

'Not All that Fly are Drones': Towards a Risk-Based Interpretation of Article 2(e) CISG

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The 30th Willem C. Vis International Commercial Arbitration Moot (Vis Moot) took place in Vienna between 31 March and 6 April 2023. Amongst other issues, participants were asked to identify whether a drone was an 'aircraft' excluded from the United Nations Convention on Contracts for the International Sale of Goods (CISG) under Art. 2(e).

This article argues that current academic approaches to Art. 2(e) CISG cannot accommodate Unmanned Aerial Systems (UAS). It suggests that Art. 2(e) CISG contains a fundamental tension between uniformity and purpose. A rigid definition of 'aircraft' may promote the CISG's uniformity and autonomy. However, this rigidity cuts across national registration requirements which are the reason that 'aircraft' are excluded from the Convention. By analysing modern approaches to UAS regulation adopted by the US Federal Aviation Administration (FAA) and the European Aviation Safety Agency (EASA), the article concludes that a new risk-based interpretation of Art. 2(e) CISG better aligns uniformity and purpose for a new era of aviation.