
In 1980, the United Nations Convention for the International Sale of Goods (CISG) came into being as an attempt to create a uniform commercial sales law. This book compares two major restatements – the UNIDROIT Principles and the Principles of European Contract Law (PECL) – with CISG articles. In this work scholars and legal practitioners from twenty countries contribute analysis on the various issues covered in the articles of the CISG, comparing them with how each issue is treated in the UNIDROIT and PECL restatements. The introductory section of the book addresses theoretical and practical issues of the appropriate interpretive methodology as mandated in CISG Article 7, and it is followed by individual analyses of the Convention's provisions.

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Foreword

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“Over recent years, discussion has intensified on possible harmonization of substantive private law, in particular contract law.”

The dream of unifying, or harmonizing, the law is an old one. For some, especially in Europe, it is a dream of a return to the golden age of a *jus commun*.* For others a unified law is an important symbol of a unified nation. A more immediately pragmatic dream is that the unification of commercial law will reduce the cost of transborder transactions and thereby increase international trade. Although pragmatic, such a dream is still idealistic. As stated in the Preamble to the United Nations Convention on Contracts for the International Sale of Goods (CISG),

The States Parties to this Convention,

**∗∗∗**

Considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States, . . .

The quotation that opens this foreword is from a Communication of the European Commission and was meant to apply primarily to developments in the European Union. However, it applies equally well to developments with a universal application and particularly to the CISG. To date 67 States that conduct more than two-thirds of international trade have made the CISG positive law by becoming party to it. The CISG is directly applicable to international sales of goods in those States, unless the parties to the contract exclude its application. The Convention must be considered to be a major success in the efforts to unify an important aspect of contract law. There is, however, a significant concern. Will the courts interpret the CISG in a consistent way? Will the unification of text be undermined by a dis-unification of interpretation?

The drafters of the CISG were acutely aware of the problem. They provided in Article 7(1) that

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

Upon adoption of the CISG by a State, Article 7 becomes part of the law of that State and constitutes a direction to the courts as to how to interpret the Convention. Nevertheless, it is understandable that the judges, trained in the law of their own domestic legal system, will have a home-State bias when faced with the need to interpret and apply the

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2 The examples of the Civil Code in France and the BGB in Germany come quickly to mind. A unified/harmonized substantive private law in Europe would have the same effect for a broader geographical area.
Convention. Furthermore, to promote uniformity in its application the judge must know how the Convention has been interpreted in the other States that have adopted it. That is not easy for obvious reasons. UNCITRAL itself has undertaken to make the interpretations of the CISG by the courts available through its CLOUT abstracts (Case Law On Uncitral Texts) and through its recently published UNCITRAL Digest of Case Law on the United Nations Convention on the International Sale of Goods. A further major resource is the CISG Web site maintained at Pace Law School with its unsurpassed collection of court decisions and bibliography of books and articles on the CISG. Not to be forgotten are the other Web sites that collect and publish decisions in non-English languages.

Although these resources are of immense importance to help satisfy “the need to promote uniformity in its application,” they do not necessarily help the interpreter “regard . . . its international character.” The international character of the CISG calls for the interpreter to go beyond the need for uniformity in its application. It calls for an appreciation of the differences between the appropriate legal solutions to the problems arising in domestic sales of goods and international sales of goods. But where is the interpreter to look for help in fulfilling the obligation? One potential source is this book, which compares the CISG and two recently adopted texts on international contract law. One is the UNIDROIT Principles of International Commercial Contracts. The other is the Principles of European Contract Law.

To understand the significance of these two texts for their potential help in interpreting the CISG, it is necessary to be aware that they have taken entirely different approaches to the unification/harmonization of international contract law. The UNIDROIT Principles of International Commercial Contracts are an “international restatement of general principles of contract law.” It should be noted that, like the CISG, the UNIDROIT Principles are restricted to commercial contracts. According to the Introduction to the Principles, “[n]aturally, to the extent that the UNIDROIT Principles address issues also covered by CISG, they follow the solutions found in that Convention, with such adaptations as were considered appropriate to reflect the particular nature and scope of the Principles.” The UNIDROIT Principles are, therefore, in many respects a further development of the CISG itself. It is clear that when the Preamble provides that “[t]hey may be used to interpret or supplement international uniform law instruments,” it is primarily the CISG that was considered. Although they have no binding force unless the parties themselves refer to them in their contract, they have taken on something of a positive law nature by the number of courts and arbitral tribunals that have cited them.

The Principles of European Contract Law have an entirely different purpose. “The main purpose of the Principles is to serve as a first draft of a European Civil Code,” although it was also hoped that they would be referred to by arbitrators. It is certainly far from clear whether there will ever be a European Civil Code, but the Principles have
indeed served as the starting point for preliminary work in that direction. This means that the European Principles do not purport to have universal significance. Nevertheless, because the European Union comprises States with both civil law and common law legal systems, the solutions found at a pan-European level for common contract problems would also have suggestive value for interpretation of the CISG. However, two caveats must be kept in mind. First, a European Civil Code, and therefore the Principles, would apply to consumer contracts, as well as to commercial contracts. Because consumer contracts raise certain policy concerns not present in commercial contracts, the Principles must always be scrutinized carefully to see whether those concerns have affected the particular provision being considered. Second, the European Principles stand somewhere between being a self-sufficient set of contract principles for current application and a first draft of a European Civil Code. Being a first draft means that there will be changes. Indeed, the preliminary work on a European Civil Code has already produced drafts that differ in some respects from the Principles.

The authors of the various chapters in this book comprise an outstanding list of scholars from all over the world. Many are leading authorities in their countries. Others are younger entrants into international legal scholarship. The fact that this is a collaborative effort by so many authors with widely varying legal backgrounds and experience leads to the natural fear that their contributions will suffer from an inconsistency of approach. It is to the credit of the editor and the authors that this fear is not realized. The quality of the work is consistently very high. There is little doubt that this is a book that will occupy a proud place in the growing library on the CISG. More importantly, this is a work that will serve to help lawyers, judges, and other scholars approach the interpretation of the CISG with a more international outlook than they might otherwise have had.

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