Ingeborg/Fountoulakis Christiana, *International Sales Law*, Routledge-Cavendish, London, New York, 2007.

Schwenzer Ingeborg / Hachem Pascal, "The CISG- Success and Pitfalls", *American Journal of Comperative Law*, Volume 57, Issue 2, 2009, pp. 457-478.

Visser Evelien, "Favor Emptoris Does The CISG favor the Buyer?", *67 UMKC. L. Rev. 77*, 1998-1999, pp. 77-92.