10. Résumé

This thesis disserts upon damages under the United Nations Convention on Contracts for the International Sale of Goods. Apart from brief historical excursus including the regulation of damages in Roman law, it is focussed exclusively on present issues in international trade. Theoretical and practical parts are interlinked throughout the paper, as it seemed more practical in this one case.

The pivotal part of the thesis – Applicability of the CISG – is dealt with by Chapter 3. The author decided to elaborate and include this seemingly unrelated topic into this thesis, since he believes that even the most convincing interpretation is unavailing and futile if a court rules that the CISG is not applicable in a particular case.

Consequently, Chapter 4 treats of accrual of liability for damage. First, it talks about five elementary preconditions for accrual of liability for damage: wrongfulness, occurrence of loss, causality between the two preceding preconditions, foreseeability and absence of circumstances excluding liability. Since it is not clear what kinds of loss can be compensated under the Vienna Convention, it also includes enumeration of those kinds where compensability is possible as well as those where it is not. Albeit only marginally, it also addresses the problem of party autonomy, namely validity of clauses regulating different areas, such as penalties, liquidated damages, exemption clauses, etc.

Chapter 5 is devoted to situations, when the contract has been avoided. It follows the logic of the Convention's provisions, namely Articles 75 and 76, which are general rules for measuring and claiming the loss incurred due to the avoidance. While the first half of this Chapter deals with the possibility to recover the difference between the contract price and the price of the substitute transaction, the second half with the possibility to recover the difference between the price fixed in the contract and the current price at the time of avoidance.

Chapter 6 addresses the obligation of promisee to mitigate the loss, which is laid down in Article 77. In particular, it deals with the intention of this Article to prevent the aggrieved party from claiming damages that could have been avoided. Hence, if the aggrieved party did not take reasonable measures to mitigate the loss resulting from the breach, the party in breach may claim a reduction in the damages to the extent the loss ought to have been mitigated. Besides the scope of application, the accent is put on reasonableness of the actions that should be taken by promisee. Reimbursement for expenses to mitigate the loss is also mentioned.

Chapter 7 – interest on late payment – represents a relatively independent part; nevertheless it is immediately concerned with the subject of damages. In this Chapter author tries to provide interpretation of the vague provision of Article 78. At first, it deals with prerequisites of application and a relationship between interest on late payment and damages. Then cases of cessation of a duty to pay interest are included. Since the rate of interest is not explicitly mentioned in the Convention, it is usually fixed by the agreement of the parties to the contract. In the absence of such an agreement, usage and practices established between the parties shall be applied. Should all the abovementioned methods fail, then Article 7(2) shall be applied.

The reason why the author decided to write a thesis on this topic is obvious: the present globalised world provides merchants with unprecedented opportunities for their business. Lifting trade barriers and intensifying call for unification and harmonisation made international trade easier than ever before. Amongst the results of unification efforts, the 1980 United Nations Convention on Contracts for the International Sale of Goods takes prime position. Having been adopted by an overwhelming majority of developed countries, the Convention provides a legal framework for transactions whose value is calculated in billions of Euros.

Positive and encouraging though the number of countries which have adopted the Convention may seem, it also brings about several problems. Various cultural, religious and legal traditions contributed to vagueness and laconic wording of some of the Convention’s provisions, which is why the

author tries to at least partly shed light on them. In an attempt of this elucidation, the thesis interlinks scholarly writings with the practice of courts. Where commentators' writings are inconsistent with decisions of courts, the author is inclined to agree with judicial decisions, since he deems reliance and foreseeability to be prerequisites for successful development of international trade. Hence the practical conclusions and court rulings are not found at the end of the thesis, but rather are systematically placed within the paper where the wording of the Convention or conclusions drawn in scholarly writings prove insufficient. *Prima facie*, it may seem that the abovementioned ambiguity and sometimes inconsistent practice of courts dramatically decrease foreseeability and render the uniform interpretation almost impossible. But it is the Convention's flexibility and being free of legal shorthand that contributed to its popularity. Hence, what may seem as a handicap to lawyers appears as an advantage to merchants. In the end it is due to say that the author is willing to admit that uniform interpretation is not always possible, however he believes that practice of courts provides guidelines which, if followed, can lead to an anticipated conclusion and thus make the Vienna Convention one of the most successful unification acts in the present world.

Finally, the reader is advised that the author does not arrogate infallibility unto himself. Even though he believes in rectitude of the conclusions, which he, in consideration of his knowledge and law applicable as of 20th November 2009, arrived at in this thesis, they are proposed as mere topics for a discussion on myriads of questions that the Vienna Convention brings along.