

Symposium: The Convention on the International Sale of Goods and its application in comparative perspective

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On 11 April 1980 the United Nations Convention on Contracts for the International Sale of Goods (CISG) was accepted by the Diplomatic Conference held in Vienna under the auspices of UNCITRAL. In the United States, France, China and a number of other states it was ratified with effect from 1 January 1988; in Germany it was adopted three years later. In the meantime the Convention has entered into force in more than 60 states, among them 12 of the EU member states¹. As a result, CISG has become increasingly influential in legal practice. By the middle of 2001 close to 1,000 decisions and arbitral awards applying the Convention were registered by CLOUT, a database run by UNCITRAL². These decisions came from 25 countries; the lion's share (close to one third), however, is from Germany. There is a growing body of literature, worldwide, dealing with CISG. References to CISG have become a standard feature in comparative works on contract law, and they also appear more and more frequently in the genuinely national legal literature. In Germany a specialised law journal has recently been founded specifically focusing on the legal problems surrounding CISG³, while some of the standard law reviews also regularly report on recent developments relating to CISG. On the international front, the proceedings of two important symposia have just been published. One is *Franco Ferrari* (ed.), *The 1980 Uniform Sales Law: Old Issues Revisited in the Light of Recent Experiences* (Verona Conference 2003) (2003), the other is *Franco Ferrari, Harry Fletcher, Ronald A. Brand*, *The Draft Uncitral Digest and Beyond: Cases, Ana-*

¹ For a complete list of states, as per 1 March 2003, see *Burghard Piltz*, *Neue Entwicklungen im UN-Kaufrecht*: NJW 2003, 2056f. As of 24 March 2004 Uncitral's website reports 62 states: <<http://www.uncitral.org/english/status/status-e.htm>>.

² See *Ulrich Magnus*, *Das UN-Kaufrecht – aktuelle Entwicklungen und Rechtsprechungspraxis*: ZEuP 10 (2002) 523f.

³ *Internationales Handelsrecht (IHR)*, from February 2001.

lysis and Unresolved Issues in the U.N. Sales Convention (Pittsburgh Conference Papers) (2004). The latter includes the full text of a Digest cataloguing the cases and arbitral awards that have applied and interpreted CISG.

The Sales Convention has also become highly influential in the field of national and supranational law reform. Thus, for instance, the various steps on the road towards modernising the rules on breach of contract and sale in Germany have largely been inspired first by CISG's predecessor, the (Hague) Uniform Law on the International Sale of Goods of 1964, and subsequently by CISG itself. CISG has also significantly shaped the Consumer Sales Directive (1999/44/EC)⁵ in spite of the fact that it applies to commercial transactions and even specifically excludes consumer sales from its range of application⁶. The correspondence between these two international instruments will significantly contribute to the emergence of a common framework of reference for the development of sales law in Europe⁷. The same is true for important contours of the general law of contract. Thus, the draftsmen of the Principles of European Contract Law⁸ took their cue from CISG, particularly in so far as breach of contract and formation of contract are concerned. No less than 52 of the 132 articles contained in the first two parts of the Principles are modelled on a provision contained in CISG⁹. The influence of CISG on the *Unidroit Principles of International Commercial Contracts* has been equally prominent.

Thus, it can safely be said today that CISG represents one of the great success stories in the history of harmonisation, or unification, of private law¹⁰. This success, however, can easily be undermined by the way in which the provisions contained in CISG are interpreted in practice. A uniform statute is

⁴ *Bundesminister der Justiz*, Abschlußbericht der Kommission zur Überarbeitung des Schuldrechts (1992) 19f.; *Peter Schlechtriem*, Rechtsvereinheitlichung in Europa und Schuldrechtsreform in Deutschland: ZEuP 1 (1993) 217ff. Another well-known example is Israel which has used the Hague Uniform Law of 1964 as a model for codification of its sales law; see *David Friedman*, The Effect of Foreign Law on the Law of Israel (1975) 99f.

⁵ *Ulrich Magnus*, Der Stand der internationalen Überlegungen, Die Verbrauchsgüterkauf-Richtlinie und das UN-Kaufrecht, in: *Europäisches Kaufgewährleistungsrecht: Reform und Internationalisierung des deutschen Schuldrechts*, ed. by *Stefan Grundmann/Dieter Medicus/Walter Rolland* (2000) 49ff.; *Stefan Grundmann*, in: *EU-Kaufrechtsrichtlinie: Kommentar*, ed. by *Stefan Grundmann/Cesare Massimo Bianca* (2002) Einl. Rz. 1ff.

⁶ Art. 2 a) CISG.

⁷ See *Viola Heutger*, Konturen des Kaufrechtskonzeptes der Study Group on a European Civil Code, Ein Werkstattbericht: *European Review of Private Law* 11 (2003) 155ff.

⁸ *Principles of European Contract Law*, ed. by *Ole Lando/Hugh Beale* I, II (2000).

⁹ See the table in *Harry M. Fletcher*, The CISG's Impact on International Unification Efforts: The *Unidroit Principles of International Commercial Contracts* and the *Principles of European Contract Law*, in: *The 1980 Uniform Sales Law: Old Issues Revisited in the Light of Recent Experiences*, ed. by *Franco Ferrari* (2003) 181ff.

¹⁰ *Herbert Kronke*, Ziele – Methoden – Kosten – Nutzen: Perspektiven der Privatrechts-harmonisierung nach 75 Jahren *Unidroit*: *JZ* 2001, 1149ff.

writ in water unless it is uniformly applied. It is already apparent, however, that key rules and concepts contained in CISG are beginning to be applied differently in different national legal settings. The paths may thus diverge again. It was the purpose of this symposium, held on the occasion of the annual meeting of the Association of Friends of the Hamburg Max-Planck-Institute on 14 June 2003, to evaluate the first experiences with the application of the Sales Convention and to explore the chances of a uniform approach. It appeared to be particularly appropriate to do so in an institute which was founded by Ernst Rabel: the man who was the driving force behind the unification of international sales law¹¹. We have attempted to isolate five issues which we regarded as suitable for this kind of investigation. The list of contributors to the symposium reflects the international spirit of the exercise; they come from the Netherlands, South Africa, Italy, the United States and Germany. We are very grateful to them for having come to Hamburg and also for having prepared their respective lectures for publication.

¹¹ *Gerhard Kegel*, Ernst Rabel – Werk und Person: *RabelsZ* 54 (1990) 1ff.

