CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS - THE SIGNIFICANCE OF "FUNDAMENTAL BREACH" IN THE VIENNA CONVENTION, 1980.

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Introduction - Contracts for the International Sale of Goods and the Vienna Convention.

The Vienna Convention on Contracts for the International Sale of Goods,1980 (CISG) was promoted by the United Nations as a replacement for the Uniform Law on the International Sale of Goods (ULIS) and the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULFIL). It has been ratified by countries around the globe with legal and social traditions situate each end of every possible spectrum, from the arch-capitalist, United States of America,[1] communist China[2] and Cuba,[3] countries following the Islamic Sharia Law such as Iraq[4] and Syria,[5] and developing countries such as Romania[6] and Georgia.[7] It is designed for easy use by both trader and lawyer,[8] and for this reason it avoids the use of conceptual legal terminology. The Vienna Convention is the product of a synthesis of legal systems and is the "fruit of world wide compromise".[9] As such it does not 'fit comfortably with the existing law of every country which adopts it'.[10] It is equally authoritative in each of its six languages, Arabic, Chinese, English, French, Russian and Spanish,[11] and is to be interpreted by national courts, without the help of a central interpreting body. Against this background of disparate legal and socioeconomic views, the creation of (and the subsequent uniform interpretation of) the Convention has been, and will continue to be, quite a challenge.

The objective of the drafters of the Vienna Convention was to provide more objective principle and more precision in interpretation of the international rules governing contracts for the international sale of goods than arose from the ULIS.[12] The question which this article focuses upon is whether there is sufficient clarity in the convention in the definition of 'fundamental breach', and certainty in how it will be applied. In its report on the Convention, the Law Society of England and Wales gave

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[1] Signed 31.8.1981, ratified 11.12.1986 and in force 1.1.1988, subject to reservation on Article 95.

[2] Signed 30.9.1981, ratified 11.12.1986, and in force 1.1.1988, subject to reservations on Articles 95 and 96.

[3] Ratified 2.11.1994, and in force 1.12.1995.

[4] Ratified 5.3.1990, in force 1.4.1991.

[5] Ratified 19.10.1982, in force 1.1.1988.

[6] Ratified 22.5.1991, and in force 1.6.1992.

[7] Ratified 16.8.1994, in force 1.9.1995.

[8] *Ibid.* footnote no. 21.

[9] *Ibid.* footnote no. 1.

[10] *Ibid*. footnote no. 2.

[11] Final paragraph to the preamble to the Convention.

[12] *Ibid*. footnote no. 1.

as one of its arguments against its adoption 'that it will not produce uniformity because it will be subject to differing national interpretation'.[13]

Fundamental Breach distinguished from Non-fundamental Breach

The concept of Fundamental Breach, though unfamiliar in many parts of the world, is said to be "fundamental to the Convention's remedy system".[14] As the term "fundamental breach" is the lynch pin of the Convention its interpretation is of great importance, and it must be distinguished from non-fundamental breach. Bianca & Bonnel describe this distinction as being of primary importance and central to the whole structure of the Convention.[15]

To truly understand the meaning of the term 'fundamental breach' it is, however, necessary first to understand the context in which the resulting remedy of *avoidance*[16] operates, and to identify any alternative remedies such as specific performance,[17] suspension of performance,[18] damages,[19] reduction in price[20] or other remedies that are available to the aggrieved party. The reason is simple: if the problem arising from the contract can be resolved by one of the lesser 'non-fundamental breach' remedies, then the remedy of avoidance will not be available. There is a flexible approach to the balancing of these remedies, which is peculiar to the CISG.[21]

(a) Specific Performance

Specific Performance, the main 'other' remedy under the Convention, is provided for by Article 46(1) (buyer) and Article 62 (seller). The Specific Performance remedy is primarily designed for situations of non-delivery or under-delivery of goods, but Article 46(2) extends its use to include the delivery of substitute goods, and Article 46(3) to the specific performance of repairing obligation of defective goods. This remedy can be supplemented by a period of 'Nachfrist' under Article 47(1) and Article 63(1).[22] It excludes the remedy of Avoidance only, but not the other remedies of Damages or Reduction of Price. The Convention, under Article 28, limits the application of Specific Performance to situations where it is otherwise available under the law of the forum state.

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[13] Robert G. Lee, *"The UN Convention on Contracts for the International Sale of Goods: OK for the UK?"* 1993 *Journal of Business Law* (March) 131-148.

[14] Michael Will in Bianca & Bonnel (ed)*'Commentary on the International Sales Law. The 1980 Vienna Sales Convention'*, (1987).

[15] John Bassindale and Nicholas Fletcher *"The UN Convention on Contracts for the International Sale of Goods ('The Vienna Convention')"* [1992] 1 ICCLR 10.

[16] To include fundamental breach, Article 49.1(a.).

[17] Articles 46 & 47.

[18] Article 71.

[19] Articles 74 to 77.

[20] Article 50.

[21] Eva Diederichsen, Commentary, *"Oberlandesgericht, Frankfurt am Main : Case 1,"* Vol 14, *Journal of Law and Commerce* 177 (1995).

[22] See below.

(b) Damages

Damages is a non exclusive remedy and can be used on its own, or with either Specific Performance or Avoidance.[23] Failure to comply with contractual obligations is sufficient for it to apply, with fault not being relevant. Evaluation of damages, if pursuant to Article 74 (residual) of the Convention, or Articles 75 (substitute sale) and 76 (when the contract is avoided), but is subject to the 'force majeure' provisions in Article 79. Issues such as interest and period for payment have been left to be resolved by national law.[24] The costs, however, of preserving the goods, in the event that the buyer, for what ever reason, does not pay the price, does not fall within the ambit of damages, but is independently recoverable, as far as they are reasonable, under Articles 85 and 88(3).[25] The issue of liquidated damages clause is not dealt with by the Convention, and would appear to require the interpretation of such clauses by the underlying domestic law, to be determined by applying choice of law principles.[26]

(c) Reduction of the Purchase Price

A further remedy referred to by the Convention is the reduction of the purchase price under Article 50 thereof. This reduction should be the difference in value of the goods actually delivered and those that should have been delivered. The date of assessment of the difference in price is the date of delivery of the relevant goods.[27] This remedy can be in addition to damages, though one set of figures would be reflected in the calculation of the other. This remedy is not affected by the 'force majeure' provisions in Article 79, and can apply even when the remedy of damages may not. The buyer may not, however, use this remedy if the seller is able to cure the non-conformity without causing the buyer unreasonable delay or inconvenience. Damages in this latter situation may remain payable.

(d) Other Remedies - Penalty Clauses, and Interest

Other remedies not referred to, or inadequately dealt with in the Convention, in the absence of express prohibition, may be applicable under the underlying domestic law, to be decided by the conflict of law rules of the forum state, e.g. Penalty clauses, which is a recognised remedy in Civil law jurisdictions only. Another issue that has to be resolved is Interest. This can be payable (in the event of delay in payment of the price) without prejudice to any claim for damages.[28] As with the remedy of reduction of price, it is not affected by the 'force major' provisions in Article 79. It would appear from Kritzer's paper[29] in the absence of a specific provision in the Convention, that the interest rate to be applied is that current at the time at the seller's place of business.

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[23] Articles 45 and 61 of the Vienna Convention.

[24] *Ibid*. footnote no. 3.

[25] Lief Sevon in edited Paul Vollon and Petar Sarcevic (eds) *Obligations of the Buyer under the UN Convention on contracts for the International Sale of Goods, Dubrovinick Lectures,* page 203.

[26] Robert S. Rendell, "*The New U.N. Convention on International Sales Contracts: An Overview*," 15 *Brooklyn Journal of International Law* 23, (1989).

[27] Article 50.

[28] Article 78.

[29] Albert H. Kritzer , *Guide to Practical Applications of the United Nations Convention on Contracts for the International Sale of Goods,* (1989).

The effect of Fundamental Breach

Fundamental Breach is defined in Article 25 of the Convention, and can arise (by virtue of Articles 49 and 64) in two distinct and defined situations, namely:

> (a.) fundamental breach by the seller who fails to fulfill any of his obligations under the contract or the Vienna Convention, (subject to the provisions of Article 47(1) or Article 63); and
>
> (b.) breach by delay or non delivery of goods (the '*Nachfrisht*' provisions)

An aggrieved party has the option to avoid a contract on the occurrence of a fundamental breach. The avoidance releases both parties from their obligations to perform the contract, but only subject to the payment of any damages that may be due. The avoidance equally does not invalidate contractual provisions which deal with arbitration, choice of forum, or dispute resolution.[30]

(a) Fundamental breach by the seller

Goods delivered pursuant to a contract governed by the Vienna Convention are required to be of the 'quantity, quality, and description required by the contract and which are contained or packaged in the manner required by the contract'.[31] Goods are deemed not to conform with the contract if they breach any of the provisions set out in Article 35.2, subject to the provisions of Article 35.3. However, the vendor is not liable for any discrepancies under Article 49(2) if, 'at the time of the conclusion of the contract the buyer knew or could not have been aware of such lack of conformity'.[32] Such breach has to be such as to effect the other party 'substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result'[33] before fundamental breach can be deemed to have occurred.

(b) "Nachfrist"

Fundamental breach is one of the two causes of avoidance of a contract given under the convention by Articles 49 and 64, the second cause of action being non-delivery within an additional period of time granted, (Articles 47 and 63), a concept similar to the German doctrine of *Nachfrist.*[34] Section 326 of the German Civil Code states that where there is a default by one party the other party may give him a reasonable time within which to perform his part, with a declaration that he will refuse to accept the performance after the expiration of the period stated, If the performance is not made within due time, the party who gave this notice, known as *Naschfrist*, may withdraw from the contract. However, Article 48 of the Vienna Convention, (subject

[30] Article 81(1).

[31] Article 35.1.

[32] Muna Ndulo, *"The Vienna Sales Convention 1980 and the Hague Uniform Laws on International Sale of Goods 1964: A Comparative Analysis" 38 ICLQ (1989).*

[33] Article 25.

[34] *Ibid*. footnote no. 17.

to Article 49) permits the vendor, even after the date or delivery is passed, to remedy his failure to deliver, at his own expense, 'if he can do so without unreasonable delay, and without causing the buyer unreasonable inconvenience or uncertainty or reimbursement by the seller or expenses advanced by the buyer'. This is nevertheless, subject to the buyer's right to recourse to damages.

In the event of non-delivery of goods the purchaser, if he is not sure that this in itself is a fundamental breach, may fix an additional period for the delivery of the goods under Article 47 (and Article 63 - the seller). In the event of non-delivery at this later date then the contract may be avoided under Article 49(1)(b), subject to the provisions of Article 47 (and Article 63 - the seller).

Time is not, in itself, of the essence in the performance of contracts under this Convention. This can lead to a problem whether a particular delay in performing a contract constitutes fundamental breach, thus allowing the aggrieved party to avoid the contract. Equally, in order to rely on delay as a fundamental breach, any possible cure, other than avoidance, must cause the aggrieved party 'unreasonable inconvenience'. As stated by Bassindale and Fletcher,[35] 'these questions will be particularly difficult to answer in the context of lengthy trading chains' or in the commodity markets.[36] Avoidance is a complex and 'thorny'[37] problem since the non-offending party must be sure that the breach is fundamental before commencing the avoidance procedure, in order not to be held liable for fundamental breach himself. The issue of delay must be examined in an international context, taking into account issues such as the type of goods and the goods handing facilities available to the parties. In many cases it would be very punitive if goods have to be returned around the world. It could be more reasonable to repair goods in situ that to re-ship them.[38]

A better and more reliable course of action for a party suffering form delay would be to operate the aforementioned '*Nachfrist*' doctrine, which makes time of the essence in the performance under the contract, and 'thus allows a party awaiting performance to eliminate uncertainty concerning the amount of delay that is serious enough to justify avoiding the contract'.[39] After serving the *Nachfrist* notice the buyer can then 'avoid the contract with impunity'[40] if there is no delivery by the date specified in the notice, or if the seller specifically states that he will not be complying with the *Nachfrist* notice. There is, as a result, some doubt as to when delay by itself results in fundamental breach, in the absence of the operation of the *Nachfrist* doctrine. The vagueness of the fundamental breach position in cases of delay forces the business man to rely on the *Nachfrist* remedy, thus bringing uncertainty into the original contract regarding the date of performance, and weakening the remedy of fundamental breach itself.[41]

Avoidance

[35] *Ibid*. footnote no. 2.

[36] *Ibid*. footnote no. 2.

[37] *Ibid*. footnote no. 17.

[38] *Ibid*. footnote no. 18.

[39] Harry M. Fletchner , "*Remedies under the New International Sales Convention: the Perspective from Article 2 of the U.C.C.*", 8 *Journal of Law & Commerce* 53 (1988).

[40] *Ibid*. footnote no. 2.

[41] The US law as enacted in UCC s.2-601, in contrast, applies fundamental breach only after the goods are accepted.

As Article 81(1) states the 'avoidance of the contract releases both parties from their obligations', subject to any damages that may be due. Avoidance of the contract, is only available in very limited circumstances, with the aim of the Convention being the reliance by traders on the aforementioned lesser remedies. 'The Convention limits access to this rather drastic form of relief, not only by restricting avoidance to cases of "fundamental" (material) breach, but also by widening the seller's right to cure'[42] through the non avoidance remedies. Some American commentators have noted that, because of this narrow application of the doctrine, it will be more difficult to operate the fundamental breach provisions of the Vienna Convention than to revoke acceptance or reject shipments, and cancel a contract, under the American Uniform Commercial Code.[43] It is therefore of the utmost importance to be able to distinguish between fundamental breach and non-fundamental breach.

The Test for Fundamental Breach under the CISG

The actual test of Fundamental Breach in the Convention is very different to that used in existing Common Law jurisdictions, and is to be assessed 'not merely by reference to the term that was broken, but by reference to the impact of the breach on the injured party as well as the perception or contemplation of the guilty party as regards the likelihood of the impact or loss'.[44]

The term 'fundamental' is not adequately defined in the Convention. The only accepted guide to the interpretation is that the breach must be "serious," but we still have to look to case law to find a definition of what is 'serious'. The first assumption that one should be able to make is that the Convention provides the same provisions in each of its official languages. To understand the meaning, in English, however, of 'substantial detriment'[45] it is necessary to examine the French, Spanish or Russian version, where it can be ascertained that this term is to be interpreted 'always in a rather large and vague sense'[46]. John Honnold[47] is also of the opinion that 'temporal or physical deviations (such as one day or .001 millimeter) have no significance apart from the extent of the loss or detriment they cause to the other party'. This would appear to introduce an element of subjectivity into the test, as the detriment depends on the non breaching party's personal business situation, and factors that would probably not be in the breaching party's knowledge.

The burden of proof regarding issues of unforeseeability has been shifted onto the party in breach by the use of the word 'unless'[48]. There is no guide in the convention as to what information is to be taken into account, and we are forced to

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[42] Joseph M. Lookofsky , *Understanding the CISG in the USA: a compact guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods.*

[43] *Ibid*. footnote no. 17.

[44] Clement No'ong'ola *"The Vienna Sales Convention and Southern Africa"* 7(2) *African Journal of International and Comparative Law* (RADIC) 227-256, (1995).

[45] Proposed by the Mexican delegate, Shinichiro Michida, "Cancellation of Contract", 27 *American Journal of Comparative Law* 279 (1979).

[46] *Ibid*. footnote no. 1.

[47] John Honnold,*Uniform Law for International Sales under the 1980 United Nations Convention*, (2ed, 1991), p. 181.

[48] *Ibid*. footnote no. 1.

rely on academic commentators to shed some light on this issue. While it would appear from commentators that 'information that a party receives too late to affect performance seems outside the scope of Article 25', as there would be no opportunity to react to same,[49] it is questionable if such commentators will be able to fill this gap in the drafting of the Convention, as while and individual may or may not have judicial respect in the courts of his or her home jurisdiction, it is unlikely that the same regard would be had to such views throughout the time and language zones. Even academic scholars differ on this issue. While some commentators are of the opinion that foreseeability should always be measured as of the time of contract formation, Flechtner[50] differs. He is of the opinion that the Convention is drafted to reflect the philosophy behind the American U.C.C. section 1-203 thereof which deals with the good faith requirement 'offer flexibility to account for facts that arise after contract formation'.

Case Law

The case law on the Convention is currently quite sparse,[51] as reflected in the sentiments of the US Court of Appeals for the second circuit in the case of *Delchi Carrier SpA v. Roterex Corporation*, a case heard on the 6th December 1995, when it stated that, 'because there is virtually no case law under the convention, we look to its language and to the general principles upon which it is based'. It will be interesting to see to what extent one national court will feel obliged to follow the findings of another national court situate at the other end of the globe, and possibly in another, rival, trading block. The European courts have got into the habit of looking at their neighbour's case law, and some cohesive interpretation of the Vienna Convention on the continent of Europe can be expected. It will be interesting to see if this will be a world wide phenomenon.

One such case was the case of *SARL BRI Productions "Bonaventure" v. Pan African Export*[52] which was heard before the French *Cour d'Appel de Grenoble*. Here the court found that not respecting the wishes of the vendor company (*viz.* to know the destination of the goods) constituted a fundamental breach of contract within the meaning of Article 25 CISG.[53]

Non-exclusive use of a distinctive mark on goods also led to fundamental breach in a case before the *Oberlandesgericht Frankfurt am Main.*[54] This distinctive mark was deemed to be a secondary obligation, nevertheless, breach of same was sufficiently serious to lead to fundamental breach. (In the commentary on this case,[55] however, it was noted that the German court never referred directly to Article 25.) Similarly, breach of an exclusivity clause was also held to be a fundamental breach, by

[49] *Ibid*. footnote no. 58.

[50] *Ibid*. footnote no. 29.

[51] Lexis 34226, also at 71 F. 3d 1024, 1995 US App, (District Court citation 1994 Lexis 12820).

[52] Case No 93/3275; see http://www.informatik.uni-dortmund.de/SFgate/welcome.html; also available R. Accueil Dalloz Sirey (1995) JR 100.

[53] This echoed an earlier finding in case no. 93/3275, involving the same parties.

[54] Oberlandesgericht, Frankfurt am Main, September 17, 1991-5U 164/92, page 261.

[55] *Ibid*. footnote no. 9.

the *Oberlandesgericht Frankfurt am Main* on the previous day.[56] Both of these cases involved Italian shoe manufacturers.

On the issue of breach by one party being a cause for breach by the other party, the Russian Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry,[57] held that violations of the vendors obligations, (the delivery of the goods in the absence of a bankers guarantee), could not be deemed a fundamental breach as the purchaser had accepted delivery of the goods. It may have lead to a valid claim for damages but the aggrieved party had not claimed this remedy.

Late delivery of goods arose in the case of *Roder Zelt-und Hallenkonstruktionen GmbH v. Rosedown park Pty Ltd et al,*[58] heard by the Australian Federal Court of the South Australian District to Adelaide, which held that no fundamental breach occurred in the event of late payments as no demand for same had been made. Similarly in the Court of Arbitration of the International Chamber of Commerce in Case No 7585/92,[59] in a case involving an Italian company and a Finnish company the Arbitration Court held that delay in payment 'is not always in itself a fundamental breach. According to circumstances, delay of payment for the buyer or delay of delivery for the seller cannot be the cause of immediate avoidance of the contract'. This would appear to severely limit the availability of non-Nachfrist fundamental breach. However, in another Italian case, *Fielopack Ag v. Denisplast SpA*[60] dispatch of goods after having received notification of the cancellation of the contract, and then only partial delivery occurring was held to be fundamental breach. While further examination of the facts of the two cases may be of merit, there appears to be a dichotomy of interpretation even between these two cases. The US courts, on the same issue, appeared to follow the Italian reasoning, as they held in the case of *Delchi Carrier SpA v. Rotorex Corporation*[61] that a delay in the shipment of goods according to agreed installment dates, and the non conformation with performance specifications of the goods that did arrive, was held to be fundamental breach.

The effect of Fundamental Breach on other Parts of the CISG - Anticipatory Breach, Suspension of Performance, and Partial Performance Breach

The definition of Fundamental Breach affects many other articles of the Vienna Convention, to include Anticipatory Breach,[62] Suspension of Performance,[63] Partial Fundamental Breach.[64]

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[56] 16th September 1991, 3/11 03/91, also available in *Recht der Internationalen Wirtschaft* 1991, 952.

[57] Case No. 200/1994 of the 25th April 1995, involving a Swiss Chocolate manufacturer, and a Russian purchaser.

[58] *Ibid*. See footnote 63, also reported in 1995 Federal Court Reports (Australia) 216-240.

[59] *Ibid*. See also footnote 63, also reported at ICC International Court of Arbitration Bulletin (November 1995) 60-64.

[60] Heard by the Pretura circondariale di Parma, sez de Fidenza, (Case 77/89) on the 24th of November 1989, and reported *Ibid*. See also footnote 63 and *Diritto del Commercio Internazionale* 1995, 441-441 No. 56.

[61] *Ibid*. footnote no. 62.

[62] Articles 71 and 72.

[63] Article 71.

[64] Article 51.

(a) Anticipatory Breach

The doctrine of Anticipatory Breach is familiar to lawyers from common law jurisdictions. It covers two circumstances, the related remedy of suspension of contractual obligations, and the avoidance of the contract.[65] Under the provisions of Article 71 a party may suspend the performance of his obligations under the contract if it is clear that the other party will not perform his obligations as a result of

1. a serious deficiency in his ability to perform or in his creditworthiness, or,
2. his conduct is preparing to perform or in performing the contract.

However a party must continue with the performance of the contract if he is given adequate assurances from the other side that there will be performance of the contract.

(b) Suspension of Performance

Prior notice in the event of anticipatory breach, of the intention to avoid, is not required, and the defaulting party need not be given an opportunity to provide an adequate assurance of future performance, unlike the situation for Suspending Performance, where under Article 71(3) immediate notice of suspension muse be given to the other party, and performance must continue if he receives an adequate assurance of performance from the other party.

There is, however, no right to use suspension as a weapon of coercion with regard to minor obligations.[66] The possibility arises that there may be situations when a fundamental breach may be caused by something less than substantial 'since the Egyptian amendment making suspension conditional upon a prospective fundamental breach was rejected'.[67] It is also unclear whether the failure to offer adequate assurances in response to a proper request under Article 71 is a repudiation justifying avoidance.

The developing countries at the Vienna Conference had serious problems with this doctrine of Anticipatory Breach for two reasons; [68] first, because the offending party would be too severely affected by denying him notice, and therefore the opportunity to offer adequate assurances *before* the other party may suspend or avoid the contract, and secondly, because the suspension appears to rely on subjective judgment which could be used by an unscrupulous trader to 'gazump' his opposite number, say for example in a rising market.

(c) Partial Fundamental Breach

The interesting concept of 'partial fundamental breach' is introduced by Article 51. Four options arise:

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[65] *Ibid*. footnote no. 14.

[66] M. Gilbey Strub, "*The Convention on the International Sale of Goods: Anticipatory Repudiation Provisions and Developing Countries*": 38 *ICLQ*, (1980).

[67] *Ibid*. footnote no 36.

[68] *Ibid*. footnote no 36.

1. to accept the goods furnished subject to a reduction on price or damages;

2. accept the goods furnished in compliance with the contract, and demand substitute goods in respect to the defective goods, subject the right to claim damages;

3. accept the conforming goods, and deem 'partial fundamental breach' in respect of the balance or;

4. 'avoid the contract in its entirety, but only if the failure to make complete delivery amounted to a fundamental breach of the entire contract'.[69]

All the above remedies are available, with the exception of avoidance,[70] in the event the other party fails to perform any of his obligations under the contract or this Convention. The test for fundamental breach is somewhat different. Whether the means of distinguishing between 'fundamental breach' and 'on-fundamental breach' is the best that could have been devised, given its history, is another matter.

Conclusion

Grey areas abound in definition of 'fundamental breach' offered to us by the Convention. The 'reasonable person' test was introduced in an effort to make the Vienna Convention more objective than the ULIS. While it answers one question, it poses another. There is no indication whether the test is for a 'reasonable man' or a 'reasonable international businessman', and which reasonable businessman, operating in which trading conditions. A reasonable businessman trading on the floor of a commodities exchange in New York will operate quite differently to the reasonable business man purchasing for a producers co-operative Yunnan province in of China, with whom he could conceivably have a direct transaction.

It would appear, therefore, that on the basis of the very few cases examined herein, that the autonomous code which was to be read, interpreted and applied in conformity through the application of uniform rules and principles with the primary objective of facilitating commerce,[71] offering 'a basis for the development of uniform international understanding',[72] has already exhibited flaws in its theory. The vastness of the objective behind the drafting of the Vienna Convention on Contracts for the International Sale of Goods (1980) cannot be underestimated. The Convention satisfies the needs of more countries and more legal systems around the world than any previous Convention, as evidenced by its adoption rate. Seen from the perspective of an English speaking European based Common Lawyer, flaws in the drafting can be found. The importance of the definition of fundamental breach as provided in Article 25 of the Vienna Convention on Contracts for the International Sale of Goods 1980 can not be underestimated.

[69] *Ibid*. footnote no. 2.

[70] Which includes fundamental breach.

[71] *Ibid*. footnote no. 3.

[72] *Ibid*. footnote no. 9.