Arbitration and CISG

The importance of the CISG for consolidating International Arbitration

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The relationship between arbitration and the CISG:

• The purposes and advantages of the CISG;
• Arbitration, CISG and the “new lex mercatoria”;
• Arbitration as a mean of promoting the CISG;
• Conclusion
The Purposes of the CISG

Applicability of the CISG:

(i) International Sale of Goods;

=> Concept of International Sale: parties established in different countries

(ii) States which are parties of the Convention

OR

Rules of private international law leading to the applicability of the domestic law of a State-party;

Ratification of the CISG by Brazilian Government:

• Cases involving parties from different countries -> CISG is the substantive law applicable to the case;

• Predictability of the law applicable -> certainty when initiating arbitral proceedings in Brazil;

• Law is applied by Brazilian arbitrators is the same of law applied by arbitrators from the other State-parties.
Benefits of the CISG

- Greater certainty in trade with Brazil;
- Possibility of instituting an arbitral tribunal composed of member from different origins: the knowledge on the substantial law will be the same;
- Uniformity: (i) avoids disputes and (ii) provides greater certainty after a dispute is initiated;
- Eliminating cultural obstacles in international trade;
- Reducing transaction costs related to the diversity of legal traditions;
- Effective harmonization: relevant amount in international trade takes place among CISG State-parties.
• Arbitration, CISG and the “new lex mercatoria”

• Concept “Lex Mercatoria”; 

• UNCITRAL’s efforts towards the harmonization of International trade:
  ✓ CISG
  ✓ International Arbitration  - Neutrality 
                              - UNCITRAL Model Rule 
                              - Independence regarding domestic juridical order

• Arbitration x CISG 

• CISG x “Lex Mercatoria”
• Arbitration as a mean of promoting the CISG

• Common goals: promoting International trade;

• UNCITRAL – proposed creating a competition on international trade to promote its work → creation of Willem C. Vis Moot;
Conclusion

• ARBITRATION AND THE CISG ARE TOOLS FOR THE HARMONIZATION OF INTERNATIONAL TRADE;

• CISG PERFORMS THE ROLE OF THE SUBSTANCIAL LAW;

• ARBITRATION IS A METHOD FOR SETTLING DISPUTES: PROCEDURAL LAW CAN BE:
  ✓ RULES OF ARBITRAL ENTITY
  ✓ MODEL LAWS
  ✓ DOMESTIC LAWS,…

• THE TWO PERFORM THEIR ROLE TOGETHER IN ORDER TO MAKE INTERNATIONAL TRADE EASIER
Thank you!