

Symposium: CISG – The 25th Anniversary: Its Impact in the Past and Its Role in the Future

Introduction

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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. The Convention has, since then, come into force in close to 70 states worldwide, among them the USA, China, Russia and 21 out of the 25 member states of the European Union. By June 2005, more than 1,600 court decisions and arbitral awards applying CISG were reported in an American database (it has been established, and is run by, the Institute of International Commercial Law of the Pace University in New York)¹. In Germany, a journal has been founded specifically focusing on CISG and its interpretation² while other law reviews also regularly report on pertinent developments³. Also, of course, the Convention has proved to be a quarry for doctoral dissertations and other academic writing, and it has become the subject of a number of major commentaries⁴. The literature list in the English edition of one of the leading German commentaries on CISG extends over more than 50 pages, in small print⁵. The history of the unification of international sales law⁶, so far, is very widely told as a success story.

¹ Available online at: <<http://www.cisg.law.pace.edu>>. For other databases, see Commentary on the UN Convention on the International Sale of Goods, ed. by P. Schlechtriem / I. Schwenzer (2. English ed.) (2005) 1054 (cited: Schlechtriem/Schwenzer).

² Internationales Handelsrecht (IHR), from February 2001.

³ See, most recently, U. Magnus, 25 Jahre UN-Kaufrecht: ZEuP 14 (2006) 96ff.; B. Pilz, Neue Entwicklungen zum UN-Kaufrecht: NJW 2005, 2126ff.

⁴ Magnus (previous note) 102, lists 15 commentaries in the German-speaking countries alone.

⁵ Schlechtriem/Schwenzer (supra n. 1) 1054–1108.

⁶ Which dates back to Ernst Rabel's famous monograph *Das Recht des Warenkaufs*, the first volume of which appeared 70 years ago, in 1936. See, on the occasion of that anniversary, the contribution by H. Rösler, *Siebzig Jahre Recht des Warenkaufs von Ernst Rabel – Werk- und Wirkgeschichte: RabelsZ 70* (2006) 793ff. Ernst Rabel lived from 1874 until

The mere fact that CISG had its 25th anniversary in 2005 would thus have been a sufficient reason for the Private Law Division of the German Association of Comparative Law to devote its bi-annual meeting in Würzburg on 23 September 2005 to that instrument⁷. That meeting has followed upon a number of other events concentrating upon CISG. Thus, in June 2003, a symposium of the Friends of the Max Planck Institute in Hamburg had attempted to explore how the courts in different countries have applied the Convention with regard to specific issues such as the notions of fundamental breach and non-conformity, or the exemption under Art. 79⁸. Another symposium at Verona also considered divergences in the interpretation of CISG and looked at its impact upon national legislation; it was edited by Franco Ferrari⁹. Ferrari also co-edited the proceedings of a symposium in Pittsburgh which marked the creation of a quasi-official digest of CISG case law and commentary¹⁰, and he started the series of anniversary volumes in 2005¹¹.

However, the 25th anniversary of CISG was not the only reason why it was thought to be advisable to deal with that instrument at the Würzburg conference. Recent developments have brought CISG into the limelight within the process of harmonization of private law in Europe¹². Thus, the Action Plan for a more coherent European Contract Law, published by the European Commission in 2003¹³, raised the possibility of creating an “optional instrument” in the field of European Contract Law. Such optional instrument is supposed to “provide parties to a contract with a modern body of rules particularly adapted to cross-border contracts in the internal market”. The Action Plan was not very specific as to what the optional instrument should look like, which areas it should cover (only the general law of contract or also spe-

1955; for an assessment on the occasion of the 50th anniversary of his death, see *U. Drobnig*, *Die Geburt der modernen Rechtsvergleichung: Zum 50. Todestag von Ernst Rabel*: ZEuP 13 (2005) 821 ff.

⁷ The German Association of Comparative Law had dealt with CISG at an earlier occasion; the papers have been published in: *Einheitliches Kaufrecht und nationales Obligationenrecht*, ed. by *P. Schlechtriem* (1987).

⁸ *K. Siehr/R. Zimmermann*, *Symposium: The Convention on the International Sale of Goods and its Application in Comparative Perspective*: *RabelsZ* 68 (2004) 427 ff.

⁹ *The 1980 Uniform Sales Law: Old Issues Revisited in the Light of Recent Experiences*, ed. by *F. Ferrari* (2003).

¹⁰ *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention*, ed. by *F. Ferrari/H. Flechtner/R. Brand* (2004).

¹¹ *Quo Vadis CISG?, Celebrating the 25th anniversary of the United Nations Convention on Contracts for the International Sale of Goods*, ed. by *F. Ferrari* (2005). Other anniversary symposia, some of which will presumably lead to publications, are listed in *Magnus* (supra n. 3) 96.

¹² Generally on the relationship between CISG and EC law, see *U. Schroeter*, *UN-Kaufrecht und Europäisches Gemeinschaftsrecht: Verhältnis und Wechselwirkungen* (2005).

¹³ See the summary in ZEuP 11 (2003) 656 f., and *D. Staudenmayer*, *Ein optionelles Instrument im Europäischen Vertragsrecht*: ZEuP 11 (2003) 828 ff.

cific contracts?), and what form it should take. It raised, but left open, the question of the relationship between the optional instrument and CISG. In the meantime, the Commission has concentrated its efforts on the somewhat less ambitious attempt to establish a “Common Frame of Reference” which is supposed, in the first place, to aim at improving the quality of legislation and the coherence of the existing and future EC law in the field of contract law¹⁴. It is not yet clear how comprehensive the “Common Frame of Reference” is going to be. But even if it only relates to the existing *acquis* in the area (mainly) of consumer contract law, it is bound to affect issues also covered – even if not for consumer sales – by CISG (in particular: remedies in case of non-conformity). If it also covers more general questions of contract law, such as offer and acceptance, the overlap will be substantial. So far, at any rate, the Commission has sought to combine the various academic activities in the field of European contract law in a Common-Principles-of-European-Contract-Law Network of Excellence¹⁵. Part of that network is the Study Group on European Contract Law, established in 1999 by Christian von Bar¹⁶, and under the aegis of that Study Group an Utrecht Working Team on Sales Law has prepared Draft Principles of European Sales Law. The draft has been forwarded to the Commission which, in turn, has made it available to the various “stakeholders” and has organized workshops in early 2006.

It is clear that CISG has exerted considerable influence on the Draft Principles of European Sales law. The same is true of the European Consumer Sales Directive of 1999, of the Principles of European Contract Law (PECL) and also of instruments concerning the global harmonization of contract law, such as UNIDROIT’s Principles of International Commercial Contracts (PICC)¹⁷. But the same is also true of whatever legislation in the field of contract law has recently been enacted on the level of the national legal systems. Obviously, therefore, key features of CISG have shaped, and will continue to shape, the development of sales law on an international level even in situations where the Convention itself does not apply¹⁸.

¹⁴ See *D. Staudenmayer*, European Contract Law – What Does It Mean and What Does It Not Mean?, in: *The Harmonization of European Contract Law*, ed. by *S. Vögenauer/S. Weatherill* (2006) 235ff. For a critical discussion, see the contributions in the first issue of *ZEuP* 15 (2007).

¹⁵ Available online at: <<http://www.copecl.org/>>.

¹⁶ *C. von Bar*, Die Study Group on a European Civil Code, in: *Festschrift für Dieter Henrich* (2000) 1ff.

¹⁷ See, e.g., the references in *R. Zimmermann*, The Principles of European Contract Law: Contemporary Manifestation of the Old, and Possible Foundation for a New, European Scholarship of Private Law, in: *Beyond Borders: Perspectives on International and Comparative Law: Symposium in Honour of Hein Kötz*, ed. by *F. Faust/G. Thüring* (2006) 133ff.; *M. Bonell*, An International Restatement of Contract Law³ (2005) 301ff.

¹⁸ See, most recently, *O. Lando*, CISG and Its Followers: A proposal to Adopt Some International Principles of Contract Law: *Am. J. Comp. L.* 53 (2005) 379ff. (arguing for a fu-

The Würzburg conference was supposed to look at CISG in the light of these developments. Thus, in the first place, central elements of CISG have been subjected to a critical analysis: the structure of remedies in general, and the remedy of damages. Secondly, the interaction between CISG and domestic remedies has been considered, using the examples of rescission for mistake and remedies in tort law. Thirdly, the role of CISG within the process of harmonization of contract law in Europe has been examined. Specific emphasis was placed on the activities set in motion by the Commission of the European Union, and on the proposals of the Study Group on European Contract Law in the field of sales law; as far as national law reform is concerned, the focus was on certain of the Eastern European states. And finally, some water was poured into the wine of enthusiasm surrounding the practical relevance of CISG in business affairs, particularly in the United States.

I am very grateful to all participants of the Würzburg symposium. All of the Würzburg contributions, with one exception¹⁹, are published in this issue of *Rabelsz*. Peter Huber kindly helped with the preparation and organization of the symposium, Alistair Price with the task of editing the papers. I am very grateful to both of them.

ture world contract law, based on the present “troika” of contract rules in CISG, PECL, and PICC); generally, see *P. Huber*, *Comparative Sales Law*, in: *The Oxford Handbook of Comparative Law*, ed. by *M. Reimann/R. Zimmermann* (2006) 937ff.

¹⁹ The contents of Dirk Staudenmayer’s lecture are summarized in: *Weitere Schritte im Europäischen Vertragsrecht: EuZW* (2005) 103ff.

