

Chapter 19: Hong Kong and the CISG: Past and Present

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I. INTRODUCTION

1. A main purpose of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG or Sales Convention), and of uniform commercial law instruments in general, is the simplification of cross-border commerce by creating certainty and predictability for commercial parties.² The adoption of uniform substantive law provisions governing the relationship between buyers and sellers does not always suffice to achieve this goal, because the Sales Convention does not exist in isolation: Occasionally, geo-political developments complicate the application of the CISG's rules, thereby reintroducing uncertainty. A pertinent example is the transfer of sovereignty over a territory from a non-CISG Contracting State to a CISG Contracting State, as happened in the case of Hong Kong.
2. Territorial changes raise difficulties under the Sales Convention because they trigger an interaction between uniform commercial law on the one hand and general treaty law on the other hand. Hong Kong's significant role in international merchandise trade³ has made the resulting questions practically

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2 See Jürgen Basedow, *Uniform Law* (Mohr Siebeck 2024), Part I para 111; Ulrich G Schroeter, 'Has the UN Sales Convention Achieved its Key Purpose(s)?' in Djakhongir Saidov (ed), *Research Handbook on International and Comparative Sale of Goods Law* (Edward Elgar 2019) 59, 73; Lisa Spagnolo, *CISG Exclusion and Legal Efficiency* (Wolters Kluwer 2014) para 3.03; Johan Steyn, 'A Kind of Esperanto?' in PHB Birks (ed), *The Frontiers of Liability*, Volume 2 (OUP 1994) 11, 15.

3 See Ulrich G Schroeter, 'The Status of Hong Kong and Macao under the United Nations Convention on Contracts for the International Sale of Goods' (2004) 16 *Pace International Law Review* 307, 308–9.

important. The present Chapter analyses the CISG’s applicability to Hong Kong-related sales transactions over the past decades and today. In doing so, it provides an overview of the case law on point from various jurisdictions around the world,⁴ which has been far from uniform in assessing Hong Kong’s position under the Sales Convention.

3. The Chapter outlines the gradual development of Hong Kong’s status under the CISG in six parts, following a chronological approach. After Part II has briefly described Hong Kong’s largely uncontroversial position prior to the “handover” on 1 July 1997,⁵ Part III recalls the controversies and resulting uncertainty regarding the Hong Kong Special Administrative Region’s situation under the Sales Convention in the quarter century between 1997 and 2022.⁶ Part IV then analyses the legislative and executive measures taken from 2019 onwards that eventually clarified Hong Kong’s status as a CISG Contracting territory,⁷ before Part V summarises the newly defined role of the Convention in Hong Kong since 1 December 2022.⁸ Part IV briefly concludes.⁹

II. EARLY YEARS AS NON-CONTRACTING TERRITORY (1988–1997)

4. After the Sales Convention was adopted at a Diplomatic Conference in Vienna in 1980, it took almost eight years before it entered into force for the first 11 CISG Contracting States on 1 January 1988.¹⁰ In the following years, Hong Kong’s position under the new Sales Convention was initially uncontroversial: Although the People’s Republic of China was among the first 11 Contracting States, Hong Kong was still a British Crown colony during this period,¹¹ so that China’s approval of the CISG had no immediate legal effect for Hong Kong.¹² In contrast to China, the United Kingdom had not acceded to the Sales Convention, and has refrained from doing so until this very day.¹³ As a result, it was

4 All case citations in this Chapter refer to the database CISG-online <www.cisg-online.org> accessed 4 March 2026.

5 See paras 4–5 below.

6 See paras 6–24.

7 See paras 25–45 below.

8 See paras 53–68 below.

9 See para 69 below.

10 These States were Argentina, the People’s Republic of China, Egypt, France, Hungary, Italy, Lesotho, the Syrian Arab Republic, the US, and Zambia.

11 Peter Malanczuk, ‘Hong Kong’ in *Max Planck Encyclopedia of Public International Law* (OUP 2010) para 2.

12 Schroeter (n 3) 312.

13 On the reasons, see Jan Dalhuisen, *Dalhuisen on Transnational Comparative Commercial, Financial and Trade Law*, Vol 2 (6th edn, Hart 2016) 230–1; Benjamin Hayward, Bruno Zeller and Camilla

undisputed that the CISG did not extend to Hong Kong during the Convention's early years.¹⁴

5. Its non-applicability in terms of formal treaty provisions did not mean that the Sales Convention remained entirely irrelevant for buyers and sellers from Hong Kong prior to 1997. In a number of instances, PRC courts¹⁵ and China International Economic & Trade Arbitration Commission (CIETAC) arbitral tribunals¹⁶ applied the Sales Convention to sales contracts between parties from China and then-British Hong Kong, typically due to an express choice of the CISG in their contract¹⁷ or, more frequently, because the parties had relied on the CISG in their briefs or oral arguments during the proceedings. By contrast, no similar CISG applications by pre-1997 courts or arbitral tribunals in Hong Kong have been reported.¹⁸

III. A QUARTER CENTURY OF UNCERTAINTY (1997–2022)

6. The situation changed, and a period of uncertainty commenced, with the “handover” of Hong Kong in mid-1997.

Baasch Andersen, ‘The CISG and the United Kingdom: Exploring Coherency and Private International Law’ (2018) 67 ICLQ 607.

- 14 Donald J Lewis, ‘The UN Convention for the International Sale of Goods: Implications for Hong Kong and China’ (1988) Law Lectures for Practitioners 243, 248; John Shijian Mo, ‘Transfer of Sovereignty and Application of an International Convention: CISG in China in the Context of One Country, Two Systems’ (2015) 2 Journal of International and Comparative Law 61, 62; Schroeter (n 3) 313; Cullen Threlkeld, ‘Are You In or Out? Hong Kong and the Applicability of the United Nations Convention on Contracts for the International Sale of Goods’ (2021) 49 Georgia Journal of International and Comparative Law 679, 683.
- 15 See Higher People’s Court Guangdong Province (China), 07 March 1994, CISG-online 2766; Intermediate People’s Court Xiamen, Fujian Province (China), 31 December 1992, CISG-online 463; Intermediate People’s Court Xiamen, Fujian Province (China), 20 April 1993, CISG-online 1604.
- 16 CIETAC Arbitral Award, 05 February 1996 – [CISG/1996/07], CISG-online 1122 para 33; CIETAC Arbitral Award, 15 November 1996 – [CISG/1996/52], CISG-online 1148 para 29; CIETAC Arbitral Award, 11 April 1997 – [CISG/1997/05], CISG-online 1150 para 16; CIETAC Arbitral Award, 27 June 1997 – [CISG/1997/18], CISG-online 1069 para 41; CIETAC Arbitral Award, 02 April 1999 – [CISG/1999/18], CISG-online 1282 para 35.
- 17 CIETAC Arbitral Award, 11 April 1997 – [CISG/1997/05], CISG-online 1150 paras 6, 16; CIETAC Arbitral Award, 02 April 1999 – [CISG/1999/18], CISG-online 1282 paras 8, 35. Even clearer CIETAC Arbitral Award, 29 March 1996 – [CISG/1996/15], CISG-online 2279 para 27: parties’ agreement about CISG’s application once arbitration had commenced.
- 18 Schroeter (n 3) 313.

A. The 1997 Handover of Hong Kong and the Moving Treaty Frontier Rule

7. On 30 June 1997, the United Kingdom transferred sovereignty over Hong Kong to the People's Republic of China¹⁹ in a ceremony commonly referred to as “the handover.” The modalities of the handover and of Hong Kong's future after the act had been previously agreed upon in a treaty between China and the United Kingdom of 19 December 1984 entitled the “Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong”.²⁰ This Sino-British Joint Declaration *inter alia* stipulated that the Government of the United Kingdom would restore Hong Kong to the People's Republic of China with effect from 1 July 1997, that the PRC would establish a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty, and that the Hong Kong SAR would enjoy a high degree of autonomy to remain unchanged for 50 years. Since 1 July 1997, Hong Kong has thus been a part of the People's Republic of China under public international law.

8. Under customary treaty law, cases of post-accession changes to a State party's territorial structure are generally governed by the “moving treaty frontier rule” (or “moving boundary principle”) enshrined in art 29 of the 1969 Vienna Convention on the Law of Treaties and in art 15 of the 1978 Vienna Convention on Succession of States in respect of Treaties, according to which a State's existing treaties are automatically extended to a new territory as and when it becomes part of that State.²¹ Article 29 of the 1969 Vienna Convention's reference to each State's “entire territory” is accordingly read as “its entire territory at any given time”.²² Under the moving treaty frontier rule, Hong Kong would therefore have become a CISG Contracting State territory when it became part of the Contracting State China on 1 July 1997. However, this customary treaty law rule is a pre-

19 It is the PRC's position that no transfer of sovereignty took place in 1997 since China merely “resumed” the exercise of sovereignty over Hong Kong; see Roda Mushkat, ‘Hong Kong and Succession of Treaties’ (1997) 46 LCLQ181, 191.

20 Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (adopted 19 December 1984) (1984) 23 ILM 1366 para 33; see Anthony Aust, *Modern Treaty Law and Practice* (CUP 2000) 322–3; Malanczuk (n 11) paras 37–56.

21 *Sanum Investments Ltd v Laos*, Singapore Court of Appeal, 29 September 2016 – [2016] SGCA 57, para 49; James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 411; Malgosia Fitzmaurice, ‘Treaties’ in *Max Planck Encyclopedia of Public International Law* (OUP 2021) para 142; Eckart Klein, ‘Treaties, Effect of Territorial Changes’ in Rudolf Bernhardt (ed), *Encyclopedia of Public International Law*, vol 4 (North-Holland 2000) 941.

22 Kerstin Odendahl, ‘Article 29: Territorial Scope of Treaties’ in Oliver Dörr and Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties; A Commentary* (Springer 2012) para 28.

sumptive rule and can be displaced,²³ albeit only if a different intention appears from the treaty concerned or is otherwise established.

B. The Sales Convention's Position Towards Multi-territorial Contracting States: Article 93 CISG and Underlying General Principles

9. The Sales Convention's text does not contain any provision specifically tailored to address the consequences of the 1997 handover of Hong Kong. This is unsurprising, because the drafters of the CISG did not and could not foresee the developments of 1997 when the Convention was prepared and drafted in the 1970s.
10. However, the Sales Convention does contain a final provision governing the Convention's application in and to Contracting States that have two or more territorial units (multi-territorial States), namely art 93 CISG.²⁴ Although art 93 CISG does not expressly address situations in which a CISG Contracting State only becomes multi-territorial after the Sales Convention has entered into force for that State or in which an additional territorial unit becomes part of an existing Contracting State,²⁵ the provision and the general principles underlying it (art 7(2) CISG) soon turned into a focal point of the discussion about Hong Kong's post-1997 status under the CISG. Could art 93 CISG be construed as displacing the general moving treaty frontier rule?
11. Article 93 CISG reads:
 - (1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and

23 *Sanum Investments Ltd v Laos*, Singapore Court of Appeal, 29 September 2016 – [2016] SGCA 57, paras 49, 112; Schroeter (n 3) 320.

24 Ulrich G. Schroeter, 'Article 93 CISG: Multi-territorial States' in Ingeborg Schwenzer and Ulrich G. Schroeter (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022), para 41.

25 Qiao Liu, 'The CISG and its Extension to a Territorial Unit of a Contracting State: The Case of Hong Kong' (2022) 52 HKLJ 67, 70–1; Schroeter (n 24) para 41.

may amend its declaration by submitting another declaration at any time.

- (2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.
- (3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.
- (4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

12. Article 93(1) CISG presupposes that a multi-territorial State's units have a certain degree of constitutional independence,²⁶ and that the legislative competence for matters governed by the CISG rests with the territorial units (and not with the State's central parliament).²⁷ It was undisputed that the Hong Kong SAR fulfilled and continues to fulfil both of these requirements,²⁸ as its constitutional independence is enshrined in art 31 of the Constitution of the People's

26 Malcolm Evans, 'Article 93' in Cesare Massimo Bianca and Michael Joachim Bonell (eds), *Commentary on the International Sales Law: The 1980 Vienna Sales Convention* (Giuffrè 1987) para 2.1; Franco Ferrari, 'Artikel 93' in Peter Schlechtriem, Ingeborg Schwenzer and Ulrich G Schroeter, *Kommentar zum UN-Kaufrecht (CISG)* (8th edn, CH Beck 2025) para 3; Ulrich G Schroeter, 'Backbone or Backyard of the Convention? The CISG's Final Provisions' in Camilla Baasch Andersen and Ulrich G Schroeter (eds), *Sharing International Commercial Law across National Boundaries: Festschrift for Albert H Kritzer on the Occasion of his Eightieth Birthday* (Wildy, Simmonds & Hill 2008) 425, 433; but see Sarah Howard Jenkins, 'Construing Laws Governing International and US Domestic Contracts for the Sale of Goods: A Comparative Evaluation of the CISG and UCC Rules of Interpretation' (2012) 26 *Temple International and Comparative Law Journal* 181, 206–7.

27 Schroeter (n 24) para 17.

28 *CNA International Inc v Guangdong Kelon Electronical Holdings and others*, US District Court Northern District of Illinois, 3 September 2008 – 05 C 5734, CISG-online 2043, para 8; Eric Ng, 'Whether Application of the CISG Should be Adopted in Hong Kong – A Belt and Road Perspective' in *Celebrating the 40th Anniversary of the CISG: CISG as a Tool for Global Trade – Theory and Practice* (Asian Academy of International Law 2020) 57, 61; Schroeter (n 3) 321–2.

Republic of China and as the SAR has legislative competence over matters of sales and contract law.²⁹

13. However, by expressly addressing only declarations of non-application made on occasion of a State's signature, ratification or accession, art 93(1) CISG logically presupposes that the State's multi-territorial structure is already existing at that time; the provision thus does not directly capture cases of post-accession changes to a Contracting State's territorial structure.³⁰ The consequences to be drawn therefrom are a matter of controversy: While some authors allow declarations by multi-territorial States only at the time prescribed in art 93(1) CISG,³¹ the better view does not read the provision as preventing States from making declarations of non-application with respect to territorial units for whom such a declaration could logically not be made at the moment of accession to the Sales Convention.³² Instead, it is submitted that an "internal gap" insofar exists in the Convention, because art 93 CISG governs the position of multi-territorial States without expressly settling the treatment of post-accession changes to a State's territorial structure. The respective questions must therefore be settled in conformity with the general principles (art 7(2) CISG) underlying art 93 CISG,³³ which in turn displace the moving treaty frontier rule of customary law.³⁴
14. In case of a post-accession change to a Contracting State's territorial structure, the general principles (art 7(2) CISG) reflected in art 93 CISG allow a declaration of non-application to be made after the Contracting State has gained sovereignty over the new territorial unit.³⁵ The precise time of its declaration is left to the reservation State to decide.³⁶ In addition, the general principles underlying art 93 CISG, in particular its overarching goal of securing legal clarity for international contracting parties dealing with counterparties from a multi-territorial

29 Schroeter (n 3) 321–2.

30 Qiao Liu, 'The CISG and its Extension to a Territorial Unit of a Contracting State: The Case of Hong Kong' (2022) 52 HKLJ 67, 70–1; Schroeter (n 24) para 41.

31 Qiao Liu and Jiangyu Wang, 'Applying the CISG to Hong Kong: Legal Analysis and Policy Recommendations' (2021) 9 Chinese Journal of Comparative Law 448, 453.

32 Camilla Baasch Andersen, 'Recent Removals of Reservations under the International Sales Law: Winds of Change heralding a Greater Unity of the CISG' (2012) J Bus L 698, 701; Mo, (2015) 2 JICL 61, 72; Schroeter, Article 93 CISG: Multi-territorial States, para 43.

33 Schroeter (n 3) 323–4; accord Weidi Long, 'The Reach of the CISG in China: Declarations and Applicability to Hong Kong and Macao' in Ingeborg Schwenzer and Lisa Spagnolo, *Towards Uniformity: The 2nd Annual MAA Schlechtriem CISG Conference* (Eleven 2011) 83, 109–10; Mo, (2015) 2 JICL 61, 71; also Ulrich Magnus, 'CISG applicable in Hong Kong and Macao', in: *Mélanges en l'honneur du Professeur Claude Witz* (LexisNexis 2018) 579, 590; application of Article 93 CISG by analogy.

34 Schroeter (n 24) para 43.

35 CNA International Inc v Guangdong Kelon Electronical Holdings and others, US District Court Northern District of Illinois, 3 September 2008 – 05 C 5734, CISG-online 2043, para 10; Schroeter (n 24) para 44. For a different view regarding the general principles underlying Article 93 CISG see Mo (n 14) 71.

36 Schroeter (n 24) para 44.

State,³⁷ require the reservation to be exercised through a notification to the depositary “expressly” stating the territorial units concerned (art 93(2) CISG).³⁸ In this respect, it is undisputed that a diplomatic note deposited by China with the Secretary-General of the UN (who, according to art 89 CISG, is *inter alia* the depositary of the Sales Convention) immediately prior to the 1997 handover³⁹ made no mention at all of the CISG.⁴⁰ Article 93(4) CISG furthermore provides that if a multi-territorial Contracting State has made no declaration in accordance with art 93(1) CISG, the Sales Convention extends to all territorial units of that State.⁴¹ Article 93(4) CISG thereby repeats what already follows from the moving treaty frontier rule.⁴²

C. Dispute about Hong Kong’s Pre-2022 Status Under the CISG

15. Against this background, it became a matter of dispute whether the Sales Convention applied to Hong Kong, or – more precisely – to international sales contracts concluded after 1 July 1997 by parties with their place of business in Hong Kong. The question attracted a significant amount of interest among academic writers⁴³ and was litigated in various States, but never in Hong Kong.
16. Some courts could leave Hong Kong’s then status under the CISG open by either applying the Convention on a basis for which this status did not matter, notably by resorting to art 1(1)(b) CISG where the respective forum’s rules of private international law referred to the law of another CISG Contracting State (typically the home State of the Hong Kong party’s counterparty),⁴⁴ by applying

37 See Schroeter (n 24) para 2.

38 Schroeter (n 24) para 44.

39 Letter of Notification of Treaties Applicable to Hong Kong after 1 July 1997, deposited by the Government of the People’s Republic of China with the Secretary-General of the United Nations on 20 June 1997, 36 ILM 1675; cf Odendahl (n 22) para 32.

40 Liu (n 25) 75; Ng (n 28) 61; Schroeter (n 3) 342; Rajesh Sharma, ‘Law Professor urges China to Extend CISG to Hong Kong’ (2015) Hong Kong Lawyer 14, 15.

41 See Jenkins (n 26) 207; Schroeter (n 3) 324–5.

42 See Schroeter (n 24) para 37.

43 See Markus Buschbaum, ‘Anwendbarkeit des UN-Kaufrechts im Verhältnis zu Hongkong?’ (2004) Praxis des Internationalen Privat- und Verfahrensrechts 546; Long (n 33) 83; Magnus (n 33) 579; Schroeter (n 3); Threlkeld (n 14) 679.

44 See Oberster Gerichtshof (Austria), 17 December 2003, CISG-online 828, para 59: contract concluded in 2001 between a Hong Kong seller and an Austrian buyer – after the case had been remanded, Oberlandesgericht Innsbruck (Austria), 01 February 2005 – 1 R 253/04x, CISG-online 1130, para 69 concluded that the parties had incorporated the buyer’s standard terms into their contract, so that the choice of Austrian law therein and as part of this law the CISG applied; Gerechthof ‘s-Hertogenbosch (Netherlands), 02 August 2022 – 200.298.252/01, CISG-online 5937, paras 6–7: CISG applied to sales contract concluded in January 2020 between Dutch seller and Hong Kong buyer because the contract included a choice-of-law clause in favour of Dutch law.

a domestic law that the parties had chosen,⁴⁵ or because the parties had agreed that for purposes of the pending prejudgment remedy application the court need not decide whether the case would be decided under the CISG or under a domestic law.⁴⁶ Among other courts and in scholarly writings, two opposing schools of thought about Hong Kong's post-1997 status under the Sales Convention developed:

1. Hong Kong as a CISG Non-Contracting Territory

17. One view among authors argued that Hong Kong was not a CISG territory prior to 2022.⁴⁷ Over time, this position developed into the prevailing approach in international case law and came to be adopted by courts in Australia,⁴⁸ France,⁴⁹ Germany,⁵⁰ the Netherlands,⁵¹ Poland,⁵² Switzerland⁵³ and the U.S.,⁵⁴ as well as by arbitral tribunals.⁵⁵

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- 45 Rechtbank Amsterdam (Netherlands), 11 December 2013, CISG-online 4641, para 27: contract concluded in 2011 between a Hong Kong seller and a Dutch buyer – as both parties had referred to Dutch domestic law in their briefs, the court concluded that they had impliedly chosen Dutch law as the law applicable to their contract and had (in case Hong Kong was a Contracting territory) impliedly excluded the CISG's application under Article 6 CISG.
- 46 *Kenwell Trading Ltd Porcelen, Ltd CT LLC*, US District Court for the District of Connecticut, 15 August 2022 – 3:22-CV-00248 (KAD), CISG-online 5943, para 18 footnote 2: various contracts concluded between November 1997 and May 1998 between a Hong Kong seller and a US buyer.
- 47 Buschbaum (n 43) 546; Peter Huber, 'Artikel 93 CISG' in *Münchener Kommentar zum Bürgerlichen Gesetzbuch* vol 4 (8th edn, CH Beck 2019) para 1; Liu and Wang (n 31) 452–3; Mo (n 14) 86; Kurt Siehr, 'Artikel 93' in Heinrich Honsell (ed), *Kommentar zum UN-Kaufrecht* (2nd edn, Springer 2010) para 3; Yongping Xiao and Weidi Long, 'Selected Topics on the Application of the CISG in China' (2008) 20 *Pace International Law Review* 61.
- 48 *Hannaford v Australian Farmlink Pty Ltd*, Federal Court of Australia, 24 October 2008, CISG-online 1782, para 5.
- 49 Cour de cassation (France), 2 April 2008, CISG-online 1651, para 10; Cour d'appel Bordeaux (France), 6 October 2020, CISG-online 5570, paras 27–32; Cour d'appel Paris (France), 3 July 2018 – 16/21302, CISG-online 5622, para 22.
- 50 *Oberlandesgericht Koblenz* (Germany), 10 August 2015 – 12 U 580/11, CISG-online 2911, para 10; *Kammergericht* (Germany), 01 February 2024 – 2 U 130/21, CISG-online 6910 para 42.
- 51 *Gerechthof's-Hertogenbosch* (Netherlands), 02 August 2022 – 200.298.252/01, CISG-online 5937, paras 6–7; *Rechtbank Oost-Brabant* (Netherlands), 04 August 2021 – 355987 HA ZA 21-149, CISG-online 5649, para 40.
- 52 *Sąd Rejonowy w Gdyni* (Poland), 16 February 2018 – VI GC 274/16, CISG-online 6608, paras 31, 32.
- 53 *Bundesgericht/Tribunal fédéral* (Switzerland), 08 December 2023 – 4A_11/2023, CISG-online 6883, para 80.
- 54 *Innotex Precision Ltd v Horei Image Products, Inc* and others, US District Court Northern District of Georgia, 17 December 2009, CISG-online 2044, para 10; *America's Collectible Network, Inc* and others v *Timlly* and others, US District Court Eastern District of Tennessee, 20 October 2010, CISG-online 2484, para 24.
- 55 CIETAC Arbitral Award, 10 August 1999 – [CISG/1999/35], CISG-online 1606 para 19; SCC Final Award, 31 December 2019 – [2019/a], CISG-online 5690, *Yearbook Commercial Arbitration*

18. The reasons given for this understanding varied: While some authors interpreted the 1997 Chinese diplomatic note (which did not mention the CISG⁵⁶) nevertheless as a declaration of non-application in accordance with art 93(1) CISG,⁵⁷ the French Supreme Court viewed the same note as a formality “equivalent” to such a declaration.⁵⁸ Other courts simply followed *ad hoc* information about the status of Hong Kong under the CISG obtained from authorities of the Hong Kong SAR,⁵⁹ of the PR China⁶⁰ or of Poland.⁶¹

2. Hong Kong as CISG Contracting Territory

19. The opposing view shared by the majority of writers⁶² regarded Hong Kong as CISG territory from the 1997 handover onwards, because it had since then formed part of the PRC.⁶³ Pursuant to this view, the clear rule in art 93(4) CISG provides that the Convention generally applies to all territorial units of

(2021) 1; *Jack Rubenstein CT LLC v Naturalena Brands HK Limited and others*, ICC Final Award, 31 July 2024 – 27550/AB/XZG, CISG-online 7157 para 50(f).

56 See para 14 above.

57 Mo (n 14) 72 (applying Article 8(1) CISG), 86.

58 *Cour de cassation* (France), 2 April 2008, CISG-online 1651, para 10; *Cour d'appel Bordeaux* (France), 6 October 2020, CISG-online 5570, para 32.

59 *Innotex Precision Ltd v Horei Image Products, Inc and others*, US District Court Northern District of Georgia, 17 December 2009, CISG-online 2044, para 8; *America's Collectible Network, Inc and others v Timlly and others*, US District Court Eastern District of Tennessee, 20 October 2010, CISG-online 2484, para 24. Contra *CNA international Inc v Guangdong Kelon Electronical Holdings and others*, US District Court Northern District of Illinois, 3 September 2008 – 05 C 5734, CISG-online 2043, para 18.

60 See *Cour de cassation* (France), 2 April 2008, CISG-online 1651, para 8.

61 *Sąd Rejonowy w Gdyni* (Poland), 16 February 2018 – VI GC 274/16, CISG-online 6608, para 32 (reliance on information provided by the Polish Foreign Ministry).

62 Wilhelm-Albrecht Achilles, 'Artikel 91' in *Kommentar zum UN-Kaufrechtsübereinkommen (CISG)* (2nd edn, Carl Heymanns 2019) para 1; Ferrari (n 26) para 4; Clayton P Gillette and Steven Walt, *The UN Convention on Contracts for the International Sale of Goods: Theory and Practice* (2nd edn, CUP 2016) 35–6; Long (n 33) 112; Ulrich Magnus, 'Artikel 93' in *J von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen – Wiener UN-Kaufrecht (CISG)* (Otto Schmidt/de Gruyter 2025) para 8; Ulrich Magnus, 'Borderline Problems of the CISG' in *Eppur si muove: The Age of Uniform Law – Essays in honour of Michael Joachim Bonell to celebrate his 70th birthday* (UNIDROIT 2016) 1771, 1792; Magnus (n 33) 595; Ulrich Magnus, 'Das UN-Kaufrecht – aktuelle Entwicklungen' (2013) ZEuP 111, 118–9; Schroeter (n 3) 324–6; Ulrich G Schroeter, *Internationales UN-Kaufrecht* (7th edn, Mohr Siebeck 2022) para 48; Jianming Shen, 'Cross-Strait Trade and Investment and the Role of Hong Kong' (1998) 16 Wisconsin International Law Journal 661, 668; Threlkeld (n 14) 695–6; Wolfgang Witz, 'Artikel 93' in Wolfgang Witz, Hanns-Christian Salger and Manuel Lorenz, *International Einheitliches Kaufrecht: Kommentar* (2nd edn, Verlag Recht und Wirtschaft 2016) para 2; Fan Yang, 'A uniform sales law for the Mainland China, Hong Kong SAR, Macao SAR and Taiwan: The CISG' (2011) 15 Vindobona Journal of International Commercial Law and Arbitration 345, 350.

63 Schroeter (n 3) 324–6.

multi-territorial States, and China had (prior to 2022) made no declaration to the contrary that conformed to art 93(1), (2) CISG and thereby had triggered an exception.⁶⁴

20. In case law, this approach was expressly considered and then followed by some U.S. courts.⁶⁵ In addition, a significant number of courts from Belgium,⁶⁶ Denmark,⁶⁷ Germany⁶⁸ and the U.S.⁶⁹ simply treated Hong Kong as a CISG territory when dealing with contracts concluded prior to 2022 without discussing this step or providing any particular reasoning for it.

D. Preferable Approach

21. It is submitted that the second approach mentioned above⁷⁰ had it right. Applying the general principles underlying art 93 CISG⁷¹ to the situation of Hong Kong between 1997 and 2022, it is crucial that China had at no point during this period made a declaration to the depositary “expressly” addressing Hong Kong’s situation under the Sales Convention,⁷² as required by art 93(2) CISG and indispensable for legal certainty among private parties to international trade. Given that the 1997 Chinese diplomatic note had been silent about the CISG, it arguably constituted no art 93 CISG declaration at all,⁷³ and in any case,

64 Ferrari (n 26) para 4; Magnus (n 62) para 8; Magnus (n 62) 1792; Schroeter (n 3) 324; Threlkeld (n 14) 680; Witz (n 62) para 2. See also *Cour d’appel Paris* (France), 3 July 2018 – 16/21302, CISG-online 5622, para 22 (« faute pour la déclaration adressée par la Chine aux Nations-Unies en application de l’article 93 de la Convention de viser la région de Hong Kong »), although the court nevertheless concluded that the CISG did not apply to Hong Kong.

65 *CNA Int’l, Inc v Guangdong Kelon Electrical Holdings and others*, US District Court Northern District of Illinois, 3 September 2008 – 05 C 5734, CISG-online 2043, paras 16–17; *Electrocraft Arkansas, Inc v Super Electric Motors Ltd and others*, US District Court Eastern District of Arkansas, 23 December 2009, CISG-online 2045, para 11; *Electrocraft Arkansas, Inc v Super Electric Motors Ltd and others*, US District Court Eastern District of Arkansas, 19 August 2010, CISG-online 2149, paras 18–19.

66 *Rechtbank van Koophandel Turnhout* (Belgium), 18 January 2001, CISG-online 994.

67 *Maritime and Commercial Court* (Denmark), 23 October 2015, CISG-online 4309.

68 *Oberlandesgericht Hamm* (Germany), 12 November 2001, CISG-online 1430, para 18.

69 *New York State Department of Health v Rusi Technology Co Ltd*, Supreme Court of the State of New York, Albany County, 25 January 2022 – 907022-21, CISG-online 5781, para 17: “Both the United States and China have adopted the Convention (...)”; *Texmont Design Ltd v Halston Operating Company LLC and others*, US District Court for the Central District of California, 21 June 2023 – CV 18-10164-CJC (GSJx), CISG-online 6381, para 4.

70 See paras 19–20.

71 See para 14 above.

72 *CNA International, Inc v Guangdong Kelon Electrical Holdings and others*, US District Court Northern District of Illinois, 3 September 2008 – 05 C 5734, CISG-online 2043, para 12; Gillette and Walt, *The UN Convention*, 35; Long, *The Reach of the CISG in China*, 112; Magnus, *Borderline Problems*, 1792; Magnus, *CISG applicable in Hong Kong*, 591. Accord Mo, (2015) 2 JICL 61, 84, who nevertheless claimed that Article 93(4) CISG did not apply to the case of Hong Kong.

73 Yang (n 62) 351.

no “express” statement about the Convention’s applicability to Hong Kong.⁷⁴ Contrary to the French Supreme Court’s position,⁷⁵ any supposedly “equivalent” formality falls short of art 93 CISG’s standards⁷⁶ and is incompatible with art 98 CISG, apart from the difficulty of treating a declaration that is silent on a particular point as “equivalent” to a declaration expressly addressing the point.⁷⁷

22. Maybe most importantly, the CISG’s depositary (art 89 CISG) as the person entrusted with examining whether any instrument, notification or communication relating to the Convention is in due and proper form (art 77(1)(d) of the 1969 Vienna Convention on the Law of Treaties) apparently had never understood the 1997 Chinese diplomatic note as relating to the CISG at all and/or meeting the requirements of art 93(2) CISG, and therefore never listed Hong Kong as object of an art 93 CISG declaration.⁷⁸

E. Legacy of the Dispute

23. Since the Sales Convention has now been formally declared applicable to the Hong Kong SAR with effect from 1 December 2022 (in a process to be further addressed below⁷⁹), the dispute about Hong Kong’s status prior to this point in time has largely become a matter of legal history. However, it continues to be of interest in two contexts: The disputed status of Hong Kong under the CISG retains its direct relevance as far as international sales contracts concluded by a Hong Kong-based party prior to 1 December 2022 are concerned, because the formal extension of the CISG to Hong Kong does not affect this period.⁸⁰ Legacy contracts of this kind are still likely to appear in court proceedings or arbitrations for a few years to come.
24. Indirectly, the dispute about the Hong Kong SAR’s CISG status described above may also inform the ongoing discussion about the status of the neighbouring Macao SAR under the Sales Convention: Given that Macao’s situation is by and large comparable to that of pre-2022 Hong Kong and that yet no formal clarification of Macao’s CISG status has occurred, it is no surprise that the views

74 Gillette and Walt (n 62) 35; Magnus (n 62) 1792; Magnus (n 62) para 8; Lutz-Christian Wolff, ‘Hong Kong’s Conflict of Contract Laws: Quo Vadis?’ (2010) 6(2) *Journal of Private International Law* 465, 480.

75 See para 18 above.

76 Gillette and Walt (n 62) 35–6; Long (n 33) 111; Wolff (n 74) 480.

77 Magnus (n 33) 591: “Mere silence is the opposite of expressly”.

78 Magnus (n 62) para 8; Magnus (n 33) 592. See more generally Ulrich G Schroeter, ‘Article 89 CISG: Depositary’ in Ingeborg Schwenzer and Ulrich G Schroeter (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022) paras 12 ff.

79 See below IV.

80 See paras 36–40 below.

are similarly split between those who regard Macao as a CISG Contracting territory⁸¹ and those who do not.⁸² (In contrast, no case law on point yet exists, reflecting Macao's practically more limited role in the international trade in goods.)

IV. ESTABLISHING CERTAINTY ABOUT HONG KONG'S STATUS UNDER THE CISG

25. In light of the Sales Convention's goal of achieving predictability for commercial parties⁸³ and of Hong Kong's important role in international trade, the diverging views about the CISG's application in and to Hong Kong were a matter of concern. This was particularly so because the issue continued to be litigated and arbitrated in different States around the world, with varying outcomes, which, in turn, threatened the uniformity in the Sales Convention's interpretation and application demanded by art 7(1) CISG. Against this background and irrespective of their position in the abovementioned⁸⁴ dispute, an increasing number of authors suggested that the desirable certainty for commercial actors would best be achieved through an official PRC action clarifying Hong Kong's status under the CISG.⁸⁵
26. Due to the legally unique and complex situation of post-handover Hong Kong, it was not immediately obvious how such a clarification would best be implemented. Certain positions advocated by writers, namely that such clarification should be achieved by amending the list of treaties applicable to Hong Kong in Annex I of the PRC's diplomatic note of 20 June 1997⁸⁶ or that any extension of the CISG by the PRC necessarily had to occur before the Hong Kong government and legislative bodies could proceed with implementation measures,⁸⁷ were not followed. Instead, Hong Kong's executive and legislative bodies acted first,⁸⁸ followed by a formal declaration by the PRC government.⁸⁹

81 Ferrari (n 26) para 4; Gillette and Walt (n 62) 36; Long (n 33) 117–8; Magnus (n 62) 1792; Magnus (n 33) 595; Magnus (n 62) 118–9; Schroeter (n 3) 325; Schroeter (n 62) para 48; Yang (n 62) 350–1.

82 Mo (n 14) 86.

83 See para 1 above.

84 See paras 15–20 above.

85 Navin G Ahuja, 'CISG in Hong Kong – to Apply or not to Apply?' (2018) *Hong Kong Lawyer* 63, 64; Liu and Wang (n 31) 452; Mo (n 14) 84, 86; Sharma (n 40) 15.

86 Liu and Wang (n 31) 454. On this diplomatic note, see para 14 above.

87 *Ibid* 453–4.

88 See paras 27–30 below.

89 See paras 31–35 below.

A. Public Consultation and Legislative Action in Hong Kong

27. In May 2019, the Department of Justice of the Hong Kong SAR announced its intention to conduct a public consultation regarding the explicit extension of the 1980 Sales Convention to Hong Kong.⁹⁰ On 27 May 2019, the Legislative Council's Panel on Administration of Justice and Legal Services discussed the matter and concluded that it generally supported the approach of the proposed application of CISG.⁹¹
28. The public consultation on the proposed application of CISG to the Hong Kong SAR was then conducted between 2 March and 30 September 2020. The consultation was accompanied by a comprehensive Consultation Paper issued by the Department of Justice,⁹² which outlined the prerequisites and effects of the Sales Convention's possible extension to Hong Kong in remarkable quality and detail. In order to prevent confusion in the application of the CISG between Mainland China and Hong Kong, as well as potential confusion in foreign courts in applying the CISG to Hong Kong related disputes, the Consultation Paper recommended that Hong Kong's application of the CISG should also mirror the reservations and declarations that had been issued by China, notably the Chinese art 95 CISG reservation excluding the application of art 1(1)(b) CISG.⁹³
29. The Department of Justice received 16 submissions in response to the consultation, among others from the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong General Chamber of Commerce and the Hong Kong Trade Development Council.⁹⁴ The responses overwhelmingly supported the CISG's application to Hong Kong as outlined in the Consultation Paper, although they disagreed with the suggested "mirroring" of the Chinese art 95 CISG reservation, instead preferring the Convention's application to Hong Kong without such reservation.⁹⁵ In reaction, the Department of Justice indicated that it would follow up on the public responses by consulting the PRC govern-

90 Department of Justice of the Hong Kong SAR, Paper briefing the Legislative Council Panel on Administration of Justice and Legal Services: 'Consultation on the Proposed Application of the United Nations Convention on Contracts for the International Sale of Goods to the Hong Kong Special Administrative Region' (May 2019).

91 Legislative Council of the Hong Kong SAR, Panel on Administration of Justice and Legal Services, Minutes of the meeting on 27 May 2019, LC Paper No CB(4)1224/18-19, at III.

92 Department of Justice of Hong Kong, 'Consultation Paper: Proposed Application of The United Nations Convention on Contracts for the International Sale of Goods to the Hong Kong Special Administrative Region' (2 March 2020) 179.

93 Department of Justice (n 92) nos 4.12-4.15.

94 Department of Justice of Hong Kong, Paper: Proposed Application of the United Nations Convention on Contracts for the International Sale of Goods to the Hong Kong Special Administrative Region (March 2021) CB(4)648/20-21(03), para 6 with Annex 2.

95 Department of Justice (n 94) para 12.

ment on the option of not extending the art 95 CISG reservation to Hong Kong.⁹⁶ Opinions voiced by members of the Hong Kong legal community outside of the consultation similarly stressed the Sales Convention's benefits for Hong Kong,⁹⁷ while viewing an art 95 CISG reservation as disadvantageous.⁹⁸

30. Taking into account the outcome of the public consultation, the Sale of Goods (United Nations Convention) Bill⁹⁹ aimed at implementing the CISG in the Hong Kong SAR was introduced into the Legislative Council on 14 July 2021.¹⁰⁰ As Hong Kong generally retains the dualist approach to giving effect to treaties in domestic law,¹⁰¹ the enactment of a law by the Legislative Council incorporating the CISG into Hong Kong local law was necessary.¹⁰² The wording of the respective draft Bill gave the entire Convention – including its art 1(1)(b) – the force of law in Hong Kong,¹⁰³ indicating that the PRC government had not insisted on extending the Mainland's art 95 CISG reservation to the SAR.¹⁰⁴ The Bill was passed by the Legislative Council on 29 September 2021, enacting the Sale of Goods (United Nations Convention) Ordinance.¹⁰⁵ However, the Bill provided that the Ordinance would only come into operation on a future day to be appointed by the SAR's Secretary for Justice.¹⁰⁶

B. The PRC's Declaration of 4 May 2022

31. In terms of the Sales Convention, and of treaty law in general, the steps taken in Hong Kong that culminated in the Sale of Goods (United Nations Convention) Ordinance¹⁰⁷ were measures of internal law without direct effect upon the CISG's operation, in particular its application in other CISG Contracting States and territories around the world. In order to affect the Convention's operation internationally, the instrument's intended application to Hong Kong needed to

96 Department of Justice (n 94) para 13.

97 Edward Liu, 'CISG and Hong Kong: its implications on Hong Kong Arbitration' (2022) *Hong Kong Lawyer* 42, 43; Liu and Wang (n 31) 450–2; Liu (n 25) 69; Mo (n 14) 81. For a more sceptic view see Anselmo Reyes, 'Potential and Problems in Hong Kong and the Philippines Acceding to the CISG' in Ingeborg Schwenzer and Lisa Spagnolo (eds), *Growing the CISG: 6th Annual MAA Schlechtriem CISG Conference (Eleven 2016)* 77, 89.

98 Liu and Wang (n 31) 455; Liu (n 25) 81.

99 Sale of Goods (United Nations Convention) Bill.

100 See Legislative Council Brief: Sale of Goods (United Nations Convention) Bill, File Ref: IL/ ITF/ 1/ 81.

101 Aust (n 20) 330; Peter Slinn, 'Aspects Juridiques du Retour à la Chine de Hong-Kong' (1996) *Annuaire Français de Droit International* 273, 288–9.

102 Department of Justice (n 92) no 4.4.

103 Clause 4 Sale of Goods (United Nations Convention) Bill.

104 See further paras 59–61 below.

105 Sale of Goods (United Nations Convention) Ordinance, Ord No 30 of 2021.

106 Clause 1(2) Sale of Goods (United Nations Convention) Bill.

107 See para 30 above.

be communicated to the other State parties of the CISG by a formal action of the kind summarised in art 77(1)(e) of the 1969 Vienna Convention on the Law of Treaties as “acts, notifications and communications relating to a treaty”. Under the Sales Convention, such actions are not exchanged directly between Contracting States; instead, they are communicated to and by the depositary of the Sales Convention (art 89 CISG) in its information function.¹⁰⁸

32. It was undisputed that such formal action could not be the accession of Hong Kong to the Sales Convention in its own right, given that art 91(3) CISG limits accessions to the Convention to “States”, which the Hong Kong SAR is not.¹⁰⁹ Although art 97(1) and (2) CISG, which govern the formalities of State declarations made under the Sales Convention,¹¹⁰ at first sight are worded somewhat more flexibly by referring to “[d]eclarations made under this Convention” or “[d]eclarations and confirmations of declarations” without specifying who has made such declarations, the provisions’ context makes clear that declarations under the Convention can only be made by Contracting States, and not by territorial units in the sense of art 93 CISG. Any notification or communication relating to Hong Kong’s status under the CISG, therefore, had to come from the PRC.¹¹¹
33. Against this background, the PRC on 4 May 2022 effected a formal “Declaration in respect of the Hong Kong Special Administrative Region” to the UN Secretary-General in his capacity as the depositary of the Sales Convention (art 89 CISG).¹¹² This declaration read (in translation):

In accordance with the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (‘the PRC’), the Government of the PRC decides that the Convention shall apply to the Hong Kong Special Administrative Region (hereinafter referred to as ‘the HKSAR’) of the PRC and declares that

¹⁰⁸ See Schroeter (n 78) paras 12–16.

¹⁰⁹ Ahuja (n 85) 64; Jenkins (n 26) 207–8; Liu (n 25) 69; Long (n 33) 107; Mo (n 14) 64, 79; Schroeter (n 3) 317–8; Ulrich G Schroeter, ‘Article 91 CISG: Signature, ratification and accession’ in Ingeborg Schwenzer and Ulrich G Schroeter (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022) para 5; Shen (n 62) 668.

¹¹⁰ Ulrich G Schroeter, ‘Article 97 CISG: Formalities, taking effect and withdrawal of declarations’ in Ingeborg Schwenzer and Ulrich G Schroeter (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022) paras 1, 10.

¹¹¹ See *CNA International Inc v Guangdong Kelon Electronical Holdings and others*, US District Court Northern District of Illinois, 3 September 2008 – 05 C 5734, CISG-online 2043, para 18; Mo (n 14) 63, 78.

¹¹² C.N.124.2022.TREATIES-X.10 (Depositary Notification).

the declaration that the PRC is not bound by subparagraph (b) of paragraph (1) of article 1 of the Convention shall not apply to the HKSAR of the PRC.

34. The declaration's wording is brief and to the point. Apart from an introductory reference to the Basic Law, Hong Kong's regional constitution,¹¹³ its single sentence contains two statements of the PRC government: (1) that the Sales Convention "shall apply" to the Hong Kong SAR, and (2) that the PRC's art 95 CISG reservation "shall not apply" to the Hong Kong SAR. The declaration's wording is silent about two other factors to be addressed below: The practically important time of its effects¹¹⁴ and its not immediately clear categorisation in terms of treaty law.¹¹⁵
35. In accordance with its depositary obligation to inform the parties and the States entitled to become parties to a treaty of acts, notifications and communications relating to the treaty (art 77(1)(e) of the 1969 Vienna Convention on the Law of Treaties¹¹⁶), the UN Secretary-General communicated the PRC's Declaration in respect of Hong Kong to all other States in a Depositary Notification dated 5 May 2022.¹¹⁷

C. Temporal Aspects: 1 December 2022 as the Effective Date

36. When stating that the Sales Convention "shall apply" to Hong Kong, the PRC's Declaration of 4 May 2022¹¹⁸ left the statement's temporal effects open: From which date onwards shall the CISG apply to Hong Kong? The answer to this question has to distinguish between the territorial extension's effect upon Hong Kong's status as a CISG Contracting State territory (the treaty law side),¹¹⁹ and its effect for the Sales Convention's application to private sales contracts (the contract law side).¹²⁰

113 See Malanczuk (n 11) paras 60–62.

114 See paras 36–40 below.

115 See paras 41–52 below.

116 On the depositary's information function under the Sales Convention, see Schroeter (n 78) paras 12–16.

117 C.N.124.2022.TREATIES-X.10 (Depositary Notification).

118 See paras 31–35 above.

119 See paras 37–38 below.

120 See paras 39–40 below.

1. Hong Kong's Status as a Contracting State Territory

37. As already indicated, the PRC's Declaration was silent about the date on which the Convention's application to Hong Kong would come into effect. The CISG's depositary similarly did not specify the date in its depositary notification.¹²¹ This may simply have been a reflection of his depositary practice, in which the date of the Convention's entry into force for a newly acceded Contracting State in accordance with art 99(2) CISG is often specified in depositary notifications,¹²² while the date of the taking effect of declaration withdrawals frequently remains unmentioned in such declarations,¹²³ although art 97(4) CISG in its second sentence expressly defines this date. If the PRC's Declaration is considered to be a declaration of withdrawal – a possible,¹²⁴ but not the only conceivable categorisation in terms of treaty law¹²⁵ – it would take effect after the expiry of a six-month grace period in accordance with art 97(4) CISG. Luckily, the outcome is the same if the Declaration of 4 May 2022 is categorised as a declaration not expressly foreseen in the Sales Convention, thereby triggering the application of the time-frame of art 97(3), second sentence CISG:¹²⁶ According to the latter provision, a declaration of which the depositary receives formal notification after the Convention's entry into force for the declaring State – which was the case here, because the CISG has been in force for the PRC since 1 January 1988 – “takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary”. As the Declaration made by the PRC on 4 May 2022 must have been received by the depositary on 4 or 5 May 2022, it took effect on 1 December 2022.¹²⁷ As already stated, the result would be the same under art 97(4), second sentence CISG.
38. According to a notice by the Hong Kong Secretary for Justice published in the Gazette of Hong Kong, the Sale of Goods (United Nations Convention) Ordinance came into operation on 1 December 2022.¹²⁸ Hong Kong law thereby mirrored, and arguably indirectly confirmed, the temporal effect of the PRC's 4 May 2022 declaration under treaty law as described above.

121 C.N.124.2022.TREATIES-X.10 (Depositary Notification).

122 See, for example, the notification of Guyana's accession to the CISG, C.N.634.2014.TREATIES-X.10 (Depositary Notification).

123 See, for example, the notification of Hungary's withdrawal of declarations relating to Articles 12, 90 and 96 made upon ratification, C.N.378.2015.TREATIES-X.10 (Depositary Notification).

124 See para 46 below.

125 See paras 41–52 below.

126 Schroeter (n 110) para 19.

127 Schroeter (n 24) para 52; Schroeter (n 62) para 48.

128 Sale of Goods (United Nations Convention) Ordinance (Commencement) Notice, LN 160 of 2022.

2. CISG's Application to Hong Kong-related Sales Contracts

39. Neither the PRC declaration nor the Sale of Goods (United Nations Convention) Ordinance expressly address the temporal effect that the developments regarding Hong Kong's status under the CISG had and have for private sales contracts. Within the Sales Convention's text, art 100 addresses the temporal applicability of the Convention to sales contracts following the CISG's entry into force in respect of a specific Contracting State. According to this provision, the Sales Convention only applies to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting State(s) referred to in art 1(1)(a) or art 1(1)(b) CISG.¹²⁹ Article 100 CISG accords with the principle of non-retroactivity,¹³⁰ insofar it follows a rule of customary international law¹³¹ also codified in art 28 of the 1969 Vienna Convention on the Law of Treaties.¹³² Article 100 CISG furthermore reflects a general principle underlying the Sales Convention (art 7(2) CISG) suitable for gap-filling in case of temporal applicability issues not expressly settled in the Convention.¹³³ This general principle also applies to the situation of Hong Kong, so that parties with their place of business in Hong Kong are parties with a place of business in a CISG Contracting State (art 1(1) CISG) as far as sales contracts concluded on or after 1 December 2022 are concerned.¹³⁴
40. In the yet limited international case law addressing the temporal effects of the PRC's 4 May 2022 declaration, a German court decision indirectly confirmed the approach advocated here by holding that the CISG was inapplicable to a sales contract concluded in April 2020 between a German buyer and a Hong Kong seller, because the extension of the CISG's application to Hong Kong only took effect on 1 December 2022.¹³⁵ However, other courts and arbitral tribunals

129 Article 100(2) CISG. Article 100(1) CISG contains a similar rule for the Convention's applicability to the formation of a sales contract, insofar referring to the date when the proposal for concluding the contract is made.

130 Cf Harry M Flechtner, *Honnolds Uniform Law for International Sales under the 1980 United Nations Convention* (5th edn, Wolters Kluwer 2021) para 473; Ulrich G Schroeter, 'Article 100 CISG: Temporal applicability to sales contracts' in Ingeborg Schwenzer and Ulrich G Schroeter (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022) para 2.

131 Cf Fritz Enderlein and 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* (Oceana 1992) 389.

132 Frédéric Dopagne, 'Article 28 of the 1969 Vienna Convention: Non-retroactivity of treaties', in Olivier Corten, Pierre Klein, Vaios Koutroulis and Anne Lagerwall (eds), *The Vienna Conventions on the Law of Treaties: A Commentary* (2nd edn, OUP 2026) para 5; Ulrich G. Schroeter, 'The withdrawal of reservations under uniform private law conventions' (2015) 20 *Uniform Law Review* 1, 12.

133 Schroeter (n 130) para 21; Schroeter (n 133) 14–5. Accord Basedow (n 2) pt 4 para 87.

134 Schroeter (n 62) para 48; Schroeter (n 24) para 52.

135 *Kammergericht* (Germany), 01 February 2024 – 2 U 130/21, CISG-online 6910 para 42.

may have taken a different view by instead focussing on 4 May 2022, the date the PRC's declaration was made, when assessing the Sales Convention's temporal applicability: In this respect, the Swiss Supreme Court held that the CISG did not apply to contracts concluded between a Hong Kong seller and a Swiss buyer as far back as 2014 and 2015 "because Hong Kong did not accede to the [CISG] until 4 May 2022, with entry into force on the same day".¹³⁶ (It is not clear what the Supreme Court's remark about the "entry into force" was based on.) And an ICC arbitral tribunal reasoned that the CISG could not properly be applied to a contract concluded in June 2020 between a Hong Kong seller and a U.S. buyer because "Hong Kong (in contrast to the People's Republic of China) did not accede to the CISG until May 4, 2022".¹³⁷

D. Categorisation Under Treaty Law

41. The abovementioned developments since 2019 do not immediately make clear how the PRC's Declaration in respect of the Hong Kong SAR can be categorised in terms of treaty law. This question may be of a largely academic nature, given that Hong Kong's status under the CISG and the Convention's applicability in and to the Hong Kong SAR have been clarified by this step and its implementation into Hong Kong law, irrespective of its treaty law character. If one nevertheless looks into this question, the answer is far from obvious.
42. It is unsurprising that the different positions that can be taken in this regard are decisively influenced by the position adopted in respect of Hong Kong's pre-2022 status under the CISG.¹³⁸ Those who believe that Hong Kong was not a CISG Contracting territory prior to 1 December 2022 must logically view the PRC's Declaration of 4 May 2022 as having a constitutive effect,¹³⁹ while the same Declaration will be of a merely declaratory nature in the eyes of those who argue that Hong Kong has been a CISG territory since 1 July 1997.¹⁴⁰

¹³⁶ *Bundesgericht/Tribunal fédéral* (Switzerland), 08 December 2023 – 4A_11/2023, CISG-online 6883, para 80: "(...) Hong Kong n'ayant adhéré à la Convention des Nations Unies sur les contrats de vente internationale de marchandises, conclue à Vienne le 11 avril 1980 (RS 0.221.211.1), que le 4 mai 2022, avec entrée en vigueur le même jour, soit postérieurement à la conclusion des contrats de vente litigieux."

¹³⁷ See *Jack Rubenstein CT, LLC v Naturalena Brands HK Limited and others*, ICC Final Award, 31 July 2024 – 27550/AB/XZG, CISG-online 7157 para 50(f): "(...) Connecticut law should be applied, on the ground, among others, that Hong Kong (in contrast to the People's Republic of China) did not accede to the CISG until May 4, 2022, nearly two years after the Agreement was executed in June, 2020, so that the CISG could not properly be applied to a contract involving a Hong Kong party."

¹³⁸ See III.C. above.

¹³⁹ See paras 44–50 below.

¹⁴⁰ See paras 51–52.

1. No Accession of the Hong Kong SAR

43. Irrespective of the preferred starting point, one issue should be clear in the present context: As art 91(3) CISG only allows “States” to accede to the Sales Convention and the Hong Kong SAR is not a State,¹⁴¹ Hong Kong cannot have acceded to the CISG in its own right. Some courts and arbitral tribunals have nevertheless spoken of Hong Kong’s “accession” to the CISG when dealing with the 4 May 2022 declaration.¹⁴² One may doubt whether this terminology’s use was at all intended in a technical treaty law sense; if it was, the characterisation thereby conveyed was simply wrong in law.

2. Constitutive Declaration of Territorial Extension?

44. If one favors the view that Hong Kong had not become a CISG Contracting territory by way of the 1 July 1997 handover,¹⁴³ the PRC’s Declaration of 4 May 2022 must be of a constitutive nature, creating the Sales Convention’s applicability to the Hong Kong SAR that had previously be lacking. The Declaration’s wording (“... the Government of the PRC decides that ...”) may militate in favour of this understanding, because it indicates that the PRC government’s decision was intended to change the status quo and not merely confirm it. A different interpretation would have been on point had the Declaration stated that “... the Government of the PRC confirms that ...”, or something similar. In any case, the Declaration’s wording as notified to the CISG’s depositary does not specify how the Sales Convention’s territorial extension, thereby constitutively effected, should be qualified in the categories of treaty law. Various possibilities come to mind:

45. In light of the Declaration’s insofar unspecific wording, it appears safe to assume that it did not aim at amending the list of treaties applicable to Hong Kong after 1 July 1997 in the PRC’s diplomatic note to the UN Secretary-General on the occasion of the 1997 handover,¹⁴⁴ contrary to what had been proposed by some authors.¹⁴⁵ This understanding is also reflected in the UN Secretary-General’s reaction to the Declaration, as he did not take any action in relation to the 1997 diplomatic note.

141 See already para 32 above.

142 See *Bundesgericht/Tribunal fédéral* (Switzerland), 08 December 2023 – 4A_11/2023, CISG-online 6883, para 80: “(...) Hong Kong n’ayant adhéré à la Convention ... que le 4 mai 2022”; *Jack Rubenstein CT, LLC v Naturalena Brands HK Limited and others.*, ICC Final Award, 31 July 2024 – 27550/AB/XZG, CISG-online 7157 para 50(f): “... Hong Kong ... did not accede to the CISG until May 4, 2022”.

143 See paras 17–18 above.

144 For this declaration, see already footnote 38 above.

145 Liu and Wang (n 31) 454.

46. Courts and authors who have opined that art 93 CISG (or the general principles underlying this provision) governed Hong Kong's position under the Sales Convention from 1 July 1997 onwards, and who furthermore believe that the PRC had – in one way or another – made a declaration of non-application in respect of Hong Kong in accordance with art 93(1), (2) CISG, could view the PRC's Declaration of 4 May 2022 as withdrawal of the earlier Chinese declaration in accordance with art 97(4) CISG. As indicated earlier, such a withdrawal would have taken effect on 1 December 2022 according to art 97(4), second sentence CISG.¹⁴⁶
47. Another conceivable characterisation of the PRC's declaration is to regard it as a declaration of amendment in accordance with art 93(1) *in fine* CISG. By specifying that any multi-territorial Contracting State that has made an art 93(1) CISG declaration “may amend its declaration by submitting another declaration at any time”, the provision allows such States to reduce the territorial units to which the Sales Convention does not apply.¹⁴⁷ In past practice under the Sales Convention, Canada made three such declarations of amendment in order to extend the Convention's applicability to its provinces of Quebec and Saskatchewan, to its Territory of the Yukon¹⁴⁸ and to its Territory of Nunavut.¹⁴⁹ In case of the PRC's declaration in respect of Hong Kong, the main difficulty, of course, is that any declaration of amendment presupposes that an art 93(1) CISG declaration had been made in the first place, which was and remains a question of dispute as far as China's past declarations under the Sales Convention are concerned.
48. The latter aspect is reflected in the view of yet other authors, who argue that the PRC was not allowed to make any declaration extending the Convention to Hong Kong under art 93 CISG because it had not made an initial declaration of non-application at the time prescribed under art 93(1) CISG.¹⁵⁰
49. Alternatively, the PRC's Declaration in respect of Hong Kong could also be categorised independent of the general principles underlying art 93 CISG, applying general treaty law rules instead. In favour of such an approach, some authors have argued that the unilateral diplomatic note made by the PRC on 4 May 2022 continued a tested and proven practice established during the 1997 hand-over.¹⁵¹ In general treaty practice, unilateral declarations by States in respect of

146 See para 37 above.

147 Schroeter (n 24) para 29.

148 See C.N.255.1992.TREATIES-3 (Depositary Notification covering Canada's declarations of 9 April 1992 (Quebec and Saskatchewan) and of 29 June 1992 (Territory of the Yukon)).

149 C.N.631.2003.TREATIES-2 (Depositary Notification of Canada's declaration of 18 June 2003 (Territory of Nunavut)).

150 Liu and Wang (n 31) 453.

151 Liu (n 25) 79–80.

territorial treaty application have indeed been viewed as a possible intention about the territorial scope of treaties “otherwise established” in the sense of art 29 of the 1969 Vienna Convention on the Law of Treaties, as least as long as other States do not object to such a declaration.¹⁵² Although no objection to the PRC’s Declaration of 4 May 2022 has been registered, the problem remains that the declaration’s content merely confirms what already follows from the moving treaty frontier rule in art 29 of the 1969 Vienna Convention,¹⁵³ instead of “otherwise” establishing the CISG’s territorial scope in China. Any constitutive effect of the Declaration, therefore, logically presupposes that the moving treaty frontier rule had already been derogated from, and it remains unclear how and when this had happened.

50. Under either of the positions regarding the PRC’s Declaration of 4 May 2022 as being of a constitutive character, the Declaration’s statement that the PRC’s art 95 CISG reservation “shall not apply” to the Hong Kong SAR would also be of a constitutive nature, forming part and parcel of the constitutive extension. Under the Sales Convention, a multi-territorial State in the sense of art 93 CISG is authorised to make a reservation only for some or a single one of its territorial units.¹⁵⁴ In the past, Canada proceeded in this way when it declared an art 95 CISG reservation only with respect to its province of British Columbia, but not for any other of its provinces and territories.¹⁵⁵

3. Mere Declaratory Confirmation of Applicability?

51. By contrast, if one follows the opinion preferred here, namely that the Hong Kong SAR has been a CISG Contracting State territory ever since 1997 when it became a territory of the PRC,¹⁵⁶ the PRC’s Declaration of 4 May 2022 cannot have had any constitutive effect – after all, the Sales Convention was already applicable to Hong Kong when this declaration was made. As a result, the declaration would be merely declaratory in nature, with its wording “the Convention shall apply to the Hong Kong Special Administrative Region” confirming the status quo and removing the uncertainty surrounding it.
52. The view that the PRC’s Contracting State position had been extended to Hong Kong through the territorial change effected by the 1997 handover means that

152 See Odendahl (n 22) para 13.

153 See para 8 above.

154 Schroeter (n 24) para 53.

155 See C.N.88.1991.TREATIES-2 (Depositary Notification of Canada’s accession to the CISG, which included the following declaration: “The Government of Canada also declares, in accordance with Article 95 of the Convention, that, with respect to British Columbia, it will not be bound by Article 1.1 b) of the Convention.”).

156 See paras 19–20 above.

China's art 95 CISG reservation also applied to Hong Kong from 1 July 1997 onwards.¹⁵⁷ The statement in the Declaration of 4 May 2022 that the PRC's art 95 CISG reservation "shall not apply" to the Hong Kong SAR therefore had a constitutive character, because it for the first time excluded the applicability of China's Article 95 CISG reservation to Hong Kong. In terms of the Sales Convention's final provisions, this step could qualify as a partial withdrawal of China's reservation in accordance with art 97(4) CISG; the withdrawal's territorial scope would then be limited to one territorial unit (art 93(1) CISG) of the reservation State, namely the Hong Kong SAR. Although such a combined application of arts 97(4) and 93(1) CISG may be rare, it is admissible under the Sales Convention and has occurred in the past, when Canada withdrew an art 95 CISG reservation only for its province of British Columbia.¹⁵⁸

V. THE CISG IN HONG KONG SINCE 1 DECEMBER 2022

53. As a result of the developments described above, it is clear that the Hong Kong SAR has been a CISG Contracting territory for purposes of the Sales Convention since 1 December 2022. What has this status practically meant for the CISG's application to sales contracts with a Hong Kong connection, and what will it mean in future practice?

A. Applicability of the CISG in Hong Kong or to Hong Kong Parties

54. In assessing the effects of Hong Kong's status as a CISG Contracting State territory, it is helpful to distinguish between the Convention's applicability in Hong Kong on the one hand and the applicability of the CISG to parties from Hong Kong elsewhere in the world on the other hand.

1. Applicability of the CISG in Hong Kong

55. Since 1 December 2022, the Sales Convention has applied in the Hong Kong SAR, which in turn means that courts in Hong Kong have had to apply the Convention to international sales contracts if the prerequisites of arts 1–6 CISG were met. In doing so, Hong Kong courts fulfil the PRC's obligation under public

¹⁵⁷ See Jenkins, (n 26) 207–8; Schroeter (n 3) 328.

¹⁵⁸ See C.N.255.1992.TREATIES-3 (Depositary Notification). A difference to Hong Kong's situation lies in the fact that Canada's Article 95 CISG reservation had from the outset only extended to the province of British Columbia and never to any other Canadian province or territory; see para 50 above.

international law arising from its position as a State party to the Sales Convention.¹⁵⁹

56. As far as arbitrations seated in Hong Kong are concerned, the effect of the Sales Convention's applicability is more nuanced: Arbitral tribunals in such arbitrations can apply the Convention in accordance with art 1 CISG,¹⁶⁰ reflecting the practice shown by arbitral tribunals in many other States or territories around the world.¹⁶¹ However, since arbitral tribunals seated in CISG Contracting States are under no public international law obligation to apply the Convention,¹⁶² additional paths towards a CISG application are open to them.¹⁶³ For example, arbitral tribunals in arbitrations administered by the Hong Kong International Arbitration Centre (HKIAC) can apply the CISG as rules of law which they determine to be appropriate (art 36(1) HKIAC Rules 2024). Various applications of the Sales Convention have occurred in the past based on similar provisions in the ICC Arbitration Rules¹⁶⁴ or the VIAC Rules.¹⁶⁵

2. Applicability of the CISG to Parties from Hong Kong Elsewhere in the World

57. It is the core idea of uniform international commercial law in general, and of the Sales Convention in particular, that a given international dispute will be decid-

159 See generally Ulrich G Schroeter, 'Introduction to Articles 89–101 CISG: General questions regarding the final provisions' in Ingeborg Schwenzer and Ulrich G Schroeter (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022), para 8.

160 Liu (n 97) 45.

161 See in recent years only CRCICA Arbitral Award, 19 February 2023 – 1527/2021 (Final Award), CISG-online 6272 para 179; Shenzhen Court of International Arbitration (SCIA) Arbitral Award, 16 June 2023 – SCIA Case ID No 2023-21, CISG-online 6919; CIETAC Arbitral Award, 02 August 2023 – R20222638 / [2023] CIETAC BJ Award No 2031, CISG-online 7789 para 34; ICC Arbitral Award, 25 March 2025 – 26625/HBH (Final Award), CISG-online 7587 paras 267–8.

162 See Ulrich G Schroeter, 'Mandatory Private Treaty Application? On the Alleged Duty of Arbitrators to Apply International Conventions' in Patricia Shaugnessy and Sherlin Tung (eds), *The Powers and Duties of an Arbitrator: Liber Amicorum Pierre A Karrer* (Kluwer 2017) 295, 304.

163 See Pascal Hachem, 'Introduction to Articles 1–6 CISG: General questions regarding the sphere of application' in Ingeborg Schwenzer and Ulrich G Schroeter (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022) para 4; Schroeter (n 62) paras 11–14.

164 See ICC Arbitral Award, September 1997 – 8962 (Final Award), CISG-online 1300 (CISG application based on Article 13(3) ICC Arbitration Rules 1988); ICC Arbitral Award, 22 May 2014 – 18133/CYK (Final Award), CISG-online 3652 (CISG application based on Article 17(1) ICC Arbitration Rules 1998); ICC Arbitral Award, 2021 – ICC-FA-2024-013 (Final award), CISG-online 7186 (CISG application based on Article 21(1) ICC Arbitration Rules 2017); ICC Arbitral Award, 18 October 2022 – 26240/AZO/SP (Final Award), CISG-online 7656 (CISG application based on Article 21(1) ICC Arbitration Rules 2021).

165 See VIAC Arbitral Award, 30 October 2024 – ARB-5740 (Final Award), CISG-online 7463 (CISG application based on Article 27(2) Vienna Rules 2021).

ed in accordance with the same substantive rules irrespective of where the dispute is litigated or arbitrated. As a consequence, the newly established clarity about Hong Kong's status under the Sales Convention since 1 December 2022 not only affects the CISG's applicability in Hong Kong itself, but also – or even primarily – the Convention's applicability to parties with their place of business in Hong Kong when their disputes are litigated in other Contracting States and territories around the world. Also in the CISG world outside of Hong Kong (and in courts of non-CISG Contracting States, should a CISG dispute be litigated there),¹⁶⁶ judges can now be certain that a buyer or seller from the Hong Kong SAR is a party whose place of business is in a Contracting State for purposes of art 1(1)(a) CISG, and that Hong Kong law is “the law of a Contracting State” for purposes of art 1(1)(b) CISG.¹⁶⁷

58. Judging by past dispute resolution practice involving international sales contracts with Hong Kong parties, this effect has been and will be the more significant impact on the CISG's applicability, because more Hong Kong parties appear to settle their disputes with foreign sales counterparties elsewhere in the world than in the courts of Hong Kong.

B. One Country, Two Sphere of Application Systems: Article 1(1)(b) CISG in Hong Kong

59. The Sales Convention's applicability in Hong Kong courts is marked by one important difference from the Convention's applicability in mainland Chinese courts: As outlined above,¹⁶⁸ the reservation declared by the PRC in accordance with art 95 CISG has not been extended to the Hong Kong SAR. As a result, Hong Kong courts will apply the Convention not only when both the State in which the seller and the State in which the buyer have their place of business are CISG Contracting States (art 1(1)(a) CISG), but also when Hong Kong's rules of private international law¹⁶⁹ lead to the application of the law of a CISG Contracting State (art 1(1)(b) CISG). The Sales Convention's sphere of application is therefore somewhat broader in Hong Kong than in mainland China.

166 See in general Hachem (n 163) para 4; Schroeter (n 62) para 50.

167 Article 1(1)(b) CISG, of course, is not applicable in courts of those Contracting States that have made a reservation in accordance with Article 95 CISG. Currently an Article 95 CISG reservation is in effect for Armenia, the PRC, Laos, Singapore, the Slovak Republic, St Vincent and the Grenadines, and the US.

168 See paras 29–30, 34 above.

169 It is undisputed that the “rules of private international law” referred to in Article 1(1)(b) CISG are the conflict of laws rules of the forum; see MG Bridge, *The International Sale of Goods* (4th edn, OUP 2017) para 10.12.

60. The policy decision against the use of an art 95 CISG reservation in Hong Kong has much to recommend it. In the categories of Hong Kong's Basic Law,¹⁷⁰ it may be viewed as an application of the 'one country, two systems' principle to an admittedly rather technical question of international uniform sales law. At the same time, it reflects the current state of the global policy discussion about art 95 CISG, in which this reservation's use is today viewed much more critical than in the early years after the CISG's adoption.¹⁷¹ In line with this development, an ever-increasing number of voices have urged the PRC to withdraw its art 95 CISG reservation,¹⁷² as allowed under art 97(4) CISG.¹⁷³
61. In addition, the availability of art 1(1)(b) CISG in Hong Kong courts can make the practical determination of the Sales Convention's applicability both easier and more commercially effective. This is due to art 1(1)(b) CISG providing more flexibility to courts than exists in art 95 CISG reservation States, where the reservation's effect has been understood as only allowing an application of the CISG if all parties to the contract have their place of business in Contracting States.¹⁷⁴ As the Sales Convention does not expressly define the term "place of business",¹⁷⁵ its localisation in a particular case can be challenging in practice. Certain constellations that have caused difficulties in this regard could also arise in Hong Kong: The involvement of companies incorporated in offshore jurisdictions (like Jersey, Bermuda, the British Virgin Islands or the Seychelles) but effectively run from offices in other locations around the world sometimes leads to disputes about the relevant place of business, and courts in various jurisdictions have had to deal with CISG cases involving BVI-incorporated companies with offices in Hong Kong.¹⁷⁶ In art 95 CISG reservation States, where

170 See Article 5 of the Hong Kong Basic Law.

171 See Bridge (n 169) para 10.56; Ulrich G Schroeter, 'Article 95 CISG: Reservation regarding Article 1(1)(b)' in Ingeborg Schwenzer and Ulrich G Schroeter (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022) paras 12–4.

172 Andersen (n 32) 709–10; Long (n 33) 89–92; Xiao and Long (n 47) 67–8; Pan Zhen, 'China's Withdrawal of Article 96 of the CISG: A Roadmap for the United States and China to Reconsider Withdrawing the Article 95 Reservation' (2016) 25 *University of Miami Business Law Review* 141, 162: 'imperative'.

173 See in general Schroeter (n 133).

174 *Impuls ID Internacional, SL and others v Psion Teklogix Inc*, US District Court for the Southern District of Florida, 22 November 2002 – 01-7541-CIV-Zloch, CISG-online 783 para 15; *Prime Start Ltd v Maher Forest Products Ltd*, US District Court for the Western District of Washington, 17 July 2006 – C05-1195C, CISG-online 1242 para 9.

175 Pascal Hachem, 'Article 1 CISG: Sphere of application' in Ingeborg Schwenzer and Ulrich G Schroeter (eds), *Commentary on the UN Convention on the International Sale of Goods (CISG)* (5th edn, OUP 2022) para 24.

176 See *CNA International, Inc v Guangdong Kelon Electronical Holdings and others.*, US District Court for the Northern District of Illinois, 17 June 2008 – 05 C 5734, CISG-online 4842 paras 7, 12–15: company incorporated in the British Virgin Islands, with its principal place of business in Hong Kong, wholly owned by a Mainland Chinese company – relevant place of business under Article

art 1(1)(a) CISG is the only path to the Convention's applicability, the relevant place of business then needs to be determined.¹⁷⁷ By contrast, a supplementary recourse to art 1(1)(b) CISG would allow the court to leave the question open if, for example, the contract had the "closest connection"¹⁷⁸ to a CISG Contracting State under the forum's conflict of laws rules, thus leading to the Convention's applicability irrespective of a party's disputed place of business. Article 1(1)(b) CISG may be similarly helpful in cases in which it is unclear whether a Hong Kong entity has acted as party to a CISG contract in its own right or merely as agent of a principal located in a non-CISG Contracting State (like India or the United Kingdom).

C. Domestic, Inter-regional Contracts Between Hong Kong and Mainland China Parties

62. In practice, many Hong Kong-based parties conduct a significant part of their trade in goods with counterparties from Mainland China. Sales contracts of this kind are not directly governed by the Sales Convention because they lack the necessary internationality, which art 1(1) CISG's opening phrase describes in the words "This Convention applies to contracts of sale of goods between parties whose places of business are in different States (...)".¹⁷⁹ The trade between parties from Hong Kong and Mainland China is not conducted by way of international sales contracts in the sense of art 1(1) CISG, but rather through domestic, inter-regional sales contracts.
63. In light of the close economic ties between Mainland China and Hong Kong,¹⁸⁰ and with the goal to facilitate the sale of goods between businesses in

10 CISG held to be in Hong Kong; *Cour d'appel Paris* (France), 3 July 2018 – 16/21302, CISG-online 5622, paras 5, 11–22: company incorporated in the British Virgin Islands, with a registered office in Hong Kong and offices and factories in Shenzhen (Mainland China) – relevant place of business under Article 10 CISG held to be in Hong Kong; *Kammergericht* (Germany), 01 February 2024 – 2 U 130/21, CISG-online 6910 paras 31–33, 41–42: company incorporated in the British Virgin Islands, with its day-to-day management conducted from an office in Hong Kong – relevant factual seat and place of business held to be in Hong Kong.

177 See *Prime Start Ltd v Maher Forest Products Ltd* US District Court for the Western District of Washington, 17 July 2006 – C05-1195C, CISG-online 1242 para 7; *CNA Int'l International, Inc v Guangdong Kelon Electronical Holdings and others*, US District Court Northern District of Illinois, 3 September 2008 – 05 C 5734, CISG-online 2043, para 3.

178 See *Oberlandesgericht Koblenz* (Germany), 27 September 1991 – 2 U 1899/89, CISG-online 30 paras 10–1; *Oberlandesgericht Düsseldorf* (Germany), 10 February 1994 – 6 U 32/93, CISG-online 116 paras 12, 14.

179 *China Science and Technology Information Import and Export Corp v Kmart Far East Ltd*, People's Court Shanghai Huangpu District (China), 30 August 2000 – BPC/05, CISG-online 2107; Liu (n 97) 45; Liu (n 25) 83; Schroeter (n 3) 329.

180 Liu and Wang (n 31) 451; Liu (n 25) 82.

the two places,¹⁸¹ an application of the Sales Convention's rules also to Hong Kong-Mainland China transactions would be advantageous.¹⁸² The Hong Kong Department of Justice's 2020 Consultation Paper¹⁸³ had therefore proposed that the to-be-created Ordinance implementing the CISG into Hong Kong law would, "on a unilateral basis", contain a provision which would in effect, apply the CISG's rules also to sales contracts between parties with their places of business in Mainland China and Hong Kong.¹⁸⁴ The responses to the consultation agreed with the goal, but suggested a different way of implementation: Instead of broadening the Convention's sphere of application by way of a unilateral provision in Hong Kong law, preference was expressed for the use of a bilateral arrangement between the Mainland and Hong Kong for mutual application of the CISG provisions to these transactions.¹⁸⁵ An example of such an arrangement in a related field of law is the Arrangement Concerning Mutual Enforcement of Arbitral Awards of 1999,¹⁸⁶ which, in essence, extends the rules of the 1958 New York Arbitration Convention to the relationship between Mainland China and Hong Kong. The Sale of Goods (United Nations Convention) Ordinance, as adopted in 2021, therefore contained no provision unilaterally extending the CISG's application to Hong Kong-Mainland China transactions. It is unclear whether any steps towards a CISG-related arrangement between Mainland China and Hong Kong have yet been initiated;¹⁸⁷ be that as it may, no formal proposal for such an instrument has been published to date.

64. In any case, there is nothing in the Sales Convention to prevent the parties to a Hong Kong-Mainland China sales contract from choosing the CISG as the governing law for such a contract.¹⁸⁸ In such a case, the CISG's provisions are not applied because the applicability requirements of arts 1–5 CISG are fulfilled; instead, the Convention's provisions apply due to the parties' choice in accordance with the applicable rules of private international law. These rules of private international law therefore also determine whether an isolated choice

181 Department of Justice (n 92) no 4.11.

182 Liu and Wang (n 31) 451–2.

183 See para 28.

184 The wording of the proposed provision read: "Despite Hong Kong being a territorial unit of China, the provisions of the Convention as it has effect under this Ordinance apply between the Mainland and Hong Kong as if the Mainland and Hong Kong were 2 different states and 2 different Contracting States." Department of Justice, Consultation Paper (n 92) 177.

185 See Department of Justice (n 94) paras 15(b), (c), 16. In this sense also Liu and Wang (n 31) 455–6; Liu (n 97) 45; Liu (n 25) 84.

186 Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region of 21 June 1999, supplemented and clarified by the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region of 27 November 2020.

187 Department of Justice (n 94) para 16(b) had indicated the DOJ's intention to initiate a discussion with the PRC government about negotiating such a mutual arrangement.

188 Advising in favor of such a choice Lewis, (1988) Law Lectures for Practitioners 243, 251.

of the CISG is admissible or whether only the law of a State can be chosen, so that the Convention can only be selected as part of the domestic law of a CISG Contracting State. Prior to 2022, various arbitral awards applied the CISG to Hong Kong-Mainland China sales contracts based on the parties' express or implied choice-of-law agreements,¹⁸⁹ and there is no reason why such party agreements should not be similarly respected today.

D. The CISG in Hong Kong's Post-2022 Dispute Resolution Practice

65. Finally, a brief look at the development of the CISG-related dispute resolution practice in Hong Kong since 1 December 2022 may be of interest.

1. In Hong Kong Courts

66. At the time when this Chapter was written, more than three years had passed since 1 December 2022,¹⁹⁰ yet not a single Hong Kong court decision actually applying the CISG had been published. The only post-2022 decision from Hong Kong mentioning the Sales Convention is the Court of First Instance's decision in *AMP Resources Limited v Indagro SA* of 6 February 2026,¹⁹¹ which deals with an injunction to restrain a Swiss company from preventing a winding-up petition against a Hong Kong company. The contractual dispute underlying the winding-up petition arose from a sales contract concluded in 2023 between the Swiss company as buyer and the Hong Kong company as seller. A CIETAC arbitral tribunal seated in Beijing, resolving the dispute, had applied the CISG.¹⁹² The Hong Kong Court of First Instance briefly refers to the arbitral tribunal's application of the CISG,¹⁹³ without addressing it in detail or applying the Sales Convention itself.
67. Putting the continuing lack of Hong Kong court decisions on the Convention into perspective, it is important to note that courts in other jurisdictions have

189 See CIETAC Arbitral Award, 10 August 1999 – [CISG/1999/35], CISG-online 1606 paras 17–19; CIETAC Arbitral Award, 11 February 2000 – [CISG/2000/02], CISG-online 1529 para 9; CIETAC Arbitral Award, 29 September 2000 – [CISG/2000/15], CISG-online 1592 para 45; CIETAC Arbitral Award, 25 May 2005 – [CISG/2004/09], CISG-online 1685 para 17; CIETAC Arbitral Award, 09 January 2008 – [CISG/2008/02], CISG-online 2056 paras 4, 67.

190 On the relevance of this date, see already paras 36–40 above.

191 *AMP Resources Limited v Indagro SA*, Hong Kong Court of First Instance, 06 February 2026 – [2026] HKCFI 784 / HCMP 1487/2025, CISG-online 7795.

192 CIETAC Arbitral Award, 22 July 2025, CISG-online 7685 (the award's full text has not been published).

193 *AMP Resources Limited v Indagro SA* (n 190) para 33.

yet to publish a decision dealing with a CISG contract concluded after 1 December 2022 involving a Hong Kong party. The current dearth of completed court cases addressing Hong Kong's post-2022 CISG status is therefore a global phenomenon. Its reason is likely to be the time it takes for court cases to be completed, possibly combined with a delay in the publication of court decisions (publication lag) that is common in many jurisdictions.¹⁹⁴ It therefore remains to be seen when the first court decision on point will eventually be published, and whether it will be a decision rendered in Hong Kong or in another forum.

2. In Hong Kong-seated Arbitrations

68. By contrast, anecdotal evidence indicates that the CISG has been applied in arbitrations seated in Hong Kong since 1 December 2022, including to sales contracts concluded after that date. This accords with the prediction that the Sales Convention's introduction in Hong Kong would be particularly advantageous for Hong Kong-seated arbitrations.¹⁹⁵ However, the confidential nature of arbitrations and the resulting lack of published information about arbitral proceedings mean that little is known about this branch of CISG-related dispute resolution practice. Insofar, the situation in Hong Kong is no different from that in other jurisdictions.¹⁹⁶

VI. CONCLUSION

69. The Sales Convention's journey to Hong Kong has been a long and sometimes stormy voyage. The unique nature of Hong Kong's 1997 transfer from a non-CISG Contracting State to a CISG Contracting State raised complex questions both under general treaty law and under the Sales Convention, as did the welcome clarification of the SAR's status under the CISG brought by the PRC's 2022 declaration. Since 1 December 2022, the CISG has been safely docked in the port of Hong Kong, providing certainty where uncertainty existed before. May it operate as a reliable set of commercial law rules benefitting traders based in Hong Kong and in the rest of the world alike.

194 See Ulrich G Schroeter, 'Empirical Evidence on Courts' and Counsels' Approach to the CISG (with some Remarks on Professional Liability)' in Larry A. DiMatteo (ed), *International Sales Law: A Global Challenge* (CUP 2014) 649, 651–2.

195 Liu (n 97) 45; Ng (n 28) 65.

196 See on the use of arbitration in settling CISG disputes André Janssen and Matthias Spilker, 'The Application of the CISG in the World of International Commercial Arbitration' (2013) 77 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 131–157; Loukas Mistelis, 'CISG and Arbitration' in André Janssen and Olaf Meyer (eds), *CISG Methodology* (Sellier 2009) 375–395; Nils Schmidt-Ahrendts, 'CISG and Arbitration' (2011) 59 *Belgrade Law Rev* 211–223.