HARMONISATION AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

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1. INTRODUCTION

After many years of negotiation, the United Nations Convention on Contracts for the International Sale of Goods ("CISG") came into force in 1988. Today, 62 states have adopted the CISG. Together these countries account for over two-thirds of all world trade.[2] On this basis alone, the CISG is an outstanding success in the legal harmonisation of the law governing the international sale of goods. However, the CISG has its critics and much comment has been made on the failure of the CISG to achieve its goal of promoting international trade through a body of uniform rules.

The primary motivation driving the push for a harmonised law on the international sale of goods is economic: a harmonised law makes it easier and more efficient for the business person to sell and buy goods across state borders. However, the engine driving the push for harmonisation is political and cultural; and the task of creating the harmonised law belongs to the diplomat.[3] A study of the CISG demonstrates that the political and cultural demands on the diplomat also act as shackles that restrain the achievement of a harmonised law.

This paper will consider the CISG and discuss the constraints on treaty making as a mechanism for legal harmonisation. Part one discusses the constraints faced when creating a uniform text. Part two discusses the problems with the text of the CISG that result from the negotiation process. Finally, part three discusses the constraints faced in maintaining the uniformity of the CISG.

2. THE DIPLOMATS

2.1 The CISG and the Promotion of International Trade

The preamble of the CISG reads like a petition. In adopting the CISG, States are attesting their commitment to the purpose of the CISG as set out in the preamble. The preamble states:

> 'THE STATES PARTIES TO THIS CONVENTION,
>
> BEARING IN MIND the broad objectives in the resolution adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,
>
> CONSIDERING that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,
>
> BEING OF THE OPINION that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic

[2] <http://www.cisg.law.pace.edu/cisg/cisgintro.html> The Pace University website dedicated to the CISG includes a map of the globe that details the countries of the world that have adopted the CISG. The wide acceptance of the CISG is immediately evident. Sixty-one countries have adopted the CISG as of 1 May 2002.

[3] Arthur Rosett, 'Unification, Harmonization, Restatement, Codification, and Reform in International Commercial Law', (1992) 40 *The American Journal of Comparative Law* 683, 684.

and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

HAVE DECREED as follows:'[4]

What follows is a treaty comprising 101 articles that deal with the scope of the CISG,[5] rules governing the formation of contracts for the international sale of goods,[6] the rights and obligations of the buyer and seller arising from the contract[7] and details of when the CISG comes into force and the reservations and declarations permitted.[8]

2.2 The long and winding road

The CISG in its final form however has a long history that is a testament to the constraints on treaty making as mechanism for legal harmonisation. A brief examination of the history of the CISG demonstrates two important points: first, treaty making is a both a labor and time intensive process and, second, the process is unlikely to succeed unless it is inclusive of states.

The twentieth century trend towards the unification of laws in multinational treaties that govern transnational commerce has its origin in the Middle Ages and the development of the *lex mercatoria*.[9] However, the modern day CISG has its origins in international attempts to create a uniform law for the international sale of goods which commenced in the 1930s.

The Governing Council of the International Institute for the Unification of Private Law (UNIDROIT) developed the first draft of a uniform law on the sale of goods in 1935. After the interruption of the World War II and several further drafts, two conventions were approved in 1964 at a conference at The Hague. These conventions were the Uniform Law on the International Sale of Goods ("ULIS") and the Uniform Law on the Formation of Contracts for the International Sale of Goods ("ULF").[10]

Only 28 states participated in the 1964 Hague conference that approved the ULIS and ULF and only nine countries gave force to these treaties. The failure of these treaties to win wider acceptance is in part attributed to the dominant influence of the civil law traditions of Western Europe[11] and to the neglect of both Socialist and Third World countries. The Socialist and Third World countries refused to enact the ULIS and ULF because they considered that these conventions were modelled on the demands of the industrialised states.[12] Accordingly, the

[4] Preamble to the CISG.
[5] See Part I, Articles 1 - 13 of the CISG.
[6] See Part II, Articles 14 – 24 of the CISG.
[7] See Part III, Articles 25 – 88 of the CISG.
[8] See Part IV, Articles 89 – 101 of the CISG. For a brief overview of the structure and scope of the CISG, see John Felemegas, 'The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation' <http://www.cisg.law.pace.edu/cisg/biblio/felemegas.html>.
[9] Franco Ferrari, 'Uniform Interpretation of the 1980 Uniform Sales Law' (1994) 24 *The Georgia Journal of International and Comparative Law* 183, 184. Also published at <http://cisgw3.law.pace.edu/cisg/biblio/franco.html>. A comparison of the CISG and the *lex mercatoria* from the perspective of harmonising international law is also interesting as they represent different approaches to harmonisation. The CISG being harmonisation by multi-national treaty developed by nation states and administered by the courts (and arbitrators) whereas the *lex mercatoria* was based on mercantile customs, was administered by merchants and had an informal procedure.
[10] Ibid, 189.
[11] Philip Hackney, 'Is the United Nations Convention on the International Sale of Goods Achieving Uniformity?' (2001) 61 *Louisiana Law Review* 473.
[12] Ferrari, above n 8, 190.

lesson learned from the failure of the Hague conventions to gain wide acceptance was that the successful harmonisation of laws governing the international sale of goods requires broad based participation in the drafting process.

In 1966, following the failure of the Hague conventions the United Nations established the United Nations Commission on International Trade Law (UNCITRAL) and gave it the task of promoting the harmonisation of international trade law. After 10 years of negotiation and drafting, UNCITRAL produced the 1978 UNCITRAL Draft Convention. In 1980, 62 countries participated in a diplomatic conference in Vienna, reviewed the 1978 Draft Convention and, after some amendments, unanimously approved the CISG.[13]

After two failed treaties and the better part of half a century, the CISG finally came into force in 1988 and today 61 countries have adopted it.[14] The factor that distinguished the CISG in its success from the two Hague conventions was the widespread participation by representatives of States from all parts of the globe in its drafting.[15]

2.3 Clash and compromise

As an exercise in harmonisation, the CISG demonstrates the predicament that faced its authors in creating an international uniform law and the mechanisms used to overcome these hurdles. Gyula Eörsi, a delegate representing Hungary at the CISG drafting conventions and a leading author on the CISG, explains the predicament in an satirical play script titled 'Unifying The Law (A Play In One Act, With A Song)', which commences as follows.[16]

> '*Chairman/*Bang!/The discussion is open on art. 1. The distinguished delegate from Knowhowland has asked for the floor.
>
> *The Delegate from Knowhowland:* Thank you Mr. Chairman. My delegation proposes that art. 1 should read as follows: "The dog shall bark." Thank you Mr. Chairman.
>
> *The Delegate from Oraculum:* With greatest respect Mr. Chairman, this proposition runs against all experience. My delegation proposes the following wording: "The cat shall mewl." Thank you.
>
> *The Delegate from Knowhowland:* My delegation is terribly sorry to disagree with my friend from Oraculum, Mr. Chairman, but I have to remind you that my proposal stating that "The Dog Shall Bark" is backed by a 700 year old, uninterrupted line of court decisions in my country. Thank you Mr. Chairman.

[13] Felemegas, above n 7.

[14] A common problem with the harmonisation of law by treaty making is the long period of time it takes to encourage states to ratify the treaty. Albert Kritzer explains that '[r]atification of conventions on international commercial law normally proceeds at a glacial pace. However, CISG ratification quadrupled in the few short years since it came into effect': see Albert Kritzer, 'The Convention on Contracts for the International Sale of Goods: Scope, Interpretation and Resources' (1995) *Cornell Review of the Convention on Contracts for the International Sale of Goods* 147. Also published at <http://cisg.law.pace.edu/cisg/biblio/kritzer.html>.

[15] Felemegas, above n 7. 'At the 1965 Hague Conference, which finalized ULIS and ULF, 28 countries took part: 22 European or other developed Western countries, 3 socialist, and 3 developed countries. At the 1980 Vienna Conference which adopted the CISG, 62 states took part: 22 European and other developed Western states, 11 socialist, 11 South-American, 7 African and 11 Asian countries; in other words, roughly speaking, 22 Western, 11 socialist and 29 "third world" countries.': Gyula Eörsi, 'A Propos For The 1980 Vienna Convention On Contracts For The International Sale Of Goods' (1983) 31 *The American Journal of Comparative Law* 333, 335.

[16] Gyula Eörsi, 'Unifying The Law (A Play In One Act, With A Song)' (1977) 25 *The American Journal of Comparative Law* 658.

> *The Delegate from Oraculum:* Without underestimating, Mr. Chairman, the erudition, frugality and creative force of the courts and the importance of judge-made law, may I call your attention to the fact that the proposal tabled by the delegation of the Republic of Oraculum stating "The Cat Shall Mewl" is warranted not only by our Civil Code but also by our greatest brains in legal thinking from the early 18th century up to the present days and is sociologically correct. Thank you Mr. Chairman.'

The call for the harmonisation of laws on the international sale of goods assumes that there are differences in the domestic legal techniques of states. Amongst the States represented at the diplomatic convention that authored the CISG, the differences in legal technique were most evident in conflicts between common law and civil law systems. There were also considerable differences between the Socialist and Western legal systems and between developed and developing countries.[17] The following examples illustrate these differences in legal concepts.

- In common law systems, contracts require consideration to be enforceable. However, consideration is not a concept recognised by civil law countries.[18]

- Common law and civil law systems have different rules that state when an acceptance to an offer is effective.[19] Under the civil law receipt theory, if a party posts his or her acceptance to an offer but the acceptance is lost or delayed in transmission, the risk of the loss or delay falls on the person accepting the offer. That is, acceptance does not become effective until it is received by the offeror. Under the common law, however, acceptance is effective on its dispatch.[20]

- Civil law systems are sympathetic to the issue of specific performance, whereas common law courts place strict restrictions on the circumstances in which it will be allowed.[21]

- Socialist systems generally require a contract to be in writing whereas Western systems do not.[22]

- Western legal systems allow a contract to come into being if the price or the way of fixing the price are absent from the contract. However, Socialist legal systems do not allow a contract to come into being in this situation.[23]

The business person who is familiar with the law that governs international trade and international contracts has a clear commercial advantage over the business person who is not familiar with the law. Accordingly, each state representative at the conferences that debated and developed the CISG had an economic interest in promoting a harmonised law that most

[17] Eörsi, above n 14, 346-352 (for a discussion on the conflict between developed and developing countries see Eörsi, above n 14, 349-352); Sara Zwart, 'The New International Law of Sales: A Marriage Between Socialist, Third World, Common, and Civil Law Principles' (1988) 13 *North Carolina Journal of International Law and Commercial Regulation* 109-128, also published at <http://cisgw3.law.pace.edu/cisg/biblio/Zwart.html>.
[18] The CISG adopts the civil law approach and makes no mention of the doctrine of consideration.
[19] The CISG generally adopts the civil law approach although not exclusively. The CISG compromise is discussed further in part two.
[20] Eorsi, above n 14, 311.
[21] The CISG compromise is discussed further in part two.
[22] The CISG compromise is discussed further in part two.
[23] Eorsi, above n 14, 341-342.

reflected their domestic legal system. Underlying this selfish motivation is the natural tendency "to assume that what is familiar is probably better than what is new and strange".[24]

The examples listed above demonstrate the fundamental differences in legal technique between the different States. The existence of these differences, coupled with the interest of each State to promote its own legal techniques and their 'know-how' advantages, meant reaching a consensus was extremely difficult. The drafting of the CISG involved reaching compromises on important legal concepts rather than the 'best' legal concepts. Arthur Rosett describes the process of reaching consensus as follows.

> 'The delegates of sixty-two participating nations did not reach consensus by a magical process. The majority, representing nations that follow the civil-law tradition, did not suddenly realize the virtues of the common-law approach to contract and commercial transactions. Nor did the representatives of states with planned socialist economies suddenly recognise the virtues of free enterprise and the private allocation of risks by contract. And the many representatives of poorer and underdeveloped nations did not come to a new appreciation of the plight of the wealthy creditors of the world. After thirty years of hard technical negotiation by experts, worldwide agreement was by diplomatic compromise.'[25]

Returning for a moment to the perplexing question of barking dogs or mewling cats, Eörsi also offers a compromise in the spirit of harmonisation.

> '*The Delegate from Balcony*: ...But with your permission Sir, I have a tentative proposal which I put forward in the spirit of compromise. We could say "An animal shall make a noise." This would cover both proposals and would also satisfy our business circles. Thank you Mr. Chairman.
>
> *The Delegate from Transcendentia:* This proposal, Mr Chairman, has a certain appeal to my delegation. May I remark, however, that not all kinds of animals are capable of making a noise. I have particularly fish in mind, Sir.
>
> *The Delegate from Balcony:* Well Sir, this depends on how the words "shall make a noise" are construed.'[26]

2.4 Methodology of Compromise

Professor John Honnold served as Chief of the United Nations International Trade Law Branch and Secretary of UNCITRAL during the drafting of the CISG. Professor Honnold argues that the methods employed by the authors of the CISG to overcome the conceptual barriers of their own legal background to reach a common and acceptable solution made reaching a consensus decision easier.[27]

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[24] Eorsi, above n 14, 311.
[25] Arthur Rosett, 'Critical Reflections on the United Nations Convention on Contracts for the International Sale of Goods' (1984) 45 *Ohio State Law Journal* 265-305 <http://www.cisg.law.pace.edu/cisg/biblio/rossett.html>.
[26] Eorsi, above n 15, 659.
[27] Amy Kastely, 'The Right to Require Performance in International Sales: Towards an International Interpretation of the Vienna Convention' (1988) 63 *Washington Law Review* 607, also published at <http://www.cisg.law.pace.edu/cisg/biblio/kastely1.html>.

Rather than commencing with proposed legislative drafts, Professor Honnold explains that the delegates used the common-law case method whereby delegates focused on hypothetical situations and sought consensus on the desired outcome. The delegates focused on results and not legislative words. Professor Honnold argues that this method was more conducive to compromise and overcame some of the constraints on treaty making as a mechanism for legal harmonisation.

> 'What came next was, for me, even more significant: the relative ease with which delegates, from different backgrounds, reached agreement on *results*. Some will say this shows that there is a universal natural law – others, that there are basic principles of commercial and legal efficiency, just as survival in the sea (beyond the reef) ... molded the dolphin and the shark into almost identical lines although they entered the sea from wildly different backgrounds.
>
> To return to dry land: After agreement was reached on what results should flow from a series of factual cases, it was not too difficult to agree on words to express the result.'[28]

Article 67 of the CISG is an example of this 'results-orientated' process. Article 67 provides:

> '(1) ... the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. ...
>
> (2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notices given to the buyer or otherwise.'

The purpose of Article 67 is to describe when risk passes to the buyer. In doing so the drafters have used words to describe a specific event typical of international transactions, being the handing over of goods from the seller to a carrier for transmission to the buyer. Having agreed on the desired outcome, words to describe that result were not difficult to find.

Article 67 is also important because of the language that it does not use. The issue in Article 67 is the point in time when risk passes. In common law systems, this issue would normally be coupled with concepts such as 'delivery', 'property' and 'title' to explain the law. These words and concepts have deliberately been excluded from Article 67 because they are words and concepts sourced from one legal system and have specific legal nuances associated with them.[29]

However, the drafters could not avoid using language sourced from one legal system completely. Some language and concepts found in the CISG are familiar to domestic legal concepts of some States. Part two below will discuss the issues that arise from this practice and the consequences for the harmonisation process.

[28] Professor Honnold quoted in Kastely, above n 26, 608. Eörsi also speaks of the tradition that developed in UNCITRAL of a 'readiness for compromise', in Eorsi, above n 15, 323.
[29] Felemegas, above n 7.

3. CISG & THE UNEASY COMPROMISE

3.1 A Compromise on Harmony

As demonstrated with the compromise proposed by the delegate from Balcony in Eörsi's play, the politically expedient compromise is not without its own problems. The same is certainly true with the CISG and the concessions made to appease the competing demands of the state representatives. That is to say, the formation and adoption of a multinational treaty such as the CISG is a political process and by necessity this process requires compromise. These compromises however often create additional complications, as argued by Arthur Rosett.

> 'The difficulty with many of these apparent compromises is that they simply do not resolve the problem they purport to address. They do not reflect two parties having yielded part of their positions to each other for the sake of agreement, but rather two sides agreeing to give the appearance by verbal formula which does not provide meaningful guidance in concrete situations.'[30]

Part II of this paper will discuss some examples of the 'uneasy compromises' found within the text of the CISG that are symptomatic of the multinational treaty negotiation process.

These compromises take on further significance in the context of the purpose of the CISG, being the promotion of international trade through the creation of uniform law. This purpose is emphasised in Article 7[31] of the CISG, which dictates that regard must be had to the need to promote uniformity in the application of the CISG.[32] Uniform application is fundamental for the successful harmonisation of laws by international treaty. Accordingly, to the extent that compromises within the text of the CISG derogate from its uniform application, they also detract from the success of the CISG as an exercise in harmonisation.

3.2 Scope of the CISG

The first question asked by both business and legal practitioners when considering the CISG is when does it apply? Accordingly, a clear definition of the jurisdictional scope of the CISG is crucial to both its understanding and success. However, the ambiguity of the jurisdictional scope of the CISG has received much criticism.[33]

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[30] Rosett, above n 24, 282.

[31] Article 7 is discussed in greater detail in Part III of this paper.

[32] Susanne Cook suggests that the CISG 'uses urgent language when it refers to uniformity. There is a "need" for uniformity which is thereby elevated to a critical, obligatory consideration – one that every court dealing with the provisions of the Convention has to entertain and which, in the Convention's spirit, cannot be discounted.': Susanne Cook, 'The need for uniform interpretation of the 1980 United Nations Convention on Contracts for the International Sale of Goods' (1988) 50 *The University of Pittsburgh Law Review* 197, 212, also published at <http://cisgw3.law.pace.edu/cisg/biblio/1cook.html>.

[33] See Rosett, above n 24.; Arthur Rosett, 'Unification, Harmonization, Restatement, Codification, and Reform in International Commercial Law', (1992) 40 *The American Journal of Comparative Law* 683; Trevor Cox, 'Chaos versus uniformity: the divergent views of software in the International Community', (2000) 4 *The Vindobona Journal of International Commercial Law and Arbitration* 3, also published at <http://www.cisg.law.pace.edu/cisg/biblio/cox.html>; Frank Diedrich, 'Maintaining Uniformity in International Uniform Law Via Autonomous Interpretation: Software Contracts and the CISG' (1996) 8 *Pace International Law Review* 303, also published at <http://www.cisg.law.pace.edu/cisg/biblio/Diedrich.html>; Camilla Baach Andersen, 'Uniformity in the CISG in the first decade of its application' <http://www.ccls.edu/eclu/events/Schmitthoff/SYMPOSIUM_Draft_1-3.html>; Hannu Honka, 'Harmonization of Contract Law Through International Trade: A Nordic Perspective'(1996) 11 *The Tulane European and Civil Law Forum* 111; James Bailey, 'Facing the Truth: Seeing the Convention on Contracts for the International Sale of Goods as an Obstacle to a Uniform Law of International Sales' (1999) 32 *Cornell International Law Journal* 273.

As early as the 1960s UNCITRAL recognised the failure of the ULIS to adequately define its jurisdiction and the imperative that this issue be rectified in the CISG. Many options were considered, however the solution in Article 1 of the CISG is said to be even 'inferior to the imperfect solution of ULIS'.[34] Article 1(1) of the CISG states that:

> 'This Convention applies to contracts of sale of goods between parties whose places of business are in different States:
>
> (a) when the States are Contracting States; or
>
> (b) when the rules of private international law lead to the application of the law of a Contracting State.'

The first observation to be made of Article 1 is the omission of the word 'international'. Significantly, this word is only found in the title of the CISG but is otherwise absent from the text of the treaty. Rather than determining the application of the CISG by the movement of goods across State borders, the authors of the CISG chose to apply the criterion of 'place of business'.

The drafters of the CISG were unable to agree on an adequate definition of an 'international transaction'.[35] Arthur Rosett argues this was due to the fact that international trade is increasingly integrated and does not in practice exist as a distinct category of trade. The fear preventing the drafters from adopting the concept of international transaction to define the scope of the CISG was the concern that the jurisdictional net of the CISG would be spread wider than intended.[36]

A compromise was reached and the scope of the CISG was defined instead by reference to the parties' 'place of business'. But this concept also has problems that may give rise to uncertainty and dissonance. For example, Article 10 outlines how a party's place of business is to be determined. James Bailey argues that, as a result of the rules in Article 10, 'the CISG can apply to transactions which are ostensibly domestic sales.'[37]

A further problem with the scope of the CISG is the definition of 'goods'. The CISG does not define goods. The uniform application of the CISG is therefore subject to courts and tribunals around the world applying a consistent definition of goods.[38] This challenge is best illustrated with the example of software.[39] Legal systems around the world treat software differently.[40]

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[34] Rosett, above n 24, 274.

[35] Ibid, 274-277. Rosett demonstrates the difficult of defining an international transaction with the following example. 'Clearly, if parties enter into a contract that calls upon the seller to ship and deliver goods to the buyer's nation before payment is due, the contract is international. However, such transaction are not very common. More frequently, the parties will make a C.I.F. contract that contemplates the packing, shipment, and insurance of goods from one country to another. This is an international contract, even though the definition of a C.I.F. contract provides that title passes and risk of loss shifts from the seller to the buyer before the goods leave the seller's country.'

[36] Ibid.

[37] Bailey, above n 32, 301. Bailey offers the following example, 'if a Paris-based branch office of a New York corporation buys a product from a party located in Indiana for delivery to a Montana address, that transaction may well be governed by the CISG because the parties to the transaction are located in separate CISG nations. Deciding whether the CISG applies in that situation will hinge on a court's application of Article 10. Conversely, a court could decide that the CISG does not apply if the Paris office ordered delivery to its New York headquarters. In that instance the court could conclude that New York is the location of the buyer because the New York office has the closest relationship "to the contract and its performance."'

[38] Ibid, 303.

[39] See Cox, above n 32, 3; Diedrich, above n 32, 303.

Some, such as the United Kingdom,[41] treat software not as a good but as a supply of a service. Others, such as Germany, treat software as a good. If countries categorise software differently, there is a danger that an international contract for the sale of software will be treated by some courts as governed by the CISG and others as outside the scope of the CISG.

Accepting the statement that a 'clear, unambiguous, and simple definition of the Convention's jurisdictional scope is critical to the success of the whole enterprise',[42] the ambiguities discussed above do not bode well for a uniform application of the CISG.

3.3 Specific Performance

As discussed above, civil law legal systems emphasise the non-breaching party's right to compel performance of the breaching party's obligations under contract. Common law systems however prefer to award damages to the non-breaching party as opposed to compelling performance by the breaching party.[43] The drafters of the CISG were unable to find a compromise solution to this specific performance conflict that promotes uniformtiy. Instead, the compromise that found itself in the text of the CISG is described as an overt recognition of the failure to overcome obstacles to the unification of law.[44]

Articles 46 and 62 are concessions to the civil law preference for specific performance. Article 46(1) states that:

> 'The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.'

Conversely, this time setting out the seller's rights, Article 62 states that:

> 'The seller may require to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.'

Article 28 however, described as the 'enclave built into the realm of unified law',[45] states that:

> 'If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation of the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.'

Articles 42 and 62 state that specific performance is available under the CISG as a remedy. Article 28 contradicts this position and declares that States that do not recognise specific performance do not have to award it. The compromise on specific performance impairs the unification of law because 'bluntly speaking, everybody may apply his own law.'[46]

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[40] The issue would appear to also depend on the form of the software with courts making the distinction between software on a disk and software that is delivered electronically.
[41] Note, the United Kingdom is not a signatory to the CISG. Whilst the countries that are signatories to the CISG account for over two thirds of world trade the absence of the United Kingdom and other important trading nations is a continuing challenge to the harmonisation of international sale of goods law.
[42] Rosett, above n 24, 273.
[43] Kastely, above n 26, 609–611.
[44] Eorsi, above n 14, 346.
[45] Ibid.
[46] Ibid, 354.

3.4 Good Faith

One of the most fiercely contested issues during the drafting of the CISG concerned the role of good faith.[47] Article 7(1) of the CISG states:

> 'In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.'

This incarnation of good faith in Article 7 has been described variously as a 'hard won compromise',[48] a 'statesman like compromise',[49] a 'strange compromise'[50] and an 'inconvenient compromise'.[51] 'Statesman like' and 'hard won' because the divide between common law and civil law delegates on the issue was so great, and 'strange' and 'inconvenient' because of the uncertainty of the final result.

While the approach to good faith in common law countries is not homogenous, there was a consensus amongst common law countries in their opposition to any reference to good faith being included in the CISG. Civil law countries, on the other hand, argued for the inclusion in the CISG of a principle of good faith directed at governing the conduct of contractual parties. Failing this, it was suggested by the civil law countries that good faith should apply to the interpretation of the contract. With neither faction willing to surrender its position absolutely, a compromise was reached and good faith was 'shifted to the provisions on interpretation of the Convention, thus... giving it an honorable burial.'[52]

If the wealth of commentary on the meaning and effect of good faith in Article 7 is any guide, the uncertainty surrounding this statesman like compromise is set to continue.

3.5 Revocation

The process of forming a legally binding agreement differs greatly amongst legal systems. One source of difference concerns the stage in a transaction in which the parties are free to withdraw. At one extreme is the view that parties are free to terminate negotiations up to the point when the contract is concluded. At the opposite end of the spectrum is the view that after entering negotiations it would be an act of bad faith to revoke an offer until the other side has had a chance to respond.[53]

Article 16 of the CISG seeks to settle this issue by detailing when an offer can be revoked. Article 16 states:

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[47] The author also discusses this issue in Troy Keily, 'Good Faith & the Vienna Convention on Contracts for the International Sale of Goods' (1999) 3 *The Vindobona Journal of International Commercial Law and Arbitration* 15-40, also available at <http://cisgw3.law.pace.edu/cisg/biblio/keily.html>.

[48] N Povrzenic, 'Interpretation and gap-filling under the United Nations Convention on Contracts for the International Sale of Goods' <http://www.cisg.law.pace.edu/cisg/biblio/povrzenic.html>.

[49] E. A. Farnsworth, 'The Eason-Weinmann Colloquium on International and Comparative Law: Duties of good faith and fair dealing under the UNIDROIT Principles, relevant international conventions, and national laws' 3 *Tulane Journal of International and Comparative Law* 47, 55.

[50] Eorsi, above n 14, 349.

[51] A Kritzer, *International Contract Manual: Guides to Practical Applications*, Kluwer, 70.

[52] Gyula Eörsi in Kritzer, above n 50.

[53] Rosett, above n 24.

'(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.'

The choice of language used in Article 16 is interesting because it shows a compromise to appease both the civil law and common law positions by stating the same rule but in language sourced and familiar to each system. As Eörsi explains, Article 16(2)(a) uses language familiar to civil lawyers and Article 16(2)(b) uses language familiar to common law lawyers, '[b]ut they both say the same thing'.[54] Thus the compromise is 'illusory'.[55]

3.6 Reservations

It is technically incorrect to speak of a single CISG text,[56] as the CISG allows States to make specified reservations to its text. This mechanism was included to make the CISG more attractive to a wider range of states. The consequence, however, is that States can tinker with the text and create their own version of the CISG - a concept that does not sit will with the objective of uniformity.

Article 98 allows States wishing to become parties to the CISG to make reservations authorised by the CISG. The CISG authorises the following reservations: [57]

- Article 92 authorises the exclusion of Part II (concerning formation of the contract) and Part III (concerning obligations of the buyer and seller and remedies for breach). For example, the Scandinavian States have declared that they will not be bound by Part II of the CISG.

- Article 93 permits a State in which two or more territorial units apply different systems of law to declare that the CISG does not extend to all of its territorial units. Australia, for example, has declared that the CISG does not apply to the territories of Christmas Island, the Cocos (Keeling) Islands and the Ashmore and Cartier Islands.

- Article 94 allows a State that has an existing agreement regarding matters governed by the CISG to declare that the CISG does not apply to parties that have their place of business in that State. The Scandinavian States have again exercised their right under Article 94 to exclude inter-Scandinavian trade from the CISG as a treaty already exists between these countries.

[54] Eorsi, above n 14, 355-356.
[55] Ibid.
[56] Also note, there are six official language texts of the CISG, being Arabic, Chinese, English, French, Russian and Spanish. This poses a further challenge to uniformity because of the difficulty task of translating in each language texts that corresponds with each other. This task is made more difficult because words used in one language will often be connected with implications that are not easily transcribed with a translation. For a discussion on this issue see Felemegas, above n 7.
[57] See <http://www.cisg.law.pace.edu/cisg/countries/cntries.html>.

- Article 95 states that Article 1(1)(b), dealing with conflict rules when determining the jurisdiction of the CISG, may be excluded. China, Singapore and the United States of America have each declared that they would not be bound by Article 1(1)(b).

- Article 96 allows a State whose law requires contracts to be in or evidenced by writing to exclude any provision of Article 11, Article 29 or Part II (which provides that a contract need not be in writing under the CISG). Countries including Argentina, Chile, Russia and China have made declarations under Article 96.

The following example demonstrates the challenge to uniformity that arises from the inclusion in the CISG of the ability of States to make reservations. Imagine a contract for the sale of goods between two parties whose places of business are respectively Australia and China. Does the CISG apply? Both states are signatories to the CISG but what if the Australian party has its place of business on Christmas Island? Further, what is the consequence of the contract not being in writing? The CISG provides that a written contract is not required, but the Chinese reservation under Article 96 throws this issue into uncertain waters.

The Australia/China hypothetical explains how the CISG reservation procedure complicates the harmonisation process. Without the reservations, parties to a transaction between Australia and China need be aware of only one law, the CISG. However, as a result of the reservations, parties need be aware of three layers of law,[58] being the standard CISG provisions, the reservations that Australia and China have made to the CISG, and the law of China regarding the sufficiency of writing in contract formation.

Business supports the harmonisation of laws because harmony brings certainty. The Australian business person is happy to sell goods to China because the uncertainty of submitting to a different legal system is ameliorated by the acceptance of the CISG by both countries. However, the reservations of both Australia and China detract from this certainty and are detrimental to uniformity.

3.7 Comment

The successful harmonisation of law by international treaty requires compromise. As demonstrated by the examples in Part two, these compromises at times do not best serve the purpose of uniformity. However, while these examples are a compromise on uniformity, they allow the drafting process to continue to completion, as explained in the following statement.

> 'Even compromises that are seemingly against unification in fact favor it by making it possible for the conference to continue its work to completion, figuratively saving the bulk of the cargo by throwing only a small part of it overboard.'[59]

[58] Bailey, above n 32, 312-313.
[59] Eorsi, above n 14, 346.

4 MAINTAINING UNIFORMITY

4.1 The Battle Front[60]

Having agreed on a final text for the international sale of goods, the next challenge for harmonisation, and the ultimate success or failure of the CISG, is the uniform application of the CISG. Part three of this paper will discuss the constraints countenanced in maintaining the uniformity of the text and the mechanism employed by the CISG to overcome these hurdles.

Before proceeding. it is necessary to comment on the concepts of 'harmonisation' and 'unification' as they relate to the CISG.

4.2 Harmonisation and Unification

Harmonisation and unification are related concepts. They differ in the degree to which each tolerates variation. To harmonise is to bring together and make similar; to unify, however, is to make the same. Unification does not tolerate variation. Unification of the law therefore requires the law of States to be made the same. Harmonisation of law is also understood as a process. Therefore, unification of law is an exercise in harmonisation where 'unification' is the standard or benchmark.

Article 7 of the CISG outlines the need to promote uniformity in the application of the CISG. Importantly, the CISG does not speak of the need to promote harmony in its application. This distinction is important because, as the purpose of the CISG is the unification of international sale of goods law, there can be no variation in the way it is interpreted and applied by courts around the world. The CISG does not permit room for error. This point is also important because, by expressing the CISG's purpose as the promotion of uniformity, the bar for determining its success or failure has been set higher.

The absence of variation in the unification of law is subject to one caveat suggested by Professor Sundberg. The Professor suggests that a margin of imperfection is permissible in the unification of law, but only to the extent that the variance does not encourage forum shopping.[61] This proposition is best explained using the issue discussed above regarding software and the definition of 'goods' under the CISG.

If a court in France determines that software is not a good, an international contract for the sale of software will not be governed by the CISG. However, if a court in Canada decides that software is a good, the CISG will apply to the contract. Adopting Professor Sundberg's view, Camilla Andersen argues that:

> '... any legal counsel representing a party who has breached an agreement in some way would be well advised to encourage his client to hurriedly forum-shop to a venue where software is not considered goods, to avoid the provisions of the pro-contractual CISG for breach.'[62]

[60] John Felemegas argues that '[t]he area where the battle for international unification will be fought and won, or lost, is the interpretation of the CISG's provisions. Only if the CISG is interpreted in a consistent manner in all legal systems that have adopted it, will the effort put into its drafting be worth anything.': see Felemegas, above n 7.
[61] Professor Sundberg quoted in Baach, above n 32.
[62] Ibid.

Therefore, the variation between the way States define software would be an unacceptable variation because the different approaches would encourage forum shopping to avoid the application of the CISG.

4.3 Article 7

Article 7 of the CISG is 'arguably the single most important provision in ensuring the future success'[63] of the CISG. Article 7 details the objectives of the CISG and how to give effect to these objectives. The battle for unification depends on the effectiveness of Article 7.[64]

Article 7 defines the protocol to be followed when interpreting the CISG. It directs those interpreting the CISG to take the following steps. First, regard must be had to the CISG's 'international character and the need to promote uniformity in its application and the observance of good faith in international trade'. Second, questions not expressly settled by the CISG are to be determined 'in conformity with the general principles on which it is based'. Third, in the absence of those general principles, questions are to be settled 'in conformity with the law applicable by virtue of the rules of private international law.' Steps two and three establish the mechanism to fill gaps in the CISG. This paper will focus on step one.

4.4 International Character & Uniformity

Lawyers must not read the CISG as they would a piece of legislation in their home state. To have regard to the international character of the CISG requires all lawyers to put aside the interpretative baggage with which they are familiar. The CISG calls for a new interpretative method that stems from the requirement in Article 7 of the CISG to have regard to its international character and the need to promote uniformity.

To have regard to the international character of the CISG involves recognition that it is a multi-national treaty that has been incorporated into the domestic law of different legal systems. Practically speaking, the requirement to have regard to the international character of the CISG is a call for vigilance against two traps - the use of domestic techniques of legislative interpretation and reliance on the 'homeward trend' when interpreting the meaning of the CISG. Each of these traps for harmonisation will be discussed below.

4.5 International Interpretation

When interpreting the CISG. it is important to avoid the techniques of legislative interpretation that would otherwise apply to domestic legislation. The CISG is not a normal piece of domestic legislation but is an international treaty. The CISG 'should be seen as part of international law in the broad sense and should be entitled to an international, rather than national, interpretation.'[65] Therefore, as opposed to the common law tendency to interpret

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[63] Phanesh Koneru, 'The International Interpretation of the UN Convention on Contracts for the International Sale of Goods: An Approach Based on General Principles' (1997) 6 *Minnesota Journal of Global Trade* 105, also available at http://cisgw3.law.pace.edu/cisg/biblio/koneru.html>.

[64] The full text of Article 7 states:

'(1) In the Interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.'

[65] Felemegas, above n 7.

domestic legislation narrowly, for example, the CISG should be given a broad interpretation. Professor Bonell explains the appropriate interpretative technique as follows.

> 'Instead of sticking to its literal and grammatical meaning, courts are expected to take a much more liberal and flexible attitude and to look, wherever appropriate, to the underlying purposes and policies of individual provisions as well as of the Convention as a whole.'[66]

This international interpretation approach involves a rejection of the view that, in domestic proceedings, treaties 'transform themselves into domestic law and therefore their interpretation and integration must take place according to the interpretative techniques ... of the domestic systems in which they are transplanted and will be applied'. This view cannot be reconciled with the requirement in Article 7 to pay regard to the international character of the CISG and the need to promote uniformity.

4.6 Homeward Trend

When searching for the meaning of terms used in the CISG, the international character of the CISG demands that care be taken to avoid the 'homeward trend' of interpreting terms in the CISG in accordance with domestic understandings. The CISG directs that answers be found within the four corners of the CISG. The homeward trend is the ethnocentric propensity to interpret an international convention such as the CISG in accordance with domestic principles and concepts. That is, the 'temptation for judges and the parties settling disputes ... to look at what is familiar especially as it appears to be so at first glance.'[67]

Parts of the CISG are familiar to concepts used in legal systems around the world. However, it is an error to refer to these domestic concepts when interpreting the CISG. To promote uniformity and give effect to the CISG's international character, the CISG must be interpreted as an autonomous legal instrument.

This approach was exemplified in the recent decision of the United States District Court in *Zapata Hermanos Sucesores v. Hearthside Baking Co.*[68] This case involved a contract for the sale of goods under the CISG. The court held that the award of damages to the seller for a breach of contract included counsel's fees as foreseeable consequential damages under Article 74 of the CISG.[69] Importantly, in reaching its decision, the court rejected the buyer's argument that in an American court the 'American Rule', that requires litigants in federal court actions to bear

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[66] Ibid.

[67] Bruno Zeller, 'The UN Convention on Contracts for the International Sale of Goods (CISG) – A Leap Forward Towards Unified International Sales Laws' (2000) 12 *Pace International Law Review* 79, 88, also published at <http://cisgw3.law.pace.edu/cisg/biblio/zeller3.html>.

[68] U.S. District Court, 28 August 2001, available at <cisgw3.law.pace.edu/case/010828.html> Also see John Felemegas, 'The Award of Counsel's Fees Under Article 74 CISG, in Zapata Hermanos Sucesores v. Hearthside Baking Co. (2001) 6 *The Vindobona Journal of International Commercial Law and Arbitration* 30-38, also available at <http://cisgw3.law.pace.edu/biblio/felemegas1.html>. After this paper was completed, the decision of the District Court was reversed by the Federal Appellate Court, see <http://cisgw3.law.pace.edu/cases/02119u1.html>. Further, at the date of publication of this paper the decision of the Federal Appellate Court was the subject of an application for leave to appeal to the Supreme Court of the United States of America, for further information see links at <http://cisg.law.pace.edu/cisg/text/e-text-74.html>.

[69] Article 74 provides that '[d]amages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.'

their own legal expenses, applies. The court recognised the importance of the international character of the CISG and the need to promote uniformity[70] and in so doing rejected the application of the American Rule. The court did not succumb to the homeward trend to explain the meaning of Article 74.

The court in *Zapata* noted that the principle of foreseeability is the limitation on damages under Article 74. This principle was also recognised by a different United States court in *Delchi Carrier S.p.A. v. Roterex Corp.*[71] However, in this case the court succumbed to the homeward trend to reach its conclusion. The court found that the 'CISG requires that damages be limited by the familiar principle of foreseeability established in *Hadley v. Baxendale*'.[72] *Hadley v. Baxendale* is a case familiar to all students of the common law system as authority on the principle of foreseeability. By construing foreseeability in Article 74 of the CISG by reference to a, common law case and domestic concept the court failed to satisfy the mandate of Article 7. By using a domestic concept to interpret the CISG the court did not pay regard to the international character of the CISG but succumbed to the homeward trend.

One further important point to note is that the homeward trend would not pose a threat to the uniform application of the CISG if there was a supranational body to hear cases on the international sale of good. However, States were not willing to surrender their sovereignty to a CISG court. Instead the task of determining disputes under the CISG has been given to the courts of all states. Accordingly, all courts determining disputes under the CISG must be mindful of the important obligations imposed on them under Article 7 of the CISG.

4.7 Other Resources

Courts have grappled with issues of uniformity and the international character of treaties other than the CISG. The House of Lords discussed these problems in *Scruttons Ltd v Midland Silicones Ltd.*[73] Scruttons case concerned whether of the word 'carrier' in the Hague Rules included a stevedore. In reaching a decision Viscount Simonds said:

> 'It is not surprising that the questions in issue in this case should have arisen in other jurisdictions where the common law is administered and where the Hague Rules have been embodied in the municipal law. It is (to put it no higher) very desirable that the same conclusions should be reached in whatever jurisdiction the question arises. It would be deplorable if the nations should after protracted negotiations reach agreement as in the matter of the Hague Rules and that their several courts should then disagree as to the meaning of what they appeared to agree on'.[74]

The decision of Viscount Simonds is critical for its recognition of the importance of maintaining a uniform application of treaties. It is also interesting for the comment his Honour makes on the use of foreign decisions when interpreting an international treaty. This issue is also relevant to the interpretation of the CISG.

[70] The court stated that a 'treaty, occupying international scope as it does and (as in this case) defining the relationships between nationals of different signatory countries, calls for uniformity of construction.' U.S. District Court, 28 August 2001.
[71] 71 F.3d 1024 (U.S. Ct. App 2d. Cir. 1995), <http://cisgw3.law.pace.edu/cases/951206u1.html>. See also Zeller, above n 56, 88-90.
[72] 71 F.3d 1024 (U.S. Ct. App 2d. Cir. 1995).
[73] 1 All E.R.
[74] 1 All E.R. p.9 per Viscount Simonds.

To give effect to the international character of the CISG and ensure uniformity in its application, it is not sufficient to simply rely on the text of the CISG. Rather, 'uniformity can only be attained if the interpreter in interpreting the provisions has regard to the practice of the other contracting States.'[75] Uniformity requires consideration of foreign case law.

This requirement gives rise to two practical problems - access to foreign cases and translation to a known language.[76] Commendable steps have however been undertaken to remedy these difficulties. For example, UNCITRAL in 1988 developed a procedure with the cooperation of Contracting States to gather and distribute information about court decisions. This information is now translated into the six official CISG languages and released as part of the UNCITRAL Secretariat CLOUT system of standardised reporting through the United Nations.[77]

As additional 'antidotes'[78] to the danger of divergent interpretations, the legislative history or *travaux préparatoires* of the CISG and academic writing should be used in interpreting the CISG. The use of legislative history is an interesting example because it again demonstrates the importance of a technique of interpretation that is international rather than domestic in focus. This is because common law countries have traditionally been reluctant to refer to legislative history as an aid to interpretation. Civil law countries on the other hand commonly use this technique.[79]

CONCLUSION

The process of drafting a uniform sales law ran over many decades, involved intense debate, required numerous drafts, two failed treaties and, in the end, concessions from all parties before a treaty could be agreed upon. However, the harmonisation process was not complete with an agreement on the final text. The real challenge for harmonisation and the ultimate success or failure of the CISG is dependent on its uniform application.

Article 7 of the CISG recognises the innate problems with maintaining a uniform law. A treaty is not a domestic creature but is a product of the international diplomatic stage. Treaties therefore should not be treated like domestic legislation and respect must be paid to their unique 'international character'. If in the application of the CISG its international character is not respected and a uniform approach is not realised, the hard work and uneasy compromises of the diplomats in creating the CISG are futile and the promotion and development of international trade is placed in doubt.

[75] Ferrari, above n 8, 204.
[76] Felemegas, above n 7.
[77] Ibid. Other resources include the UNILEX database maintained by The Centre for Comparative and Foreign Law Studies in Rome and the Pace University website, which this author can highly recommend.
[78] Professor Honold quoted in Ferrari, above n 8, 206.
[79] Ferrari, above n 8, 207-208.

BIBLIOGRAPHY

Andersen, Camilla Baach, 'Uniformity in the CISG in the first decade of its application' <http://www.ccls.edu/eclu/events/Schmitthoff/SYMPOSIUM_Draft_1-3.html>.

Boodman, Martin., 'The Myth of Harmonization of Laws' (1991) 39 *The American Journal of Comparative Law* 699.

Bailey, James, 'Facing the Truth: Seeing the Convention on Contracts for the International Sale of Goods as an Obstacle to a Uniform Law of International Sales' (1999) 32 *Cornell International Law Journal* 273.

Carrigan, Frank, 'Globalisation and Legal Transnationalism' (1999) 10 *Australian Journal of Corporate Law* 122.

Cook, Susanne, 'The need for uniform interpretation of the 1980 United Nations Convention on Contracts for the International Sale of Goods' (1988) 50 *The University of Pittsburgh Law Review* 197.

Cook, Susanne, 'The UN Convention on Contracts for the International Sale of Goods: A Mandate to Abandon Legal Ethnocentricity' (1997) 16 *Journal of Law and Commerce* 257, also published at <http://www.cisg.law.pace.edu/cisg/biblio/1cook.html>.

Cox, Trevor, 'Chaos versus uniformity: the divergent views of software in the International Community', (2000) 4 *The Vindobona Journal of International Commercial Law and Arbitration* 3, also published at <http://www.cisg.law.pace.edu/cisg/biblio/cox.html>.

Curran, Vivian Grosswald, 'The Interpretive Challenge to Uniformity' (1995) 15 *Journal of Law and Commerce* 175, also published at <http://www.cisg.law.pace.edu/cisg/biblio/curran1.html>.

Darkey, Joanne M., 'A U.S. Court's Interpretation of Damage Provisions under the U.N. Convention on Contracts for the International Sale of Goods: A Preliminary Step towards an International Jurisprudence of CISG or a Missed Opportunity?' (1995) 15 *Journal of Law and Commerce* 139 also published at <http://www.cisg.law.pace.edu/cisg/biblio/darkey2.html>.

Diedrich, Frank, 'Maintaining Uniformity in International Uniform Law Via Autonomous Interpretation: Software Contracts and the CISG' (1996) 8 *Pace International Law Review* 303, also published at <http://www.cisg.law.pace.edu/cisg/biblio/Diedrich.html>.

Fox, Eleanor M., 'Harmonization of Law and Procedures in a Globalized World: Why, What, and How?' (1992) 60 *Antitrust Law Journal* 393.

Eörsi, Gyula, 'A Propos For The 1980 Vienna Convention On Contracts For The International Sale Of Goods' (1983) 31 *The American Journal of Comparative Law* 333.

Eörsi, Gyula, 'Problems of Unifying Law on the Formation of Contracts for the International Sale of Goods' (1979) 27 *The American Journal of Comparative Law* 311, also published at <http://www.cisg.law.pace.edu/cisg/biblio/eorsi.html>.

Eörsi, Gyula, 'Unifying The Law (A Play In One Act, With A Song)' (1977) 25 *The American Journal of Comparative Law* 658.

Farnsworth, E. A., 'The Eason-Weinmann Colloquium on International and Comparative Law: Duties of good faith and fair dealing under the UNIDROIT Principles, relevant international conventions, and national laws' 3 *Tulane Journal of International and Comparative Law* 47.

Felemegas, John, 'The Award of Counsel's Fees Under Article 74 CISG, in Zapata Hermanos Successors v. Hearthside Baking Co. (2001) 6 *The Vindobona Journal of International Commercial Law and Arbitration* 30, also published at <http://cisgw3.law.pace.edu/cisg/biblio/felemegas1.html>.

Felemegas, John, 'The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation' <http://www.cisg.law.pace.edu/cisg/biblio/felemegas.html>.

Ferrari, Franco, 'Interpretive Decision Applying CISG: Commentary: Uniform Law of International Sales: Issues of Applicability and Private International Law' (1995) 15 *The Journal of Law and Commerce* 159.

Ferrari, Franco, 'Recent Developments: CISG: Specific Topics of the CISG in Light of Judicial Application and Scholarly Writing' (1995) 15 *The Journal of Law and Commerce* 1, also published at <http://www.cisg.law.pace.edu/cisg/biblio/2ferrari.html>.

Ferrari, Franco, 'Ten Years of the United Nations Sales Convention: CISG Case Law: A New Challenge for Interpreters?' (1998) 17 *The Journal of Law and Commerce* 245, also available at <http://www.cisg.law.pace.edu/cisg/biblio/ferrari3.html>.

Ferrari, Franco, 'Uniform Interpretation of the 1980 Uniform Sales Law' (1994) 24 *The Georgia Journal of International and Comparative Law* 183, also published at <http://www.cisg.law.pace.edu/cisg/ferrari2.html>.

Frisch, David, 'Commercial Common Law, the United Nations Convention on the International Sale of Goods, and the Inertia of Habit' (1999) 74 *Tulane Law Review* 495.

Hackney, Philip, 'Is the United Nations Convention on the International Sale of Goods Achieving Uniformity?' (2001) 61 *Louisiana Law Review* 473.

Hillman, Robert A., 'Applying the United Nations Convention on Contracts for the International Sale of Goods: The Elusive Goal of Uniformtiy' (1995) *Cornell Review of the Convention on Contracts for the International Sale of Goods* 21, also published at <http://www.cisg.law.pace.edu/cisg/biblio/hillman.html>.

Honka, Hannu, 'Harmonization of Contract Law Through International Trade: A Nordic Perspective'(1996) 11 *The Tulane European and Civil Law Forum* 111.

Kastely, Amy, 'The Right to Require Performance in International Sales: Towards an International Interpretation of the Vienna Convention' (1988) 63 *Washington Law Review* 607. Also published at <http://www.cisg.law.pace.edu/cisg/biblio/kastely1.html>.

Keily, Troy, 'Good Faith & the Vienna Convention on Contracts for the International Sale of Goods' (1999) 3 *The Vindobona Journal of International Commercial Law and Arbitration* 15, also published at <http://www.cisg.law.pace.edu/cisg/biblio/keily.html>.

Koneru, Phanesh, 'The International Interpretation of the UN Convention on Contracts for the International Sale of Goods: An Approach Based on General Principles' (1997) 6 *Minnesota Journal of Global Trade* 105, also published at <http://www.cisg.law.pace.edu/cisg/biblio/koneru.html>.

Kritzer, A., *International Contract Manual: Guides to Practical Applications*, Kluwer, 70.

Kritzer, Albert, 'The Convention on Contracts for the International Sale of Goods: Scope, Interpretation and Resources' (1995) *Cornell Review of the Convention on Contracts for the*

International Sale of Goods 147, also published at <http://cisg.law.pace.edu/cisg/biblio/kritzer.html>.

Mistelis, Loukas A., 'Regulatory Aspects: Globalization, Harmonization, Legal Transplants, and Law Reform – Some Fundamental Observations' (2000) 34 *International Lawyer* 1055, also published at <http://www.cisg.law.pace.edu/cisg/biblio/mistelis.html>.

Murphy, Maureen T., 'United Nations Convention on Contracts for the International Sale of Goods: Creating Uniformity in International Sales Law' (1989) 12 *Fordham International Law Journal* 727, also published at <http://www.cisg.law.pace.edu/cisg/biblio/murphy.html>.

Nottage, Luke, 'A Realist's View from New Zealand – and A Way Forward?' <http://www.law.kyushu-u.ac.jp/-luke/nzlj95.html>.

Povrzenic, N., 'Interpretation and gap-filling under the United Nations Convention on Contracts for the International Sale of Goods' <http://www.cisg.law.pace.edu/cisg/biblio/povrzenic.html>.

Rosett, Arthur, 'Critical Reflections on the United Nations Convention on Contracts for the International Sale of Goods' (1984) 45 *Ohio State Law Journal* 265, also published at <http://www.cisg.law.pace.edu/cisg/biblio/rossett.html>.

Rosett, Arthur, 'UNIDROIT Principles and Harmonization of International Commercial Law: Focus on Chapter Seven' ,http://www.unidroit.org/english/publications/review/articles/1997-3.html>.

Rosett, Arthur, 'Unification, Harmonization, Restatement, Codification, and Reform in International Commercial Law', (1992) 40 *The American Journal of Comparative Law* 683.

Ryan, Lisa M., 'The Convention on Contracts for the International Sale of Goods: Divergent Interpretations' (1995) 4 *Tulane Journal of International and Comparative Law* 99.

Sim, Disa, 'The Scope and Application of Good Faith in the Vienna Convention on Contracts for the International Sale of Goods' <http://www.cisg.law.pace.edu/cisg/biblio/sim1.html>.

Tetley, Willian, 'Mixed Jurisdictions: common law vs civil law (codified and uncodified)' <http://www.cisg.law.pace.edu/cisg/biblio/tetley.html>.

Twibell, T.S., 'Implementation of the United Nations Convention on Contracts for the International Sale of Goods (CISG) Under Shari'a (Islamic Law): Will Article 78 of the CISG be Enforced When The Forum is an Islamic State?' (1997) 9 *International Legal Perspectives* 25, also published at <http://www.cisg.law.pace.edu/cisg/biblio/twibell.html>.

Zeller, Bruno, 'Good Faith – The Scarlet Pimpernel of the CISG' <http://www.cisg.law.pace.edu/cisg/biblio/zeller2.html>.

Zeller, Bruno, 'The UN Convention on Contracts for the International Sale of Goods (CISG) – A Leap Forward Towards Unified International Sales Laws' (2000) 12 *Pace International Law Review* 79, also published at <http://www.cisg.law.pace.edu/cisg/zeller3.html>.

Zwart, Sara, 'The New International Law of Sales: A Marriage Between Socialist, Third World, Common, and Civil Law Principles' (1988) 13 *North Carolina Journal of International Law and Commercial Regulation* 109, also published at <http://www.cisg.law.pace.edu/cisg/Zwart.html>.