

INTRODUCTION: THE ROLE OF UNIFORM LAW IN THE CIRCULATION OF LEGAL MODELS: THE CASE OF THE CISG

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The United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG, or the Convention)¹ is commonly considered one of the most successful international trade law texts. Commentators hail broad State participation in that treaty.² CISG contracting States include most of the world's largest economies, so that the volume of international trade in theory covered by that treaty (ie without taking into account actual "opting out") may cover up to 80% of global trade.

However, it is necessary to highlight a second, equally if not more relevant role of the CISG, ie its major impact also as a model for national legislation. Indeed, few legislative texts may be seen as source of inspiration for other jurisdictions: those texts include the French Civil Code (Code Napoléon, 1804), the German Civil Code (BGB, 1900), the English Sale of Goods Act (1893), and the US Uniform Commercial Code, Article 2 (1952). The CISG is the most recent of these influential models. It is also the only one that has benefitted from an inclusive drafting process, which has led to the adoption of a text truly compatible with all legal traditions and with all economic systems. Hence, the CISG is particularly fit to provide a global blueprint for contract law reform.

The CISG was drafted by the United Nations Commission on International Trade Law (UNCITRAL), which is the body tasked with the preparation and promotion of uniform commercial law texts in the United Nations system. However, UNCITRAL did not work in the field of sales law and of general

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1 United Nations *Treaty Series* vol 1489, 3.

2 The CISG has 80 State parties as of 1 November 2013.

contract law since the adoption of the Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance, a text complementing the CISG, in 1983.³

Recently, a proposal was submitted to the consideration of UNCITRAL suggesting that it should consider again undertaking work in the field of sales law and of general contract law.⁴ It is too early to assess the actual impact of that proposal, often referred to as the "Swiss proposal" because of its proponent. In any case, that proposal had the merit of opening a broader debate on whether further work on uniform contract law is useful and feasible, and, in the affirmative, on whether UNCITRAL would be the right forum for that venue.⁵ One prominent concern in that discussion is the increasing fragmentation of sales law, despite the regular increase in the number of State parties to the CISG. The fragmentation is partly due to regional initiatives that do not take into full consideration the need to coordinate global, regional and national levels. In particular, several views were expressed with respect to the draft Common European Sales Law,⁶ an optional instrument whose choice would, in the intention of its drafters, displace the application of the CISG.⁷

In East Asia and the Pacific the influence of the CISG on national law reform is well-known.⁸ Moreover, the prevailing economic model in East Asia is based on cross-border supply chains. The broader adoption of a uniform legal framework for supply chain management could significantly reduce transaction costs and increase legal predictability. However, current regional economic integration mechanisms do not foresee the production of uniform rules of the type needed to support those

3 UNCITRAL *Yearbook* (1983) vol XIV, part three, II, A 272.

4 UN Doc A/CN.9/758 - Possible future work in the area of international contract law: Proposal by Switzerland on possible future work by UNCITRAL in the area of international contract law.

5 A debate on these matters is contained in volume 58, issue 4 (2013) of the Villanova Law Review, compiling the papers presented at the Villanova Law Review Norman J Shachoy Symposium. See also the contributions of Mr Dennis and of Prof Schwenzer in this volume.

6 Proposal for a regulation of the European Parliament and of the Council on a Common European Sales Law, Brussels 11.10.2011 COM (2011) 635 final.

7 The discussion has generated significant literature: ex multis, U. Magnus, CISG and CESL, in MJ Bonell, M-L Holle and PA Nielsen (eds) *Liber Amicorum Ole Lando* (Djøf Forlag, Copenhagen 2012) 225.

Incidentally, opting out from the CISG is a matter regulated in the provisions of the CISG itself.

8 See, eg the contribution of Prof Han to this volume. See also S Kozuka, L Nottage *Policy and Politics in Contract Law Reform in Japan* forthcoming (draft on file with author).

supply chains.⁹ Hence, global models such as the CISG rise to special prominence. At the same time, regional initiatives, though only in their early stage,¹⁰ need to be closely monitored and supported in order to ensure adequate coordination and seamless interaction between different legislative levels.

In light of the above, the UNCITRAL Regional Centre for Asia and the Pacific (RCAP) decided to convene an expert group meeting to discuss the role of the CISG both as a treaty and as a source of inspiration for national law reform in East Asia and the Pacific. The meeting took place on 25 and 26 February 2013 in Incheon, Republic of Korea, where the UNCITRAL RCAP is located. Some of the papers presented at that meeting are here reproduced.

At that meeting, unanimous calls were made in favor of additional resources for capacity-building in the field of commercial law, and, in particular, sales law. It was noted that increased focus on this field would greatly assist in building endogenous legal capacity in economies in transition and other economies, including post-conflict ones, wishing to participate more closely in the global economy. In that respect, it was added, no jurisdiction was too small or too disconnected from global trade not to benefit from exposure to the CISG, and, in particular, from increased familiarity with its fundamental notions as expression of the most modern restatement of the law, widely-tested daily in jurisdictions belonging to all legal families and economic systems.

At the operational level, it was noted that more accessions to the CISG were likely to take place, in particular, in South-East Asia. Moreover, the use of the CISG as a fundamental tool for domestic law reform was highlighted. The case of Japan was illustrated, explaining that familiarity of academics with the CISG, acquired through higher studies pursued in CISG contracting States, especially Germany, paved the way to its adoption.¹¹ Indeed, it was added, the case of China demonstrated that the adoption of the substantive provisions of the CISG in domestic law gave critical impetus to the broad use of the treaty for cross-border trade by practitioners.

In the end, there was full consensus on the need to broaden CISG participation and to raise additional resources to pursue that goal. It was emphasised that CISG

9 In general, see M Hiscock "Remodelling Asian Laws" in T Lindsey (ed) *Indonesia: Bankruptcy, Law Reform and the Commercial Court* (Desert Pea Press, Sydney, 2000) 28.

10 See, eg the description of the Principles of Asian Contract Law project offered by Prof Ka in this volume. See also Asian Development Bank, *Reforming Pacific Contract Law*, August 2009.

11 See also H Sono, Japan's Accession to and Implementation of the United Nations Convention on Contracts for the International Sale of Goods (CISG), (2010) 53 *Japanese Yearbook of International Law* 410-437.

adoption, especially in developing countries, was only the first step towards contract law modernisation and the creation of adequate legal capacity.

With respect to the desirability and feasibility of new UNCITRAL work in the field of sales law and general contract law, a proposal was made in favor of the preparation of a model law on general contract law, to be complemented with guidance materials that would provide needed assistance to jurisdictions undertaking law reform task in that field.¹²

The contributions reproduced here, and those to be found elsewhere, are meant to further foster discussion on these very important issues. UNCITRAL and the UNCITRAL RCAP stand ready to facilitate that dialogue in the framework of their mandate aimed at pursuing global trade law harmonisation.

12 See also 王利明, 《联合国国际货物销售合同公约》与中国合同法的制定与完善, (Liming Wang, Developing and Perfecting the CISG and Chinese Contract Law), paper presented at the conference "Unification of International Trade Rules in the Age of Globalization: China and the World", held in Tsinghua University, Beijing, 19-20 October 2013 (on file with author).