THE CISG AND MODERNISATION OF CHINESE CONTRACT LAW

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This paper considers the impact of the CISG on the modernisation of Chinese contract law. The impact will be examined from a historical and comparative perspective. It is noted that there are still some important topics, not touched by the CISG, such as consumer contracts and service contracts, which are left for the Chinese to formulate corresponding rules when they prepare a Chinese civil code in the near future.

I INTRODUCTION

The CISG, as a "common law" for international sale of goods, is a great success. It has also far-reaching impact in China.[1] This paper examines the impact of the CISG on the modernisation of Chinese contract law from a historical (Part II) and comparative perspective (Part III). Then it will raise some issues as to the modernisation of Chinese contract law, using consumer contract and service contract as examples (Part IV).

II THE CISG AND THE CONTRACT LAW 1999: A HISTORICAL SKETCH

A A History of the Modernisation of Chinese Contract Law

The past 64 years in China may be divided into two parts. In the first part there was no formal contract law in China. In the second part, there gradually came several contract laws in China, namely the Economic Contract Law (1981), the Law on Economic Contracts Involving Foreign Interest (1985), and the Law on Technology Contracts (1987). And finally the above three contract laws were united as one law, namely the Contract Law (1999, hereafter "CL").

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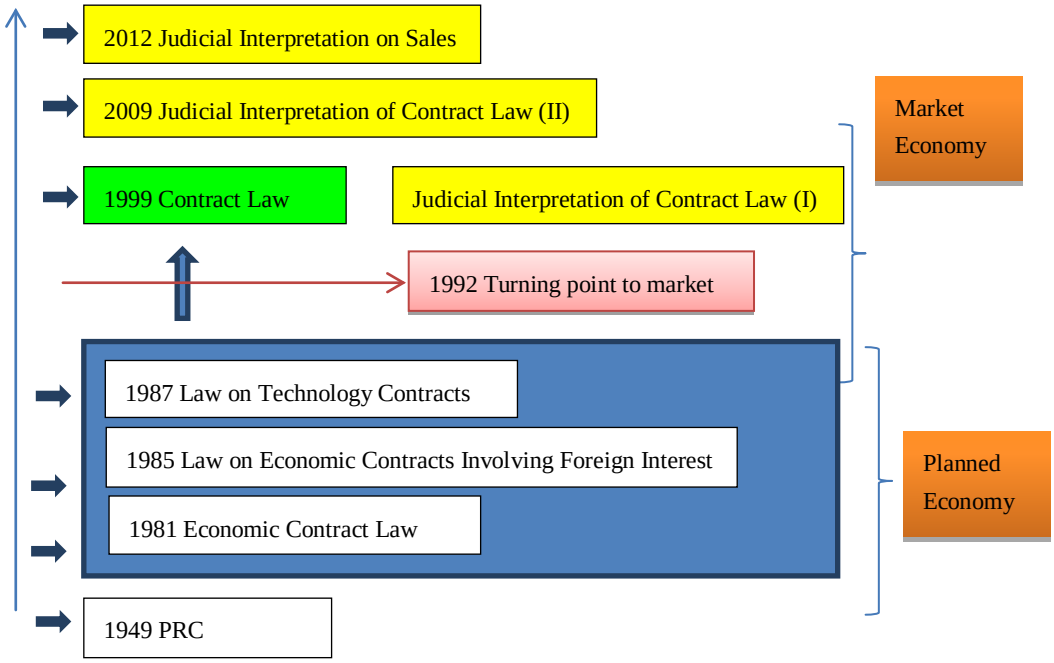
1 See Shiyuan Han in Franco Ferrari (ed) *The CISG and its Impact on National Legal Systems* (European Law Publishers, München, Sellier, 2008) 71 et seq.

To see the whole image of Chinese contract law, as a set of rules and principles, it is not enough just to know the CL. Apart from the CL, there are also judicial interpretations made by the Supreme People's Court of the PRC, which are another important type of source of law in China.



So for the most important judicial interpretations on contract law are the Judicial Interpretation I of the CL (1999),[2] the Judicial Interpretation II of the CL (2009)[3] and some judicial interpretations of the Special Part of the CL.[4]

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2 Interpretation I of the Supreme People's Court of Several Issues concerning the Application of the Contract Law of the People's Republic of China (最高人民法院关于适用《中华人民共和国合同法》若干问题的解释（一）) (Interpretation 19 [1999]).

3 Interpretation II of the Supreme People's Court of Several Issues concerning the Application of the Contract Law of the People's Republic of China (最高人民法院关于适用《中华人民共和国合同法》若干问题的解释（二）) (Interpretation 5 [2009]).

4 The most important ones are the Interpretation of the Supreme People's Court on the Relevant Issues Concerning the Application of Law for Trying Cases on Dispute over Contract for the Sale of Commodity Houses (最高人民法院关于审理商品房买卖合同纠纷案件适用法律若干问题的解释) (Interpretation 7 [2003]), Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Dispute over Contracts on Undertaking Construction Projects (最高人民法院关于审理建设工程施工合同纠纷案件适用法律问题的解释) (Interpretation No 14 [2004]), Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases about Disputes Over Lease Contracts on Urban Buildings (最高人民法院关于审理城镇房屋租

Chinese contract law itself is not an aim, but a tool. It is a tool to improve the development of economy and society in China. In order to get a good understanding of Chinese contract law, one should not focus attention only on the law itself. Chinese contract law should be understood with its social and historical background. From this perspective, the transformation of Chinese contract law is just a reflection of the transformation of Chinese society, namely from the so-called "planned economy" to a market economy.[5] The so-called "the modernisation of Chinese contract law" may be understood as how Chinese follow the general common rules of modern market economy.

B The Role the CISG Played in the Course of Modernisation of Chinese Contract Law

The role the CISG played in the course of modernisation of Chinese contract may be showed from three stages: (1) China's approval of the CISG; (2) the CISG's impact on the Law of Economic Contracts Involving Foreign Interests (1985); and (3) the CISG's impact on the CL.

Since the end of 1978, China decided to follow the reform and opening-up policy. In 1980 a Chinese government delegation attended the Vienna Conference as observer. On 30 September 1981 the Chinese government signed the CISG. The event shows the Chinese government's attitude for supporting the CISG. It also shows the resolution of Chinese people to open up and to follow an international standard of rules of market economy. In November 1986 the American government contacted the Chinese government wishing China to accede to the CISG together with it and to make the CISG effective. The Chinese government agreed with the American government's suggestion. Afterwards the American government banded together with the Italian government on the matter. The three governments deposited their instruments of approval of the CISG in December 1986. And the

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赁合同纠纷案件具体应用法律若干问题的解释) (Interpretation No 11 [2009]) and Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Disputes over Sales Contracts (最高人民法院关于审理买卖合同纠纷案件适用法律问题的解释) (Interpretation no 8 [2012]).

5 Since the end of 1978, China has followed a way of economy reformation and opening up. The year 1992 is a turning-point of the economy reformation, as in that year Mr Deng Xiaoping made it clear that Chinese should develop socialist market economy.

CISG came into force on 1 January 1988. The story is called an international "joint venture" action between American government and Chinese government.[6]

The import of the CISG is far more than as a directly applicable law. Its basic structure and central concepts have impacted on international projects of unification of law and national law reforms.[7] In 1985 China enacted the Law of Economic Contracts Involving Foreign Interest. The law made quite a lot of references to the CISG.[8]

While the Chinese were preparing the draft of the CL, once again the CISG became an important model for reference. In the guide ideas of legislators of the CL which are set up by the legislative plan of the law, the first one states:[9]

> Considering the real needs of the reform and opening-up of China and the development of the socialist market economy, the set-up of a nationally unified market and an access to the international market, we shall sum up the experiences of legislators and judges and the results of theoretical researches concerning contracts in China, draw broadly on the successful experiences of other countries and regions on laws and cases, adopt to the best of our abilities common rules reflecting objective laws of modern market economy, and harmonize rules of Chinese law with those of international conventions and international customs.

Here "international conventions" means mainly the CISG. The unification and perfection of contract law is a real need of the development of market economy of China. To follow the CISG in many rules is an independent choice of the Chinese people. The reasonableness of the selection may be proved by the reasonableness of the CISG itself, as it is a crystallisation of wisdom of so many excellent scholars and experts.

To sum up, the economic reform in China since the end of 1978 follows a route from planned economy to market economy. The modernisation of Chinese contract

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6 See Yuqing Zhang (ed) [张玉卿], Guo ji huo wu mai mai tong yi fa [Uniform Law of International Sales《国际货物买卖统一法》], preface of 2nd edition, 2 (Foreign Economic and Trade Publishing House, Beijing, China, 1998).

7 Peter Schlechtriem, Internationales UN-Kaufrecht, 4 Aufl (Mohr Siebeck, Tübingen, 2007) S 4.

8 As a comparison of the CISG and the Law of Economic Contracts Involving Foreign Interest, see Chenbin Wang [王承斌], Lianheguo xiao shou he tong gong yue yu wo guo she wai he tong fa de bi jiao [The CISG and the Law of Economic Contracts Involving Foreign Interest: A Comparative Study 联合国《销售合同公约》与我国《涉外经济合同法》的比较（上）], 1989:3 Zhongguo fa xue [Chinese Legal Science《中国法学》] 106.

9 *Huixing Liang* [梁慧星], Min fa xue shuo pan li yu li fa yan jiu [Studies on Civil Law Theories, Cases and Legislation《民法学说判例与立法研究》] 121, Vol 2 (Beijing: Guo jia xing zheng xue yuan chu ban she, 1999).

law follows correspondingly a market-oriented path. The basic concept has been shifted from "economic contract" to "contract". Contract becomes a basic tool of market transaction and is no longer a means to realise the economic plan of the state. In the process, the CISG plays an important role as a model of reference for Chinese law reform.

III THE CISG AND THE CONTRACT LAW 1999: A COMPARATIVE ACCOUNT[10]

A Manifestations of Chinese Law's Following the CISG

Just as professor Huixing Liang, who is a main drafter of the CL, has put it, the drafters of the law "have consulted and absorbed rules of the CISG on offer and acceptance, avoidance (termination) with a *Nachfrist*, liabilities for breach of contract, interpretation of a contract and sales contract".[11] So it may be said that the CISG's impacts on the CL are not limited to sale-specific topics, it has had an impact on non- sale-specific issues as well.

1 Conclusion of contracts

If we compare Chapter 2 "Conclusion of Contracts" (arts 9~43) of the CL with Part II "Formation of the contract" (arts 14~24) of the CISG, we find that the former has drawn lessons from the latter sufficiently. One example is the problem of whether an offer is binding and whether it may be revoked. This was one of the most difficult issues met in the course of unification of the law on contract formation, because it was necessary to bridge the gap between different views. While the notion that an offeror is bound by the offer is established in Germanic legal systems and also in Scandinavia, the Romanic and common law systems have taken the opposite approach.[12] The former civil law theories of China followed theories of Germanic legal systems on the acknowledgement of a binding nature of

10 This part, which has been updated, appeared first in Shiyuan Han "China" in Franco Ferrari (ed) *The CISG and its Impact on National Legal Systems* 84~90 (European Law Publishers, München, Sellier, 2008).

11 *Huixing Liang* [梁慧星], Cong san zu ding li zou xiang tong yi de he tong fa [From Three Separate Parts to a Unified Contract Law从〝三足鼎立〞走向统一的合同法], 1995:3 Zhongguo fa xue [China L Sci《中国法学》] 9.

12 See P Schlechtriem in P Schlechtriem (ed) *Commentary on the UN Convention on the International Sale of Goods (CISG)* (transl G Thomas) 118 (2nd ed, Clarendon Press, Oxford, 1998).

an offer.[13] But the view has not been adopted by the CL. The CL follows art 16 of the CISG in arts 18 and 19. Art 18 states: "An offer may be revoked. The revocation notice shall reach the offeree before it has dispatched a notice of acceptance." Art 19 states: "An offer may not be revoked, if (1) the offeror indicates a fixed time for acceptance or otherwise explicitly states that the offer is irrevocable; or (2) the offeree has reasons to rely on the offer as being irrevocable and has made preparation for performing the contact."

We can still find many other similarities between the CISG and the CL in "Conclusion of Contracts", such as: concept of an offer (CISG art 14(1); CL art 14); an invitation to make offers (CISG art 14 (2); CL art 15); effectiveness of an offer on its reaching the offeree (CISG art 15(1); CL art 16(1)); withdrawal of an offer (CISG art 15(2); CL art 17); termination of an offer (CISG art 17; CL art 20(1)); concept of an acceptance (CISG art 18(1); CL art 21); effectiveness of an acceptance on its reaching the offeror (CISG art 18(2); CL art 26(1)); *Willensbetaetigung* (CISG art 18(3); CL art 22 and 26(1)); alterations (CISG art 19; CL art 30-31); late acceptance (CISG art 21; CL art 28-29); withdrawal of an acceptance (CISG art 22; CL art 27); time when a contract is concluded (CISG art 23; CL art 25). In addition, art 10(1) of the CL states: "The parties may use written, oral or other forms in entering into a contract." This will bring almost the same results as art 11 of the CISG, which had been reserved by China but now the reservation has been withdrew.

2 Integration of liability for non-conformity with remedies for breach of contract in general

Generally speaking, Chinese law is a member of the families of civil law system. So people tend to take it for granted that warranty liabilities for defect in things, which origins from aedilitian remedies of Roman law, can be found in Chinese laws. Before the coming into force of the CL, there is much dispute on this question in scholarly writings. In the CL, art 153 states: "The seller shall deliver the subject matter in compliance with the agreed quality requirements. Where the seller gives the quality specifications for the subject matter, the subject matter delivered shall comply with the quality requirements set forth therein." Article 155 states: "If the subject matter delivered by the seller fails to comply with the quality requirements, the buyer may demand the seller to bear liability for breach of contract in accordance with Article 111 of this Law." Article 111 is in Chapter 7 "Liabilities for Breach of Contracts". It states:

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13 See *Anmin Ye* [叶安民], in Jiafu Wang (ed)[王家福], Zhongguo min fa xue min fa zhai quan [Doctrine of Chinese Civil Law: Obligations《中国民法学・民法债权》] 290 (Law Press China, Beijing, 1991).

> Where the quality fails to satisfy the agreement, the breach of contract damages shall be borne in the manner as agreed upon by the parties. Where there is no agreement in the contract on the liability for breach of contract or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 61 of this Law, the damaged party may, in light of the nature of the subject matter and the degree of loss, reasonably choose to request the other party to bear the liabilities for the breach of contract such as repairing, substituting, reworking, returning the goods, or reducing the price or remuneration.

Although a few scholars take an opposite viewpoint, [14] nowadays the mainstream view of Chinese scholars is that the CL does not follow the Roman model of a "two tier approach". The so-called "warranty liabilities for defect in things" are integrated with remedies for breach of contract in general. The CL follows a unitary approach.[15] In some degree, it can be said that the CL is influenced by the CISG. After the CL, the BGB, which is a member of the families of civil law system, has realised a similar integration since 1 January 2002.[16]

3 Passing of risk

Passing of risk in the subject matter of sales has been regulated by CL arts. 142-149. Except art 148, other articles are very similar to those of the CISG, including: the delivery rule of risk's passing (CL art 142; CISG art 69(1)); delay of obligee rule (CL art 143; CISG art 69(1)); risk's allocation in respect of goods sold in transit (CL art 144; CISG art 68. It should be pointed out that there is no *proviso* in CL art 143.); the first carrier rule (CL art 145; CISG art 67); buyer's fail to take delivery rule (CL art 146; CISG art 69(1)); seller's failure to deliver relative documents and materials does not affect the passing of the risk (CL art 147; CISG

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14 See eg *Jianyuan Cui* [崔建远], Wu de xia ci dan bao ze ren de ding xing yu ding wei [On Classification of the Nature and Status of Defects Guarantee物的瑕疵担保责任的定性与定位], 2006:6 Zhongguo fa xue [China L Sci 《中国法学》] 32. *Jianyuan Cui* [崔建远], Zhai quan: jie jian yu fa zhan [Selected Papers on Obligation《债权：借鉴与发展》] 537 (China Renmin University Press, Beijing, 2012).

15 See eg *Shiyuan Han* [韩世远], Chu mai ren de wu de xia ci dan bao ze ren yu wo guo he tong fa [Seller's Guarantee Liability on Defect of Things and China's Contract Law出卖人的物的瑕疵担保责任与我国合同法], 2007:3 Zhongguo fa xue [China L Sci《中国法学》] 170. For the distinction between a "two tier approach" and a "unitary approach" on this matter, see P Huber "Comparative Sales Law" in Reimann/Zimmermann (eds) *The Oxford Handbook of Comparative Law*, 2006, 956.

16 See Zimmermann *The New German Law of Obligations: Historical and Comparative Perspectives* (Oxford University Press, Oxford, 2005) 79.

art 67(1)); buyer's bearing of the risk does not affect its right to other remedies (CL art 149; CISG art 70). By the way, art 148 of the CL states:

> Where the quality of the subject matter does not conform to the quality requirements, making it impossible to achieve the purpose of the contract, the buyer may refuse to accept the subject matter or may terminate the contract. If the buyer refuses to accept the subject matter or terminate the contract, the risk of damage to or missing of the subject matter shall be borne by the seller.

There is no counterpart in the CISG. It is said the rule is inspired by a rule of the Uniform Commercial Code (hereafter "the UCC") of the USA.[17] Article 2-510 of the UCC, and art 148 of the CL are not the same thing and some change has been made.

4 Unsicherheitseinrede and anticipatory breach

Article 71 of the CISG is on *Unsicherheitseinrede*[18] and art 72 is on anticipatory breach. This kind of mixed reception style, ie a combination of rules both from the civil law system and from the common law system, may find its counterpart in the CL. Articles 68 and 69 which are on *Unsicherheitseinrede* and arts 94(2) and 108 which are on anticipatory breach.

According to art 94(2) of the CL, a party to a contract may terminate the contract, if prior to the expiration of the period of performance, the other party expressly states, or indicates through its conduct, that it will not perform its main obligation. Whether a demand for performance (*Mahnung*) is necessary for termination where the other party indicates through its conduct it will not perform its main obligation, it is not stated in art 94(2). As a systematic interpretation of the above rules, it is pointed out that a demand for performance is necessary. This conclusion can be induced from art 69, which requires the party who suspends its performance in accordance with its *Unsicherheitseinrede* shall notify the other party in a timely way. If the other party fails to regain its ability to perform and fails to provide appropriate assurance within a reasonable time, the suspending party may terminate the contract.[19] This conclusion of interpretation may also be reproved by art 72 of the CISG.

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17 See Kangsheng Hu (ed) [胡康生], Zhonghua Renmin Gongheguo he tong fa shi yi [Commentary on Contract Law of PRC《中华人民共和国合同法释义》] 229 (Law Press China, Beijing, 1999).

18 Peter Schlechtriem *Internationales UN-Kaufrecht, 4 Aufl* (Mohr Siebeck, Tübingen, 2007) S 178.

19 See *Shiyuan Han* [韩世远], He tong fa zong lun [The Law of Contract《合同法总论》] 519 (3rd ed, Law Press China, Beijing, 2011).

5 Other provisions

There are some other provisions which may show CL following the CISG, including: seller's duties (CISG art 30; CL arts 135 and 136); place of seller's delivery (CISG art 31; CL art 141); time of seller's delivery (CISG art 33; CL arts 138 and 139); instalment contracts (CISG art 73; CL art 166); and damages (CISG art 74; CL art 113(1)).

B Manifestations of Chinese Law's Partial Following the CISG

1 Fundamental breach

The idea of fundamental breach has been accepted by the CL, ie art 94(2-4). But art 94(2-4) has a few differences from art 25 of the CISG. Firstly, there is a proviso in art 25 of the CISG ie "unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result". There is no such a proviso in the CL. As to the difference, a Chinese author has pointed out:[20]

> Chinese legal rule on criteria of a fundamental breach is not so strict like that of the CISG. It has not employed a rule of foreseeability and emphasizes only the seriousness of the result of a breach as a criteria of a fundamental breach. This means a subjective standard has been abandoned. In doing so, arbitrariness in determining a fundamental breach because of a subjective standard may be reduced and factors adverse to the protection of an obligee may be decreased.

Secondly, as to the contractual duty not being performed, the CISG has no further requirement. It only requires the result. As a contrast, both art 94(2) and art 94(3) require what not being performed is a "main obligation".

2 Conformity of the subject matter of sales

Article 35 of the CISG regulates the conformity of goods in the quantity, quality, description and package as required. In the CL, the matter is not regulated in one article, but in different articles separately. The conformity of goods in quality is regulated in arts 153, 154, 155, 168 and 169 etc. The conformity of goods in quantity, though it is not like quality and regulated as the seller's obligations directly, is still regulated by relative articles, such as arts 72, 158 and 162 etc. As to the conformity of goods in the description, it may be treated as a matter of

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20 *Liming Wang* [王利明], He tong fa xin wen ti yan jiu [A Study on New Topics of Contract Law《合同法新问题研究》] 544 (Beijing: Zhongguo she hui ke xue chu ban she, 2003).

conformity in the quality (for example art 153) or sales based upon a sample (art 169). The CL does not use the expression of "ordinary use purpose" or "particular purpose", but it uses an expression of "the normal standards of the kind" (in art 169), which perhaps has a similar function to "ordinary use purpose" of the CISG. As to the conformity of goods in the package, art 156 of the CL is almost the same as art 35(2) (d) of the CISG.

Article 38 of the CISG is on the period for examining the goods. A counterpart of the CL is its art 157, which states: "Upon receipt of the subject matter, the buyer shall inspect it within the agreed inspection period. Where no inspection period is agreed, the buyer shall timely inspect the subject matter." When there is no agreed period, the two articles are the same - the buyer shall inspect the goods in a timely way or within as short a period as is practicable. One apparent difference of the two articles is that the CL has no further detailed provisions as art 38(2) and (3) of the CISG. The difference does not mean that the drafter of the CL did not believe art 38 of the CISG is reasonable. The main concern here of the drafter, as it seems to me, is a reality of China, ie the more complicated the rule is, the more complicated for it to be passed in the National People's Congress.

3 Exemption

The reason of exemption in the CISG is "an impediment beyond his control" (art 79). A counterpart of the CL is a force majeure, which is defined as "any objective circumstances which are unforeseeable, unavoidable and insurmountable" (art 117). Because of the word "and" in this article, the exemption in the CL is much stricter than its counterpart of the CISG.

Article 79(5) of the CISG states: "Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention." Amongst the promisee's other remedies are avoidance of the contract (arts 45(1)(a), 49, 51, 61(1)(a) and 64) and a reduction in the contract price (art 50).[21] According to art 94(1) of the CL, if it is rendered impossible to achieve the purpose of contract due to an event of force majeure, the parties to a contract may terminate the contract. Although it is not clear in the CL whether a price reduction can be effected by an event of force majeure, the same result should be achieved through an interpretation.

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21 See Stoll in P Schlechtriem (ed) *Commentary on the UN Convention on the International Sale of Goods* (CISG) (transl G Thomas) (2nd ed, Clarendon Press Oxford, Oxford, 1998) 622.

4 Termination (avoidance)

Articles 97 and 98 of the CL are almost the same comparing with art 81 of the CISG. The only difference is the last sentence of art 81(2) of the CISG, ie "if both parties are bound to make restitution, they must do so concurrently". A similar sentence cannot be found in the CL. But it is theoretically advocated that exception non adimpleti contractus (CL art 66) may be applied analogically to both parties' duty to make restitution.[22]

Article 82(1) of the CISG lays down the Roman law principle that restitution may be claimed only if the buyer can return the goods in the condition in which they were received. The right to avoid the contract should be exercisable by the buyer only if he can return the goods in an unimpaired condition. If he cannot, the remedy of avoiding the contract is blocked - in principle restitution should not take place.[23] A similar rule does not exist in the CL. And there is no rule on the problem in the CL. In order to fill the gap in law, it is advocated following the rule of §346(2) of the new German Civil Law (BGB), which obliges the obligor to compensate for the value of the thing instead of make restitution. In the meantime, its right to termination is not extinguished.[24] This conclusion is also in keeping with the expression "taking other remedial measures" of art 97 of the CL.

IV TOWARDS A CHINESE CIVIL CODE: THE NEXT STEP OF CHINESE CONTRACT LAW

The CISG is a set of rules and principles on international sale of goods. It does not govern consumer contract and service contract. As a matter of course, Chinese contract law cannot obtain any inspiration on these two topics from the CISG. What should the Chinese legislature do with them?

A Consumer Contract Law: General Rule or Special Rule?

How to regulate consumer contract? Consulting the following table, there are three possible models. Model (1) is quite questionable. The question exists in the CL, namely while applying rules regulating standard terms (arts 39~41, 53), whether it should distinguish between consumer contract and commercial contract.

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22 See *Shiyuan Han* [韩世远], He tong fa zong lun [The Law of Contract《合同法总论》] 304~305, (3rd ed, Law Press China, Beijing, 2011).

23 See Leser in P Schlechtriem (ed) *Commentary on the UN Convention on the International Sale of Goods* (CISG) (transl G Thomas) 644 (2nd ed, Clarendon Press Oxford, Oxford, 1998).

24 See *Shiyuan Han* [韩世远], He tong fa zong lun [The Law of Contract《合同法总论》] (3rd ed, Law Press China, Beijing, 2011) 544.

The CL as a set of general rules, does not distinguish consumer contract and commercial contract (trader contract).

	General Rule	Special Rule
Contract Law	(1) ?	(2)√
Consumer Protection Law		(3)√

Both model (2) and model (3) are possible. Till time being Chinese law follows model (3). Special rules are formulated in special laws, such as the Law on Protection of Consumer Rights and Interests 1993, Labor Contract Law 2007 and so on. Should China change its position from model (3) to model (2) in preparing a Chinese Civil Code? This depends on whether there is any substantial merit in doing so. It is really doubtful.

B Service Contract: Should "Strict Liability" be a General Principle of Damages for Breach?

The remedy of damages as set forth in art 74 of the CISG is available irrespective of fault on behalf of the breaching party. Thus, the breach need not be wilful or negligent in order for art 74 to apply.[25] Therefore the "no fault system" of the CISG is thought to be a kind of strict liability system.

In China, during the drafting of the Contract Law, there was a great debate as to whether damages for breach of contract ought to follow the fault principle or to follow the strict liability principle.[26] Ultimately the CL follows the model of the CISG on this point, namely, it follows the strict liability principle (art 107) with an exemption cause of force majeure (art 117(1)).

While preparing the draft of the General Part of the Contract Law, the Chinese drafters envisaged the sale of goods as the typical model of contract. Now the service contract[27] plays an important role in the society and calls for suitable rules

25 See J Gotanda in Kroell/Mistelis/Perales Viscasillas (eds), *UN Convention on Contracts for the International Sale of Goods (CISG) Commentary*, 2011, art 74, para 7.

26 For supporting the strict liability principle, see Huixing. Liang [梁慧星], Cong guo cuo ze ren dao yan ge ze ren [From Fault Liability to Strict Liability从过错责任到严格责任], in Huixing Liang (ed) [梁慧星], *Min shang fa lun cong* [Civil and Commercial Law Review《民商法论丛》] 1~7, Vol 8 (Law Press China, Beijing, 1997). For advocating fault liability principle, see Jianyuan Cui [崔建远], Yan ge ze ren? Guo cuo ze ren? [Strict Liability or Fault Liability?严格责任？过错责任？], *in* Huixing Liang (ed) [梁慧星], *Min shang fa lun cong* [Civil and Commercial Law Review《民商法论丛》] 190, Vol 11 (Law Press China, Beijing, 1999); Shiyuan Han [韩世远], *Wei yue sun hai pei chang yan jiu* [A Study on Damages for Breach of Contract《违约损害赔偿研究》] (Law Press China, Beijing, 1999) 88.

27 As to service contracts in China, see Knut B. Pissler, Service Contract in Chinese Contract Law: an Approach According to the European Draft Common Frame of Reference, in Lei Chen & CH

for regulation. Strict liability is not suitable for service contracts. Since "strict liability" is adopted as a general principle in the General Part of the CL, special rules are still needed to regulate service contracts in China.

V FINAL REMARKS

From the above historical and comparative examination, it is clear that the CISG has quite a lot of impact on the CL. The impact should not only be at the black-letter rule level, but also be at theoretical understanding level. One example may be the effects of termination (avoidance). According to the dominant view of the CISG, the CISG at the point of avoidance introduces new rights and duties to give effect to avoidance by transforming the original contractual relationship into a winding-up or restitutionary relationship.[28] In China, on the contrary, the theory of direct effects (zhi jie xiao guo shuo直接效果说), which treat termination with retrospective effects, is still a dominating theory.[29] Modernisation of contract law means not only a set of modernised black-letter rules, but also modernised understandings, ideas or theories of contract law. In this, the modernisation of Chinese contract law continues to face arduous tasks.

(Remco) van Rhee (eds) *Towards a Chinese Civil Code* (Martinus Nijhoff Publishers, Leiden, 2012) 273.

28 See CISG-AC Opinion No 9, Consequences of Avoidance of the Contract, Rapporteur: Professor Michael Bridge, London School of Economics, London, United Kingdom. Adopted by the CISG-AC following its 12th meeting in Tokyo, Japan on 15 November 2008. Comments paragraph 3.7.

29 See Jianyuan Cui [崔建远], He tong fa [Contract Law《合同法》] 274 *et seq* (Peking University Press, Beijing, 2012). In China, inspired by the commentaries of the CISG, there is also different theory challenging the theory of direct effects, see *Shiyuan Han* [韩世远], He tong fa zong lun [The Law of Contract《合同法总论》] (3rd ed, Law Press China, Beijing, 2011) 528~543.