INTERNATIONAL SALE OF GOODS
APPLICATION AND IMPLICATION

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Global Uniform Sales Law – With a European Twist? CISG Interaction with EU Law

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The article investigates the interaction between the United Nations Convention on the International Sale of Goods of 11 April 1980 (CISG) and European Community law. It outlines the historical involvement of the European Community in the efforts to create a global uniform sales law (first through the Hague Sales Laws, then through the CISG), before elaborating on the way in which the CISG has influenced various law making efforts of the EU (the EC Consumer Sales Directive, the EC Late Payments Directive, other EC Directives, the ongoing plans to create a European ‘Optional Instrument’, and the revised rule on the jurisdiction of the courts at the place of performance under Article 5 No. 1 of the Brussels I Regulation). The final part of the paper concentrates on the influence the CISG has and could have on the interpretation of European Community law, and makes the case against the European Court of Justice’s power of interpretation over the CISG.

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1. Introduction

According to its Preamble, the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) aims at the ‘removal of legal barriers in international trade’ through ‘the adoption of uniform rules which govern contracts for the international sale of goods’. In somewhat similar terms, the Treaty establishing the European Community calls for ‘the progressive abolition of restrictions on international trade’ and ‘the approximation of the laws of Member States to the extent required for the functioning of the common market’,¹ thus providing for essentially the same goals, albeit on a regional scale.²

This parallel forms part of a more general phenomenon that we have seen in recent years, namely the fact that regional organization of States – in diplomatic terms, they are nowadays referred to as ‘regional economic integration organisations’³ – have commenced to work on the harmonisation or unification of their contract laws. The maybe most prominent example is the European Union, but similar developments are under way in the OHADA in Western Africa,⁴ in the Mercado Comun del Sur (Mercosur)⁵ in South America, and possibly in the future within the North American Free Trade Area (NAFTA).⁶ Since the law of international sales contract has already been unified globally through the CISG, this has lead to a coexistence between global and regional laws. Which raises the general question: What does this phenomenon mean in practical terms, and why is it important?

For the purposes of the present discussion, it may be helpful to think of the sales laws of the world as dishes on the menu of a global restaurant, from which the customers – the buyers and sellers of the world – may choose. Some of the dishes taste good to buyers and sellers, others only to one of the two, some dishes taste exotic or surprising,⁷ and yet others may even be considered inedible by some of the world’s customers. Many of the dishes listed, quite simply, will not be known to the merchants of most countries,⁸ and there may not be a waiter available who can explain their taste and consistence.

But there is one dish on the menu that almost everybody knows. It hails from the city we are meeting in today, which has given it its name: the Viennese schnitzel. It is a traditional dish that has been carefully developed over decades
by excellent chefs, it has a sophisticated taste, and it is available in most parts of the world. I might call it a ‘global dish’. In terms of sales laws, this is the Vienna Sales Convention, or the CISG.

Other dishes are regional in nature, and have not quite achieved a similar acceptance throughout the world. In the case of EU laws, which are largely drafted and adopted in Brussels, one may compare them to Brussels sprouts.

If you imagine for a moment to be served a Viennese schnitzel with Brussels sprouts on top, you can almost taste that the coexistence of the CISG with EU law is not necessarily without problems. Indeed, the ‘fusion’ between global and regional laws raises many interesting aspects. I will concentrate on two of them, namely the interaction of the CISG and European private law at the law-making level (in Part 3 of this article) and the role of the European Court of Justice in connection with the CISG’s interpretation (Part 4). Before turning to these matters, I will briefly touch upon the history and Status quo of the Convention within the European Union (Part 2).

2. The CISG in the European Union – History and Status Quo

2.1 History

The role of the European Union within the context of the global sales law unification goes back to the predecessor of the CISG, the Hague Sales Laws (ULIS and ULF) of 1964.9 While the negotiation of the Hague Sales Laws was at that stage handled by the Member States of the then European Economic Community (EEC), the EEC sent its own observers to the 1964 Diplomatic Conference in the Hague. After the Conference, the then six EEC Member States agreed between themselves on the adoption of ULIS and ULF, in order to thereby establish a uniform sales law within the EEC.10 This common approach was subsequently extended to the three States which joined the EEC in 1973 and inter alia led to the United Kingdom adopting the Hague Sales Laws (which, as not many practitioners know, are still in force in the UK today). As Professor Ziegel explains: ‘The UK’s adherence was inspired by its joining the Common Market and was apparently regarded by the British government of the day as a gesture of goodwill towards its new economic and political partners.11
The coordinated (Western) European approach towards the Hague Sales Laws eventually was no success, since it did not prevent the EEC Member States from an (uncoordinated) declaration of various reservations under ULIS and ULF, which greatly diminished the intra-European uniformity of this early global sales law. At the same time (and somewhat paradoxical), the existing coordination may have enhanced the impression in other parts of the world that the Hague Sales Laws were 'too European'.

During the drafting of the CISG within UNCITRAL and at the 1980 Diplomatic Conference in Vienna, the EC coordination was therefore deliberately conducted in a less visible manner. Already at the Conference's closing ceremony, however, it became obvious that the interest in using global sales law for the purposes of European integration continued to exist, as can be seen from the following statement by the head of the German delegation: 'The Federal Republic of Germany had not yet signed the present Convention because its Government wished to study it together with other countries, especially with a view to its signature in common by all Common Market countries. Such an approach was in his view desirable.'

2.2 Status Quo

Since then, the Convention has indeed managed to become 'the most relevant' international instrument harmonising substantive rules of contract law within the EU: Among the current 27 Member States of the EU, no less than 23 have ratified the CISG. This means that the vast majority of national courts in the EU apply the Convention to most international sales law cases that end up on their docket. As a matter of fact, most of the current CISG Contracting States within the EU – 13 out of 23 – acceded to the CISG even before they became part of the EU. For these States, global uniform sales law therefore has a longer tradition than regional harmonization within the EU.

3. The CISG and the European Harmonisation of Private Law

Most academic discussions about the coexistence of global and regional law focus on their interaction at the law-making level. The CISG and the European harmonisation of private law is therefore the first of the two areas we are going to look at.
3.1 The CISG – Inspiring European Law Makers

I will start with the ways in which the CISG has inspired European law makers. The question thus is: Has the 'global' Viennese schnitzel influenced the cooks in Brussels' kitchen in their work?

3.1.1 The CISG as a Model for EU Law

In the past, the CISG has sometimes been used by the EU law makers as a model when drafting European rules of contract law, thus serving as a vehicle for the advancement of uniform domestic law within the European Union. The European Parliament, in its 2001 Resolution on the approximation of the civil and commercial law of the Member States, explicitly referred to the Convention as 'a basis for a future common body of law'.


The most important example for the Convention's influence on lawmaking in the EU is certainly the Consumer Sales Directive that was adopted in 1999: Its rules were – at least the drafting stage – clearly based on the CISG, and one author has even described the Directive as a 'copy of the CISG on the consumer level'.

Such an inspiration of regional law by global law is generally, I believe, a good thing, since it approximates both bodies of law and thereby makes it significantly easier for merchants, legal counsel and the courts to navigate through the system of uniform laws.

It must, however, be noted that the text of the Consumer Sales Directive, as eventually adopted, differs in a number of important aspects from the CISG. Speaking in terms of Article 35 of the CISG, the Directive delivered does therefore 'not possess the qualities of goods which have been held out as a model' (Article 35(2)(c) CISG), although the differences may not always be immediately obvious. Just like in case of the Viennese schnitzel, which is only 'the real thing' when made of veal, you may sometimes also come across versions which are made of pork, but look almost the same. In case of our 'legal' dishes, this may well have practical effects on the interpretation level, which I will address later.
3.1.1.2 Other EC Directives

Apart from the Consumer Sales Directive, there are a number of other EC Directives and European legal acts which, at least according to the opinion of some authors, may also have been influenced by the CISG. Support for this claim, though certainly arguable, seems to be difficult to find within the legislative history of these legal acts, and the Convention's model effect – if any – can only have influenced their respective wordings to a much lesser extent.

In spite of this caveat, it has on one hand been argued (by a European Commission official) that the EC Directive on Late Payments (2000) was inspired by the CISG. Other authors, however, took the opposite view and have accused the European Commission (who was responsible for drafting the proposal for the Directive on Late Payments) of 'blindness towards the [EU] Member States' international Conventions', since at least the first draft for the Directive was, in a number of ways, incompatible with provisions of the CISG. As I have demonstrated in detail elsewhere, the Directive on Late Payments' text as finally adopted still conflicts with the Convention, thus making it necessary to decide if Convention or Directive should eventually prevail.

One author has furthermore argued that also the EC Package Travel Directive (1990) and the EC Credit Transfer Directive (1997) were influenced by the CISG, although such an inspiration does not seem immediately apparent. One last example of a European legal rule that was – clearly – modelled on the CISG is Article 18 of the Rome Convention on the Law Applicable to Contractual Obligations of 19 June 1980 (which has recently been replaced by a EC Regulation). According to Giuliano and Lagarde's official report on the Rome Convention, this provision was based on the wording of Article 7(1) CISG.

3.1.2 The CISG as a Reason for Reforming EU Law: The Brussels Regime on Jurisdiction

Occasionally, the CISG has also inspired the European law makers in the opposite way, namely in being the reason for reforming EU law so as to reduce the Sales Convention's impact.
3.1.2.1 Article 5 No. 1 of the Brussels Convention: Turning the CISG into a European 'Exporter's Darling'

This way notably the case with respect to the so-called 1968 'Brussels' Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which governed the question of which court within the EU has the jurisdiction over disputes arising out of *inter alia* international sales contracts, and which applied from 1973 until 2002. Article 5 No. 1 of the Brussels Convention provided that '[a] person domiciled in a Contracting State may, in another Contracting State, be sued [...] in matters relating to a contract, in the courts for the place of performance of the obligation in question'. In the famous *Tessili* case, one of the first cases it decided under the Brussels Convention, the European Court of Justice held that the place of performance must to be determined by resorting to the substantive law which applies to the contract.\(^{40}\)

Whenever this law was the CISG, this meant that the place of performance of both the seller's obligation to deliver conforming goods and the buyer's obligation to pay the price was at the seller's place of business, under Article 31 or 57 CISG respectively.\(^{41}\)

Article 5 No. 1 of the Brussels Convention accordingly allowed the seller to always litigate at home whenever he had concluded a CISG contract. Not surprisingly, this (somewhat accidental) tactical advantage, which the interaction between the Brussels Convention and the Vienna Convention gave the seller, reputedly turned the CISG into something of an 'exporter's darling',\(^{42}\) and might have been the reason why European courts were comparatively quick in generating a large number of CISG judgments in the Sales Convention's early years.

There lies a certain irony in this interaction between European procedural law and global uniform sales law, which becomes apparent when looking at the reasoning that the European Court of Justice gave in *Tessili*:

> 'Having regard to the differences obtaining between national laws of contract and to the absence at this stage of legal development of any unification in the substantive law applicable, it does not appear possible to give any more substantial guide to the interpretation of the reference made by Article 5(1) to the "place of performance" of contractual obligations.'\(^{43}\)
Tessili, which involved an Italian-German contract for the sale of goods, was decided by the European Court of Justice in 1976, but the sales contract that initially gave rise to the dispute had already been concluded in April 1971. At that point in time not even the ULIS had entered into force in Germany (where the buyer had brought his action), so the Court of Justice's statement about the absence of any unification in the substantive law applicable was accurate, at least when focusing on the particular case concerned. Once, however, the unification of the substantive law of sale had moved forward – first through the increasing implementation of the ULF and the ULIS within the European Communities, and later through the adoption and ratification of the CISG – it turned out that the global uniform sales law contained rules on the place of performance which, when applied in connection with Article 5 No. 1 of the Brussels Convention, led to results that were undesirable from a procedural point of view. Jamais parfait!

3.1.2.2 Article 5 No. 1 of the New Brussels I Regulation: Problem Solved?

The procedural effects that Articles 31 and 57 CISG caused under the Brussels Convention attracted a lot of criticism. The impact of these critical voices was enhanced by the fact that, practically speaking, Article 5 No. 1 had become the most important basis for special jurisdiction under the Brussels Convention. In an attempt to stop the Brussels regime from 'borrowing' the place of performance from the Vienna Sales Convention, the European Commission therefore suggested a revised version of Article 5, which was adopted as part of the Brussels I Regulation that entered into force in 2002, replacing the Brussels Convention.

The Commission claims that the new Article 5 is using 'a pragmatic determination of the place of performance'. It does so by providing in its relevant parts that 'for the purpose of this provision [...] the place of performance of the obligation in question shall be [...] in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered'. Has the EU law on jurisdiction thereby been adapted so that it does not rely on the CISG anymore? This is difficult to say: At least the Italian Supreme Court is of the opinion that, also under the revised Article 5 of the Brussels I Regulation, the place of performance still has to
be determined in accordance with the CISG, notably its Article 31 (a). Some authors have adopted the same position. Since the summer of 2008, a reference for a preliminary ruling has been pending in the European Court of Justice - we will have to see what comes of it.

For the moment, one is tempted to conclude that the waiters in the Brussels restaurant did notice that Viennese schnitzel may cause unfortunate effects when served on the wrong type of tableware, but in reaction have merely replaced the paper plates previously used by plates made from a different kind of article.

3.2 Contrary Examples: Ignoring the Elephant in the Room?

3.2.1 A European 'Optional Instrument' and the CISG

European law making is, however, not always in harmony with the CISG. I will leave aside examples from past EC Directives which include provisions that are in contradiction to provisions of the Vienna Sales Convention – the EC Late Payments Directive has already been mentioned – and will concentrate on the ongoing plans of the EU to create a so-called 'optional instrument'. With this somewhat strange term, Brussels refers to a legal instrument that will lay down uniform European rules on various areas of contract law, among others the law of sales. It will be 'optional', since the parties will be able to 'opt in' or 'opt out' of it. These plans obviously have a significant importance for the CISG, since they could practically result in a European counterpart to the global Sales Convention.

3.2.2 How to Avoid Overlaps between an Optional Instrument and the CISG

This raises the question of how overlaps between a European optional instrument and the CISG can be avoided. Two approaches spring to mind: First, one might doubt if there is at all a need for sales law provisions in the optional instrument. After all, the CISG already provides balanced and well-tested rules for sales contracts, and the Convention is also of an 'optional' nature, because of its Article 6. It comes with the additional advantage of offering identical rules for international contracts within the EU and with parties in third countries. One
might therefore convincingly make the case for leaving the law of sales out of the optional instrument, and instead using the global CISG in order to fill this gap in regional law.\textsuperscript{56}

In addition, the EU could (and should) use its legislative powers and - either by way of an EC Regulation (Article 249(2) EC Treaty) or an EC Decision (Article 249(4) EC Treaty)\textsuperscript{57} – compel the four remaining EU States which have not yet ratified the CISG\textsuperscript{58} to do so as soon as possible.\textsuperscript{59} Such a step could furthermore be supplemented by obliging those CISG Contracting States within the EU which currently have declared reservations under the Convention\textsuperscript{60} to withdraw them.\textsuperscript{61}

This preferable solution may, however, not happen for a variety of reasons,\textsuperscript{62} and the current drafts for an optional instrument indeed all contain rules on the international commercial sale of goods, which differ from the CISG's rules in a significant number of respects.\textsuperscript{63} The second (and probably more realistic) approach would therefore be the inclusion of an explicit clause (a so-called Relationsnorm)\textsuperscript{64} in the optional instrument, which would state that the CISG shall prevail in case of conflicts between the two instruments.\textsuperscript{65}

\textbf{3.2.3 Resolving Conflicts between European Law and the CISG: Vienna Trumps Brussels}

However, since explicit clauses of the kind mentioned are not contained in every EU legal act that differs from the CISG, conflicts between EU law and the CISG are always possible. If such a conflict arises, courts in EU States find themselves in a rather difficult position: On one hand, they are legally bound to apply the EC Directive or Regulation because this is an obligation flowing from the European treaties, and on the other hand they are legally bound to apply the CISG, since the CISG is a treaty binding the respective State under public international law.

Much has been written on the question how this conflict is to be resolved.\textsuperscript{66} The prevailing opinion correctly assumes that Article 94 CISG (rather than Article 90 CISG)\textsuperscript{67} is the relevant starting point.\textsuperscript{68} Neither EC Directives nor EC Regulations qualify as ‘international agreements’ in the sense of Article 90 CISG, but rather result in the EU Member States having ‘the same or closely related legal rules’ on
matters governed therein, as addressed in Article 94 CISG. This Relationsnorm allows for those regionally harmonised legal rules to prevail over the CISG, but requires that a formal declaration to this end is made to the Secretary-General of the United Nations (in his function as depositary of the Convention, Article 89 CISG). Such declaration has not yet been made (nor, it is submitted, should it be made in the future).

Without going into further details here, this essentially means that 'at the current stage of legal development' (if I may use a typical EU phrase), the Vienna Sales Convention trumps EU secondary law. Suffice it to say that this assessment does not mean that we should sit back and refrain from preventing conflicts to happen in the first place – the contrary is true, since each restaurant chef should make sure in the first place that the ingredients used in his kitchen go well together. If this is not possible, a well written menu should at least make clear to the customer which of the dishes on offer are not to be combined.

### 3.3 European Supplements to the CISG

Apart from the points already discussed, much can be said in favour of a EU harmonisation of those matters which are not addressed in the CISG, and which are therefore currently governed by domestic law. Here, questions like the assignment of claims or set-off immediately spring to mind. European rules insofar supplementing the CISG would be a significant improvement over the current state of affairs, since their content would be much easier to ascertain as that of 27 diverging domestic contract laws. This advantage would work in favour of both parties located within the EU and in other countries of the world. When framing it in terms of my previous food picture, the EU would thereby compose new side dishes to our Viennese schnitzel, which would go better with it than the current calamari or sauerkraut found on domestic menus.

### 4 Interpretation of a Global Sales Law in A Regional Union of States

We now turn to the interpretation of the CISG. Staying within my usual picture, the preparation of our global dish may involve all kinds of difficulties: The cook may overcook the food, he may use strange spices, or he may prepare the meal differently every time. I will, again, focus on two selected aspects.
4.1 The Dangers of a 'Regional' Interpretation of the CISG

When thinking about a possible 'regional' interpretation of the CISG, we must start by asking ourselves: Why could such a 'regional' interpretation emerge? There are a variety of reasons: First, the geographical and cultural proximity between countries in the same region might lead courts to primarily take into account the decisions rendered by other courts in the same region, when they interpret the Convention. Second, if the regional law uses identical or similar terms as the CISG, courts might look to the regional law for guidance when interpreting the Convention. And third, the courts may even intentionally interpret the CISG 'in conformity' with regional law, in order to avoid possible conflicts between global and regional law. Against this background, I therefore believe that it is well possible that 'regional' interpretations of our global sales law could develop in the future. In European courts, this could result in the CISG being applied 'with a European twist'.

This Raises the Question: Would 'regional' interpretations be a good thing, or not? There are different views in this matter: Some authors - including Professor Flechtner, whom I generally agree on many questions – welcome regionalized interpretations, and regard them as a probably indispensable step on the way to a uniform interpretation. In this respect, I have to disagree with Professor Flechtner: In my opinion, Article 7(1) of the CISG calls for global uniformity in the Convention's interpretation, and regional interpretations should be avoided, since they constitute an even greater danger than a reading of the CISG through the lenses of domestic law, which Article 7(1) undisputedly wants to prevent. I fear, in particular, that regional interpretations would soon become entrenched and almost impossible to change, even more so than interpretations that are 'merely' influenced by domestic law. This danger seems to be particular strong when a regional interpretation has developed because the CISG is being interpreted 'in conformity' with the regional law. The result would be that buyers and sellers who come from other regions of the world are often surprised by the CISG's interpretation when they have to litigate in courts of a different region.

Consider a chef in the United States, whose daily work mainly consists of preparing a famous regional dish, the Hamburger. When unexpectedly receiving
an order for a Viennese schnitzel from a foreign customer, he may think: ‘Well, my Hamburger recipe is not per se applicable here. However, a colleague has recently told me that it may ‘inform’ me where the ingredients of the relevant other dish ‘track’ those of the Hamburger.’ That seems to be the case here: Both Hamburger and Viennese schnitzel have bread substance on the outside, and both have meat on the inside. Thus, my regional Hamburger recipe is ‘a useful guide’ in addressing the question of how to prepare the schnitzel.’

That is the reason why Viennese schnitzels ordered in some US district restaurants sometimes seem to taste somewhat surprising to the palate of the connoisseur. I believe that is therefore necessary to ignore the regional recipes and look beyond the advice that your regional colleagues can give you. Article 7(1) of the Viennese schnitzel cook book rather requires the chef to take into account information from beyond his region’s borders, in order to be able to prepare the dish properly.

4.2 The European Court of Justice and the CISG

I come to my last point: The European Court of Justice in Luxembourg, and the role it could play with respect to the CISG. After briefly touching upon the influence that the CISG already has (and will arguably continue to have) upon the interpretation of European regulations and directives, I will turn to another much debated issue, namely the possibility of charging the European Court of Justice with the interpretation of the CISG.

4.2.1 The CISG’s Influence upon the Interpretation of EU Law

Since the CISG has occasionally been used as a model for EU private law acts, it is not entirely surprising that scholars have soon called for the Convention to be used as a guideline in interpreting EU law. This approach, which deserves to be supported, means that provisions in such EU Directives should, if in doubt, be construed in accordance with similar provisions in the CISG – European law should thus be read in light of the global sales law.

The academic proposition just described did apparently not fall on deaf ears in Luxembourg: In a few recent proceedings that dealt with the interpretation of EU law, the CISG was indeed mentioned, albeit only in passing. An Advocate
General at the European Court of Justice, for example, referred to Article 46(2) CISG when interpreting Article 3(2) of the EC Consumer Sales Directive, and to Article 78 CISG in support of a Member State’s obligation to pay interest to the Commission. Article 78 CISG was also cited by the European Court of First Instance in a ruling on yet another claim for payment of interest, this time against the Commission. The European Court of Justice proper has, on the contrary, never referred to the CISG in his judgments.

4.2.2 The Case against a Power of the European Court of Justice to Interpret the CISG

As far as the uniform interpretation of the Sales Convention itself is concerned, one of the most common criticisms that as been voiced is the lack of a competent international court that could guarantee the uniformity of interpretation. One author has even called it a ‘birth defect’ of the CISG. Against this background, it has often been suggested that the European Court of Justice, which is charged with interpreting EU law via so-called preliminary rulings (Article 234 EC Treaty), could do the same with respect to the CISG. (In fact, the same suggestion was already made under the ULIS).

The legal prerequisites for such a role are not currently fulfilled, but they could indeed be established under the existing EC Treaty, should the EU States so desire. A possible path towards creating an interpretative power of the European Court of Justice over the CISG would be the adoption of a so-called ‘Interpretation Protocol’, an instrument under public international law. Such an approach has been declared to be in conformity with EC primary law by the European Court of Justice itself, and Interpretation Protocols have in the past successfully been used in connection with the Brussels Convention, the Lugano Convention and the Rome Convention.

The interesting question therefore is: Is an international court really indispensable in order to achieve a uniform interpretation of uniform law? I personally do not believe it is, and I find myself in good company: Already Ernst Rabel, writing 80 years ago in 1929, dismissed the urgent calls for an international court as ‘exaggerated’. Furthermore, there is even a danger involved, should the European Court of Justice be charged with interpreting the CISG: First, it is clear that only courts in EU States could refer questions to the
European Court, since no other State would accept binding interpretations by a court in which it is not represented by a judge. Secondly, this would result in the risk that the European Court would develop a specific European interpretation of the CISG, taking guidance only (or primarily) from European sources. And thirdly, it has to be pointed out that the European Court’s past interpretations of private law acts are widely considered to be far from stellar. This is not surprising, since its judges are not selected because of their experience in private law matters, but because of their expertise in State law, in constitutional law and in government practice. The European Court of Justice is, after all, primarily the EU’s constitutional court. Appointing it as the decisive body for interpreting the CISG would be similar to hiring a group of famous sushi chefs in order to have a Viennese schnitzel prepared - and that would be, at the very least, risky.

The preferable alternative therefore lies (1) in a cooperation by the commercial courts and arbitrators throughout the CISG world, (2) in contributions by commentators and academics which assist the practitioners in developing a common understanding of the Convention, and – of course – (3) in international projects like the CISG Advisory Council. When looking at these joint efforts, I am confident that the CISG’s recipe is in good hands.

Endnotes


3 See e.g., the wording of Article 29 of the Hague Convention on Choice of Court Agreements concluded on 30 June 2005.


7 Cf. Honnold, J.O., Uniform Law for International Sales under the 1980 United Nations Convention, 3rd ed., 1999, Kluwer, The Hague, para. 30, who refers to the ‘outdated legal formulae that still complicate domestic sales law. One may delight in legal antiques and in the patina of ingenious circumlocutions that have had to substitute for fundamental reform but these aesthetic values may not be appreciated by a modern merchant and, more especially, by his trading partner from a different legal tradition.’

8 Honnold, J.O., Uniform Law for International Sales, para. 45 points to the ‘uncertainty that was inherent in the likelihood that the applicable domestic law would be unknown (and often inscrutable) to at least one of the parties’.

9 See Schroeter, U., UN-Kaufrecht und Europäisches Gemeinschaftsrecht, § 2 para. 2 et seq.


13 See Schroeter, U., UN-Kaufrecht und Europäisches Gemeinschaftsrecht, § 2 para. 13 et seq.


16 Austria, Bulgaria, the Czech Republic, Estonia, Finland, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic, Slovenia and Sweden.


24 Note that in Austria, the official Codex Alimentarius Austriacus (Österreichisches Lebensmittelbuch – Austrian Food Code) issued in accordance with § 76 of the Austrian Lebensmittelsicherheits – und Verbraucherschutzgesetz explicitly provides that a dish may only be referred to as ‘Wiener Schnitzel’ if made of veal.
25 See 4. infra.

26 Cf. Schroeter, U., UN-Kaufrecht und Europäisches Gemeinschaftsrecht, § 16 paras. 45-46.


31 Schroeter, U., UN-Kaufrecht und Europäisches Gemeinschaftsrecht, § 6 paras. 337-399, § 15 paras. 121-166.


33 See 3.2 infra.


44 The ULIS, implemented in the Federal Republic of Germany through the Einheitliches Gesetz über den internationalen Kauf beweglicher Sachen of 17 July 1973, had entered into force for Germany on 16 April 1974 and applied to contracts concluded on or after that date.


46 That this was indeed the primary motive for the revision, is being correctly pointed out by Kohler, C., 'Revision des Brüsseler und des Luganer Übereinkommens über die gerichtliche Zuständigkeit und die Vollstreckung gerichtlicher Entscheidungen in Zivil und Handelsachen – Generalia und Gerichtsstandsproblematik', in Gottwald, P. (ed.), Revision des EuGVÜ – Neues Schiedsverfahrensrecht, (2000, Gieseck), p 1, at 12, 16: 'eigentliches Revisionsmotiv'.
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52 See 3.1.1.2 supra with references.


57 Schroeter, U., UN-Kaufrecht und Europäisches Gemeinschaftsrecht, § 19 para. 57.

58 Ireland, Malta, Portugal and the United Kingdom.


60 Reservations in accordance with Articles 92 and 94 CISG have been declared by Denmark, Finland and Sweden, reservations in accordance with Article 95 CISG by the Czech and the Slovak Republics, and reservations in accordance with Article 96 CISG by Hungary, Latvia, and Lithuania.

61 Cf. Schroeter, U., UN-Kaufrecht und Europäisches Gemeinschaftsrecht, § 19 paras. 73-81.


64 On this legal term, see Schroeter, U., UN-Kaufrecht und Europäisches Gemeinschaftsrecht, § 7 para. 27.

65 Ibid., § 18 paras. 69-70.

66 See with further references ibid., §§ 5-15.

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69 See the authors cited in the previous fn. and Schroeter, U., UN-Kaufrecht und Europäisches Gemeinschaftsrecht, § 9 para. 45 with further references.


74 It is interesting to note that this point has only been addressed by very few authors. See, however, Bonell, M.J., 'Article 7' in Bianca, C.M. and Bonell, M.J. (eds.), Commentary, note 2.2.2: '... the Convention's ultimate aim [... ] is to achieve world-wide uniformity in the law of international sale contracts' (emphasis added).


See 3.1.1 supra.


Advocate General V. Trstenjak, Opinion of 11 June 2008 in Case C-275/07 – Commission v. Italy, para. 90.

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89 See Schroeter, U., UN-Kaufrecht und Europäisches Gemeinschaftsrecht, § 21 paras. 24 et seq.

91 Cf. European Court of Justice, Opinion 1/91 of 14 December 1991 – Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area, at para. 4: ‘...it is true that there is no provision of the EEC Treaty which prevents an international agreement from conferring on the Court of Justice jurisdiction to interpret the provisions of such an agreement for the purposes of its application in non-member countries

92 See Schroeter, U., UN-Kaufrecht und Europäisches Gemeinschaftsrecht, § 21 paras. 53 et seq.


