

The Vienna Convention: History and Scope*

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I. History of the Convention

In 1980, sixty-two countries including the United States met in Vienna at a diplomatic conference sponsored by the United Nations to revise and approve a Convention on the International Sale of Goods. It seems likely that in the next year or two, the convention (known as “CISG” or the “Vienna Convention”) will come into effect and it is quite possible that the United States will be a party to it. I am to tell you of the history and scope the convention.

The history of the convention dates from 1930, when the International Institute for the Unification of Private Law in Rome (UNIDROIT) — then under the auspices of the League of Nations — set up a drafting committee of European scholars to work on a uniform law for international sales. By the outbreak of the Second World War, the committee had prepared a first draft, solicited comments from governments, and prepared a revised draft taking account of these comments.

After the war, in 1951, the Dutch government convened a twenty-one-nation conference at the Hague which approved the revised draft and appointed a special commission to do further work. That commission released its revised draft in 1956 and solicited comments from governments. In 1964, the Dutch government convened a diplomatic conference at the Hague, and it approved a Uniform Law on the International Sale of Goods (ULIS) and a shorter companion Uniform Law on the Formation of Contracts for the International Sale of Goods (ULFC).

What was the role of the United States in all this? None, until the very last stage. Late in 1963, just before the diplomatic conference at the Hague, the United States joined UNIDROIT. Quickly it put together a delegation to consider the product of what had up to this time been a group of exclusively European scholars. While the impact of our delegation was not insignificant, our influence was not pervasive enough to produce a final text that justified United States’ ratification. Nevertheless, ULIS did receive enough adoptions by other countries to take effect. These include Belgium, Federal Republic of Germany, Gambia, Israel, Italy, Netherlands, San

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Marino, and the United Kingdom (with a rather extraordinary reservation making the law effective only by agreement of the parties).

Even before ULIS had received enough adoptions to take effect, efforts were already afoot under U.N. auspices to produce a revised version of ULIS that would be more widely acceptable. In 1966, the United Nations General Assembly, on an initiative by Hungary, had established the United Nations Commission on International Trade Law (UNCITRAL). The commission was to "have for its object the promotion of the progressive harmonization and unification of the law of international trade" by such activities as preparation of conventions, model and uniform laws, standard trade terms, and the like. Its original membership of twenty-nine countries has now been expanded to thirty-six (nine African, nine Western European and Others, seven Asian, six Latin American, five Eastern European). The United States has been a member since the beginning (as one of the "Others").

The work of UNCITRAL is reported in a series of yearbooks that have appeared since 1971. We are concerned with the work on international sales, which UNCITRAL put on its priority list at its first session in 1968. At its second session, in 1969, UNCITRAL appointed a fourteen-member working group on sales to consider what changes in ULIS would make it more acceptable to countries of varied legal, social, and economic systems — particularly to countries outside the Western European group that had dominated the drafting of ULIS. The United States was an active member of this working group from its inception.

By 1977, the end of the road was in sight — at its tenth session UNCITRAL revised and approved a text of CISG prepared by the working group on sales. In 1978, at its eleventh session, UNCITRAL integrated into CISG additional provisions on formation and interpretation. And in 1980, the United Nations held in Vienna the diplomatic conference that I have already mentioned to propose a final text of CISG. After five weeks of intensive effort by the sixty-two countries represented, the Vienna Convention was approved. Before the deadline for signature, September 30, 1981, it had been signed by twenty-one countries, which thereby indicated their intention to give serious consideration to its ratification.

The final product of this half-century of work consists of eighty-eight substantive articles (what we in the United States would call "sections") plus thirteen more articles on effective date, reservations, and the like. CISG will take effect upon adoption by ten countries (art. 99(1)). It has already been adopted by six (Argentina, Egypt, France, Hungary, Lesotho, and Syria).

I shall leave to Henry Landau the discussion of United States activity in connection with CISG. As I have already pointed out, that activity did not

begin until the project was thirty-four years old, when we sent a delegation to the 1964 diplomatic conference at the Hague.

II. Scope of the Convention

The scope of the Vienna Convention is limited in three important respects: first, it applies only to international transactions; second, it governs only the commercial sale of goods; and third, it does not apply to specified types of questions.

The first limitation is found in article 1(1), which provides that the "Convention applies to contracts of sale of goods between parties whose places of business are in different states."¹ Furthermore, the countries from which both parties come must have adopted the convention. (I do not speak of art. 1(1) (b) since, if the United States ratifies, it is likely to avail of itself of the reservation in art. 95 and exclude art. 1(1) (b).)

Thus, if the United States ratifies, our courts would apply CISG to a transaction between, for example, a seller in New York and a buyer in Paris, since the parties have their places of business in different countries, both of which have ratified. But, assuming that Canada does not ratify, if the buyer were in Toronto rather than in Paris, our courts would not apply CISG and would have to resort to choice of law rules — resulting in the application of either Canadian law or the Uniform Commercial Code. And if the buyer were in San Francisco rather than in Paris or Toronto, our courts would, of course, apply the Uniform Commercial Code and not CISG.

The limitation to the commercial sale of goods has two parts. First, article 2(a) generally excludes consumer sales — "goods bought for personal, family or household use." Second, article 3(2) excludes transactions, even if commercial, that would not be characterized as "sales" because services are the preponderant part. However, the fact that the seller is to manufacture the goods does not take the transaction out of the scope of CISG unless the buyer is to supply a substantial part of the materials.²

The final limitation consists of the exclusion of certain kinds of questions. These include questions of validity,³ questions of property,⁴ and some questions of product liability.⁵ But CISG is, like the Uniform Commercial Code, applicable to questions involving the formation of contracts of sale as well as the obligations arising from concluded contracts.

Thus if the United States ratifies CISG, it will apply to a transaction between a party in New York and a party in Paris if the transaction is one

¹On what is a place of business, *see* art. 10.

²*See* CISG art. 3(1).

³CISG art. 4(a).

⁴CISG art. 4(b).

⁵CISG art. 5.

for the commercial sale of goods and the question that has arisen is not one of these excluded. It should be added that the parties are free to exclude CISG entirely or generally to vary its provisions. CISG would not apply to our New York-Paris transaction, therefore, if the parties had provided otherwise, as they might do by choosing the domestic law of France or New York.

III. More about the Convention

Before closing, I want to tell you how you can find out more about CISG. To begin with, CISG has already been the subject of a number of articles. The best to start with is one by my fellow panelist Professor Peter Winship, of Southern Methodist University, who played a leading role in getting ABA endorsement for CISG,⁶ and one of my own, which appears as a chapter in a book.⁷ A much more detailed study of CISG can be found in a book by my fellow panelist Professor John Honnold of the University of Pennsylvania, who was a member of our delegation to the 1964 diplomatic conference at the Hague, the chief of the United Nations Secretariat's activities in this field during most of the commission's work on CISG and United States a representative to the diplomatic conference in Vienna in 1980.⁸ There is also a commentary on CISG in German⁹ and a forthcoming commentary in English by an international consortium of specialists in sales, including myself. Furthermore, there is an imposing collection of legislative history. Most important are the official records of the 1980 Vienna diplomatic conference.¹⁰ These contain the very valuable commentary prepared by the Secretariat to accompany the draft presented to the conference. (Unfortunately, there is no commentary accompanying the final text adopted at the conference.) Finally, there are the reports of the work of both the working group and UNCITRAL contained in the yearbooks of UNCITRAL.

⁶Winship, *New Rules for International Sales*, 68 A.B.A. J. 1230 (1982).

⁷Farnsworth, *The Vienna Convention: An International Law for the Sale of Goods*, in SOUTHWESTERN LEGAL FOUNDATION, *PRIVATE INVESTORS ABROAD* (1983).

⁸J. Honnold, *UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 U.N. CONVENTION* (Kluwer 1982).

⁹P. SCHLECHTRIEM, *EINHEITLICHES UN-KAUFRECHT* (Mohr Siebeck, 1981).

¹⁰Official Records, United Nations Conference on Contracts for the International Sale of Goods (United Nations, New York, 1981). *See also* UNCITRAL Commentary, *infra*, at 37 ed.