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Review of Standard Forms or Terms Under the Vienna Convention

On January 1, 1988, the Convention on Contracts for the International Sale of Goods[1] took effect in the United States and in ten other countries.[2] The initial list includes Argentina, France, Italy, and the People's Republic of China, some of our most significant trading partners, with more adherences soon to follow.[3] In all likelihood the Convention, popularly known as C.I.S.G. or the Vienna Convention, will soon be governing law for most of our exports and imports of goods.

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1. Final Act of the United Nations Conference on Contracts for the International Sale of Goods Annex 1, U.N. Doc. A/Conf. 97/18 (1980) [hereinafter C.I.S.G. or Convention], *reprinted in* 19 I.L.M. 668 (1980).

2. Art. 99(1) provides that the Convention becomes effective on the first day of the month following twelve months after the tenth State deposits an instrument of ratification, acceptance, approval or accession. C.I.S.G., *supra* note 1, art. 99(1), *reprinted in* 19 I.L.M. at 694 (1980). On Dec. 11, 1986, China, Italy and the United States deposited ratification instruments, bringing the number of countries ratifying the Convention to over ten. Thus, Jan. 1, 1988 became the Convention's effective date for the eleven ratifying countries. These countries are Argentina, The People's Republic of China, Egypt, France, Italy, Hungary, Lesotho, Syria, The United States of America, Yugoslavia, and Zambia. Bonell, *Introduction to the Convention*, in COMMENTARY ON THE INTERNATIONAL SALES LAW: THE 1980 VIENNA SALES CONVENTION 1, 6-7 (C. Bianca & M. Bonell eds. 1987) [hereinafter Bianca & Bonell]. As of the date of this publication, Australia, Austria, Finland, Mexico, Norway and Sweden have also acceded to the Convention.

3. In the 18-month signatory period following the Convention's acceptance in April, 1980, twenty-one countries became Signatory States. MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, S. TREATY DOC. No. 9, 98th Cong., 1st Sess. V, VI (1983) (letter of submittal from Sect. of State George P. Shultz) [hereinafter MESSAGE FROM THE PRESIDENT]. Art. 99(2) governs when the Convention becomes effective for those Signatory States ratifying the Convention after the initial ten ratifying states. *See* C.I.S.G., *supra* note 1, art. 99(2), *reprinted in* 19 I.L.M. at 694 (1980).

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Under article 1, the Convention "applies to contracts of sale of goods between parties whose places of business are in different States" when those States are parties to the Convention.[4] Where it applies, the Convention supplies a framework of supplementary private law rules governing such important matters as contract formation and interpretation, obligations of seller and buyer, remedies for breach, and excuse based on changed circumstances. For international sales it thus replaces the greater part of article 2, the Sales article, of the Uniform Commercial Code.[5]

A voluminous literature already has accumulated on whether the United States should ratify the Convention and the effects of that ratification.[6] This Article addresses a difficult question of current importance—one that now faces every American business that exports or imports goods using its own standard forms or standard terms: What revisions in those standard forms or terms should business consider in light of the Convention?

I. A Tripartite Hierarchy

Two of the Convention's general articles are central to answering this question. Article 6 empowers the parties to "exclude the application of this Convention or . . . derogate from or vary the effect of any of its provisions." Article 4 provides that, "except as otherwise expressly pro-

4. C.I.S.G., *supra* note 1, art. 1(a), *reprinted in* 19 I.L.M. at 672 (1980). In ratifying the Convention, the United States took advantage of a reservation permitted by article 95 under which the United States is not bound by the language in article 1(1)(b) making the Convention applicable when "rules of private international law lead to the application of the law of a Contracting State." C.I.S.G., *supra* note 1, art. 1(1)(b), *reprinted in* 19 I.L.M. at 672 (1980).

Congress cited two reasons for electing out of art. 1(1)(b). First, Congress found that international choice of law rules are uncertain and could lead to disharmony between contracting parties. Applicability of the Convention based on art. 1(a), however, is clear-cut; the Convention applies when the places of business of the buyer and seller are in different Contracting States (Contracting States being those States that have ratified, and therefore subject to, the Convention).

Second, Congress felt that art. 1(1)(b) would displace United States domestic law more frequently than foreign law. For example, where the United States contracts with a non-Contracting State, if private international law points to application of the non-Contracting State's law, its domestic law applies. On the other hand, if private international law points to application of United States law, art. 1(1)(b) would dictate application of the Convention. *See* MESSAGE FROM THE PRESIDENT, *supra* note 3, at 21 (Appendix B).

5. For example, the C.I.S.G. repeals the U.C.C.'s statute of frauds for sales transactions. Under art. 11, "A contract of sale need not be concluded in or evidenced by writing. . . ." Arts. 12 and 96 permit a reservation avoiding the application of this provision, but the United States did not make such a reservation.

6. For an excellent chronicle of much of this literature, see Note, *Disclaimers of Implied Warranties: The 1980 United Nations Convention on Contracts for the International Sale of Goods*, 53 FORDHAM L. REV. 863, 863 n.1 (1985). For an extensive bibliography of English language commentary on the Vienna Convention see Winship, *Bibliography: International Sale of Goods*, 18 INT'L LAW. 53 (1984) and its supplement, Winship, *A Bibliography of Commentaries on the United Nations International Sales Convention*, 21 INT'L LAW. 585 (1987). *See also* Ackerman, *infra* at 535.

vided," the Convention "is not concerned with . . . [t]he validity of the contract or of any of its provisions," leaving validity to be determined by the law applicable under choice of law rules.[7]

Article 6 purports to give the parties an unqualified power to vary the effect of the Convention by agreement.[8] On the other hand, article 4 makes it clear that, absent a contrary provision, the Convention does not affect any rule of domestic law dealing with the "validity" of a contract provision.[9] Taken together, articles 6 and 4 create a tripartite hierarchy, with domestic law on validity at the top, the agreement of the parties in the middle, and the Convention at the bottom. The domestic law on validity continues to control the agreement of the parties, and both control the Convention. This subordination of the Convention to both the domestic law on validity and the agreement of the parties was part of the price paid by the Convention's sponsors for its acceptance by adopting nations.

At first glance, the consequences of the hierarchy seem clear. Drafters reviewing standard forms or terms need only consider situations where the existing language is not dispositive, so that the provisions of the Code or other applicable law are now relied on to supplement it.[10] In these situations a drafter must compare the adequacy of Convention provisions with their Code counterparts and consider whether the Convention now makes additional language desirable. With regard to situations where existing language is dispositive, a drafter might well assume that, since under article 6 the agreement of the parties controls the Convention, no review of such provisions is necessary. With regard to situa-

7. C.I.S.G., *supra* note 1, arts. 4, 6. Because the Convention expressly excludes issues of validity from its scope of coverage, the Convention's "gap-filling" provision, art. 7(2), cannot be applied to resolve validity issues. Therefore, courts must look to applicable domestic law on validity questions. *See* J. HONNOLD, UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION 128 (1982) [hereinafter HONNOLD, UNIFORM SALES LAW].

To determine applicable domestic law, courts must apply private international conflicts of law rules. In 1985, the Hague Conference of Private International Law adopted a revision of the 1955 Hague Convention on the Law applicable to International Contracts for the Sale of Goods. This revised Hague Convention offers courts uniform conflicts of law rules for choosing the domestic law that should be applied to resolve questions outside the scope of the Vienna Convention. *See* Bonell, *Introduction to the Convention*, in Bianca & Bonell, *supra* note 2, at 12-13.

8. Art. six goes beyond the comparable language of the Uniform Commercial Code § 1-102(3), which allows parties to vary the effect of the Code's provisions by agreement but which prohibits their disclaiming the Code's "obligations of good faith, diligence, reasonableness and care." U.C.C. § 1-102(3) (1978). Art. six subjects drafters of standard forms to no such restraints.

9. The most obvious example of where the Convention nevertheless proposes to affect domestic laws regulating validity is art. 11 which dispenses with the writing requirement of the statute of frauds. C.I.S.G., *supra* note 1, art. 11, *reprinted in* 19 I.L.M. at 674 (1980). Arts. 12 and 96, however, permit Contracting States to make a reservation so that art. 11 does not apply where any party has his place of business in that Contracting State. C.I.S.G., *supra* note 1, arts. 12, 96, *reprinted in* 19 I.L.M. at 674, 693 (1980); *see supra* note 7 and accompanying text.

10. This includes situations where there is no language at all and also where existing language is to be supplemented by applicable law.

tions where the form has been tailored to comply with domestic law on validity, a drafter might also assume that, since under article four domestic law continues to control validity questions, review of such provisions is unnecessary.

A drafter who made these two assumptions would, however, be doubly in error. The Convention calls for reconsideration of situations where existing language is dispositive and of situations as to which that language has been tailored to comply with domestic law, as well as of situations in which that language is not dispositive and relies on applicable law to supplement it. Three kinds of situations therefore merit consideration: where language is dispositive, where language has been tailored, and where language is not dispositive.

II. Language Is Dispositive

If the agreement controls the Convention, how can language, dispositive prior to the Convention, require revision? Language could require revision because it now acquires a different meaning under the Convention.

An important example arises if the parties wish to choose the law of New York, for instance, including the Uniform Commercial Code. Prior to the Convention, it would have been sufficient to provide that "the law of the State of New York" governed the contract. At first blush, such language would seem sufficient to "exclude the application of [the] Convention" under article six. A reference to New York law, however, incorporates that part of federal law that a New York court would find applicable, and the Convention is part of that federal law.[11] Language that, prior to the Convention, referred to internal New York law, including the Uniform Commercial Code, takes on a different meaning under the Convention, referring now to the Convention and excluding the greater part of the Uniform Commercial Code.

A party who wants to take advantage of article six to exclude the Convention must revise that language. One possible phrasing is to choose "the law of the State of New York excluding the Convention on Contracts for the International Sale of Goods." Other possibilities include choosing "the internal domestic law of the State of New York" or "the law of New York applicable to parties whose places of business are in the United States."

Choice of law provides the most striking illustration of the point that words in a provision may take on a different meaning under the Convention, but it is not the only example. Consider, for instance, as simple a phrase as "there are no warranties" in a seller's disclaimer. Under the Uniform Commercial Code, such plain language designates as "warranties" a seller's obligations as to quality.[12] Under the Convention, however, there are, strictly speaking, no "warranties" even in the

11. *See* P. SCHLECHTRIEM, UNIFORM SALES LAW 36 (1986).

12. *See* HONNOLD, UNIFORM SALES LAW, *supra* note 7, at 222. The U.C.C. addresses warranties under three headings: (1) express warranties, U.C.C. § 2-313

absence of a disclaimer; the Convention speaks only of "obligations of the seller" as to "conformity of the goods."[13] Arguably, the phrase disclaims nothing under the Convention. The drafter of the seller's form would do well to at least consider replacing the phrase with language such as "there is no obligation of the seller as to conformity of the goods."

III. Language Has Been Tailored

If domestic law on validity continues to control the parties' agreement, how can language tailored to comply with that law invite revision? Such language invites revision because the term "validity" contains shades of meaning.

Consider again the example of the seller's disclaimer. Under the Uniform Commercial Code, a typical disclaimer reads "there are no warranties including the WARRANTY OF MERCHANTABILITY." Drafters use this phrase because the Code requires that "to exclude or modify the implied warranty of merchantability . . . the language must mention merchantability and in case of a writing must be conspicuous."[14] A purported disclaimer of the implied warranty of merchantability lacking the twin requirements of mentioning merchantability and of conspicuousness is ineffective. The Convention contains no such requirements. The question therefore arises whether a seller, whose transaction would otherwise be subject to the Convention, is bound by these Code provisions as constituting provisions on "validity."

At least one commentator argues for defining "validity" so narrowly that these Code requirements would not be requirements for "validity" under the Convention. John Honnold contends that the Convention's reference to "validity" should "not be read so broadly as to import domestic rules that would supplant other articles of the Convention."[15] To impose the Code's requirements for exclusions of warranties, he argues, supplants the provision of article eight, section 2 that contract terms "are to be interpreted according to the understanding that a rea-

(1978); (2) implied warranty of merchantable quality, U.C.C. § 2-314 (1978); and (3) implied warranty of fitness for a particular purpose, U.C.C. § 2-315 (1978). *Id.*

13. C.I.S.G., *supra* note 1, art. 35, *reprinted in* 19 I.L.M. at 679 (1980). The term "obligations of the seller" comes from the title of C.I.S.G., ch. II; "conformity of the goods" comes from the title of § 2 of that chapter which contains art. 35. In drafting the art. 35 treatment of the seller's obligation as to conformity, one objective was to avoid the parochial terms characterizing national legal systems.

14. U.C.C. § 2-316(2) (1978).

15. HONNOLD, UNIFORM SALES LAW, *supra* note 7, at 258-59. One might ask whether, under Honnold's narrow interpretation of validity, a party could disclaim the Code's non-disclaimable obligations of "good faith, diligence, reasonableness and care" since these are not issues of validity, but rather are "understandings" between the parties covered under art. 8(2). *See* U.C.C. § 1-102(3) (1978). Honnold argues that rules such as U.C.C. § 1-102(3), which deny legal effect to provisions even if they are clearly stated and understood by the parties, are clearly within the scope of validity and therefore remain vital under art. 4(a). HONNOLD, UNIFORM SALES LAW, *supra* note 7, at 258-59.

sonable person of the same kind as the other party would have had in the same circumstances."[16]

Another writer challenged Honnold's view on the ground that it treats the Code's requirements as "mere guidelines for interpreting the parties' agreement rather than imperatives for valid disclaimers."[17] The writer argued that the U.C.C.'s disclaimer provisions are requirements for validity because the language is mandatory—that is, a disclaimer clause is invalid if it does not meet the requirements.[18] As long as uncertainty remains, a prudent American seller may well hesitate to rely on a narrow definition of "validity" and revise its language of disclaimer so that it is no longer in compliance with the Code.[19]

The Convention's definition of "validity" will have consequences in other areas as well. Consider, for example, the Code's rule on firm offers, under which language making an offer irrevocable "on a form supplied by the offeree" is not effective unless "separately signed by the offeror."[20] Under a broad definition of "validity," the Code's requirement of separate signing survives even under the Convention; under a narrow definition it might not. As in the case of disclaimers, a prudent response on the part of the drafter may well be to assume the worst and comply with the Code's requirement.

IV. Language Is Not Dispositive

The situations most obviously calling for review by drafters occur when the language is silent, relying on the provisions of the applicable law to supplement it. In what areas is the Convention less satisfactory than, for example, the Code as a source of supplementary rules? Three situations come to mind.

One situation is risk of loss. While the Convention lays down general rules for dealing with risk of loss,[21] it contains nothing comparable to the Code's provisions regarding the effect on risk of such common trade terms as C.I.F.,[22] F.O.B.,[23] and F.A.S.[24] The drafters of the Con-

16. HONNOLD, UNIFORM SALES LAW, *supra* note 7, at 258-59.

17. Note, *Disclaimers of Implied Warranties: The 1980 United Nations Convention on Contracts for the International Sale of Goods*, 53 FORDHAM L. REV. 863, 870 (1985).

18. *Id.*

19. A foreign seller might feel more confident in relying on a narrow definition of "validity" in failing to comply with the Code, even though the transactions might be governed, for instance, by New York law. The wisdom of this, however, is questionable.

20. U.C.C. § 2-205 (1978).

21. *See* C.I.S.G., *supra* note 1, arts. 66-70, *reprinted in* 19 I.L.M. at 686-90.

22. *See* U.C.C. § 2-320 (1978). Under the Code, the term C.I.F. means that "the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination." This creates a shipment contract under which the buyer assumes risk of loss or damage upon shipment of goods if the seller properly performed all its obligations. Delivery to the carrier is delivery to the buyer for purposes of risk and title. The insurance, although purchased by the seller, is included in the purchase price and is for the buyer's benefit, to protect the buyer against the risk of loss or damage in transit. U.C.C. § 2-320 comments 1, 3 (1978).

vention, unlike those of the Code, thought such detail inappropriate for legislation intended to withstand changes in commercial practices. Article 67(1) of the Convention states the basic rule on risk where the contract involves carriage of the goods.[25] If the seller is bound to hand the goods over at a particular place, risk does not pass until the goods are handed over at that place; if the seller is not so bound, then risk passes when the goods are handed over to the first carrier.[26] This wording might suggest that under a "C.I.F. Buyer's City" contract, risk would not pass until the goods are handed over at Buyer's City, contrary to the Code rule and the universal understanding that in C.I.F. contracts transit risks fall on the buyer.[27] The fact that the price paid by the buyer includes the cost of insurance should suffice, however, to show the intention of the parties to put the transit risk on the buyer, a rationale used to reach that result at common law and that seems equally appropriate under article six.[28] The Convention's lack of specific C.I.F. rules comparable to those of the Code nevertheless makes it imperative for contracting parties to provide such rules themselves, whether by incorporation of the International Chamber of Commerce's INCOTERMS[29] or otherwise.

A second matter on which the Convention is less satisfactory than the Code is that of notice by a buyer of defects in the goods. Under the Code, a buyer loses all right to claim damages for goods accepted unless

23. *See* U.C.C. § 2-319(1)(a)-(c) (1978). Under the Code,the term F.O.B. means "free on board." A usual shipment order and confirmation will state that the shipment is to be "F.O.B. seller's place of business" or "F.O.B. buyer's place of business." The former is a shipment contract under which the seller is only obliged to make "an appropriate contract for shipment and to get conforming goods into the possession of the carrier." J. WHITE & R. SUMMERS, UNIFORM COMMERCIAL CODE § 5-2, at 217 (3d ed. 1988). Risk of loss shifts to the buyer upon delivery to the carrier under U.C.C. § 2-509(1)(a) (1978). "F.O.B. [the buyer's place of business]" is a destination contract under which the risk does not pass to the buyer until the goods are tendered to the buyer at the place of destination. *Id.*

24. *See* U.C.C. § 2-319(2) (1978). F.A.S. means "free alongside" and is a delivery term under which the seller assumes the risk of loss or damage of goods until the goods are delivered alongside the named vessel at a named port.

25. C.I.S.G., *supra* note 1, art. 67(1), *reprinted in* 19 I.L.M. at 686.

26. *Id.*

27. *See supra* note 22.

28. This rationale will not, however, serve to put the transit risk on the buyer in the case of a C. & F. contract. A C. & F. contract means that the price includes cost and freight, but not insurance, to the named destination. U.C.C. § 2-320(1) (1978). As with a C.I.F. contract, the Code nevertheless passes title and risk of loss to the buyer on shipment under C. & F. contracts on the ground that the term is often used where "the buyer is in a more advantageous position than the seller to effect insurance on the goods or . . . has in force an 'open' or 'floating' policy covering all shipments." U.C.C. § 2-320(3) (1978); U.C.C. § 2-320 comment 16 (1978).

29. INTERNATIONAL CHAMBER OF COMMERCE, INTERNATIONAL RULES FOR THE INTERPRETATION OF TRADE TERMS, PUB. NO. 350 (1980). INCOTERMS offer a large menu of trade terms that depart from the traditional and somewhat outmoded C.I.F. terms. INCOTERMS take account of the problems posed by containerization, where passage of risk at the ship's rail may be inappropriate, and high technology goods, where it may be desirable to keep the risk on the seller.

the buyer notifies the seller of the breach "within a reasonable time after he discovers or should have discovered any breach."[30] Drafting a comparable provision for the Convention produced a tug of war between developing and developed countries that threatened the success of the Vienna diplomatic conference that put the Convention in final form.[31] Continental European countries often have short statutory periods, such as a year or six months, within which a buyer must give notice.[32] Representatives of developing countries feared that such a short period would disadvantage their importers who might have difficulty determining defects in manufactured goods and might also suffer from unreliable means of communication, obstacles not faced by an importer of raw materials in a developed country.[33]

Article 39(1) thus begins, much as the Code does, by requiring a buyer to "give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it." Article 44 adds an exception, however, insisted on by the developing countries, that allows the buyer to nevertheless claim damages "if [the buyer] has a reasonable excuse for his failure to give the required notice." This exception is itself subject to an exception, inserted at the behest of the developed countries, that excludes from such recovery damages "for loss of profit."[34] In addition, article 39(2), also at the behest of the developed countries, requires the buyer in any event "to give the seller notice" within a period of two years at the latest. In summary, the buyer must notify the seller "within a reasonable time" unless the buyer "has a reasonable excuse," but in that case the buyer cannot recover "for loss of profits," and in any event the buyer must notify the seller within two years.[35] Buyers as well as sellers may well want to replace this unwieldy and vague rule with a requirement that notice be given within a specified period of time.

Changed circumstances is a third matter on which the Convention is less satisfactory than the Code. Under article four, the Convention does not apply if existing circumstances give rise to questions of mistake affecting validity.[36] The Convention's provisions on "exemption" in article 79[37] reflect a compromise between the common law and civil law

30. U.C.C. § 2-607(3)(a) (1978).

31. For a brief description of the deadlock over this issue and ensuing proposals, see Sono, *Art. 44—Failure to Notify*, in Bianca & Bonell, *supra* note 2, at 324-25.

32. *See* HONNOLD, UNIFORM SALES LAW, *supra* note 7, at 281 n.5 (examples of domestic limitations on time for notice of defects include: Sweden, one year; Switzerland, six months; Mexico, five days from receipt for quality and quantity and 30 days from receipt for inherent defects).

33. *See id.* at 278, 281 n.5 for legislative history of debate.

34. C.I.S.G., *supra* note 1, art. 44, *reprinted in* 19 I.L.M. at 681.

35. C.I.S.G., *supra* note 1, arts. 39, 44, *reprinted in* 19 I.L.M. at 680, 681.

36. Under art. four, the Convention does not apply if existing circumstances give rise to questions of mistake that affect validity.

37. C.I.S.G., *supra* note 1, art. 79, *reprinted in* 19 I.L.M. at 689. Under art. 79, a party is not liable for failure to perform if failure is due to an impediment beyond his

doctrines regarding changed circumstances.[38] Barry Nicholas, who represented the United Kingdom in negotiations concerning this article, wrote that the difficulty in defining the circumstances in which "exemption" will occur "lay in producing a formula which would have the same meaning in different legal systems."[39] Although the Convention's solution has the attraction of seeming to incorporate both common law and civil law doctrines, such a compromise can scarcely escape being illusory for jurists from both systems.[40] A prudent drafter of a clause to cover changed circumstances under the Convention should consider making its language self-sufficient—exclusive of the Convention—with respect not only to excusing the seller in cases of impracticability of performance but also to excusing the buyer in cases of frustration of purpose.

As to these three matters, the burden of revising existing forms may not be as great as first appears. Many forms for international sales already incorporate INCOTERMS, require that the buyer notify the seller of defects within a specified period of time, and contain detailed provisions dealing with changed circumstances. Although the drafter must be careful to make sure that the special needs of the Convention are met, thorough rewriting is not likely to be needed. Nor is the drafter likely to see a compelling need to oust the Convention by choosing another law.

Conclusion

Articles six and four of the Convention create a tripartite hierarchy in which the Convention lies at the bottom, the agreement of the parties is in the middle, and the domestic law on validity rests on top. Prudent drafters ought to re-examine language for the international sale of goods, even when such language is dispositive, to protect the special needs of their clients in light of this new tripartite hierarchy. Among the areas drafters should review are choice of law, sellers' disclaimers, risk of loss, buyers' notice of defects, and changed circumstances provisions. Although careful review is necessary, drafters likely will not need to engage in thorough rewriting or oust the Convention entirely by choosing another law.

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control that he could not reasonably be expected to have taken into account, avoided or overcome at the time of the conclusion of the contract. *Id.*

38. *See* Tallon, *Art. 79—Exemptions*, in Bianca & Bonell, *supra* note 2, at 572-75 for a description of common and civil law on exemptions and the Convention's attempt to develop a system of exemptions independent of pre-existing systems. *See generally* Nicholas, *Force Majeur and Frustration*, 27 AM. J. COMP. L. 231 (1979) (discussion of the exemption provisions in the draft Convention on Contracts for the International Sale of Goods, art. 65 (1978)).

39. Nicholas, *supra* note 38, at 232.

40. The autonomy from pre-existing systems that the Convention attempts frustrates interpretation of art. 79 because the Convention rejects use of words and concepts accepted in domestic law. Thus, drafters and courts cannot resort to these laws as a guide to interpretation. Tallon, *Art. 79—Exemptions*, in Bianca & Bonell, *supra* note 2, at 574.