The Development of the Principles of Agreement in Cross Border Contract Amid COVID-19 Outbreak

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Abstract. Cross-border contracts can be more complicated than domestic contracts because they must adhere to the laws and regulations of multiple countries, including those governing taxation, tariffs, import and export controls, intellectual property rights, and dispute resolution. In addition to the usual commercial and financial considerations, parties entering into cross-border contracts may need to consider cultural differences, language barriers, and legal systems. The UPICC can play a significant role in international agreements by providing a common framework for parties to use when drafting and negotiating contracts and promoting good faith and fair dealing in business relationships. The research method is to make a legal analysis of the UPICC provisions on the impact of the COVID-19 pandemic. The findings indicate Although the UPICC is not a legally binding framework, it can assist parties in navigating the complexities of cross-border transactions. Although the UPICC does not explicitly address COVID-19, its principles relating to good faith and fair dealing and the concept of hardship provide a mechanism for parties to negotiate and modify their contractual obligations in the event of unforeseen circumstances, such as a pandemic.

Keywords: Cross Border, Covid -19 Outbreak, Offer and Acceptance.

1 Introduction

Cross-border contracts are legally binding agreements made by two or more parties located in different countries or legal jurisdictions. These contracts set out the terms and conditions that govern international business transactions [1]. These contracts provide a framework that sets out the rights, obligations and expectations of the parties involved in a global commercial venture [2]. The primary purpose of cross-border contracts is to ensure that all parties involved in an international business transaction have a clear understanding of their roles and responsibilities [3]. These contracts typically outline key elements such as the products or services to be exchanged, pricing structures, delivery schedules, payment terms, dispute resolution mechanisms and relevant legal provisions. Cross-border contracts often address the complexities of international trade, including issues relating to customs, tariffs, import-export regulations, and compliance with international treaties and agreements [4]. One common feature of cross-border contracts is that they often involve the exchange of goods or services, financial transactions, intellectual property or other valuable resources across international

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boundaries [5]. This aspect underscores the importance of well-drafted and comprehensive agreements that not only protect the interests of the parties involved, but also navigate the unique challenges and risks associated with conducting business in different legal, cultural and economic environments.

Cross Border contracts often present various complexities that distinguish them from domestic agreements [6]. One of the main factors contributing to these complexities is the involvement of parties who are subject to different legal systems. This leaves the parties with different legal principles, court systems, and dispute resolution mechanisms, potentially leading to legal uncertainty and disputes [7]. International contracts often involve parties from different language and cultural backgrounds. This linguistic and cultural diversity can lead to misunderstandings and miscommunications, thus affecting contract performance. Differences in business customs, negotiation styles and expectations can complicate matters [8]. Cross- Border contracts also require compliance with various regulatory frameworks, including customs, trade and tax laws, adding another layer of complexity and administrative burden. Finally, transactions involving multiple currencies pose exchange rate risk, which can affect the financial outcome of the contract, potentially resulting in financial loss or gain for the parties involved [9]. In addition, parties located in different time zones and regions can face challenges in coordinating and communicating effectively, potentially causing delays and disruptions in contract execution.

When entering into international contracts, it is important for parties to consider the relevant International Conventions and Treaties [10]. These international treaties play an important role in shaping the legal landscape for cross-border transactions by providing standardized rules and principles that can replace or supplement national laws [11]. International Conventions and Treaties are designed to promote consistency, fairness, and cooperation among countries engaged in international trade and other activities. [12]. Parties can ensure that their contracts align with and comply with the obligations and provisions set out in such Conventions and Treaties. International Convention can help improve the enforceability and legitimacy of contracts in different jurisdictions, as it demonstrates a commitment to complying with international standards [13]. Anticipating different legal systems in international contracts can assist parties in avoiding disputes and ensuring that their agreement is enforceable in each jurisdiction.

International Conventions and Treaties are global agreements that establish standardized rules and principles for various aspects of international trade, ranging from commerce and intellectual property to environmental protection and human rights [14]. These agreements create a consistent and predictable legal environment for international business by encouraging cooperation and uniformity among countries. The Uniform Principles of International Commercial Contracts (UPICC) is a set of guidelines developed by the United Nations Commission on International Trade Law (UNCITRAL) to provide a uniform framework for the formation and interpretation of international commercial contracts [15]. The UPICC serves as a comprehensive set of non-binding principles specifically tailored to international commercial contracts [16]. Although not legally binding, the UPICC is frequently referred to and adopted in international contracts as a valuable framework for addressing contractual issues related to formation, interpretation, enforcement, and remedies for breach [17]. Parties can use the UPICC as a guide to ensure that their contracts are in line with international best practices and principles of fairness.

In a meanwhile, The COVID-19 pandemic has brought significant challenges to cross-border contracts and international trade [18]. The principles of engagement in cross-border contracts may have evolved amid the COVID-19 outbreak based on general trends and considerations up to that time [19]. In the midst of the COVID-19 outbreak, treaty principles in cross-border contracts evolved to address unprecedented challenges [20]. Parties are increasingly including special force majeure clauses covering the pandemic, adopting flexible contract terms to accommodate disruptions, using virtual dispute resolution mechanisms, emphasizing transparent communication and cooperation, and considering supply chain diversification and health and safety protocols [21]. These changes aim to improve contractual resilience and responsiveness to pandemic-related uncertainties, reflecting the need for adaptability and risk mitigation in international trade agreements [22]. The pandemic has also highlighted the importance of communication and cooperation between the parties in contract formation [23]. In particular, parties may need to work together to address issues relating to supply chain disruptions, travel restrictions and other challenges that may affect contract performance [24]. By communicating effectively and in good faith, parties can ensure that contract terms are revised in a way that is fair and reasonable to all parties.

The COVID-19 pandemic has highlighted the importance of clarity, certainty and good faith in contract formation, especially with regard to offer and acceptance [25]. Parties must communicate effectively, cooperate in good faith, and include clear and unambiguous terms in their contracts to mitigate the impact of the pandemic on contractual relationships [26]. The UPICC provides general principles that can be applied to various types of contracts, it does not contain specific provisions related to the pandemic such as COVID-19. However, the UPICC provides a mechanism for parties to negotiate and modify their contractual obligations in the event of unforeseen circumstances or force majeure events [27].

COVID-19 and its impact on global supply chains, business operations, and economic conditions potentially qualify as such a change in circumstances, and parties may be able to rely on this provision to request modification of their contracts [28]. For Example, Under Article 6.2.2 of the UPICC, parties are required to perform their obligations in accordance with the principles of good faith and fair dealing [29]. This includes the obligation to cooperate and communicate with each other, which can be particularly important in the context of a pandemic that may affect the performance of contractual obligations [30]. The focus of this paper is to explore the role of UNIDROIT, one of the leading international organizations promoting the unification of private law at the global level, in addressing the impact of the COVID-19 pandemic. This paper consists of two parts, which deal with the most important aspects of UNIDROIT's legal response to the problems posed by COVID-19 and the resulting economic crisis in relation to the implementation of treaties and the restoration of trust and the creation of new opportunities in cross-border contract.

2 Literature Review

The "UNIDROIT Principles on International Commercial Contracts" (UPICC) are a set of non-binding rules that serve as a valuable framework for international commercial contracts. The principles cover various aspects of contract law, such as contract formation, interpretation, enforcement, and remedies for breach [31]. The Principles are designed to provide a standardized foundation that parties can use when drafting and negotiating cross border contracts [32]. By offering this general framework, the UPICC helps to reduce misunderstandings and increase legal certainty in the complex world of international business transactions. One of the main roles of the UPICC is to fill in the gaps in International Conventions and Treaties. UPICC addresses legal issues that may not be covered in existing international treaties, providing guidance and principles to assist parties in navigating uncharted territory. In addition, the UPICC underscores the importance of good faith and fair dealing in international business contracts. This emphasis on ethical behavior contributes to building trust between contracting parties, which is critical to the success of any business relationship [33]. The main objective of the UNIDROIT Principles on International Commercial Contracts is to facilitate the development of trust among parties involved in international transactions. It aims to promote good business relations and foster a more harmonious and reliable global business environment. The Principles are a valuable legal foundation for business people and legal professionals involved in international trade, offering a solid basis for the creation and enforcement of international contracts while emphasizing fairness and ethical conduct in the process.

The UPICC assist in addressing issues of interpretation in international contracts by providing Guidance on the meaning and scope of contract terms. The regulation plays a significant role in international contracts by providing a common framework for parties to use when drafting and negotiating contracts [34]. The convention also promoting good faith and fair dealing in business relationships. Although the UPICC is not a legally binding framework, it can assist parties in navigating the complexities of cross-border transactions [35]. Anticipating different legal systems in international contracts can assist parties in avoiding disputes and ensuring that their agreement is enforceable in each jurisdiction [10]. Dispute Resolution Clauses International contracts should include dispute resolution clauses that outline the process for resolving potential conflicts. [36]. Parties to cross border transaction might speak different languages hence the parties should consider whether to include mediation, arbitration, or litigation provisions and ensure the chosen method is enforceable in each jurisdiction [37]. Due to the situation , the party must ensure that the contract has been accurately translated into each language and that all parties thoroughly understand its terms is essential [38].

Another important function of the UPICC is as a valuable resource for resolving disputes that may arise from complex international contracts [39]. Usually, when dealing with disputes in the context of international law, the legal framework consists primarily of national legal rules and regulations [40].However, the international nature of such disputes often requires a different approach. In many cases, instead of relying solely on national law provisions, there is a growing recognition of the need to consider instruments that recognize the unique and complex nature of cross-border business transactions [41]. This recognition has led to arguments advocating the use of a uniform international law or soft law regime, with the UPICC as a prime example [42]. These international legal frameworks provide a set of principles and rules specifically tailored to the complexities of international trade, offering a fairer and more predictable basis for resolving disputes. By incorporating the UPICC or similar international uniform legal principles into international contract dispute resolution, parties and legal professionals can ensure a fair and consistent approach that transcends national boundaries. This not only enhances the legitimacy and efficiency of the dispute resolution process, but also aligns with the global nature of contemporary business interactions.

The UPICC (UNIDROIT Principles of International Commercial Contracts) is an international convention that incorporates elements from English law, resulting in the inclusion of legal terminology and concepts that may not be widely recognized or utilized within continental European legal systems [43]. This can pose challenges for parties engaged in cross-border transactions, as differences in terminology and legal principles may lead to misunderstandings and complexities in the interpretation and enforcement of cross border-contracts [44]. For example the term "specific performance" is a remedy generally associated with the enforcement of non-monetary contractual obligations, which usually do not include payment obligations. This remedy differs from the continental European concept of a claim based on a primary obligation to pay the contract price [45].

The equitable nature of specific performance makes it distinct from conventional notions of contractual claims, due to its discretionary and ancillary nature. In essence, it is a remedy that compels a party to fulfill a non-monetary obligation under a contract rather than providing compensation in the form of monetary damages.

In the context of English law, the application of specific performance does not inherently follow from the principle of pacta sunt servanda which states that agreements must be kept [46]. Although specific performance of primary payment obligations is explicitly provided for in the Sale of Goods Act, 1979 (Section 49(1) and (2)), which authorizes actions relating to the contract price, this is largely due to the historical development of the English court system and procedural law. Although payment obligations can generally be subject to specific performance under English law, it may be technically difficult to base such a claim on Article 7.2.1 of the UNIDROIT Principles on International Commercial Contracts (UPICC) and integrate it into English contract law.

In English law, the term "specific performance" can include the performance of key contractual obligations, including those related to financial aspects [47]. This broader interpretation does not limit it exclusively to non-monetary obligations in the procedural sense. English law recognizes specific performance as a remedy that can be applied to enforce various types of contractual obligations, which can include debt claims, including actions related to the contract price. However, it is important to note that in common law jurisdictions such as England, actions for damages for breach of contract have traditionally had a privileged role compared to civil law systems, which emphasize the importance of compensatory damages as opposed to specific performance.

3 UPICC Amid COVID-19 Pandemic

The COVID-19 pandemic situation has brought many challenges to businesses involved in international trade, especially in the area of cross-border contracts. Some of the key issues arising from the pandemic include disruptions in global supply chains, stemming from plant closures, disruptions in transportation networks, and border closures, which have resulted in delays and increased costs, hindering access to essential goods and services needed for contractual obligations. The COVID-19 pandemic situation has brought many challenges to businesses involved in international trade, especially in the area of cross-border contracts [18]. The spike in force majeure claims is also another important concern in covid-19 events, as parties seek to suspend covid-19. This is due to parties seeking to suspend or terminate their contractual commitments due to unpredictable pandemic-related circumstances, leading to disputes and uncertainty regarding the validity and implications of these claims. Contract renegotiation has also emerged as an important challenge, given the profound economic and social disruption caused by the pandemic, with struggling businesses seeking to reconfigure contractual terms to accommodate the changing landscape. International travel restrictions have complicated cross-border negotiations, contract execution and enforcement, leading to delays and increased costs [48]. In addition, currency fluctuations, driven by the economic impact of the pandemic, have introduced uncertainty in contract payments, making it difficult for parties to anticipate the financial implications of their contractual obligations.

The United Nations Commission on International Trade Law (UNCITRAL) developed the Uniform Principles of International Commercial Contracts (UPICC) to provide a uniform framework for forming and interpreting international commercial contracts. The Uniform Principles of International Commercial Contracts (UPICC) serve as a valuable framework for the formation and interpretation of international commercial contracts [16]. While the UPICC does not include specific provisions addressing the pandemic, such as COVID-19, it is designed to be a comprehensive set of principles. However, the UPICC is an adaptable convention that can be applied to a wide range of contract types and industries. Instead, the UPICC offers a more general and flexible approach, which emphasizes the importance of principles such as good faith and fair dealing in contractual relationships.

Under the UPICC, when unforeseen events such as a pandemic or force majeure disrupt contract performance, the principles of good faith and fair dealing come into play. These principles require parties to act honestly, cooperatively, and fairly, foster transparent communication, and encourage renegotiation or modification of contract terms as necessary to address unforeseen circumstances [49]. UPICC's emphasis on good faith and fair dealing encourages fairness, balance, and a collaborative approach, ensuring that parties adapt to changing circumstances while upholding the integrity of their contractual commitments. When unforeseen circumstances or force majeure events such as a pandemic disrupt international contracts under the UPICC, the principles of good faith and fair dealing serve as fundamental pillars in guiding the behavior and interactions of contracting parties. Good faith requires both parties to act honestly, transparently and sincerely in their contractual dealings. In practical terms, this means the party should engage in open communication, disclose relevant information about the challenges they face, and sincerely seek possible solutions to continue the performance of the contract in a reasonable and fair manner [50]. The principle of good faith encourages parties to collaborate rather than take an adversarial stance, thus fostering an atmosphere of mutual trust and cooperation that is especially important in times of crisis.

The principle of fair dealing emphasizes the importance of fair treatment for every party involved. It ensures that no party takes undue advantage of another party's vulnerability caused by unforeseen events [51]. Fair dealing requires parties to act in a manner that takes into account the legitimate interests and expectations of both parties, seeking to achieve a balanced outcome. This may include adjusting contract terms, delivery schedules or payment terms to accommodate challenges posed by such events without burdening either party. At its core, UPICC's reliance on good faith and fair dealing empowers parties to collaboratively address the complexities of unforeseen disruptions, promoting fairness and equity in the face of unforeseen challenges while maintaining the essence of their contractual commitments.

While the UPICC does not set out specific measures or solutions for these situations, it underscores the importance of negotiating and modifying contractual obligations as a way to adapt to changing circumstances. Parties are encouraged to cooperate and communicate openly to find mutually acceptable solutions to overcome the challenges posed by such unforeseen events. The sentence underscores the importance of cooperation and open communication between the parties when faced with unforeseen events that interfere with the performance of the contract. In the context of international contracts governed by the UPICC, cooperation implies that both parties should work together to overcome challenges posed by unforeseen circumstances such as a pandemic or force majeure event [52]. This collaborative approach requires a willingness to jointly explore alternative solutions, adapt to changing circumstances, and find common ground to maintain the contractual relationship. Parties are encouraged to engage constructively and transparently, recognizing that adversarial or confrontational attitudes are unlikely to lead to mutually beneficial outcomes.

Open communication involves a clear and honest dialog between both parties, where they share information about the nature and extent of the disruption caused by unexpected events. Open communication allows both parties to gain a better understanding of each other's perspectives and constraints, making it easier to identify potential solutions. Effective communication also helps in building trust and ensuring that contract negotiations and modifications are based on accurate information and a mutual commitment to resolve issues amicably. The encouragement of cooperation and open communication in the UPICC framework underscores the need for a collaborative and transparent approach when addressing challenges posed by unforeseen events in international contracts, ultimately aiming to maintain the integrity of the contractual relationship [53]. This flexibility allows parties to tailor their responses to the unique challenges presented by events like the pandemic, promoting fairness and equity in international commercial relations. Ultimately, the UPICC's strength lies in its adaptability and reliance on fundamental principles, allowing it to remain relevant in the face of evolving global challenges.

Parties are required by Article 6.2.2 of the UPICC to fulfill their obligations under the principle of good faith and fair dealing. This includes the duty to cooperate and communicate with one another, which can be especially important in a pandemic, where the ability to fulfill contractual obligations may be impacted [54]. Furthermore, Article 7.1.7 of the UPICC provides for the concept of "hardship," which permits a party to seek renegotiation or modification of a contract if there is a substantial change in circumstances that were unforeseeable at the time the contract was formed and which makes the performance of the contract excessively burdensome. COVID-19 and its impact on global supply chains, business operations, and economic conditions may qualify as a change in circumstances, and parties may be able to rely on this provision to seek contract modifications.

The Principles of Uniform International Commercial Contracts Numerous legal systems and international conventions recognize the concept of "hardship," including the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Uniform Principles of International Commercial Contracts (UPICC) [29]. It refers to a significant change in circumstances that were unforeseeable at the time the contract was formed, which makes the contract's performance excessively burdensome or complex.

Article 6.1.1 of the UPICC states that "a contract must be performed according to its terms and under the principles of good faith and fair dealing." However, Article 7.1.7 recognizes that the performance of a contract may become unduly burdensome due to a change in circumstances that was not foreseeable at the time the contract was formed [54]. This change in circumstances cannot have been brought about by the party requesting relief and must be beyond their control.

In the event of such a change, the party experiencing hardship may request renegotiation or modification of the contract to restore its equilibrium, considering interests of party. However, the party seeking relief must first attempt to resolve the dispute with the other party before seeking court or arbitration tribunal intervention.

4 Offer and Acceptance Principle and Its Relation to COVID-19

The UPICC plays an important role in providing guidance for the formation and interpretation of international commercial contracts. One of the fundamental aspects of contract formation is the establishment of mutual consent between the parties, which is reflected in the principles of offer and acceptance at contract [55]. Regarding offer and acceptance, UPICC recognizes the importance of these elements in contract formation. UPICC recognizes that for a contract to be valid, there must be an offer made by one party, setting out the terms of the proposed agreement, and a clear acceptance by the other party to avoid misunderstandings and disputes. By offering these guidelines, UPICC contributes to the establishment of a common understanding and approach to offers and acceptances in international contracts, which can facilitate smoother cross-border trade and reduce the potential for disputes or legal complications.

A contract is formed under Article 2.1 of the UPICC when an offer is made by one party and accepted by the other. An offer is a party's proposal to enter into a contract on particular terms. Acceptance is the other party's unqualified agreement to the terms of the offer. The formation of a contract based on the principles outlined in Article 2.1 of the Uniform Principles of International Commercial Contracts (UPICC), requires an offer and acceptance [56]. This is intended to avoid ambiguities in the terms of offer or acceptance, timing and communication discrepancies, the introduction of counter-offers or rejections, complexities associated with electronic communications, and navigating international jurisdictions and differences in applicable law.

The rules on time and communication in Article 2.4 of the UPICC highlight an important aspect of contract formation across national borders. While the UPICC provides clear guidance as to when an offer is deemed to have been made and when acceptance becomes effective, its practical implementation can be complicated [57]. International transactions often involve parties located in different geographical locations and time zones, which can cause communication delays. These delays can create uncertainty as to exactly when an offer is communicated, accepted or accepted, especially in cases where parties are working to tight deadlines or facing rapidly changing situations.

In addition, the method of communication can introduce further complexity. In today's digital age, international contracts are often negotiated through various electronic means, such as email, video conferencing and instant messaging. Determining when an electronic communication is deemed to have been received or whether it meets the legal requirements for receipt can be subject to interpretation. This can lead to disputes over the precise moment when contract formation occurs and may require careful documentation and adherence to established communication protocols to minimize such ambiguity. Overall, addressing timing and communication challenges is critical to ensuring that parties to a contract have a clear understanding of when their rights and obligations under the contract are legally established, ultimately reducing the risk of disputes and legal complications.

For an offer to be effective, it must be sufficiently specific and unambiguous so that the other party can comprehend the terms and decide whether or not to accept. An offer may be communicated orally, in writing, or through conduct [54]. In international business transactions, however, it is generally recommended that offers be made in writing to avoid disputes over whether or not an offer was made. Acceptance must be definite, unconditional, and communicated promptly to the offeror. Generally, silence or inaction cannot be interpreted as acceptance unless the parties have agreed to such a mechanism. In addition, any changes to the terms of the offer are typically regarded as a counteroffer, which the original offeror must accept for a contract to be formed.

The UPICC recognizes the significance of offer and acceptance in contract formation. Acceptance must be unconditional and communicated promptly. Important factors include the timing and communication of offer and acceptance, which must adhere to good faith and fair dealing principles [56]. The COVID-19 pandemic has affected the formation of contracts and the offer-acceptance relationship. The pandemic has highlighted the need for clarity and certainty in contractual arrangements and the significance of good faith and cooperation among parties.

The pandemic has impacted offer and acceptance by introducing uncertainty regarding the parties' ability to fulfill their contractual obligations. For instance, a supplier unable to deliver goods due to the pandemic may need to renegotiate the terms of their contract with the buyer. To ensure that the terms of the contract are revised in a way that is fair and reasonable to both parties, the parties must communicate openly and in good faith.

Likewise, the pandemic has emphasized the importance of clear and ambiguous contractual terms. Specifically, parties may wish to include force majeure clauses in their contracts that address the repercussions of pandemics, epidemics, and other similar events. Such clauses can provide clarity and direction regarding how parties should proceed in the event of unforeseen circumstances, and they can aid in avoiding disputes regarding whether or not an offer has been accepted.

5 Conclusion

The COVID-19 pandemic has posed significant challenges to cross-border contracts governed by the Uniform Principles of International Commercial Contracts (UPICC). These challenges include supply chain disruptions, an increase in force majeure claims, difficulties in renegotiating contracts, international travel restrictions, and currency fluctuations. While the UPICC does not contain specific provisions addressing the pandemic like COVID-19, it emphasizes the importance of good faith, fair dealing, cooperation, and open communication between parties. The provisions of the UPICC are not only applicable during the COVID-19 emergency but can also serve as a guide during other future emergencies situation.

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