



PRESERVATION OF THE GOODS: COMPARISON OF ARTICLES 85-88 CISG AND
COUNTERPART PROVISIONS OF THE PRINCIPLES OF EUROPEAN CONTRACT LAW

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1. PRESERVATION OF THE GOODS UNDER THE CISG.

-SELLER'S DUTY TO PRESERVE THE GOODS (ART. 85)

-BUYER'S DUTY TO PRESERVE THE GOODS (ART. 86)

-PROVISIONS COMMON TO BOTH PARTIES: DEPOSIT IN WAREHOUSE (ART. 87)
AND SALE OF GOODS (ART. 88)

2. PRESERVATION OF THE GOODS UNDER PECL (ARTS. 7:110 – 7:112)

-SITUATIONS WHERE PECL ARTICLE 7:110 MAY BE HELPFUL IN CONSTRUING THE MEANING OF THE COUNTERPART PROVISIONS OF THE CISG

3. CONCLUSION

1. Preservation of the goods under the CISG

As a general rule, Section VI of Chapter V of the CISG requires that the party left in possession of, or otherwise in control of the disposition of the goods has the duty to protect and preserve the goods. This duty, which applies to any party to the transaction, "is an expression of the general obligation to cooperate, as it can be deduced from this provision [CISG Article 85] or that provision of the CISG as one of the Convention's underlying principles."²

-Seller's duty to preserve the goods (Article 85)³

The scope of the provision comprises two situations: first, where the buyer is in delay in taking the goods⁴ and, second, where the buyer fails to pay the price when payment is to be made concurrently with delivery.⁵ In these cases, the seller is obligated to take measures to preserve the goods.

The standard to be applied is that the seller is required to take any reasonable step under the circumstances to preserve the goods, which will often be decided based on usage.⁶ Failure to fulfill this duty may give rise to stringent consequences especially in those cases where the risk of loss has already passed to the buyer although the seller still has control over the disposition of the goods.⁷ In fact, a seller's failure to preserve the goods releases the buyer from liability arising from loss even though the risk has already passed to the buyer,⁸ "regardless of whether or not the property in the goods has passed"⁹ to the buyer. This is the "substance" of the obligation to preserve the goods.¹⁰ If, however, the risk of loss has not passed to the buyer, even though found liable for preservation costs, the seller is not entitled to damages to the good for prolonged storage.¹¹

Moreover, it must be noted that "reasonable circumstances and reasonable expenses are common law notions which provide standards according to which a judge or arbitrator can evaluate the necessary steps and expenses."¹²

The CISG does not state the length of the obligation to preserve the goods. However, "[i]t follows from Article 88(1) that the seller is quite entitled to limit the period of preservation and that upon certain conditions [Article 88], he may at any time proceed to sell the goods, provided that he has previously informed the buyer of that intention."¹³ The seller may also be freed from the obligation to preserve the goods when he avoids the contract under Article 64.¹⁴ In addition, it must be noted that the seller's obligation to preserve the goods does not end if the seller brings an action to require the buyer to pay the price.¹⁵

The seller is responsible for the costs arising from reasonable measures to be taken to preserve the

goods;¹⁶ however, the seller can sell the goods and retain from the proceeds an amount equal to the reasonable expenses incurred in preserving the goods and seller also has the right to retain the goods until those expenses are paid.¹⁷ However, according to many authors,¹⁸ “the buyer will have to be allowed a right to satisfy the right of retention by providing reasonable security.”¹⁹

The Article 85-88 provisions on the preservation of the goods may be easily overcome by means of interim relief procedural tools, which are governed by domestic law.²⁰

Courts often regard damages arising from preserving the goods pursuant to Article 85 as damages recoverable under CISG Article 74.²¹

Buyer's duty to preserve the goods (Article 86)²²

The buyer, similar to the seller, is bound to preserve the goods when (i) after receiving them, (ii) he intends to exercise the right to reject them. If both requirements are met, the buyer must take such reasonable²³ measures as the case may be. The buyer is, however, entitled to retain the goods until the seller reimburses the buyer for the reasonable expenses incurred in preserving the goods.²⁴ Failure to take reasonable measures regarding the goods may result in denial of a claim for warehouse expenses (Article 86(1)).²⁵

The rejection may be exercised from the time the right to reject²⁶ arises until it expires.²⁷ While the period to decide whether to reject the goods is running, the buyer still has a duty to preserve the goods,²⁸ which continues until the duty has been discharged pursuant to Articles 87 and 88.²⁹

If the goods have been dispatched to the buyer and placed at his disposal without having physical possession of them, the buyer, in order to be able to reject the goods, must take them into custody on behalf of the seller as long as it can be done without the payment of the price and without unreasonable inconveniences or unreasonable expenses (Article 86(2)). Of course, this rule does not apply if the seller or a person authorized by the seller to take charge of the goods is present at the place of destination of the goods.

Articles 85 and 86 establish the duty to preserve the goods. As already mentioned, a party may discharge his duty by (i) depositing the goods in a warehouse and/or (ii) selling the goods.

Deposit in Warehouse (Article 87)

The deposit of the goods in a warehouse³⁰ (of a third person, if necessary) will be at the expense of the other party. However, unless otherwise provided, the party who deposits the goods is primarily liable to the warehouse although he may seek reimbursement from the other party to the sale contract.³¹ To be recoverable, depositing expenses must be reasonable.³² It should be noted that unreasonable expenses only affect the depositing party's right to obtain full reimbursement. The right of reimbursement exists only in regards to those expenses that are proportionate.³³ Moreover, “[t]he incurring of unreasonable expense does not lead to the risk of storage in a warehouse being transferred to the other party.”³⁴

Two issues may give rise to some uncertainty as they are not regulated by the CISG: (i) the relationship between the parties to the storage contract and the parties to the sale of goods contract, which, as it has been suggested, should be “governed by the domestic law applicable in each particular case”³⁵ and (ii) the legal consequences to the sale contract of the deposit of the goods in a warehouse: whether the deposit in a third person's warehouse is to be qualified as a substitute for the original obligation. It should not be deemed to constitute an exemption from the original obligation³⁶ unless

the property involved is money.

-Sale of the Goods (Article 88)

Article 88(1) allows the party who is bound to preserve the goods to sell them if the other party fails to take action in a reasonable time (also known as self-help sale). It is an option (not an obligation).³⁷ There are only two requirements the selling party must comply with to exercise such an option: (i) unreasonable delay by the other party in taking the property,³⁸ and (ii) reasonable notice to the other party of the intention to sell the goods.³⁹ This notice does not need to be in a specific form: it needs only to be appropriate under the circumstances.

Article 88(2) requires the party who is bound to preserve the goods to sell them when the “goods are perishable or their preservation would involve unreasonable expenses” (also known as emergency sale). In this case, selling the goods is a duty. Failure to sell the goods in an emergency situation may give rise to a right to the other party to seek damages.⁴⁰

Two issues arise in connection with Article 88(1) and 88(2) not dealt with by the CISG: (i) legal consequences of failure to give notice and, (ii) whether the other party may object. As to the first, however, it has been suggested that “a party who performs a self-help sale, without giving notice of his intention to do so, breaches an ancillary contractual obligation and will be under an obligation to compensate the other party for any resultant damage.”⁴¹ On the other hand, in an emergency sale situation, a claim for lack of notice may be difficult to bring it successfully. As to the second issue, some authors believe that the sale can be made regardless of any objection made by the other party,⁴² although the other party may bring an action for breach of an obligation to proceed based on reasonableness standard.

-Article 88(3)

Whether it has been a self-help or emergency sale, the party may retain from the proceeds of the sale the reasonable expenses incurred in preserving and selling the goods and require the other party to pay the balance. There is no reference in the CISG regarding (i) how any objections in connection with the reasonable expenses standard may be raised, (ii) whether the party who sold the goods may retain damages from the proceeds, as some authors have suggested and (iii) how the balance should be returned to the other party. However, based on the general principles behind the rules on the preservation of goods, as well as the other principles on which the CISG is based, it may be possible to assume that: (i) Claims regarding the proper application of the reasonableness standard may be brought as damages for breach of a secondary obligation; (ii) As the provision clearly states that the party may retain the costs to preserve the goods and the costs to sell the same, there should not be any doubt that the balance must be accounted for by the other party.⁴³ This does not mean, however, that the party may not bring an action for damages setting-off his claim from the proceeds;⁴⁴ and (iii) the balance should be paid at the other’s party place of business. If the party still refuses to take the money back, it may be useful to resort to a solution similar to PECL Article 7:111 (depositing the money to the order of the other party in accordance with the law where the payment is due).

2. PRESERVATION OF THE GOODS UNDER PECL (ARTICLES 7:110- 7:112)⁴⁵

PECL Article 7:110 considers mainly three cases: (i) buyer refuses to take deliver of goods; (ii) the buyer rejects the goods and seller refuses to take them back; and (iii) the contract has been terminated and the goods must be returned to the other party who refuses to take them back. Article 7:110 may be helpful, as the issue is not dealt with by the CISG.

The substance of PECL Article 7:110⁴⁶ is, therefore, very similar to CISG Articles 85-88. Thus, what it has been said about the CISG also applies under the PECL with the following distinctions. First, the main difference between the two sets of rules concerns the structure: PECL Article 7:110 comprises both the seller's and buyer's duty to preserve the goods in only one provision, whereas the CISG considers both parties' duties separately. The other difference concerns the wording: PECL outlines more simply than the CISG regarding how the party left in possession of the goods may discharge its duty.

-Situations where PECL Article 7:110 may be helpful in construing the meaning of the counterpart provisions of the CISG

(1) *Preservation of money.* PECL specifically deals with the case where the property to be protected and preserved is money (Article 7:111), a case not specifically dealt with by the CISG and, therefore, it may be of help when applying the CISG in such instances. Specifically, the provision applies where the debtor attempts to perform a primary (e.g. payment of the goods) or secondary (e.g., repayment of money received or payment of damages under Chapter 9 Section 5) duty to pay.⁴⁷ Pursuant to Article 7:111, the debtor discharges its duty to pay by “depositing the money to the order to the first party [creditor] in accordance with the law of the place where payment is due,”⁴⁸ after giving the creditor a reasonable notice. By doing so, the debtor may also prevent claims by the creditor concerning interest on the sum to be held on behalf of the creditor.

(2) *Avoidance and preservation of goods.* Reading Articles 81 and 86 CISG, with the guidance of PECL, one should draw the conclusion that, where the contract has been avoided, the buyer must arrange the restitution of them to the seller as the former cannot keep those goods nor can he destroy or let them being destroyed. While the party is in possession of goods to be taken by the other party, the very same party must also arrange a way to preserve them pursuant to Articles 87-88.⁴⁹

As to the seller, if (i) the seller still has possession of, or control of, the goods, and (ii) the contract has been avoided, the seller cannot claim expenses for preserving the goods from the buyer.

The PECL, contrary to CISG, does clearly deal with the case just mentioned, which makes Article 7:110 useful when dealing with restitution and preservation of the goods when the contract has been avoided.

3. CONCLUSIONS

PECL's language is very similar to CISG. However, one feature makes PECL Articles 7:110 and 7:111 very useful when dealing with preservation of money, and preservation of goods as result of the avoidance of the contract, as these situations are not directly dealt with by the CISG.

As a general rule, for all of the other general legal issues herein mentioned not directly solved by the CISG, it may be appropriate to first resort to the general principles of the CISG, unless the matter is clearly outside the scope of the CISG (e.g., storage agreement). The otherwise applicable domestic law, however, should control all of the more technical and detailed questions of substantive and, of course, procedural law.

(Footnotes)

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- ² See Fritz Enderlein & Dietrich Maskow, INTERNATIONAL SALES LAW, UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS – CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS, Oceana Publications 351 (1992). Available at <<http://cisgw3.law.pace.edu/cisg/biblio/enderlein.html>>.
- ³ For literature specifically relevant to the provisions of Article 85, see <<http://cisgw3.law.pace.edu/cisg/text/mono85.html>>. See also Harry Flechtner, in THE DRAFT UNCITRAL DIGEST AND BEYOND: CASES, ANALYSIS AND UNRESOLVED ISSUES IN THE U.N. SALES CONVENTION, 861 (Franco Ferrari, Harry Flechtner, Ronald A. Brand eds. 2004) [hereinafter *UNCITRAL Digest*].
- ⁴ See Hans E. Eberstein, Annotations 1-18 on Article 85, in COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) 663, 667 (Peter Schlechtriem, ed. 1998) [hereinafter *Annotations 85*]; Herbert Bernstein & Joseph Lookofky, UNDERSTANDING THE CISG IN EUROPE 103 (2003) [hereinafter *CISG in Europe*]; Flechtner, UNCITRAL DIGEST, *supra* note 3. But see ICC Arbitration Case No. 7197 of 1992 available at <<http://cisgw3.law.pace.edu/cases/927197i1.html>> [the preservation costs were awarded as result of failure of opening a letter of credit].
- ⁵ This language is also explained in a colloquy at the 1980 Vienna Diplomatic Conference available at <<http://cisgw3.law.pace.edu/cisg/text/link85.html>>. Official Records of United Nations Conference on Contracts for the International Sale of Goods, Vienna, March 10 – April 11, 1980, A/CONF. 97/19 (hereinafter *Official Records*). See also Jorge Barrera Graf, in COMMENTARY ON THE INTERNATIONAL SALES LAW 614, 613-619 (Massimo C. Bianca and M. Joachim Bonell eds., 1987); Eberstein, *Annotations 85*, *supra* note 4, at 667; Bernstein & Lookofky, *CISG in Europe*, *supra* note 4 at 103; Flechtner, UNCITRAL DIGEST, *supra* note 4. See also Hamburg Arbitration proceeding, Germany, December 29, 1998, available at <<http://cisgw3.law.pace.edu/cases/981229g1.html>>.
- ⁶ Eberstein, *Annotations 85*, *supra* note 4, at 664 and 668.
- ⁷ See Peter Schlechtriem, UNIFORM SALES LAW – THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, Manz: Vienna 108 (1986). Available at <<http://cisgw3.law.pace.edu/cisg/biblio/schlechtriem.html>>.
- ⁸ See the Secretariat Commentary on Article 74 of the 1978 Draft [draft counterpart of CISG article 85] reprinted in *Official Records*, *supra* note 5, at 62, available at <cisgw3.law.pace.edu/cisg/text/seccomm-85.html>; see Schlechtriem, *supra* note 7; John O. Honnold, UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION, 3d ed., 519 (1999); Harry M. Flechtner, *Remedies Under the New International Sales Convention: The Perspective from Article 2 of the U.C.C.*, 8 JL&C 53, 104 (1988) [available at <<http://cisgw3.law.pace.edu/cisg/biblio/flecht.html>>] [hereinafter “Remedies”]; and Jelena Vilus, *Provisions Common to the Obligations of the Seller and the Buyer*, in INTERNATIONAL SALES OF GOODS: DUBROVNIK LECTURES, Oceana Publications 259, 237-264 (Petar Sarcevic & Paul Volken eds., 1986) [available at <<http://cisgw3.law.pace.edu/cisg/biblio/vilus.html>>].
- ⁹ Eberstein, *Annotations 85*, *supra* note 4, at 665.
- ¹⁰ See Enderlein & Maskow, *supra* note 2, at 352.
- ¹¹ ICC Arbitration case, No. 7197 of 1992, available at <<http://cisgw3.law.pace.edu/cases/927197i1.html>>.
- ¹² See Vilus, *supra* note 8; see also Enderlein & Maskow, *supra* note 2, at 352, “[w]hat is to be considered as steps that are reasonable in the circumstances will have to be determined using the measure which the CISG applies to flesh out such vague descriptions. It amounts to taking such steps that they would be taken by a reasonable person in the same circumstances;” Carlo Scognamiglio, NUOVE LEGGI CIVILI COMMENTATE 326, 325-342 (Massimo C. Bianca ed., 1989). For the definition of reasonableness under the CISG and PECL and references to reasonableness in continental and common law domestic rules, doctrine and case law, visit <<http://cisgw3.law.pace.edu/cisg/text/reason.html#overv>>. As to case law, see Oberlandesgericht Braunschweig, Germany, October 28, 1999, available at <<http://cisgw3.law.pace.edu/cases/991028g1.html>>; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, April 25, 1995, case 142/1994, available at <<http://cisgw3.law.pace.edu/cases/950425r2.html>>.
- ¹³ Eberstein, *Annotations 85*, *supra* note 4, at 668.
- ¹⁴ Eberstein, *Annotations 85*, *supra* note 4, at 669. If a contract has been avoided, the seller may not claim reimbursement of expenses incurred in preserving the goods: Hamburg Arbitration proceeding, Germany, December 29, 1998, available at <<http://cisgw3.law.pace.edu/cases/981229g1.html>>.

- ¹⁵ Honnold, *supra* note 8, at 520.
- ¹⁶ Eberstein, *Annotations 85*, *supra* note 4, at 669.
- ¹⁷ See Oberlandesgericht Braunschweig, Germany, October 28, 1999, available at <<http://cisgw3.law.pace.edu/cases/991028g1.html>>; Tribunal Cantonal Vaud, Switzerland, 17 May 1994, available at <<http://cisgw3.law.pace.edu/cases/940517s1.html>>.
- ¹⁸ Eberstein, *Annotations 85*, *supra* note 4, at 669; Enderlein & Maskow, *supra* note 2, at 353.
- ¹⁹ Eberstein, *Annotations 85*, *supra* note 4, at 669.
- ²⁰ See Tribunal Cantonal Vaud, Switzerland, May 17, 1994, available at <<http://cisgw3.law.pace.edu/cases/940517s1.html>> where the court states: “[t]he Vienna Convention ... rules only on substantive issues. Therefore it does not exclude that a different solution may be given in the frame of provisional measures.”
- ²¹ See, e.g., Oberlandesgericht Braunschweig, Germany, October 28, 1999, available at <<http://cisgw3.law.pace.edu/cases/991028g1.html>>, where the court also stated “[w]hen applying the CISG, the duty to pay damages is based on Article 74, in part also on Article 85”; *Delchi v. Rotorex*, Federal Appellate Court 2nd Circuit, USA, December 6, 1995, available at <<http://cisgw3.law.pace.edu/cases/951206u1.html>> Federal District Court, New York, USA, September 9, 1994, available at <<http://cisgw3.law.pace.edu/cases/940909u1.html>>; ICC Arbitration case, No. 7531 of 1994, available at <<http://cisgw3.law.pace.edu/cases/947531i1.html>>; ICC Arbitration Case No. 7197 of 1992 available at <<http://cisgw3.law.pace.edu/cases/927197i1.html>>.
- ²² For selected texts specifically relevant to the provisions of Article 86, visit <<http://cisgw3.law.pace.edu/cisg/text/mono86.html>>. See also Bernstein & Lookofsky, *CISG in Europe*, *supra* note 4; Flechtner, *UNCITRAL DIGEST*, *supra* note 3, at 864.
- ²³ See *supra* note 12.
- ²⁴ See Cour de Cassation, France, January 4, 1995, case 92-16.993, available at <<http://cisgw3.law.pace.edu/cases/950104f1.html>>; ICC Arbitration Case No. 7531 of 1994 available at <<http://cisgw3.law.pace.edu/cases/947531i1.html>>.
- ²⁵ *China International Economic and Trade Arbitration Commission [CIETAC] - Shenzhen Commission*, (June 6, 1991, arbitration proceeding 164/1996, available at <<http://cisgw3.law.pace.edu/cases/910606c1.html>>): the court stated that warehouse expenses, which almost amounted the price of the contract, were unreasonable. The court also noted that the extend deposit caused the goods to decompose.
- ²⁶ See, e.g., Articles 46(1), 46(2), 49(1)(a), 49(1)(b) and maybe a right to reject exist under Articles 52 and 71. See Hans E. Eberstein, *Annotations 1-26 on Article 86*, in *COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) 671* (Peter Schlechtriem, ed., 1998) [hereinafter *Annotations 86*].
- ²⁷ It can be exercised even at a later time after receiving the goods - e.g., non-conforming goods must be rejected within a reasonable time after the buyer discovers or should have discovered the defects.
- ²⁸ See Honnold, *supra* note 8, at 524; See also Eberstein, *Annotations 86*, *supra* note 26, at 671; Fritz Enderlein, Dietrich Maskow and Heinz Strohbach, *INTERNATIONALES KAUFRECHT*, Article 86, note 3.2 (1991).
- ²⁹ It has been suggested that the buyer has no duty to take the goods in possession when he rejected them at earlier stage (see Secretariat Commentary on Article 75 of the 1978 Draft [draft counterpart of CISG article 86] reprinted in *Official Records*, *supra* note 5, at 62, available at <cisgw3.law.pace.edu/cisg/text/seccomm-86.html>; Rolf Herber and Beate Czerwenka, *INTERNATIONALES KAUFRECHT*, Article 86, paragraph 6 (1991). However, the provisions do not support such view as once the goods are the buyer's disposal whether he rejects them or only intends to reject them, he is still bound to preserve the goods pursuant to Articles 87 and 88. See also Eberstein, *Annotations 86*, *supra* note 26, at 675; Enderlein/Maskow/Strohbach, *supra* note 28, at Art. 8, note 7.
- ³⁰ The term “warehouse” means “any place appropriate for the storage of goods of the type in question.” Secretariat Commentary on Article 76 of the 1978 Draft [draft counterpart of CISG article 87], reprinted in *Official Records*, *supra* note 5, available at <cisgw3.law.pace.edu/cisg/text/seccomm-87.html>.

- ³¹ Honnold, *supra* note 8, at 525. As to case law, see ICC Arbitration Case No. 7531 of 1994, available at <<http://cisgw3.law.pace.edu/cases/947531i1.html>>; cf. Tribunal Cantonal Vaud, Switzerland, May 17, 1994, available at <<http://cisgw3.law.pace.edu/cases/940517s1.html>> [in the context of interim relief].
- ³² Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, April 25, 1995, case 142/1994, available at <<http://cisgw3.law.pace.edu/cases/950425r2.html>>.
- ³³ *Id.*
- ³⁴ See Hans E. Eberstein, Annotations 1-12 on Article 87, in COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) 677 (Peter Schlechtriem, ed., 1998) [hereinafter *Annotations 87*] [footnote omitted].
- ³⁵ *Id.* at 678. See also Enderlein & Maskow, *supra* note 2, at 357.
- ³⁶ See Herber/Czerwenka, *supra* note 29, at Art. 87, paragraph 5; Eberstein, *Annotations 87*, *supra* note 34, at 678. But see Enderlein/Maskow/Strohbach, see *supra* note 28, at Art. 87, note 1.2.
- ³⁷ See Honnold, *supra* note 8, at 526.
- ³⁸ See Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, April 25, 1995, case 142/1994, available at <http://www.cisgw3.law.pace.edu/cases/950425r2.html>>; ICC Arbitration Case No. 7531 of 1994, available at <<http://cisgw3.law.pace.edu/cases/947531i1.html>>.
- ³⁹ Oberlandesgericht Braunschweig, Germany, October 28, 1999, available at <<http://www.cisg.law.pace.edu/cases2/991028g1.html>>.
- ⁴⁰ See Hans E. Eberstein, Annotations 1-32 on Article 88, in COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) 683 (Peter Schlechtriem, ed., 1998) [hereinafter *Annotations 88*].
- ⁴¹ *Id.* at 682 [footnote omitted]; Scognamiglio, *supra* note 12, at 340.
- ⁴² *Id.*
- ⁴³ See Eberstein, *Annotations 88*, *supra* note 40, at 684; Flechtner, *Remedies*, *supra* note 8, at 80; but see Scognamiglio, *supra* note 12, at 341; (as to ULIS) H.J. Mertens and E. Rehbinder, INTERNATIONALES KAUFRECHT, Articles 94 and 95, note 8 (1975).
- ⁴⁴ See Secretariat Commentary on Article 77 of the 1978 [draft counterpart of CISG Article 88], reprinted in *Official Records*, *supra* note 5, at 63, available at <cisgw3.law.pace.edu/cisg/text/seccomm-88.html>. See also Flechtner, *Remedies*, *supra* note 8, at 81; Eberstein, *Annotations 88*, *supra* note 40, at 684 citing also Herber/Czerwenka, *supra* note 29, Art. 88, paragraph 8; Enderlein/Maskow/Strohbach, *supra* note 28, Art. 88, note 9.
- ⁴⁵ For the full text of the Principles of European Contract Law, visit <<http://cisgw3.law.pace.edu/cisg/text/textef.html>>.
- ⁴⁶ For the text of PECL Article 7:110, visit <<http://cisgw3.law.pace.edu/cisg/text/textef.html#a7110>>.
- ⁴⁷ See Comment and Notes on Article 7:111 in PRINCIPLES OF EUROPEAN CONTRACT LAW: PARTS I AND II 352-357 (Ole Lando & Hugh Beale eds., 2000) available at <<http://cisgw3.law.pace.edu/cisg/text/peclcomp85.html>>.
- ⁴⁸ See Oberster Gerichtsof, Austria, June 29, 1999, available at <<http://cisgw3.law.pace.edu/cases/990629a3.html>>, where the court dealing with the issues of determining the place of restitution as result of the avoidance of the sale contract (CISG Article 81), found that “[t]he CISG does not contain any provisions pertaining to the place of performance for restitution. Nevertheless, the gaps arising from the absence of relevant agreements within the framework of Art 7(2) CISG can be bridged without recourse to national provisions (*Leser, op. cit.*, Art. 81 Annotation 17; *Weber, op. cit.*, Art. 81 Annotation 21). The place of performance for the obligations concerning restitution should mirror the place of performance for the primary contractual obligations (*Posch*, in *Schwimann*, 2d ed., CISG Art. 81, Annotation 9).” I expect, however, that other courts may refer this issue to the law otherwise applicable to the contract.
- ⁴⁹ ICC Arbitration Case No. 7531 of 1994, available at <<http://cisgw3.law.pace.edu/cases/947531i1.html>>.