

*Article 90*

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the parties have their places of business in states parties to such agreement.

## OVERVIEW

1. Article 90 aims at providing priority to other international agreements that concern matters covered by the Convention. Specifically, Article 90 aids in the determination of the governing law for a dispute over a contract for the international sale of goods, or some aspect thereof, by providing that the Convention shall not prevail over any international agreement “which has already been made or may be entered into...” and which concerns the same matters covered by the Convention, as long as the parties’ places of business are in States party to such agreement.<sup>1</sup>

2. Several cases have held that when an international agreement existed prior to the Convention coming into force, priority is given to the treaty already in place with regard to any overlapping substantive issues.<sup>2</sup> In order for the international agreement to supplant the Convention, both of the contracting parties must have their place of business in States signatory to the international agreement.<sup>3</sup>

THE PROTOCOL ON THE GENERAL CONDITIONS  
OF DELIVERY BETWEEN THE USSR AND  
THE PEOPLE’S REPUBLIC OF CHINA

3. There are a number of arbitral awards rendered in cases between parties from the Russian Federation and the People’s Republic of China in which the applicability of the Protocol on the General Conditions of Delivery between the USSR and the People’s Republic of China (“Protocol”) in relation to the Convention is addressed. The Protocol<sup>4</sup> was signed by both States prior to the Convention becoming effective in either country. In none of the cases did the contract of sale include a choice of law provision.

Acknowledging that, by virtue of article 1 (1) CISG, the Convention would normally be applicable as both parties are Contracting States, the tribunals gave priority to the Protocol on matters otherwise covered by the Convention pursuant to article 90.<sup>5</sup>

1955 HAGUE CONVENTION ON THE LAW  
APPLICABLE TO INTERNATIONAL SALE  
OF GOODS

4. The cases concerning the relationship between CISG and the Convention on the Law Applicable to Contracts for the International Sale of Goods (1955 Hague Convention) have held that, as the rules covered by the two are not overlapping in scope, there is no issue regarding which international agreement shall prevail.<sup>6</sup> CISG provides substantive rules for the sale of goods and the 1955 Hague Convention provides, in relevant part, for conflict of law issues. Article 3 of the Hague Convention of 15 June 1955 provides that, unless the parties agreed otherwise in the contract, the law of the seller’s country is applicable to the dispute involving the contract for the sale of goods.<sup>7</sup> See the discussion in the Digest for article 1 regarding “Indirect Applicability.”

1980 ROME CONVENTION ON THE LAW  
APPLICABLE TO CONTRACTUAL OBLIGATIONS

5. It has been held that there is no conflict in the context of article 90 between the Rome Convention of 19 June 1980<sup>8</sup> (regarding applicable law) and CISG (regarding uniform material law), and there is therefore no reason to determine which international agreement prevails.<sup>9</sup> See the discussion in the Digest for article 1 regarding “Indirect Applicability.”

**Notes**

<sup>1</sup> Hungary has filed certain remarks under article 90 providing that it “considers the General Conditions of Delivery of Goods between Organizations of the Member Countries of the Council for Mutual Economic Assistance/GCD CMEA...to be subject to the provisions of article 90 of the Convention.” (16 June 1983) UN Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-10&chapter=10&clang=\\_en#19](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&clang=_en#19). There are currently no identified cases clarifying the application these remarks.

<sup>2</sup> Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce, Russian Federation, 5 July 2006, information available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce, Russian Federation, 14 April 1998, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce, Russian Federation, 2 October 1998, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce, Russian Federation, 24 January 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu)

(regarding calculation of interest); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce, Russian Federation 22 March 2002, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>3</sup>See the Digest for article 10 regarding place of business.

<sup>4</sup>Also referred to in translated arbitral awards as the GTS USSR-PRC, GTB, and the General Principle of Deliveries between the Soviet Union and the People's Republic of China.

<sup>5</sup>See also Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce, Russian Federation, 5 July 2006, information available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce, Russian Federation, 14 April 1998, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce, Russian Federation, 2 October 1998, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce, Russian Federation, 24 January 2005, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (regarding calculation of interest); Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce, Russian Federation 22 March 2002, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>6</sup>Tribunal commercial de Bruxelles, Belgium, 5 October 1994, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 647 [Suprema Corte di Cassazione, Italy, 19 June 2000], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>7</sup>Tribunal commercial de Bruxelles Brussels, Belgium, 5 October 1994, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 647 [Suprema Corte di Cassazione, Italy, 19 June 2000], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu).

<sup>8</sup>For the text of this Convention, see Official Journal L 266, 9 October 1980, 1 et seq.

<sup>9</sup>Tribunal commercial de Bruxelles, Belgium, 5 October 1994, English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu); CLOUT case No. 647 [Suprema Corte di Cassazione, Italy, 19 June 2000], English translation available on the Internet at [www.cisg.law.pace.edu](http://www.cisg.law.pace.edu) (further providing that with regard to the International Sales of Moveable Goods, the Hague Convention of 15 June 1955 prevails over the Rome Convention of June 1980).