

JOHN HONNOLD AND THE VIENNA CONVENTION ON
THE INTERNATIONAL SALE OF GOODSJORGE BARRERA GRAF[†]

John O. Honnold, a brilliant jurist and scholar and a very dear friend of mine, is retiring from his academic commitments. He does this not because he feels unable to meet the burdens of academic life—burdens he has met for almost forty years. He is retiring, rather, because of his desire to be in the closest and nearest contact, in the United States and abroad, with specialists and organizations in the fields of international trade and contracts. This desire dictates that he be less subject to the scholastic demands, the continuous academic programs, and the frequent discussions with students and colleagues in relation to matters more detached from his most valued studies and works.

In these remarks, I want to render homage to Professor Honnold as a main architect of the Vienna Convention of 1980 on The International Sales of Goods. Our contacts regarding that subject and our friendship began two decades ago in September 1964. Some months before, in April, the Convention of the Uniform Law of International Sales—illustrious predecessor of the Vienna text—had been approved in The Hague. In September we met in a Colloquium of the International Association of Legal Sciences, in which John acted as General Reporter. Also present were many reputable jurists from diverse legal, economic, and social systems: civil and common law, capitalist and socialist, developed and developing. Many of these legal experts, including John and myself, were to become in later years members of the United Nations Commission on International Trade Law (UNCITRAL). Among these jurists were Ion Nestor of Rumania, Gyola Eörsi of Hungary, Alan Farnsworth and Joseph M. Sweeney of the United States, Andre Tunc of France, Edwin C. Harris of Canada, and Shinichiro Michida of Japan.

John edited a volume of that memorable colloquium in which he made a comparative study of national and regional unification of the law of sales and explored “avenues toward agreement and adjustment.”¹ Most of the questions referred to and analyzed in his work

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¹ Honnold, *A Comparison of National and Regional Unifications of the Law of*

later received special consideration in the meetings of UNCITRAL's Working Group on Sales, during the preparation of the Draft of the Law. Areas of discussion included the analysis of divergencies with respect to the formation of international sales contracts; the concept and length of delivery of the goods; the role and extension of the autonomy of the will of the parties; remedies for nonconformity of goods as to quality or time of performance; right of rejection; risk of loss; time limits (prescription); and many more.

Before that colloquium in New York, John had already participated in a 1962 meeting of the International Association in London. There he had examined other general principles connected with international trade—subjects of interest not only in common law countries, but also in countries with civil law systems, either with or without the division of the private law in civil and commercial matters. In addition to this accomplishment, John had also analyzed the existence of commercial law as an autonomous and independent branch of law vis-à-vis civil legislation. He had examined the separation of American law from that of the mother country, noting the tendency in the United States for codification of commercial matters through the Uniform Commercial Code. Finally, his work contributed to the urgency in all countries to adopt similar rules governing international trade. "With the accelerating obsolescence and hazards of nationalistic barriers," he then concluded, "there is work to be done, on an international scale, towards reducing the remaining sources of misunderstanding and disappointment."²

In 1982 John published the most complete work of the Uniform Law for International Sales under the 1980 United Nations Convention.³ Undoubtedly, he was the most qualified person for such a task. As the driving force of the Secretariat of UNCITRAL for six years and as the American delegate afterwards, he was able to refer to the Vienna Convention and compare it with the Conventions of The Hague of 1964. One relates to the formation of the sale contract, the other concerns rights and obligations of the parties. Together they form part of the present U.N. convention. In this splendid work John undertakes a particular analysis of the articles of the Uniform Law and the thirteen

Sales and Avenues Toward their Harmonization: Prospects and Problems, in UNIFICATION OF THE LAW GOVERNING INTERNATIONAL SALES OF GOODS 3, 3 (J. Honnold ed. 1966).

² Honnold, *The Influence of the Law of International Trade on the Development and Character of English and American Commercial Law*, in THE SOURCES OF THE LAW OF INTERNATIONAL TRADE 70, 87 (C. Schmitthoff ed. 1964).

³ J. HONNOLD, UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION (1982).

final administrative provisions (articles 89-101), commonly included in United Nations Conventions. No other book enjoys the authority of this one. It contains sources, special studies, discussions during the preparation of the text, documents, reports of the Working Group, as well as of UNCITRAL Year Books—all in order to clarify and explain the background, the sense, and the content of each article.

As Secretary of UNCITRAL from 1968 to 1974, John provided invaluable encouragement to the Working Group. After nine years of continuous efforts, it prepared the Draft of the Law that was finally approved in Vienna. Through pertinent, efficient, and deep research and studies by the Secretariat regarding innumerable topics on international sales, the drafting of the Project was made possible. His long experience as a professor of contracts and international trade proved to be an invaluable asset to the Group. I am particularly grateful to John, having worked shoulder to shoulder with him as Chairman of the Group.

What has been accomplished through the Vienna Convention? Recently, two countries of great juridical tradition on civil and commercial matters, Chile and Argentina, ratified it. The United States and Mexico are in the process of ratification. John has informed me that President Reagan has submitted the convention and recommended its adoption to Congress.⁴ In Mexico, the juridical department of our foreign office is now in the process of consulting specialists in the field, sponsoring and calling for meetings with professors, professional groups, and lawyers associations—all in order to examine and discuss various aspects of the Convention.

I have written a comparative study of the Vienna Convention with the Mexican laws on sales, which was published in 1982, in the *Arizona Journal of International and Comparative Law*.⁵ This work was intended to encourage the adoption of the Convention, with emphasis on the modern approach of the whole contract, as well as on several matters of sales in relation to Mexico's present internal legislation. Like its counterparts in other Latin American countries, the Mexican commercial code is old and inadequate. It was originally copied from texts elaborated in the nineteenth century that were not drafted or conceived for international transactions.

⁴ See President's Message to the Senate Transmitting the United Nations Convention on Contracts for the International Sale of Goods, 19 WEEKLY COMP. PRES. DOC. 1290 (Sept. 21, 1983).

⁵ Barrera Graf, *The Vienna Convention on International Sales Contracts and the Mexican Law: A Comparative Study*, 1 ARIZ. J. INT'L & COMP. L. 1 (1982) (translated by D.G. Foulke).

Many rules and principles of the convention—including the formation of the contract *inter-absentes*, rights and obligations of the seller and buyer, as well as actions in protection of those rights—are rather new for external as well as for internal contracts of sale. Notwithstanding its importance to our international trade, the ratification by Mexico of the Vienna Convention shall be of great assistance in the future incorporation of some of these new rules into local laws and in the Code of Commerce, which is now being submitted for revision and completion.

The impact of the Vienna Convention will therefore be substantial for Mexico and, I trust, for many other nations, as well as for international law. Without John Honnold, such progress would have been much more difficult, if not impossible.