

# ARTICLES

## THE UNIFORM INTERNATIONAL SALES LAW AND THE GLOBAL JURISCONSULTORIUM

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*A global jurisconsultorium on uniform international sales law is the proper setting for the analysis of foreign jurisprudence.*

*Vikki Rogers and Albert Kritzer, in  
A Uniform International Sales Law Terminology*

### 1. INTRODUCTION

The 1980 Convention on Contracts for the International Sale of Goods (CISG) was drawn up in collaboration between scholars from many countries around the globe, and can be said to be a product of a largely global scholarly *jurisconsultorium*. This term is offered by Vikki Rogers and Albert Kritzer

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in their excellent trade law thesaurus on terminology of international sales,<sup>1</sup> and they use it to denote the need for cross-border consultation in deciding issues of uniform law. It is an excellent descriptive term for the phenomenon of the meeting of minds across jurisdictions in the shaping of international law. However, the term *jurisconsultorium* also lends itself well to the formation of such law in a scholarly *jurisconsultorium*. In essence, this article will examine the genesis of the CISG, the scholarly *jurisconsultorium* from which it sprang, and the need for practitioners (i.e. judges, arbitrators and legal counsel) to extend the *jurisconsultorium* in practice to ensure uniformity.<sup>2</sup>

## 2. THE GENESIS OF THE CISG—A PHOENIX OF THE SCHOLARLY GLOBAL JURISCONSULTORIUM

The 1980 Convention on Contracts for the International Sale of Goods (CISG) is labelled as the uniform international sales law. As of December 2004, it has been ratified by 65 countries across the globe.<sup>3</sup> According to a recent initiative by the Department of Trade and Industry, the CISG is again being considered for ratification by the United Kingdom.<sup>4</sup> Upon entry into force, the text of the CISG becomes the applicable domestic law to international sales, governing the formation and substantive regulation of sales contracts in international sales. It is a major instrument in international trade and commercial law.

One of the most significant aspects of the Convention is its uniformity and global recognition. It is the result of 13 years of diplomatic drafting among representatives of numerous nations. Improving on its less successful antecedents, the ULIS and the ULF (the 1964 Hague Conventions Uniform Law for International Sale and Uniform Law of Formation), the aim was to

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1. Vikki M. Rogers & Albert H. Kritzer, *A Uniform International Sales Law Terminology*, in *FESTSCHRIFT FÜR PETER SCHLECHTRIEM ZUM 70. GEBURTSTAG* (Ingeborg Schwenzer & Günter Hager eds., 2003), available at <http://cisg.law.pace.edu/cisg/biblio/rogers2.html>.

2. The concept of a global *jurisconsultorium* raises numerous issues of comparative law and legal theory, such as reconciliation of legal traditions in drafting, the comparative use of precedents, sources of law, and the discipline of uniform law as such, none of which form the focus of the present paper. These topics will be examined in a forthcoming article for the new *Journal of Comparative Law* which will be launched in 2005.

3. As of March 7, 2005, UNCITRAL reports that 65 States have adopted the convention. See <http://www.cisg.law.pace.edu/cisg/countries/entries.html>.

4. Following previous initiatives in 1989 and 1997. DTI has not released any papers yet, but a panel has been convened to consider the matter, including Dr. Loukas Mistelis who is also Secretary to the CISG Advisory Council.

produce a convention which was truly global in reconciling legal traditions.<sup>5</sup> In figurative language, the intent was to create a fantastic phoenix of flaming global internationality from the ashes of these antecedents, which were perceived as too western. Thus, the UNCITRAL working groups conceiving the CISG were global in their representation, and the CISG was drawn up to represent all jurisdictions. It was a true global jurisconsultorium in its conception. Consider, for example, the fact that “[a]t the United Nations Diplomatic Conference which adopted the CISG, ‘62 states took part: 22 European and other developed Western states, 11 socialist, 11 South-American, 7 African and 11 Asian countries; in other words, roughly speaking, 22 Western, 11 socialist and 29 third world countries.’”<sup>6</sup> The CISG entered into effect in the first 11 States to adopt it on January 1, 1988.<sup>7</sup> Since then the rate of ratification has been both astounding and record breaking. A phoenix certainly arose. The question is, to what extent is this phoenix uniform?

### 3. THE UNIFORMITY OF THE CISG

The Convention’s uniformity is clear from three different vantage points. First, its very genesis, based on the Uniform Law of Sales and the Uniform Law of Formation, makes it an inherent instrument of uniform law. This is especially true when considering the aim, which is to create similar rules for sales contracts in order to remove barriers in trade law. Second, as its preamble explains: “the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade.”<sup>8</sup> Third, its interpretational guideline in Article 7(1) sets out that “regard is to be had to its international character and the need to promote uniformity in its application.”<sup>9</sup> Drafting the CISG in the global jurisconsultorium surely was

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5. See Alejandro M. Garro, *Reconciliation of Legal Traditions in the U.N. Convention on Contracts for the International Sale of Goods*, 23 INT’L LAW. 443 (1989), for a thorough review on the subject.

6. Pace Law School, *CISG by State*, at <http://www.cisg.law.pace.edu/cisg/cisgintro.html#trends>, quoting Gyula Eörsi, *A Propos the 1980 Convention on Contracts for the International Sale of Goods*, 31 AM. J. COMP. L. 333, 335 (1983).

7. For more information on this and contracting states in general, see *id.*

8. United Nations Convention on Contracts for the International Sale of Goods, Apr. 11, 1980, Preamble, U.N. Doc. A/Conf. 97/18, reprinted in 19 I.L.M. 668 [hereinafter CISG].

9. *Id.* at art. 7(1).

a challenge. However, drafting uniform words is one thing; ensuring their uniformity is another. As predicted by John Honnold when the CISG entered into force—uniform words do not create uniform results.<sup>10</sup>

Examples of divergences in the application of nearly all the provisions of the CISG abound.<sup>11</sup> It is evident that many cases fall into groups created by different schools of thought concerning the interpretation of CISG provisions. For example, in Article 39(1)'s determination of "reasonable time" for the giving of notice in cases of non-conformity, a clear diversity between German Courts and Austrian Courts has evolved. Austrian Courts advocate one month as a yardstick for evaluating a reasonable time while German Courts prefer a period of 14 days.<sup>12</sup> Considering the significance of Article 39 in the context of relying on a breach of contract (*i.e.*, no notice means a complete lack of remedy) this difference in CISG application is no small matter. Inevitably the discrepancy prompts the competent legal advisor to *forum shop* and race to another, more favorable jurisdiction, if one is available according to the jurisdictional rules.<sup>13</sup> Such widely differing applications of the CISG provisions do not constitute an acceptable divergence of law even within the admittedly flexible confines of uniform law. This divergence would not occur if the courts were guided by international CISG case law. Unfortunately, international decisions are often completely overlooked or accorded less weight than domestic decisions on the CISG.

This problem is not one that the scholarly jurisconsultorium, which created the CISG, can control. The convention has, in the 16 years in which

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10. See John Honnold, *The Sales Convention in Action—Uniform International Words: Uniform Application?*, 8 J.L. & COM. 207 (1988).

11. See, e.g., Camilla Andersen, *Reasonable Time in Article 39(1) of the CISG—Is Article 39(1) Truly a Uniform Provision?*, available at <http://www.cisg.law.pace.edu/cisg/biblio/andersen.html>.

12. Compare the "noble month" introduced by the German Supreme Court in Bundesgerichtshof 8 March 1995, BGH VIII 159 (German), available at <http://cisg.law.pace.edu/cases/950308g3.html>, with the 14 day guideline introduced by the Austrian Supreme Court in Oberster Gerichtshof on 15 October 1998, S2 191/98, available at <http://cisg.law.pace.edu/cases/981015a3.html> and subsequent judgments from both jurisdictions. For more information see the Second Opinion of the CISG Advisory Council, available at <http://www.cisg.law.pace.edu/cisg/CISG-AC-op2.html>.

13. See JOHN HONNOLD, UNIFORM LAWS FOR THE INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION 142 (1991) ("The settlement of disputes would be complicated and litigants would be encouraged to engage in forum shopping if the courts of different countries persist in divergent interpretations of the Convention."). The pros and cons of *forum shopping* fall outside the scope of the present paper. In brief, it is given that forum shopping is not necessarily a compromise to uniformity as such, and moreover is arguably a duty for counsel to seek the most favorable venue. For more information, see Franco Ferrari, *International Sales Law and the Inevitability of Forum Shopping: A Comment on Tribunale di Rimini*, 23 J.L. & COM. 169 (2004), and on *forum shopping* in general, see, for example, Friedrich Juenger, *Forum Shopping, Domestic and International*, 63 TUL. L. REV. 553 (1989).

it has now applied, been taken from the hands of the scholars who drafted it and been placed firmly in the hands of the practitioners—the Judges, the Arbitrators and the Counsel. The challenge to uniformity in application now lies, primarily, here. Consequently, these problems must be addressed in a different jurisconsultorium, one which recognizes uniform law as a unique discipline in law.

#### 4. THE IMPORTANCE OF RECOGNIZING UNIFORM INTERNATIONAL LAW AS A UNIQUE DISCIPLINE IN LAW

Central to the understanding of the CISG is the notion that uniform international law is a separate and unique discipline in law. In any promotion of its uniformity, it is vital that judges, legal counsel, and scholars be aware of this, and treat it differently from other types of law. When operating with uniform international law, the mindset has to change to encompass a larger playing field. Consider the words of Roy Goode:

If the harmonization process is to have any hope of acceleration it is essential for law schools to reduce their preoccupation with national law and their assumption of its superiority over other legal systems and to revert at least in some degree to the internationalism of medieval law teaching. It is primarily by the spreading of awareness of foreign legal systems among our students that we can hope to accelerate the process of harmonization and to produce practitioners and judges of the future prepared to look beyond the horizon of their own legal system.<sup>14</sup>

These words, intended for harmonisation as a whole, are doubly true for the application of uniform law. It must be recognized that uniform law cannot be applied like other international law with any exploration of the boundaries of its application, nor can it be treated as internal domestic law which is exclusive to one jurisdiction or region.

This awareness of the uniqueness in using and applying uniform law is especially true in the area of international commercial law. For other international law which is to be applied uniformly to some degree, there are protections through application of rules, laws, and guidelines. For example, in public international law, monitoring institutions and bi-lateral or multi-lateral treaties are often set up to ensure the correct application and the uniformity. For most commercial law, and for the CISG in particular, no such

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14. Roy Goode, *Reflections on the Harmonization of Commercial Law*, in *COMMERCIAL AND CONSUMER LAW—NATIONAL AND INTERNATIONAL DIMENSIONS* 26 (Ross Cranston & Roy Goode eds., 1993).

help or framework exists. Uniformity is not monitored or guided by anything except the fact that the law is deemed "uniform." So the practitioner must find a path to uniformity.

In the application of uniform commercial law it is thus essential that the judiciary and the practitioner grasp that he or she is applying a law that is:

- a) *international*: must be free from any influences (case law or legal theory) which are purely domestic; and
- b) *uniform*: must be congruent in its application at the international level to an extent that the internationality is respected.

Although occasional good examples crop up, it is very rare to see instances where courts or tribunals recognize the uniqueness of applying uniform law. One such example is *Fothergill v. Monarch Airlines*, a case on the interpretation of the Warsaw Convention on the Liability of Air Carriers, in which the House of Lords clearly set out that uniform international law is unique and must be treated uniquely.<sup>15</sup> On the other side of the Atlantic Ocean, the U.S. Supreme Court decided in *Air France v. Saks*, a case on the meaning of the word "accident" under the Warsaw Convention, that judicial decisions from other countries interpreting a treaty term are "entitled to considerable weight."<sup>16</sup> This was restated more recently in another case on the same convention by the U.S. Supreme Court in the *El Al Israel Airlines* case.<sup>17</sup>

There is, however, a significant difference in the mindset of judges who apply public international law or municipal law in the form of conventions (like the Warsaw Convention) and those who apply private commercial law (like the CISG) when requiring an international outlook. In the field of municipal or public international law, the scale of the law is larger and more international. Therefore, the public law requirement to be bound by an instrument will invariably weigh on the judge. In private law, however, the scenario is different. The contract is between individuals and the international element may not seem as overriding. But the international element must be a dominant concern if uniformity is to be obtained.

Happily, such examples are beginning to be more frequent in the realm of the CISG.

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15. *Fothergill v. Monarch Airlines Ltd.*, [1981] A.C. 251 (Eng.).

16. *Air France v. Saks*, 470 U.S. 392, 404 (1985) (quoting *Benjamins v. British European Airways*, 572 F.2d 913, 919 (2d Cir. 1978)).

17. *El Al Israel Airlines, Ltd. v. Tseng*, 525 U.S. 155, 176 (1999).

## 5. THE IMPORTANCE OF INTERNATIONAL CASE LAW: ARTICLE 7(1)

Article 7 raises many issues on interpretation of the CISG, the challenge to uniformity, and the significance of international jurisprudence.<sup>18</sup> The main focus of the present paper is the issue of case law and precedents, and how they impose on the practitioner a duty to look to international case law. It is this author's conviction that the only feasible way to achieve any degree of actual uniformity in the application of the CISG is to establish the concept that international case law should be examined where any interpretation is called for by the judiciary, i.e. all cases where the rules are not self explanatory but can be guided by existing decisions from other States. The interpretational guidelines in Article 7, in and of themselves, do not satisfy the objective for uniformity.

In 1984, after the CISG had been drawn up but before its entry into force in 1989, Gyula Eörsi, the President of the Diplomatic conference at which the CISG was promulgated, faced the problems which Article 7 would raise, and stated:

It could be argued that the provisions of Article 7(1) are but pious wishes: the paragraph is necessarily vague and therefore open to surprising results. . . . [T]he elements of regard to the international character of the Convention and uniformity in its application were well chosen. The first, as we have seen, was devised to check the homeward trend, and the second is an admonition to follow precedents on the international plane.<sup>19</sup>

Article 7 was, from the onset, meant to form the basis for the extension of a jurisconsultorium to the judges, arbitrators, and counsel—for decisions to be of persuasive value throughout CISG States. If we retain the notion that the practitioner must respect the internationality as well as the uniformity of the

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18. The interpretational challenge to uniformity and the challenges raised by Article 7 as a whole are outside the scope of this paper. For further information see John Felemegas, *The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation*, in REVIEW OF THE CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS 115 (PACE INT'L L. REV. ed., 2000-2001), available at <http://www.cisg.law.pace.edu/cisg/biblio/felemegas.html>. For a very different approach, see Bruno Zeller, *Four-Corners—The Methodology for Interpretation and Application of the UN Convention on Contracts for the International Sale of Goods*, May 2003, at <http://www.cisg.law.pace.edu/cisg/biblio/4corners.html>.

19. GYULA EÖRSI, *General Provisions, in INTERNATIONAL SALES: THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS 2-1, 2-4* (Nina M. Galston & Hans Smit eds., 1984) (footnotes omitted), available at <http://cisg.law.pace.edu/cisg/biblio/eorsi1.html> [hereinafter EÖRSI, *International Sales*].

CISG, then nothing short of inspecting, and to some degree respecting, the interpretations of other jurisdictions will satisfy this requirement.

Only through the creation of terminology and interpretation which is uniform do we achieve uniformity at all. In the need to establish a uniform autonomous terminology lies the inherent requirement that practitioners look to international case law for contributions to interpretations. Otherwise the autonomy becomes illusory, and with it the uniformity as well.<sup>20</sup>

Interpretational guidelines may help to solve problems internationally and within the CISG, but will not ensure congruent applications of provisions. Although it may be true that the interpretational guidelines of Articles 7 and 8 are “the key to the door of unified approach”<sup>21</sup> in unlocking at least some problems of uniformity in the CISG, it is also true that this “key” will need a bit of help to turn in the lock. Even assuming that international uniform standards of good faith and fair dealing, as well as general principles of the CISG, could be evolved, autonomy of these principles cannot be reached without some indicative recourse to the international body of case law, that is, the CISG case law.

The international character of the Convention is such that it is the only example of legislation which spans such diversity of geography, language, and legal culture. If this is seen in light of “the need to promote uniformity,” then Article 7 must logically prompt the consideration of what other jurisdictions rely on in the interpretation of the Convention. The creation of compromises and “meeting in the middle” across the barriers of legal culture and legal understanding is where problems arise. If practitioners do not look to international case law, then how will they determine this uniform international application?

If practitioners follow their duty to foreign recourse in the interpretation of CISG terms, all problems concerning uniformity will be greatly diminished, if not non-existent. But to avoid any regional differences, recourse must be truly international and not favor particular groups of legal systems.

## 6. DEFINING A CISG PRECEDENT

The main problems with Article 7 as a basis for a duty to look to international CISG precedents are two-fold:

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20. See Franco Ferrari, *Article 7*, in *KOMMENTAR ZUM EINHEITLICHEN UN-KAUFRECHT* 126 (Peter Schlechtriem ed., 3d ed., 2000).

21. Zeller, *supra* note 18, at 17.



- 1) First: what is the extent to which this case law should be persuasive? This is a difficult question to pin down.
- 2) Second: how can the CISG impose any actual duty on national courts or independent tribunals to go outside their own legal systems in the interpretation of what is—essentially—their domestic law for international sales once ratified?

The latter problem is easily addressed: it cannot, procedurally or in terms of public international law technicalities, impose such a duty. However, the interest to promote trade and follow the ambitions which the preamble to the CISG reflects is strong in most States, and respect from the international legal community, as well as in scholarly analysis, is an aim which most courts or tribunals cannot shrug off.

Some scholars have, in their quest to force international case law to the attention of courts and tribunals, gone so far as to advocate a binding effect, a “supranational *stare decisis*,”<sup>22</sup> which obligates domestic courts to be bound by foreign case law. This is, however, rejected by courts<sup>23</sup> and most scholars<sup>24</sup> alike, and rightly so. It would be impossible to impose such a duty without a hierarchical structure of international courts<sup>25</sup> and tribunals, and such a structure is a political impossibility which would require mandates from constitutional courts or similar institutions or bodies throughout the CISG States.

Closely tied to this is another problem. Namely, the extent to which a CISG precedent should influence a judge or arbitrator. This is a more difficult question with a more multivalent answer.

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22. Larry A. DiMatteo, *The CISG and the Presumption of Enforceability: Unintended Contractual Liability in International Business Dealings*, 22 YALE INT. L.J. 111, 133 (1997).

23. See *Rheinland Verischerungen v. S.r.l. Atlarex*, Trib. di Vigevano, 12 July 2000, n. 405 (Italy), available at <http://www.cisg.law.pace.edu/cases/00071213.html>. See also *Tessile 21 S.r.l. v. Ixela S.A.*, 29 Dec. 1999 (Italy), available at <http://www.cisg.law.pace.edu/cases/991229i3.html>, where the court expressly states that “foreign case law merely has persuasive value.”

24. See ROLF HERBER, *Chapter II: General Provisions*, in COMMENTARY ON THE UN CONVENTION FOR THE INTERNATIONAL SALE OF GOODS 63 (Peter Schlechtriem ed., Geoffrey Thomas trans., 2d ed. 1998). See also FRITZ ENDERLEIN & DIETRICH MASKOW, *INTERNATIONAL SALES LAW: UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS: CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS* 348 (1992), emphasizing that “the only force foreign decisions have is their persuasive effect.”

25. Franco Ferrari, *Applying the CISG in a Truly Uniform Manner*, UNIF. L. REV. 203, 208 (2001-1), available at <http://cisgw3.law.pace.edu/cisg/biblio/ferrari4.html> [hereinafter Ferrari, *Applying the CISG*] “The court correctly rejected the minority view which attributes binding force to foreign case law . . . this fails to take into account the rigid hierarchical structure of the court system presupposed by the “*stare decisis*” doctrine and which is lacking on an international level.”

The concept of a "precedent," especially in legal regimes shaped by a sometimes rigid *stare decisis*, is not limited to the binding precedent, but also encompasses precedents which are of persuasive value. For the purposes of the CISG, we can bend the notion even further, to a precedent which is inspirational. There is no need to fear use of the term "precedent" in a context where it cannot mean binding precedent.

Misgivings on the use of the word "precedent" in the CISG regime are evidenced often, based on the comprehension that it indicates a binding precedent. An example is illustrated where Franco Ferrari, one of the leading advocates for promoting the use of foreign recourse in the CISG realms, recants the use of the word.<sup>26</sup> "In my opinion, which, I have to admit, has changed since the CISG case law has begun to arise, foreign case law should always be considered as having merely persuasive value. . . . Foreign case law should be used as a source from which to draw either arguments or counter-arguments."

As opposed to his earlier statement:

The interpreter must consider "what others have already done," i.e., he must consider the decisions rendered by judicial bodies of other Contracting States, since it is possible that the same or analogous question has already been examined by other States' courts, in which case such decisions can have either the value of precedent—"[i]f there is already a body of international case law," or a persuasive value.<sup>27</sup>

This clearly demonstrates a great reluctance to use the word "precedent" in the context of the CISG. However, regardless of such sensitivity associated with a term such as "precedent," it is a fact that some CISG cases do now consider case law from other jurisdictions and do appear to feel bound by a duty towards the principles of uniform law, the CISG community, and sister States to take some leading cases into consideration.

René Henschel has coined an interesting term for this, *ipso facto stare decisis*, which some cases have obtained through regular reference to them by courts and tribunals in other countries.<sup>28</sup> René Henschel used an (in)famous case of the cadmium-infested *New Zealand Mussels* as an example.<sup>29</sup> While

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26. Franco Ferrari, *CISG Case Law: A New Challenge for Interpreters?*, 17 J.L. & COM. 245, 260 (1999) [hereinafter Ferrari, *Challenge*].

27. Franco Ferrari, *Uniform Interpretation of The 1980 Uniform Sales Law*, 24 GA. J. INT'L & COMP. L. 183, 204-05 (1994).

28. René Franz Henschel, *Conformity of Goods in International Sales Governed by CISG Article 35: Caveat Venditor, Caveat Emptor and Contract Law as Background Law and as a Competing Set of Rules*, 1 NORDIC J. COM. L. 1, 9 (2004), available at [http://www.njcl.fi/\\_2004/article2.pdf](http://www.njcl.fi/_2004/article2.pdf).

29. BGH No. VIII ZR 159184 (Mar. 8, 1995), available at <http://cisgw3.law.pace.edu/cases/>

it may be correctly argued that certain cases have gained such a status by their use before some courts, the *stare decisis* nature of leading CISG cases is not, in actual fact, *ipso facto* everywhere—as one might hope if the uniformity of the CISG is to be safeguarded by the evolution of autonomous interpretation.

Other CISG scholars have agreed that foreign case law, while not binding, should be consulted so that the CISG's provisions can be considered in the light of all relevant decisions in the spirit of uniform law.<sup>30</sup> Moreover, a body of congruent, established case law from different CISG states on an issue is something which a practitioner should be strongly criticised for overlooking,<sup>31</sup> rendering the body of case law binding on a more abstract level. In the words of Harry Flechtner, the CISG “requires . . . an approach not unlike the treatment U.S. courts accord decisions of other jurisdictions when applying our Uniform Commercial Code.”<sup>32</sup> This parallel to the UCC in the USA is also drawn by another scholar, Philip Hackney, who states:

[W]hen interpreting the Convention, a court should look to other court's interpretations of the Convention, including the interpretations of courts from other countries. . . . The use in the U.S. of case law to interpret the Uniform Commercial Code (UCC) can serve as a model for courts using case law to interpret the Convention. No state within the U.S. is bound by an interpretation of the UCC from another state, but the interpretations of the UCC from other jurisdictions are extremely persuasive. While this method does not achieve exact uniformity, the U.S. has achieved a level of uniformity in sales law that is useful to companies transacting business in many states.<sup>33</sup>

This statement is interesting, because it highlights not only the parallels between two regimes with non-binding precedents, but also places in focus the fact that uniformity is not an absolute, but functions on different levels. For

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30. One of the first to point this out was Peter Schlechtriem, *Uniform Sales Law—the Experience with Uniform Sales Laws in the Federal Republic of Germany*, in 2 JURIDISK TIDSKRIFT 1, 27 (1991/92), available at <http://cisgw3.law.pace.edu/cisg/biblio/schlech2.html>, where he explains how consideration and critique of case law in other jurisdictions, as well as help from scholars and comparative law centres, smooth any divergent interpretations of uniform law. See also Joseph Lookofsky, *At Fremme en Ensartet Anvendelse af CISG*, UGESKRIFT FOR RETSVAESEN 139, 140 (1996) (UFR 1996B139) (“Man skal tage hensyn til den internationale præcedens, til hvad de forskellige domstole har sagt.”) [“Consideration must be had to international precedents, to what the different Courts have said.”] (author's translation) and Herber, *supra* note 24, at 62.

31. See Michael Joachim Bonell, *Article 7—Interpretation of Convention*, in COMMENTARY ON THE INTERNATIONAL SALES LAW 91 (Cesare Massimo Bianca & Michael Joachim Bonnell eds., 1987).

32. Harry M. Flechtner, *The Several Texts of the CISG in a Decentralized System: Observations on Translations, Reservations and Other Challenges to the Uniformity Principle in Article 7(1)*, 17 J.L. & COM. 187-217 (1998).

33. Philip T. Hackney, *Is the United Nations Convention on the International Sale of Goods Achieving Uniformity?*, 61 LA. L. REV. 473, 479 (2001).

the CISG absolute uniformity, or anything approaching it, is an illusory notion; however, a level of uniformity useful to business (as it promotes trade, in accordance with the conventions preamble) is a realistic aim. It does, however, require a continuum of CISG precedents.

If we accept that foreign CISG cases must have some level of persuasive influence, then the fact that the foreign case law is not binding, either in fact or *ipso facto*, should not necessarily hinder the use of the term "precedent" in the CISG regime. If we advocate autonomous terms in the CISG, then we can develop for the CISG an autonomous definition of the term "precedent."

CISG practitioners should apply or quote CISG precedents to issues involving interpretation of CISG provisions or terms. A case can—and should—serve as a CISG precedent where it interprets the same or similar terms or aspects of the same or similar provisions. The effect a CISG precedent should have is persuasive, to inspire the practitioner to continue the creation of uniform law rather than domestic idiosyncratic interpretation of a common text.

If such an autonomous definition of a CISG precedent were generally recognized, it would remove from the scholarly realm all the minute differences in shades of meaning when defining the importance of CISG case law. Perhaps this would even avoid debates in legal theory about the status of CISG case law, which are inevitably sterile and fruitless because they are based on concepts relevant to domestic jurisdictions but inapplicable in the CISG regime as a whole.

The importance of CISG precedents does not solely apply to court judgments. Arbitral awards are also, indeed especially, significant due to their internationality and "stateless" context. "[A]n arbitral award could have more influence on a specific solution than a decision of a supreme court of a country whose judges are not accustomed to dealing with international issues in general, and the CISG in particular."<sup>34</sup>

Another interesting issue is the difference in procedural approaches to considering precedents as a whole. Some Courts in some States (for example Denmark) will have an *ex officio* duty to find the correct influencing precedent in States where a *jura noscitur curia* ("the judge knows the law") principle prevails.<sup>35</sup> Others will be subject to a more limited review, based very firmly

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34. Ferrari, *Challenge*, *supra* note 26, at 260. In the author's view, this is also true for those awards which do not represent traditional applications of the CISG.

35. See, e.g., EVA SMITH, CIVILPROCES 4. udgave, 2000. For a discussion on the Danish principle of *ex officio*, see BERNHARD GOMARD, CIVILPROCESSEN 5. udgave, 2000, Thomson/GadJura, s. 313 (Det påhviler i almindelighed retten at påse *ex officio*, om den kan træffe realitetsafgørelse om de nedlagte

on the pleadings of the parties (like most common law countries). While this does not change the theory of the CISG precedent, it very firmly includes legal counsel in the group of “practitioners” who now own the CISG and must look to foreign case law in its interpretation. The reality is, of course, that even in the *jura noscit curia* regimes the judges often, for practical reasons, limit themselves to the material presented by counsel. But the inclusion of lawyers, solicitors, and barristers in the “practitioners” category for the theory of CISG precedents means that although counsel is, understandably, a subjective force as he or she is presenting an argument, the duty is also on him or her to look to international case law. This is true in all jurisdictions, but primarily in those where the arguments for looking to or applying foreign law are the responsibilities of the parties. The need for inclusion of the CISG precedent extends to the parties presenting their arguments.

The theory of the need to use CISG precedents is one thing—what the courts, tribunals, and counsel actually choose to do is another issue entirely.

## 7. A LOOK AT CISG CASE LAW USING CISG PRECEDENTS

The question of the recognition by practitioners of foreign case law is not purely theoretical. Trends to do so are emerging in case law, albeit slowly. Several years ago, there were no examples of Courts or Tribunals looking to international precedents. However, in 1996, an Italian case from Cuneo took the first step, by looking to German and Swiss case law in the determination of Articles 38 and 39.<sup>36</sup>

Others followed soon thereafter, beginning with a French judgment from Grenoble,<sup>37</sup> which considered a German judgment in the assessment of place of payment. Thereafter two American judgments followed. The first looked for foreign cases in the determination of parole evidence, but found none.<sup>38</sup>

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påstande, eller om sagen helt eller delvis må afvises eller henvises til en anden ret.”) (quoting Gomard’s original Danish text). For a discussion on the term *jura noscit curia*, see GOMARD, *supra*, at s. 430. (“Retten kender ikke parternes mellemværende, men retssystemet er retten bekendt, jura novit curia.”).

36. Sport d’Hiver di Genevieve Culet v. Ets. Louys et Fils, Trib. Civile of Cuneo, 31 Jan. 1996 n. 45-196 (Italy), available at <http://cisgw3.law.pace.edu/cases/960131i3.html>. In Franco Ferrari, *Remarks on the Autonomy and the Uniform Application of the CISG on the Occasion of its Tenth Anniversary*, INT’L CONT. ADVISOR, 41 n.33 (1998), Professor Ferrari reports that the decision from the Trib. Civile of Cuneo was the only one of 300 cases reported by Michael Will to comply with the duty to look to foreign case law.

37. Scea. Gaec des Beauches B. Bruno v. Société Teso Ten Elsen GmbH & Co KG, CA Grenoble, 23 Oct. 1996 [94/3859], available at <http://cisgw3.law.pace.edu/cases/961023f1.html>.

38. MCC-Marble Ceramic Ctr., Inc. v. Ceramica Nuova D’Agostino S.p.A. 134 F.3d 1384 (11th Cir. 1998). This case is also unique because it refers to an internet database as an excellent source for finding the foreign case law needed. *Id.* at 1390 n.14.

The second looked to a German Supreme Court case in the determination of Articles 35 and 39.<sup>39</sup> The latter judgment has aroused considerable interest. Peter Schlechtriem has stated:

the decision of the U.S. federal court is remarkable because it treats a foreign court decision as precedent, or at the least as "authority" and thus treats uniform international law similar to American law with the—for American courts self-understood—consideration given to decisions of their neighboring states under the (American) common law. In other words, it treated the CISG as a kind of international common law, the application and development of which is in the hands of the courts of all nations party to the Convention, which must therefore also give consideration to decisions made in other countries—in this case, "the law as articulated by the German Supreme Court."<sup>40</sup>

Although Professor Schlechtriem is right in his commendation of the judgment, and the wonderful attitude towards uniform law expressed by the judge that the CISG is an international common law, there were however at this point several other cases, as evidenced above, which did the same, and the praise should be shared with them.

A subsequent judgment, that also commendably looked to foreign case law is an Italian case from Pavia which referred to a Swiss case in the determination of interest rate.<sup>41</sup>

There have also been instances of the "next best thing," namely referrals to scholars who look at foreign case law or legal tradition in the interest of observing uniformity. One such example is a Swiss judgment from Luzern,<sup>42</sup> which is often mistakenly referred to as a judgment looking to foreign case law<sup>43</sup> due to its verbatim citation of the Swiss scholar Schwenger's assessment of "reasonable time" in Article 39(1).<sup>44</sup> Another example is from the German

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39. *Medical Mktg. Int'l, Inc. v. Internazionale Medico Scientifica, S.r.l.*, No. 1990 WL 311945 at \*2 (E.D. La. May 17, 1999).

40. André Corterier, *Conformity of the Goods and Standards Established by Public Law—Treatment of Foreign Court Decision as Precedent*, available at <http://cisgw3.law.pace.edu/cases/990517u1.html>. This is an English adaptation of Peter Schlechtriem's commentary on *Medical Mktg. Int'l, Inc. v. Internazionale Medico Scientifica, S.r.l.*, in *PRAXIS DES INTERNATIONALEN PRIVAT- UND VERFAHRENSRECHTS* 388-90 (1999).

41. *Tessile*, *supra* note 23. Also worth mentioning is a Swiss Supreme Court case from 2003, which refers to cases from Belgium and Germany in its decision. Bundesgerichtshof, 13 Nov. 2001, 4C. 198/2003 SRI (Switzerland), available at <http://cisgw3.law.pace.edu/cases/031113s1.html>.

42. Obergericht des Kantons Luzern, 8 Jan. 1997, 11 95 123/357, (Switzerland) available at <http://cisgw3.law.pace.edu/cases/970108s1.html>.

43. See Felemegas, *supra* note 18, at Ch. 5, n.830 with accompanying text.

44. See Ingeborg Schwenger, in *KOMMENTAR ZUM EINHEITLICHEN UN KAUFRECHT* 362 (Peter Schlechtriem ed., 1995), which is the exact verbatim statement by the Court in the judgment from Luzern.

Supreme Court, in a case concerning the sale of vine wax, where the Court cites the views of scholars from France, Germany, England, Switzerland, and the United States in its reasoning.<sup>45</sup>

It should also be kept in mind that there are many CISG cases which are not reported, and these may also, conceivably, include examples of applications of the CISG which refer to CISG precedents.

One of the most remarkable example of a judge complying with an obligation to look to international CISG precedents is yet another Italian judgment, this one from *Vigevano*.<sup>46</sup> In the interpretation of non-conformity and notice rules under the CISG (Arts. 35 and 39) the judge examined cases from the Austrian, Dutch, French, German, Italian, US and Swiss Courts, as well as Arbitral Awards from the ICC. It also referred to two CISG websites and a UNILEX database on the CISG, although surprisingly, not to CISG scholars. One scholar criticises this in his editorial remarks to the case, “[c]onspicuously absent are references to civilian commentaries and treatises.”<sup>47</sup> However, what the Court does is more significant than what it does not do. The many references to foreign cases are much more significant than any references to scholars.

It is not surprising that this judgment has been praised highly by scholars striving for uniformity of the CISG. For example, Professor Ferrari writes:

The conclusions which may be drawn from reading the *Tribunale di Vigevano* decision are obvious. Recourse to foreign court decisions in interpreting and applying the CISG, something that legal scholars have been asking for from the time the Convention came into force, is apparently possible. It is equally obvious, however, that not all courts (as mentioned earlier) will apply the CISG as did the *Tribunale di Vigevano*. We can only hope that the *Tribunale di Vigevano* will soon be called upon to decide another case dealing with the CISG.<sup>48</sup>

Professor Ferrari’s conclusion is undoubtedly correct—it is entirely possible to render the terms of the CISG uniform by ensuring the autonomy of terms with recourse to foreign judgments. It may not happen often, but cases referring to international case law are becoming more frequent.

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45. Bundesgerichtshof, 24 Mar. 1999, BGH VIII ZR 121/98 (German).

46. *Rheinland Versicherungen*, *supra* note 23.

47. Charles Sant ‘Elia, *Editorial Remarks*, available at <http://cisgw3.law.pace.edu/cases/000712i3.html>.

48. See Ferrari, *Applying the CISG*, *supra* note 25, at 215.

Other Italian cases<sup>49</sup> have also demonstrated the application of this commendable technique for interpretation of uniform law.<sup>50</sup> One particular example, a case from Rimini,<sup>51</sup> improves on the case from Vigevano, by quoting a total of 37 international CISG precedents in the determination of various provisions concerning non-conforming goods.<sup>52</sup>

Recently, in the US, there have been several cases where judges have displayed an understanding of the unique nature of the CISG as uniform international law by looking to foreign case law. One was a federal district court case from Illinois, which cited an Australian case on the validity of retention of title clauses in the determination of the applicability of the Convention. Judge Lindberg of the District Court of Illinois concisely stated that: "courts should consider the decisions issued by foreign courts on the CISG" in their interpretation.<sup>53</sup>

In the much discussed *Zapata* cases concerning the nature of attorneys' fees as damages or not (i.e. whether they are encompassed by Art. 74),<sup>54</sup> the circuit court overturned a finding of the district court. In the petition for certiorari to the U.S. Supreme Court, the nature of the international precedents

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49. See *Scatolificio La Perla S.n.c. di Addrigo Stefano e Giuliano v. Martin Frischdienst GmbH*, Trib. Di Padova, 31 Mar. 2004, n. 40466 of Rig 2002 (Italy), available at <http://cisgw3.law.pace.edu/cases/040331i3.html> and *SO. M. AGRI s.a.s. di Ardina Alessandro & C. v. Erzeugerorganisation Marchfeldgemüse GmbH & Co. KG*, Trib. di Padova, 25 Feb. 2004, n. 40522 (Italy), available at <http://cisgw3.law.pace.edu/cases/040225i3.html>.

50. It is a curious aside to investigate why Italian courts have been so instrumental in blazing the trail of uniform law application. After searching fruitlessly for a reason in Italian legal history or theory why Italy excels in uniform law application, a conversation with Franco Ferrari enlightened me to the fact that the judges in these cases are all fresh mindsets and rather young. The reason the CISG-enlightened Italian judges is their fresh mindset and lack of reluctance to employ the CISG as it has formed an integral part of their legal training. Italian jurisprudential tradition for younger judges is influencing the formation of uniform law directly.

51. *Al Palazzo S.r.l. v. Bernardaud di Limoges S.A.*, 26 Nov. 2002, n. 3095 (Italy), available at <http://cisgw3.law.pace.edu/cases/021126i3.html>.

52. **CASES CITED.** *Austria*: three Supreme Court cases; *Belgium*: two district court cases: District Courts of Hasselt and Kortrijk; *France*: one Supreme Court case, two other cases: Appellate Court of Grenoble; *Germany*: thirteen cases—nine cases: Appellate Courts of Düsseldorf, Köln, München, Saarbrücken, Stuttgart and Thüringer; two cases: District Courts of Berlin and Giessen; two cases: Lower Courts of Augsburg and Kehl; *Hungary*: one case: arbitral award; *Italy*: one Supreme Court case, four other cases: District Courts of Cuneo, Pavia, Torino and Vigevano; *Netherlands*: one case: District Court of Zwolle; *Switzerland*: two cases: Appellate Courts of Luzern and Vaud, one other case: Commercial Court of Zurich; *United States*: one case: Federal District Court of Illinois.

53. *Usinor Industrieel v. Leeco Steel Prod.*, 209 F. Supp. 2d 880, 886 (E.D. Ill. 2002).

54. *Zapata Hermanos v. Hearthiside Baking*, 313 F.3d 385 (7th Cir. 2002), which also contains a case history of the eight other judgments entered, and the (ultimately denied) application for certiorari to the Supreme Court which uses even more international case law and scholars. See *Zapata Hermanos Sucesores' Petition for Writ of Certiorari*, available at <http://www.cisg.law.pace.edubiblio/zcertpet.html>.



was never questioned.<sup>55</sup> The Solicitor General stated the following on the topic of international jurisprudence, “Article 7(1)’s reference to ‘the need to promote uniformity in [the Convention’s] application’ is not appreciably different from the rule that judicial decisions from other countries interpreting a treaty term are ‘entitled to considerable weight.’”<sup>56</sup> Another recent US case to use international CISG precedents is the *Chicago Prime Packers* case from May 2004.<sup>57</sup> In this remarkable example of the application of uniform law before US Courts the District Court looked at cases from Germany, Switzerland, and Italy in its deliberations of an allegedly breached contract for the sale of meat.<sup>58</sup> It is, to date, the US decision which quotes the most international case law and represents another milestone in treating uniform law as unique in the US courts.<sup>59</sup>

However, although there are several cases and a quote from the Solicitor General to support the growth of international CISG case law precedents in the US, not all cases follow suit. The cases which do refer to foreign cases are still a minority. Even worse, a recent case from the District Court of Illinois saw Judge Filip misapply the principle of foreign jurisprudence to guide interpretation of CISG Article 79 (a *force majeure* rule) with domestic law and the UCC.<sup>60</sup> The true horror of this case is that he uses the wonderful example set by the *Chicago Prime Packers* case (above) to do so, completely misconstruing the context and the need for uniform law application to be international, going decidedly against the grain of the CISG.<sup>61</sup> As stated in the 1976 UNCITRAL Yearbook, noting the progress of the drafting of the Convention: “no recourse to national law should be admitted in interpretation.”<sup>62</sup> This was, from the onset, a firm rule for the Convention’s

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55. The certiorari was ultimately denied on 1st December 2003. See *Zapata Hermanos Sucesores v. Hearthside Baking Co.*, 540 U.S. 1068 (2003). The opportunity for the US Supreme Court to pronounce on this important issue of international precedents in the CISG regime must await another case.

56. Department of Justice, Brief for the United States as Amicus Curiae, Case No. 02-1318, October 2003, available at <http://www.usdoj.gov/osg/briefs/2003/2pet/6invt/2002-1318.pet.ami.inv.html>.

57. *Chi. Prime Packers v. Northam Food Trading*, 320 F. Supp. 2d 702 (E.D. Ill. 2004).

58. *Id.* at 709 n.11.

59. See Annabel V. Teiling, *CISG: U.S. Court Relies on Foreign Case Law and the Internet*, UNIFORM L. REV./REVUE DEDROIT UNIFORME 431, 434 (2004-2), available at <http://cisgw3.law.pace.edu/cisg/biblio/teiling.html>.

60. *Raw Materials Inc. v. Manfred Forberich GmbH*, No. 03 C 1154, 2004 U.S. Dist. LEXIS 12510 at \*11-13 (E.D. Ill. July 6, 2004).

61. *Id.* at \*13.

62. 3 UNCITRAL Yearbook 76 no. 53 (1972): *A/CN.9.SR.*, p. 5.

uniformity. It is worth noting that the *Raw Materials* case is being strongly criticized in current writings.<sup>63</sup>

In Europe, a case from Spain is one of the most recent reported CISG cases to use a CISG precedent and help establish a global jurisconsultorium in aid of an autonomous interpretation of this uniform convention.<sup>64</sup> In this case, concerning the sale of wine concentrate, the court expressly refers to the need for an autonomous interpretation of the Convention and the uniqueness of uniform law. The Court then goes on to look at the *travaux préparatoires* of the CISG and case law as well as scholarly opinions from other jurisdictions. Moreover, it sets out five steps for interpretation of the CISG, which culminate in the fact that international jurisprudential guidance is needed for its interpretation.

German cases on the CISG are disproportionately numerous in reported case law databases—nevertheless, there have been very few examples of German cases following a duty to look to international case law in CISG interpretation. The first reported example is from Landgericht Trier,<sup>65</sup> wherein the Court referred to a US case.<sup>66</sup> The second, however, is a recent case from the German Supreme Court (the Bundesgerichtshof or “BGH”), wherein the BGH refers to cases and scholars from various jurisdictions as well as arbitral awards in the determination of Article 40 and the question of burden of proof.<sup>67</sup>

At the time of going to print, the most recent example of deserving international jurisprudence in the realm of the CISG was found in the Supreme Court of the Netherlands—and with this increasing number of supreme courts worldwide following the trend of the juris consultorium, there is cause for optimism.<sup>68</sup>

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63. See, among the more entertaining, Harry Flechtner & Joseph Lookofsky, *Nominating Manfred Forberich: The Worst CISG Decision in 25 Years?*, 9 VINDOBONA J. 1 (2005), who nominate this case as the worst CISG case of all time.

64. Cherubino Valsangiacomo, S.A. v. American Juice Import, Inc., Audiencia Provincial de Valencia, 7 June 2003, 142/2003 (Spain), available at <http://cisgw3.law.pace.edu/cases/030607s4.html>.

65. LG Trier, 8 Jan. 2004, 7 HKO 134/03 (Germany), available at <http://cisgw3.law.pace.edu/cases/040108g1.html>.

66. Chateau des Charmes Wines Ltd. v. Sabaté USA, Sabaté S.A., 328 F.3d 528 (9th Cir. 2003).

67. BGH, 30 June 2004, VIII ZR 321/03 (Germany), available at <http://cisgw3.law.pace.edu/cases/040630g1.html>.

68. Isocab France S.A. v. Indus Projektbouw B.V., 4 Feb. 2005, LJN: AR 6187; CO/007HR (Netherlands), available at <http://cisgw3.law.pace.edu/cases/050204n1.html>.

## 8. CONCLUSION

The role of CISG practitioners should be clear: look to CISG precedents on an international level. Consult CISG experts and practitioners on a global scale in recognition of the Convention's uniformity. But they do not always do so. The reasons for the failure to do so are many, but basically fall into two categories:

- 1) will not; and
- 2) cannot.

In the first category we find judges who are unaccustomed to the concept of international precedents and consider the notion a breach on the sovereignty of lawmaking in their jurisdiction to some extent. It is likely that a Danish case from the Danish Maritime Commercial Court,<sup>69</sup> concerning the sale of frozen fish, reflects this to some degree. While it is obvious from the reasoning of the Court that the judge was swayed by the defendant's arguments which relied heavily on cases from Germany and Netherlands, there is no direct referral to these cases by the Court in its findings. It is noteworthy, however, that the Court phrases its conclusion almost verbatim albeit in Danish on one point, with the same phraseology as the Dutch precedent the defendant relied on. If leaning so heavily on the arguments of a Dutch case, then why not cement the relationship and accredit it to the conclusion by referring to it as a precedent? This would have constructed a significant Danish case which recognizes the importance of international case law in uniform law. One answer may simply be that Danish judgments are traditionally very brief in their findings and that the reference to foreign case law was omitted for no particular reason. However, given the reasoning, which for a Danish judge is quite detailed, this is unlikely. It is more likely that the judge, consciously or sub-consciously, was prepared to follow the logic of a Dutch case but not to treat it as a Danish law precedent, because Danish lawyers are traditionally very protective of their national legal sovereignty. Although the judge in this case did, in fact, comply with an obligation to look to international precedents by hearing the international cases and becoming swayed by them (or their logic), he shrinks from the opportunity to demonstrate any international precedents and thus pave the way

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69. Dr. S. Sergueev *Handelsagentur v. DAT-SCHAUB A/S, Sø-og Handelsretten*, 31 Jan. 2002 [H-0126-98] (Denmark), available at <http://cisgw3.law.pace.edu/cases/020131d1.html>.

for other Danish courts to do the same. It is this type of thinking which obstructs the uniform application of uniform legal regimes.

In the second category, where international precedents are not followed because the practitioner cannot, this will be because case law from other jurisdictions can be hard to find, and may be in a language which is not understood by the relevant practitioners.

This reasoning for non-compliance of the duty in Article 7, is however losing its justification, as availability of case law is becoming more widespread thanks to databases like <[www.cisg.law.pace.edu](http://www.cisg.law.pace.edu)> with mirror sites across the globe, reporting case law from CISG jurisdictions almost as soon as the cases appear.<sup>70</sup> Moreover, this database also helps to eliminate problems of language by providing translations.<sup>71</sup> Aided by a network of CISG scholars and students, and edited by a great CISG scholar Albert H. Kritzer, this non-profit database provides free services detailing all aspects of the CISG.<sup>72</sup>

It is worth noting that the jurisconsultorium of the CISG never abated on the scholarly side. One testament to this is the existence of the CISG Advisory Council.<sup>73</sup> Scholarly cooperation is also given by law journals, who aid interpretational issues for the CISG. It is recognized that the interpretational challenge to uniformity is great, and that Article 7 which is the source of this challenge requires the cooperation of scholars. In the words of Gyula Eörsi, the President of the Diplomatic conference at which the CISG was promulgated:

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70. For more information on the internet as a tool to promote uniformity of the CISG, see Camilla Baasch Andersen, *The Internet: Tool of Law, Source of Law or Tool for Sources—Use of the Internet in Legal Practice using Examples from International Sales*, April 2003, available at <http://www.bileta.ac.uk/03papers/baasch.html>.

71. The Queen Mary Case Translation programme, in effect since 2000, has now ensured over 750 translations of CISG cases.

72. It is no wonder that the database was awarded the first ever web site award by the International Association of Law Libraries as winner in the non-commercial category with the words, "A great project—containing nearly all information about CISG gathered in one site. They show us the way to get a successful partnership worldwide, through this innovative site." Pace University School of Law, IALL Website Award 2002, <http://www.cisg.law.pace.edu/cisg/award.html> (last visited April 25, 2005).

73. Comprised of: Peter Schlechtriem (chair), Eric Bergsten, Michael Bonell, Alejandro Garro, Roy Goode, Sergei Lebedev, Pilar Perales Viscasillas, Jan Ramberg, Ingeborg Schwenzer, Hiroo Sono and Claude Witz. This body of international scholars render decisions on issues of the CISG as commissioned by practitioners and trade or bar organisations. The first and second opinions (on electronic commerce and notification, respectively) are available on the CISG database and the third (aptly on article 3) will be available soon.

I admit that it will not always be easy to implement the above-mentioned principles. Domestic courts must not be allowed to forget these requirements, and a collection of precedents followed by critical annotations should be published, possibly by UNIDROIT which has issued the *Uniform Law Review* since 1973.<sup>74</sup>

It is interesting to note that the recently published UNCITRAL digest, which collected selected cases from CLOUT on issues of the CISG,<sup>75</sup> was not critical in its approach and thus helpful, albeit not as helpful as Eörsi envisioned.

*The Uniform Law Review* has, indeed, been helpful in ensuring scholarly collaboration on issues of uniformity, for the CISG as well as for other instruments of uniform law, such as the UNIDROIT Principles of International Commercial Contract. So have other commercial journals of excellence, such as *The Journal of Law and Commerce*. By creating forums for the opinions of scholars worldwide to come together in edited publications of high standard, interpretations, values and problems of uniformity can be addressed transnationally. However, scholarly cooperation will not ensure uniformity. It is undisputed that the CISG now belongs to the practitioners—the Judges, the Arbitrators and the legal Counsel.

It is the hope of the author that, with the growing number of courts open to the idea of a global jurisconsultorium, and the CISGW3 and UNILEX database and scholarly cooperation ensuring the availability and accessibility of the material, we can see more CISG precedents applied in the future. And when it becomes the rule, rather than the exception, the global jurisconsultorium will be complete in the circle of law.

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74. See Eörsi, *International Sales*, *supra* note 19, at 2-4.

75. CLOUT is the Case Law on UNCITRAL text, a collection of abstracts on CISG and MAL (UNCITRAL Model Law on International Commercial Arbitration (1985) case law. For more information, see <http://www.uncitral.org/english/clout/>.