

Rules Governing the Unification of Electronic Commercial Contracts: A Case Study of International Sales of Goods

Bahareh Bijani*1, Ali Mohammad Mokarrami2, Meysam Eslami3

1- M.A. Student. Department of Law, UAE Branch, Islamic Azad University, Dubai, United Arab Emirates

2- Assistant Professor, Department of Law, UAE Branch, Islamic Azad University, Dubai, United Arab Emirates

3- Assistant Professor, Department of Law, Central Tehran Branch, Islamic Azad University, Tehran, Iran

Abstract:- Unification in contract law means unifying the rules governing commercial contracts at the global level. By applying uniform law to all commercial contracts, easy and free relations in the field of international trade are guaranteed. It seems that in the current situation, due to the lack of global consensus regarding the importance of this international issue, only the acceptance of a common legal standard for exchanges and commercial transactions on a limited "international" level can be realized. The purpose of this research is to investigate and study the rules governing the Unification of electronic commercial contracts in the international sale of goods. In this research, the required information was collected using the library method. For this purpose, the tool of taking receipts and preparing a checklist was used. The results showed that one of the ways to prevent the conflict of laws in international sales contracts is to choose the applicable law when setting up the contract. According to the treaties, this choice must be made explicitly and clearly among the government laws. Of course, these treaties have not prohibited other rules either and the parties can choose from other sources of international trade law such as commercial customs, general principles, commercial legal principles as the law applicable to the contract (provided that it does not conflict with the rules of the country where the court is located).

Keywords: *supervisory rules, Unification, electronic commerce, international sale of goods*

Introduction

Information technology has made it possible to conduct many business transactions, transactions and services through the Internet. The expansion of this type of transactional and commercial relations between individuals has been accompanied by raising some legal issues in the field of rules governing the contractual relations of individuals. Today, it should be accepted that with the spread of remote communication tools, forming a contract as one of the required relationships cannot always be done through direct communication. The parties to an agreement may not meet each other and may not have any telephone conversation with each other. Therefore, forming a contract in cyberspace does not necessarily mean concluding it in an empty environment. The recognition of new communication technologies in the formation of contracts and their validity, the ability to attribute electronic documents, issues related to electronic signatures, electronic payments, etc. have been among the important issues raised in this field.¹

The law of contracts, especially the law of commercial contracts, has always been in the center of attention and at the forefront of the movement towards Unification and harmonization of private law. Because the diversity of different domestic laws is considered as an obstacle for international trade. In order to remove such an obstacle, movements at the national, continental and international levels have started since the sixteenth century and have

¹ Mahmoud Jalali & Ebrahim Mehranfar, unification of conflict resolution rules in electronic contracts, (2018). comparative law researches, 107.

reached their peak in recent decades. Although these movements have not been successful at some point in time², But currently, the successes resulting from the Unification of private law, especially in the field of contract law, are undeniable. Unification of contract law has different effects and consequences, the most important of which is the development of international trade. In every part of the world where the Unification of commercial laws has taken place, the primary goal has been the development of trade. Records of Contract Law Unification in the regional and global realm show that such purposeful measures have been taken with the intention of commercial development and the direct and indirect results of such actions have achieved the intended goals.

Unification in contract law means unifying the rules governing commercial contracts at the global level; To guarantee easy and free relations in the field of international trade by applying uniform law to all commercial contracts. But it seems that in the current situation, due to the lack of global consensus regarding the importance of this international issue, only the acceptance of a common legal standard for exchanges and commercial transactions can be realized on a limited "international" level³.

This issue, with titles such as "Unification" and "Coordination", is considered one of the most important issues related to transnational transactions and has been the focus of international organizations such as UNCITRAL⁴ and UNIDROIT⁵ in recent decades. As a result, significant documents have been implemented. But on the other hand, this international event requires that the governments, including Iran, always have a scholarly attitude towards it and be able to be creative and influential in the course of this international process, far from any passive role⁶.

During the last one hundred years, many jurists believed that the internal laws of countries can and should be unified. During Professor Zitelmann's speech in 1888 (prominent German jurists): Because the roots of law are the same everywhere and the goal of creating order among all civilizations is common, the laws of every nation will eventually converge. Like his speech, individual efforts were made by lawyers and group actions by international organizations to develop equal rights for all nations. Of course, some of these actions have been effective, while others have not had enough impact⁷. Uniform measures regarding transportation rights, such as the Warsaw Convention and the Montreal Convention on Air Transportation, convention merchandises routiers (CMR) and The Convention concerning International Carriage by Rail (COTIF) are considered effective measures in this field.

One of the most successful projects of the Unification of commercial contract law is the United Nations Convention on Contracts for the International Sale of Goods (CISG), which was implemented in 1980 as the Unification Law governing international sales contracts. The mentioned convention is described as the most successful international document in the field of contracts. Because currently 83 countries have joined the said

² Ingeborg Schwenzer, Who Needs Uniform Contract Law and Why? Villanova Law Review, 2013, p. 723.

³ Mahmoud Jalali, Masoumeh Shakuri, the trend of mutual formation of contract law at the international level, Private Law Research Quarterly, , (2012), 140.

⁴ United Nations Commission on International Trade Law

⁵ International Institute for the Unification of Private Law

⁶ Mahmoud Jalali, Masoumeh Shakuri, the trend of mutual formation of contract law at the international level, Private Law Research Quarterly, (2012), 145.

⁷ Kozuka Souichirou, The Economic Implications of Uniformity in Law, Unif. L. Rev. 2007, p.683-6.

convention, which have more than two-thirds of world trade. The said document is widely applied by arbitration courts and national courts as the most comprehensive law governing international sales contracts⁸.

Efforts to harmonize the laws governing sales contracts at the international level also began in 1920 under the supervision of the International Institute for the Unification of Private Law (UNIDROIT). In 1928, Ernst Rabel, a prominent Austrian professor, proposed to the mentioned institution to place the harmonization of the laws governing international sales contracts as the first project in its agenda. A year later, Rabel sent the initial report to the institute, and in 1930, the aforementioned institute mandated a committee to investigate the laws of Unification governing sales contracts. Between 1930 and 1934, the said committee held 11 meetings and in 1934, the first draft was prepared. After expressing opinions and interpretations of member states of the League of Nations, the Governing Council of the Institute approved the revised version of the draft in 1939. After the disruptions caused by the Second World War, the work of Unification of the laws governing international sales contracts was resumed and in 1951, the Netherlands held a conference in The Hague and appointed a special committee to continue working on the draft. The special commission presented two drafts, which were generally approved by the interested authorities, and the diplomatic conference was held in The Hague in 1964, in which two conventions were approved, which were The Convention on a Uniform Law on the Formation of Contracts for the International Sale of Goods (ULIF) and The Convention on a Uniform Law of International Sales (ULIS). Both conventions entered into force in 1972; But because only 9 contracting countries implemented them and they were not well received in international trade, they were not successful⁹.

The conclusion of international electronic contracts is the meeting point of different legal systems. These differences will lead to challenges and ambiguity regarding the law governing the contract. The purpose of this research is to investigate the rules governing the Unification of electronic commercial contracts in the international sale of goods. In this regard, Jalali and Mehran Far (2018) in a research entitled "Unification of rules for conflict resolution in electronic contracts" showed that private international law should have a suitable answer in the conflict resolution phase of electronic contracts and should be able to pre-empt the Unification of these rules. to provide This has led to the reaction of the governments and even the judicial procedure at the domestic and international levels. These reactions can be examined in the field of legislation in the rules of substance and form of electronic contracts and the rules of conflict resolution.

Nouri Yushanloui and Gholam Dekht (2016), in an article entitled "Unification Rules for Conflict Resolution in International Trade Contracts", they showed that the Unification Rules for Conflict Resolution will guarantee the two principles of speed and security in international trade law more than formal conflict resolution rules. Because these rules put an end to the claim of different legal systems in the government to a dispute contract; It makes the rights and obligations of the parties to the contract predictable; With the Unification of conflict resolution rules, different interpretations are prevented and the law of the strong party is prevented from being imposed on the weak party of the contract.

Abhari et al (2016) conducted an article entitled "Comparative study of the rules governing the rights of electronic documents from the perspective of Iranian laws, UNCITRAL regulations and French laws". In this article, the achievements of the French legal system, the UNCITRAL model laws on electronic commerce and electronic signature, and Iran's related laws have been examined.

Mafi and Kaviar (2012) conducted a research entitled "Comparative study of the law governing electronic contracts concluded in the Internet environment from the perspective of the legal systems of the United States, the European Union, and Iran". In this article, considering the latest international documents and domestic laws,

⁸ F Ferrari, What Sources of Law for Contracts for the International Sale of Goods? Why One has to look Beyond the CISG, (International Review of Law and Economics 2005), p. 314.

⁹ P Huber & A Mullis, The CISG: A New Text book for Students and Practitioners, (Sellier 2007), p. 2.

the author did a comparative-analytical review of the approach of the European Union, American and Iranian laws regarding the determination of the governing law in electronic contracts.

Jalali and Shakuri (2012), in a research entitled "Unification trend of contract law at the international level", showed that the Unification laws are considered as transnational laws and can propose a solution to the legal issue in two mandatory or optional ways. The mentioned two types of laws can be considered as the only solution to resolve the conflict of laws or beyond that, they can establish a substantive rule. Currently, many governmental, semi-governmental and private organizations are the main actors in the design of Unification rules. They have speeded up the approval and implementation of Unification laws in the form of documents such as conventions with more enforcement or documents such as legal principles and guidelines (only by the conscientious persuasion of governments). In some cases, the mentioned organizations have achieved this goal by adapting and approximating legal systems and sometimes by establishing new laws based on the practice of transnational commerce. What is ultimately important is to pay attention to the limitations of Unification in contract law, so that by considering things like the common interest of governments and removing unnecessary issues, the problems of approving and implementing new laws can be minimized.

Shoarian (2013) in an article titled "The Role of Unification of Contract Laws in the Development of International Trade" showed that one of the main problems of businessmen is choosing the law governing the contract, and each negotiation party tries to determine the law of its respective country as the law governing the contract. Because it is more familiar with its concepts and is more supported. Since the mentioned problem is considered the main obstacle to the development of international trade and in many cases, leads to the conflict of laws, during the last few decades, efforts have been made to remove this obstacle by creating transnational rules and Unification of contract law. The most important action in this field is the Convention on the International Sale of Goods (CISG) approved in Vienna in 1980, which has been joined by eighty countries. Other international documents such as Principles of International Commercial Contracts (UPICC), Principles of European Contract Law (PECL), Draft Common Framework of Reference (DCFR), OHADA Principles, Principles of Asian Commercial/Civil Law (PACL) and US Uniform Commercial Code (UCC), are among the efforts made in the field of Contract Law Unification. The strength of international commercial contracts, the predictability of the future of commercial relations, the reduction of costs due to the conclusion of a transaction, the reduction of the time to reach an agreement, and the reduction of the time to deal with disputes are the results of the Unification of International Contract Laws. Among the other benefits of the aforementioned measures is the promotion of domestic law and the availability of new legal concepts, which can quickly reduce the gaps in domestic law and familiarize lawyers and businessmen with new legal concepts.

The concept of electronic business contracts

Some authors have provided a general and very broad definition of an electronic contract, according to which an electronic contract is a contract whose conclusion or execution requires the use of a digital means of information exchange or a communication device of this type¹⁰.

Obviously, this definition includes a contract that is traditionally concluded on paper, but its implementation is realized through a network such as the Internet. In fact, when it comes to the type of contract, its purpose is to pay attention to the characteristics of the contract in terms of its conclusion. Because the basic problems are raised when discussing the request and acceptance announced through the network, as well as the law governing the contract and the competent court to deal with the disputes related to it, and these are the issues that challenge the rights of the contracts. The only problem that may arise regarding these contracts is the implementation of the obligations arising from them, which again cannot make us consider them electronic.

¹⁰ Standing. Craig, Internet Commerce Development, Artech House Computing Inc, Boston, First Ed, 2000, p. 35.

According to another definition, an electronic contract is a situation in which an obligation is created between two or more people, each of them using a computer connected to a communication network as a means of exchanging the elements of the said contract¹¹.

According to another lawyer, an electronic contract is a contract that is signed electronically either immediately or with a delay, without considering the negotiation or implementation of this contract¹². The strength of the latter definition is to pay attention to the essence of concluding the contract electronically and the traditional contract, which was negotiated through the network, but the request and acceptance of which was traditionally realized by correspondence or in person by the parties, has been explicitly excluded from the scope of electronic contracts.

Some other authors who consider computer networks along with the services provided through them to be a juridical entity independent of the traditional world, have chosen the term cyber contract for the discussed contracts and they have declared that by using such a word, the fact that the relations of the parties are created in the virtual space is emphasized more and not the type of technique used during the conclusion of the contract¹³.

It should be noted that the term electronic commerce contract should be used with more caution in Iranian law. Although the term electronic commerce itself has been termed in our legal literature and even a law with the same name has been approved in the country (Electronic Commerce Law, approved on 17/10/2013), But it should be noted that in Iranian law, the word business is defined, and when it comes to business law, certain provisions are immediately associated in the minds of lawyers, which are related to certain persons and transactions. For this reason, it has been compiled in an independent country under the title of Trade Law.

In fact, by examining the first chapter of Iran's commercial law, one can realize that commercial rights are the rights of commercial practices and merchants. That is, the legislator has introduced a series of actions as commercial actions (Article 2 of the Commercial Law) and states that whoever makes these actions his regular occupation is a businessman (Article 1 of the Commercial Law). Anyone who is recognized as a businessman, all his legal actions are commercial (Article 3 of the Commercial Code), except for actions that are not for commercial rights (Articles 3 and 4 of the Commercial Law)¹⁴.

But is the scope of contracts concluded through computer networks limited to commercial contracts? On second thought, the answer would be no. For example, consider a software engineering student who has designed software as a practical assignment for one of his courses and when he finds out via e-mail that his classmate needs the mentioned software, he sends it to him after conducting e-correspondence and agreeing on the price. There are many examples that prove this point.

As a result, in order to eliminate any doubts, it is better to use the terms of e-commerce contracts cautiously in our legal literature. In cases where these words are used, it is necessary to pay attention to the tolerance in this use. Otherwise, the doubt will be raised that the e-commerce law is a special law for merchants and commercial activities that are done electronically.

According to the various articles of this law, especially Article 1, which contains the following verses: "This law is a set of principles and rules that are used for easy and safe exchange of information in electronic media and using new communication systems.", It is clear that the law in question has a domain of commercial relations and

¹¹ Rabia Skinny, commercial law, general commercial transactions, merchants and organization of commercial activity, Somit publishing house, Tehran, 7th edition, winter 2014, p. 3.

¹² Todd. Paul, E-Commerce Law, Cavendish Publishing, First Published in Great Britain, 2005, p. 169.

¹³ Rowland. Diane, Macdonald. Elizabeth, Information Technology Law, Third Edition, Published in Great Britain by Cavendish, 2005, P. 101.

¹⁴ Rabia Skinny, 2014, p. 3.

in fact the purpose of passing this law is to regulate the exchange of information through electronic networks. Therefore, a title such as the Electronic Transactions Law, where a similar phrase is used to name one of the laws of the United States of America, better reflects the goals and content of the law in question¹⁵.

Unification of contracts

"Unification" in contract law means unifying the governing rules of commercial transactions at the global level to ensure easy and free relations in the field of international trade by applying uniform laws to all commercial contracts; But it seems that in the current situation, due to the lack of global consensus regarding the importance of this international issue, only the acceptance of a common legal standard for exchanges and commercial transactions can be realized at a limited international level.

This issue, with titles such as Unification and Coordination, is considered one of the most important issues related to transnational transactions and in recent decades, international organizations such as UNCITRAL and UNIDROIT have received a lot of attention, and as a result, significant executive documents have been implemented. But on the other hand, this international event requires governments, including Iran, to always have a scholarly stance towards it and they can be far from any passive role, while being influential, they can be creative and influential during this international process.

Rules governing the Unification of electronic commercial contracts in the international sale of goods

Treaties of conflict resolution rules in the international sale of goods

Efforts for Unification and coordination of laws governing international sales date back to the end of the First World War. From that date until today, there have been many regional and global activities to make the rules related to the conflict of laws in the field of international sales and similar issues uniform. These efforts have not been successful for various reasons; But in any case, they left good works, as a result of which several agreements have been created in connection with international sales contracts, the most important of which are mentioned below:

A: The Hague Convention of 1955

Regarding the law applicable to the international sale of goods, a special commission from the Hague Conference in 1931 prepared a draft agreement on the law applicable to the international sale of goods and presented it to the seventh meeting of this conference in 1951. After discussion and review, this draft was signed by the representatives of 17 countries participating in this meeting on June 15, 1955, and so far it has been approved by eight European countries and one African country and has been implemented in them, which are: Belgium, Denmark, Finland, France, Italy, Norway, Sweden, Switzerland and Niger. The purpose of this conference was to create Unification rules to determine the national law that should govern the dispute between the parties to an international transaction. Therefore, the subject of this agreement is only the conflict of laws. Article 2 of this agreement expresses the principle of freedom of choice and stipulates: "The contract for the sale of goods will be governed by the domestic law of the country that is determined by the parties".¹⁶

The Hague Convention of 1955 regarding the law applicable to the international sale of goods was not welcomed due to the political and economic conditions of the countries and the independence of many countries at the international level after the Second World War. Since UNCITRAL was conducting studies and investigations in the field of trade, in 1974, they approved the Convention on the Elapse of Time in International Sales. Because,

¹⁵ Kaviar, Hossein, A Reflection on the United Nations Convention on the Use of Electronic Communications in Electronic Commerce Contracts, CD of Proceedings of the Electronic Commerce Conference: Opportunities and Challenges, Islamic Azad University, Bardesir Branch, Azar 2007. 120

¹⁶ Article 2: „ A sale shall be governed. By the domestic law of the country designated by the contracting parties,,.

based on the internal laws, over time, they had predicted the guarantee of different performances, or in case of violation of the contract and the sum of the elements and conditions of the responsibility of the contract and in compensation for damages, the national laws of the countries made different interpretations of the conditions, which could not be answered simply by choosing the applicable law. This conflict should be resolved somehow; Therefore, with the approval of this agreement, an effort was made to standardize the results due to the passing of time.

B: Convention on the International Sale of Goods (1980) Vienna CISG

Before the ratification of the 1974 Convention in 1968, the United Nations Commission on International Trade (UNCITRAL) decided to form a research group. To ask the opinions of the member states of the United Nations that have different legal, social, political and economic systems. After asking for opinions, the research group initially had 14 members and later increased to 15 members, and a comprehensive agreement on the international sale of goods should be designed and regulated based on the request of the member states of the United Nations. Preliminary studies were done and after the technical and preliminary adjustment, they presented it to the United Nations General Assembly and with Resolution No. 33/93 dated December 16, 1979, it was decided to hold a conference of plenipotentiary representatives of the countries to consider and review the draft convention. The organized conference on international contracts of goods (CISG) was to unify the two problems of uncertainty and unpredictability of the law governing the sales contract. Because if the laws are uniform, the companies that are engaged in business all over the world can easily be aware of the rights and duties of their contracts, and they can very easily give guidance and advice to their clients in this field. But approving an international sales law that can meet the needs and interests of all countries is a huge task. For this, many differences in the internal laws of countries should be removed. These differences and disputes mainly started when commercial law entered the common law in England. While the European countries that were oriented towards Roman civil rights were different from the countries whose laws were based on Islamic Sharia or the countries that were founded on the principles of socialism derived from Marxist ideology. These structural differences in legal systems affected the role and nature of sales rights from different angles, and in the interpretation of the words of the contract, different interpretations were carried out according to the internal laws of the countries of the contracting parties.

The 1980 Vienna Convention can only be applied to contracts related to goods that have international characteristics and the first countries that joined this convention by depositing their ratification documents are: People's Republic of China, Italy, America and until March 2005, sixty-five countries joined this convention. This convention was described as a format that is easily acceptable for online contracts related to the sale of goods and includes rules that determine the scope of the convention as follows:¹⁷

- The contract is related to the sale of goods.
- The place of business should be in at least two different countries.
- The place of business is located in the contracting countries.
- The conflict resolution rules of private international law lead to the application of the law of one of the member states as the governing law.

The scope of the application of the Convention is described as a supplementary rule. Because unless the parties do not specify the non-applicability of the convention, another law will govern instead of the convention, this convention will be applied to any international agreement that conforms to its terms.

This convention has considered exceptions in its provisions:

¹⁷ Sohrab Darabpour, A Commentary on International Sales Law, Ganj Danesh Publishing House. Tehran, 1995. P 70.

- Selling goods that are purchased for personal, family or home use. Unless the seller did not know at any time before the conclusion of the contract or at the time of conclusion that the traded goods were purchased for such purposes.
- Sales that take place through auction.
- Sale of capital shares of commercial companies, securities, transfer documents or money.
- Sale of ships, spaceships, aircraft and air vehicles.
- Electric power.¹⁸

The Hague Convention of 1955 regarding the law applicable to international goods was not well received. Therefore, the Hague Conference on Private International Law, which was the drafter of that treaty, decided to replace it with another treaty that is more in line with the requirements of the present time and accepted by more countries of different legal systems. Therefore, from 1955 to 1980, in the sessions of the Hague Conference, the subject of applicable law on international sales contracts was on the agenda several times. Since 1980, the idea of revising the 1955 convention was raised. In this area, the Hague Convention and UNCITRAL cooperated, coordinated and exchanged ideas, and in this way, a new treaty project was prepared at the special meeting of the Hague Conference on October 14, 1985, with the presence of representatives of 61 countries, and the representative of Iran was also present at this meeting. They participated in the preparation of the text of the French convention (Paul Lagareau) and the American documents (Artoni and von Mehren). The mentioned convention was drawn up in The Hague on December 22, 1986, in both English and French languages, and since then it has been deposited in the archives of the Kingdom of the Netherlands, and its copy has been sent to the participating governments for signature at the October 14, 1985 summit. This convention consists of four chapters and 31 articles.

In the introduction of this agreement, it is stated that this agreement is concluded with the purpose of Unification of the rules of choice of law related to international sales of goods contracts and keeping in mind the United Nations Convention on International Sale of Goods Agreements concluded in Vienna in 1980.

In fact, the principles of the new agreement are basically the adjusted principles of the 1955 agreement. The subject of the 1986 Hague Convention is the conflict of laws in the field of international sale of goods, in which it provides appropriate and desirable and acceptable solutions for different member countries at the international level and provides the flexible unity of private international law and international contracts. Because the conflict of laws is one of the complex topics of private international law, some of its concepts are not easy to understand even for experts.

The scope of the implementation of the convention is defined affirmatively in the first paragraph of the first article and negatively in the second paragraphs of the same article, which also includes exceptions. The provisions of this convention are applicable in situations related to the choice of applicable law in the obligations of international sales contracts.

1. The transactions mentioned in Article 2 and its following clauses in the contract.
2. The contracts listed in Article 4 and those parts of them that cannot be considered sales.
3. The competence of the parties to the transaction or the works that caused invalidity due to the lack of competence of one of the parties. This exception means that when a person's ability to conclude a contract of sale depends on his capacity, the Convention assigns the resolution of the conflict of laws to the valid conflict resolution rules of the investigating authority country. For example, the law governing the issue of whether the person has reached the legal age or is not prohibited from entering into a transaction is not provided for in the

¹⁸ Sohrab Darabpour, 1995. P 75.

convention, and the competence of individuals is outside the scope of the convention. Most of the signatory countries of the convention have considered this issue to be related to the personal status of individuals, and it has been found out by the expert group that the fundamental issue of the communication factor related to the person's eligibility cannot be resolved quickly in the convention on the governing law.

4. Other exceptions mentioned in the treaty are issues related to the agent (representative) in terms of whether he can create an obligation on his principal or not. Also, the transfer of ownership, the effect of sale to third parties, agreements related to arbitration or choice of court will not be outside the scope of the Convention.

In the second chapter of the convention, which is one of its main goals, the applicable law in sales contracts has been discussed, and Article 7 and its sub-clauses put the sales contract under the rule of law chosen by the parties and emphasized that the chosen law should be clear and unambiguous. Its meaning is that the law of choice should not be suspended and floating. In other words, the parties cannot specify that the desired law will be chosen after the dispute. Also, the parties can change or experiment with the chosen law after the conclusion of the contract, provided that the rights of the parties are according to it and the validity of the contract is not affected in any way.

Article 8 of the agreement and paragraph one states that if the parties do not comply with Article 7, the sales contract will be governed by the law of the country where the seller's place of business was when the contract was concluded and in paragraph 2 of the same article, it states the conditions that the law applicable to the contract will be governed by the buyer's country.

C: United nation convention of electronic communication in the international contracts (CUECIC)

In sales contracts and in order to determine the competent law in private international law, it is necessary to determine the place of the contract. Determining the place of occurrence is also very important to avoid the time conflict of the laws of time and the occurrence of marriage. In face-to-face contracts, where the parties are not present in front of each other in the same place and at the same time, they exchange requests and acceptances on the spot. Therefore, the time, place and type of contract are known, and if there is a dispute, the dispute will be in the nature of the member, and this difficulty increases with the development of communication technologies. In the past, contracts were made by exchanging letters, telegraphs, telephones, etc. between the parties, and determining the time of the contract, there is a doubt that the time of request and acceptance is exactly at what stage of the contract. With the emergence of online computer systems and the use of electronic communications in international contracts, the process of harmonizing different legal systems in this field seemed necessary. In July 2001, UNCITRAL approved a set of proposals presented by the Working Group on Electronic Commerce in order to develop an international document, which evaluated the issues related to the formation of electronic contracts and examined the existing legal obstacles in the way of electronic commerce in the existing international convention. Proposals to coordinate legal reforms with the increasing use of automated information in international trade were first developed in 1984 by UNCITRAL. UNCITRAL adopted the Model Law on Electronic Commerce (MLEC) as a model for the national legislation of UN member states. But in the continuation of the national legislations, they often deviated from the principles of the model law and the e-commerce laws of other countries, especially regarding the authentication of electronic signatures. These differences, which are from the internal actions of the countries towards the parties who were outside the country, caused that the proposal of setting up an international convention regarding electronic commerce was submitted to the Secretariat of UNCITRAL.¹⁹

The proposed principles included technical neutrality, neutrality of national resources and the freedom of the parties to determine the law and rules governing the contract. In some countries, the supremacy of the laws of international treaties such as international trade conventions over the normal domestic laws of The Hague, created a potential conflict between the domestic laws of the existing treaties that required physical (paper) documents. To prevent these conflicts, the Convention on the Use of Electronic Communications in International Contracts

¹⁹ H Martin, Charles; UNCITRAL Convention on Electronic Contracts, translated by Ali Rezaei, Shahid Beheshti University Faculty of Law Legal Research Journal, number 47, 2007. P170

was proposed by the United Nations Commission on International Trade Law and was approved in July 2005. This convention is important in international sales contracts in that the International Sale of Goods Convention (1980 Vienna) was considered as an example of this convention. Some of the rules of the scope of application and the rules related to the proposed changes and amendments are the same rules related to the 1980 Vienna International Sales Convention²⁰. However, it is substantively superior to the 1980 Convention because the legal rules of the 2005 Convention have a common source with the United Nations Model Law on Electronic Commerce and the federal law of ISAIN and Utah. Therefore, the convention will not be accepted in codified legal systems and known issues (such as the concept of substitution and the fact that oral evidence is basically not accepted).

General principles of law and commercial legal principles as conflict resolution rules

A: General principles of rights:

These are the principles that exist and are recognized in the internal laws of different countries. For example, the rule of keeping the promise is one of the general principles of law that has been accepted in different systems or in international arbitrations, this principle is accepted that the arbitrator can vote based on fairness when the parties have agreed on this general principle or it is stated in paragraph 2 of Article 33 of UNCITRAL regulations: "The arbitral tribunal will make a decision based on fairness only if the parties to the arbitration expressly and in writing have given such permission to the tribunal". The opposite meaning of this phrase is that if the parties to the lawsuit have not explicitly allowed arbitration based on fairness, the court cannot rule based on fairness, but is obliged to implement the law.

Or it is stated in Article 7 of the European Convention on International Commercial Arbitration of 1961: The parties are free to determine the rights that the arbitrators must implement in the nature of the dispute. If the parties have not determined the governing law, the arbitrators will determine the governing law by using the conflict rule that they deem appropriate for the case. In both cases, the arbitrators will consider the contents of the contract and commercial customs.²¹

Article 13 of the arbitration regulations of the International Chamber of Commerce stipulates that "if the parties have authorized the arbitrator to mediate the dispute, he has such authority". Only empowering referees to determine applicable rules can be a solution to this situation. This possibility is based on the rule of jurisdiction to determine jurisdiction, which is especially accepted in arbitration.

The Hague Convention has declared the same rule in Article 73 as follows:

The court is allowed to determine its jurisdiction by interpreting the arbitration agreement and other agreements that may be an exception to the issue at hand and by applying legal principles. The mentioned rule is more clearly reflected in Article 26 of the European Convention for the Peaceful Settlement of Disputes. According to this article, in case of silence or absence of an arbitration agreement, the arbitration court will rule based on fairness and according to the general principles of international law and in compliance with contractual obligations and final decisions of international courts that are binding for the parties²².

B: Principles of commercial law

Another source that can be mentioned for the opinions and decisions of the arbitration court is the principles of commercial law. The meaning is not the principles of national or domestic commercial law, but the meaning of

²⁰ H Martin, Charles, 2007. P175

²¹ Hossein Safai, A few words about the innovations and inadequacies of the international commercial arbitration law, Tehran University School of Law and Political Science Journal, 1996. P77

²² Behrouz Akhlaghi, Principles of international commercial contracts, third edition, Tehran, Shahr Danesh publication. 2013. P140.

the principles of international commercial law, which is sometimes interpreted as national law and sometimes as non-national or supranational law. Arbitrators and international arbitration institutions also play an important role in establishing these rights. Professor David says in this regard: Arbitration and its new expansion show that in fact, merchants are always seeking to have their own rights. The laws governing commerce exist only theoretically in the provisions of codes and laws made by lawyers. In fact, these rights are found much more often in standard contracts and general conditions contained in commercial contracts. In this way, the businessmen abandon the justice of the courts to resolve their disputes and look for justice in arbitration that is different from the justice of the courts.²³

The principles of international commercial contracts of the International Institute of Unification of private law as conflict resolution rules in international sales contracts

A: Principles in view of the rules of the law governing the contract

Choosing principles as the governing law: Since the principles represent a system of contract law principles and rules that best match the special requirements of international commercial transactions, it is possible that the parties have good reasons for explicitly choosing them as the legal rules applicable to their contract. To do this, the parties can exclusively refer to the principles or combine the reference to the principles with a reference to a specific domestic law that must be applied to matters not covered by the principles. Parties who wish to adopt the principles as applicable to their contract are strongly advised to combine the reference to the principles with an arbitration agreement.²⁴

Application of principles as an embodiment of general legal principles, transnational businessmen or similar cases referred to in the contract of rights: The parties to international commercial contracts who cannot agree on the choice of the law of a specific domestic law as the law applicable to their contract, sometimes stipulate that the contract is subject to the general principles of law or the customs and traditions of international trade or the transnational rights of businessmen, etc.

Applying the principles in case the parties do not choose the governing law: The principles can be applied if the contract is silent on the applicable law, if the parties have not chosen the law governing their contract. The principles are very flexible compared to other conflict resolution rules and allow arbitral tribunals to apply appropriate private rules. Usually, arbitration courts apply a specific domestic law as the appropriate law of the contract, but exceptionally these courts may resort to non-national and transnational rules such as principles. This happens when it can be concluded from the situation that the parties intend to prohibit the application of any domestic law. For example, in the case where one party to the contract is a government or government agency, and the parties have made it clear that none of them will accept the application of the domestic law of the other party or the law of a third country. Or when the contract in question has factors related to several countries and none of those factors has enough dominance over other factors to recommend the application of a national law and not other laws.²⁵

B: Principles as a means to interpret and complete uniform international legal documents

Traditionally, uniform laws have been interpreted and supplemented based on the principles and standards of domestic law. Whether that domestic law is the applicable law or the law that is applicable under the relevant rules of private international law in the absence of a uniform international law. Recently, all courts and all arbitral tribunals have increasingly abandoned the said conflict method and instead, they interpret and complete uniform international law by referring to independent and internationally uniform principles and standards. This approach,

²³ Behrouz Akhlaghi. 2013. P144.

²⁴ Hossein Safai, 1996. P80

²⁵ Behrouz Akhlaghi. 2013. P146.

which is actually in the latest conventions, is explicitly intended to guarantee implementation, for example, it is stated in Article 7 of the Convention on the International Sale of Goods:

In the interpretation of this convention, its international nature and the need to promote coordination in its implementation with respect for good faith in international trade must be taken into account. The issues related to the subjects governed by the present convention, whose duties were not explicitly determined in this convention, will be resolved and this will be done according to the general principles on which the convention is based or, in the absence of such principles, according to the law that is applicable according to the rules of private international law on the conflict of laws.²⁶

The above article is based on the assumption that uniform international law, even after its inclusion in various national legal systems, is considered an integral part of the legal system only in Syria. While in terms of substance, it does not lose its main and primary characteristic as a special set of rights that has evolved independently at the international level.

So far, it has been the practice for judges and arbitrators to find such independent principles and criteria for changing and supplementing uniform international law documents in each specific case, based on a comparative review of the solutions adopted in various national legal systems.

C: The principles are a means of interpreting and forming the domestic law

The principles of conflict of laws can be used to interpret and formulate domestic law. Courts and arbitral tribunals may, when applying a particular domestic law, be faced with doubts about the appropriate remedy to be adopted under that law. Considering these principles as a source of inspiration, it can be recommended that by doing this, the desired domestic law is interpreted or completed according to accepted and international standards and the specific needs of cross-border business relations.²⁷

D: Principles as an example for national and international legislation

Considering the inherent values of the principles, the drafters of laws at the national and international level can use it as an example to set laws in the field of contracts or in connection with special types of transactions. At the national level, for countries that have a mutual set of legal rules regarding contracts and want to update their laws at least in terms of foreign economic relations with current international standards, these principles and rules can be extremely useful. The state of recent significant changes in their social and political structure urgently need to rewrite their laws, especially laws related to economic and commercial activities.²⁸

E: Other possible uses of principles

The principles can be used as a guide for drafting contracts. In particular, these concepts help to distinguish the issues addressed in contracts and provide an unbiased legal terminology that is equally understandable to all interested parties. Such use of the principles of the rules is approved by citing the fact that the text of the rules is available in several languages. These principles can be used as a substitute for domestic laws that are not applicable. In other words, whenever it is proven that it is impossible or extremely difficult to achieve the relevant

²⁶ Sohrab Darabpour, 1995. P 77.

²⁷ Alireza Hojatzadeh, Ebrahim Noshadi, The Law Governing International Electronic Contracts (Comparative Review), 2011, International Legal Journal, p120

²⁸ Sohrab Darabpour, 1995, p80

rule of the specific domestic law in connection with a specific issue, the use of principles and rules as a substitute for the rules of the domestic law or the costs of achieving it are considered²⁹.

Conclusion

Although information technologies have led to numerous challenges in the rules of private international law (conflict of laws), but they have not led to the establishment of a separate legal regime for electronic contracts in cyberspace. The approach of the countries also indicates the compliance of the existing legal rules on the legal practices of the virtual space. Based on this, by accepting the principle of functional equality and technical neutrality as the basis for establishing laws governing electronic contracts, the same substantive laws governing paper contracts can also be applied to electronic contracts.

In terms of the form of contracts, accepting the principle of freedom of the parties in choosing the form of the contract, as the basis of legislation in this regard, no special form has been provided for electronic contracts. But in terms of the special characteristics of the electronic environment and in order to be able to assign legal actions, some minimal formal requirements have been established. In the field of rules of conflict of laws, although the legal systems have not determined new communication factors to be applied in the virtual space, but in order to adapt them to this environment, they have tried to redefine the communication factors and, accordingly, modernize the rules for determining the ruling law. Whenever a lawsuit that has a "foreign factor" is discussed in a country, the court of that country must implement the rules and regulations prescribed by the country's legislature.

The rules and rulings that guide the court in choosing the applicable law and provide a solution to the conflict between the laws of the countries, create a set called "conflict resolution system". The conflict of laws, which is one of the topics of private international law, is more difficult compared to other legal concepts. The reason for this difficulty is that in private international law, unlike other concepts of law, there are no common rules among all nations, and each country resolves the conflict between laws in the way it knows best. Because identifying the appropriate law in a country is one of the issues related to the sovereignty and independence of that country. Therefore, in the issue of conflict of laws, every country has a national conflict resolution system, which the national judge naturally refers to to resolve the conflict between laws and choose the competent law.

The conflict of laws is the result of two factors: 1- Difference in material rules, 2- Difference in conflict resolution rules. Laws in a legal system regarding contracts, conflict resolution rules include those rules of the national law of a country that the courts of the same country use to settle a dispute in which there is a foreign element.

One of the ways to prevent conflict of laws in international sales contracts is to choose the applicable law when setting up the contract. According to the treaties, this choice must be made explicitly and clearly among the government laws. Of course, these treaties have not prohibited other rules, and the parties can choose from other sources of international trade law, such as commercial customs, general principles, commercial legal principles, as the law applicable to the contract; Provided that it does not conflict with the rules of the country of the seat of the court.

Suggestions

- Revising the laws and regulations related to the export and import of goods, including tariffs, duties, taxes, and interpretation of public order, the rule of thumb, and other principles related to limiting the principle of free will.
- Using expert opinions of specialized organizations affiliated with the United Nations such as the International Monetary Fund, the World Bank and other international organizations such as the World Trade Organization.

²⁹ Hossein Safai, 1996. P79

References

1. Akhlaghi, B. Principles of international commercial contracts, third edition, Tehran, Shahr Danesh publication. 2013.
2. Jalali, M, Shakuri, M, the trend of mutual formation of contract law at the international level, 2012. Private Law Research Quarterly, No. 9.
3. Hojatzadeh, A, Noshadi, E, The Law Governing International Electronic Contracts (Comparative Review), 2011. International Legal Journal, No. 11.
4. Jalali, M; Mehranfar, E, unification of conflict resolution rules in electronic contracts, 2018.comparative law researches, volume 23, number 3.
5. Nouri Y, Jafar; Gh, Uniform Rules for Conflict Resolution in International Commercial Contracts, 2016. Private Law Journal, Volume 14, Number 1, pp. 155-177.
6. Shoareyan, E, The role of unification of contract law in the development of international trade, Proceedings of the first conference on the challenges of international trade in Iran's legal system, Farozesh Publications, 2013, pages 416-389.
7. Abhari, H; Fatemian, A; Hosni, A; Kaynia, M, comparative study of the rules governing the rights of electronic documents from the perspective of Iranian laws, UNCITRAL regulations and French law, Iranian and international comparative legal research, 10th year, 37th issue, 2016.
8. Mafi, H; Kaviar, H, comparative study of the law governing electronic contracts concluded in the Internet environment from the perspective of the legal systems of the United States, the European Union, and Iran, 2012. Journal of Comparative Law Studies, Volume 4, Number 1, 155-177.
9. Ingeborg S, Who Needs Uniform Contract Law and Why? Villanova Law Review, 2013, Vol. 58, p. 723.
10. P Huber & A Mullis, The CISG: A New Text book for Students and Practitioners, (Sellier 2007), p. 2.
11. Souichirou K, The Economic Implications of Uniformity in Law, Unif. L. Rev. 2007, p.683-6.
12. F Ferrari, What Sources of Law for Contracts for the International Sale of Goods? Why One has to look Beyond the CISG, (International Review of Law and Economics 2005), p. 314.
13. Standing. C, Internet Commerce Development, Artech House Computing Inc, Boston, First Ed, 2000, p. 35.
14. Todd. P, E-Commerce Law, Cavendish Publishing, First Published in Great Britain, 2005, p. 169.
15. Rowland. D, Macdonald. Elizabeth, Information Technology Law, Third Edition, Published in Great Britain by Cavendish, 2005, P. 101.
16. Skinny, R, commercial law, general commercial transactions, merchants and organization of commercial activity, Somit publishing house, Tehran, 7th edition, winter 2014, p. 3.
17. Kaviar, H, A Reflection on the United Nations Convention on the Use of Electronic Communications in Electronic Commerce Contracts, CD of Proceedings of the Electronic Commerce Conference: Opportunities and Challenges, Islamic Azad University, Bardesir Branch, Azar 2007
18. Darabpour, S; A Commentary on International Sales Law, Volume 3, Ganj Danesh Publishing House. Tehran. 1995
19. H Martin, Ch; UNCITRAL Convention on Electronic Contracts, translated by Ali Rezaei, Shahid Beheshti University Faculty of Law Legal Research Journal, number 47, summer 2007
20. Safai, Hossein, A few words about the innovations and inadequacies of the international commercial arbitration law, Tehran University School of Law and Political Science Journal, 996 No.4