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THE *CISG* AS A MODEL LAW: A COMPARATIVE LAW APPROACH

ANGELO **CHIANALE***

In this article I adopt a comparative law approach to illustrate the coexistence of various models governing the sale of goods, and their classification on the basis of two main characteristics: the transfer of property and the opposition certainty/flexibility. I use this approach to analyse the *United Nations Convention on Contracts for the International Sale of Goods*.[1] Then I examine how the *CISG* influenced several national systems and can influence future attempts at regional harmonisation. I conclude with the reasons that in my opinion make the *CISG* a good model for the sale of goods (prestige, equilibrium and derogability), and with the desirable future developments.

I. A COMPARATIVE OVERVIEW OF SALE OF GOODS MODELS

Legal history presents two types of phenomena: the birth of original legislative models, and the circulation of existing models, which are assimilated by legal systems different from the one that generated them.

The first case—the birth of new models—is rather rare. The circulation of models, on the other hand, is much more frequent, and has been studied extensively in comparative law. Scholars have identified various methods for the circulation of a model: the imposition by a dominant power, as was the case for the French *Civil Code* after the Napoleonic victories, or for European national laws exported to the colonies (to keep to our theme, this was the case of the English *Sale of Goods Act*,[2] which was adopted throughout the Commonwealth[3]); and the spontaneous adoption by the imitator system, when the model has the prestige that makes it appear as the best system available (as in the case of Roman law in mediaeval Europe, or the German *Civil Code of 1900*, which was adopted to varying degrees in Switzerland, Turkey and Japan, as the result of the influence exerted by German authors in the university environment).[4]

Where Western legal systems are concerned, the panorama of original models regarding the sale of goods can be greatly simplified.

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* Professor, University of Torino, Italy.

1 11 April 1980, 1489 UNTS 3, 19 ILM 668 (entered into force 1 January 1988) [*CISG*].

2 1893 (UK), 56 & 57 Vict, c 71 [*SOGA 1893*].

3 *Cf* the observations in Singapore Academy of Law, Law Reform Committee, Sub-Committee on Commercial Law, *The United Nations Convention on Contracts for the International Sale of Goods* (*Vienna, 1980*): *Should Singapore Ratify*? (Singapore: SAL, 10 August 1994).

4 The idea of the prestige of the model imitated can be found in René David, *Les Grands Systèmes de Droit Contemporains* (Paris: Librairie Dalloz, 1964).

The traditional dominant models, which evolved between the 18th and 20th centuries, and were assimilated by other systems, are:

(a) *French sale of goods law, based on the transfer of property between the parties by effect of the contract*: This system was developed by French jurists before the introduction of the Code, illustrated comprehensively by Pothier and finally incorporated into arts 1138 and 1583 of the *Code Civil*. This model was assimilated into Belgian, Italian, Polish, Portuguese, Bulgarian, Quebec[5] and Louisiana law. It also appears in the *SOGA 1893*, regarding the rules for the transfer of property, the identification of the goods sold and the determination of the price. In turn, the *SOGA 1893* was considered in time as an autonomous model of Common Law and is assimilated both in numerous countries in the Commonwealth or exposed to the influence of English Common Law (Australia, New Zealand, Canada, India, Hong Kong, Singapore and Nigeria), and in the United States, through the *Uniform Commercial Code*.

(b) *German sale of goods law, which requires the goods to be delivered for the transfer of property*: This model appears in German law, in a variant that envisages abstract delivery (*BGB* § 929), and in Austrian law, in a variant that envisages delivery based on a cause (*ABGB* §§ 380, 425). The rule that links delivery to the transfer of ownership of the goods was transplanted in the Swiss, Spanish and Greek Civil Codes. What is more, the German and Austrian models, which enjoy considerable prestige in Europe, were assimilated by various systems after the disintegration of the Socialist states (Estonia, Lithuania, Latvia, Slovenia, Slovakia and the Czech Republic).

The *CISG* appeared on the world scene in 1980, and celebrated its 35th anniversary in 2015. In the context of comparative law, it is advisable to verify whether the *CISG* can really take the place of a new model for the sale of goods. It has already been amply illustrated that the framework of the *CISG* rules originates from English Common Law (for example, the liability for breach of contract; and the termination of contract granted under restrictive conditions), from American Common Law (for example, the seller's right to cure if the cure is possible without delay and unreasonable inconvenience for the buyer), from the French system (for example, the ways the price is fixed; the price reduction as a contractual remedy; the specific performance as a general remedy for the breach of contract; and the foreseeability test for the amount of damages), and from the German system (for example, the buyer's duty to notify defective goods; and the additional time period for performance granted by a party to the other in some cases).[6] The *CISG* was developed on the level of the global uniformisation of law—therefore outside national systems—and is presented

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5 In Quebec the French model was initially adopted in the *Civil Code of Lower Canada 1866*. The new *Civil Code of Quebec*, entered into force on 1 January 1994, presents some relevant English influences: now, even when the property passes at the time of the contract, art 1456 declares that the debtor of the obligation to deliver the goods continues to bear the risks attached to the goods until they are delivered.

6 See the analysis by Ulrich Magnus, "The Vienna Sales Convention (CISG) between Civil and Common Law: Best of all Worlds?" (2010) 3 J Civ L Stud 67; see also Ingeborg Schwenzer & Pascal Hachem, "The CISG: Success and Pitfalls" (2009) 57 Am J Comp L 457; Ingeborg Schwenzer & Lina Ali, "The Emergence of Global Standards in Private Law" (2014) 18:1 Vindobona J 93, focused on the remedies for breach of contract; Ole Lando, "CISG and Its Followers: A Proposal to Adopt Some International Principles of Contract Law" (2005) 53 Am J Comp L 379 [Lando, "CISG Proposal"].

as a new model, containing a consistent summary of rules regulating the sale of goods.

II. Contrasting Models for the Transfer of Property and Flexibility

The various models of sale of goods can be assessed and compared on the basis of various characteristic aspects. Two in particular are worthy of attention.

A. *Transfer of Property*

As I said earlier, a classic opposition, studied extensively in comparative law, distinguishes between the various models on the basis of the rule used for the transfer of property.

On one side we have systems in which the transfer of property takes place when the contract is concluded, even if the delivery of the goods sold and/or payment of the price takes place subsequently. This model was adopted by French law prior to the Revolution, and is illustrated comprehensively in Pothier's work. The French *Code Civil of 1804* adopts it and disseminates it in the other systems derived from French law. It also appears in the English rule set out in the *SOGA 1893* (Part II: Effects of the Contract, *Transfer of Property as between Seller and Buyer*),[7] notably via the legal system of French Louisiana (*Code Civil of 1808*) and the work of Judah Philip Benjamin.[8]

On the other side, as I have said, we have the systems in which property is transferred after the sale contract is stipulated, by virtue of the delivery. This model is characteristic of German law (with abstract delivery) and Austrian law (with causal delivery).

However, opposition between the selling models based on the way the property of the goods sold is transferred has been criticised by the best authors of comparative law.[9] Ultimately, we can see that identifying the moment that property is transferred (upon contract or delivery) belongs to the realm of general formulas, while the solutions of the various practical problems belong to the realm of operational rules. It was thus discovered that even legal systems with contrasting general formulas can share identical operational rules.

This opposition between models was strained from the perspective of positive law by the promulgation of the *CISG*, as it does not contain any rule about the transfer of property.[10] As a result, when questions emerge that have to be resolved on the basis of ownership, the judge must refer to the domestic law applicable according to

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7 *Supra* note 2.

8 Benjamin's work, titled *A Treatise on the Law of Sale of Personal Property: With References to the American Decisions and to the French Code and Civil Law*, was published in London: Henry Sweet in 1868.

9 *Cf* the seminal work by Rodolfo Sacco, "Legal Formants: A Dynamic Approach to Comparative Law (Installment II of II)" (1991) 39:2 Am J Comp L 343, already appeared as "Le Transfert de la Propriété des Choses Mobilières Déterminées par Acte Entre Vifs" in Zoltán Péteri & Vanda Lamm, eds, *General Reports to the 10th International Congress of Comparative Law* (Budapest: Akadémiai Kiadó, 1981) 247.

10 Article 4 of the *CISG*, *supra* note 1, states that the Convention "is not concerned with:… (b) the effect which the contract may have on the property in the goods sold".

the usual rules of conflict. The absence of a precise rule in the *CISG* regarding the transfer of property must not be considered a loophole: it was a deliberate choice by the drafters of the Convention so that they would not have to take a stand regarding a highly sensitive aspect of movable sales that was resolved differently in the systems mentioned above.[11] This has without doubt facilitated the adoption of the *CISG* by legal systems that adopt one solution or the other for domestic sales.

B. *Certainty/Flexibility*

Another very significant opposition, but one that is rarely examined by comparative law scholars, is the question of certainty/flexibility.

A certain degree of certainty is attributed to the sale laws that guarantee the maximum predictability of the solutions asked of judges and arbitrators. This implies that legal rules must be as precise as possible and must avoid loopholes, generic directives for the parties or interpretation gaps for the decision of cases. On the other hand, any sale law that contains general clauses—such as the good faith principle—binding the contracting parties to behaviour, whose legitimacy is decided after the event by the judge or arbitrator, is considered flexible.

In this sense, the systems that occupy the extreme points of the opposition are the English sale of goods law, which is considered a bulwark of certainty, and German law, which is considered very flexible. In particular, in the former, there is no obligation to act in good faith, while in the latter, good faith and the parameter of reasonableness permeate the entire spectrum of contract relationships. One of the results is a different configuration of the judge's powers: when the legal system is very flexible, the judge is generally granted penetrating powers of interference in the content of the contract, including the faculty to modify any clause deemed to be in conflict with good faith. Under the *CISG*, good faith acts only as an interpretative principle of the Convention itself: following the English Common Law tradition, the *CISG* does not recognise a general obligation to act in good faith, the breaching of which could cause damage.[12] It means that "a court should not apply the good faith principle to an international contract whenever that principle would be applicable to a domestic situation".[13]

The tension between certainty and fairness is solved by the *CISG* in favour of the certainty principle: many authors point out that this solution is the best to lower

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[11] The United Nations Commission on International Trade Law ("UNCITRAL") Secretariat Commentary on the 1978 Draft of the Convention explains the absence of a rule on the passing of property: "[i]t was not regarded possible to unify the rule on this point nor was it regarded necessary to do so since rules are provided by this Convention for several questions linked, at least in certain legal systems, to the passing of property". *Cf* also Roy Goode, "Reflections on the Harmonisation of Commercial Law" (1991) I Unif L Rev 54 at 65.

[12] The scope of the principle of good faith encompassed in the *CISG* is the subject of considerable discussion: several authors believe that good faith is only a criterion for interpretation of the rules of the *CISG*: Steven D Walt, "The Modest Role of Good Faith in Uniform Sales Law" (2014) Va Public Law & Legal Theory Research Paper 8; others believe that art 7 of the *CISG*, *supra* note 1, contains an obligation for the contracting parties: Bruno Zeller, "Good Faith: The Scarlet Pimpernel of the CISG" (2000) 7 Int'l Trade & Bus L Ann 2; Bruno Zeller, "Good Faith: Is it a Contractual Obligation?" (2003) 15:2 Bond L Rev 215. *Cf* also Troy Keily, "Good Faith and the Vienna Convention on Contracts for the International Sale of Goods (CISG)" (1999) 3:1 Vindobona J 15.

[13] Lando, "CISG Proposal", *supra* note 6 at 391.

transaction costs related to uncertainty and could discourage businesses to opt out from the *CISG*.

III. The *CISG* and its Influence on National Legal Systems

The *CISG* has been around for 35 years; to date it has been ratified by 83 countries. Important global trading countries that have signed up recently include Japan, effective 1 August 2009, Turkey, effective 1 August 2011, and Brazil, effective 1 April 2014. The *CISG* is rightly considered a hugely successful international uniform law.[14]

For some time now scholars have also noted the impact that the *CISG* is having on numerous legal systems, regarding both sales of goods and obligations law and contract law generally.[15]

The influence on individual national systems may be felt by the courts, by doctrine, by legal practice and by law-makers. It is a known fact that Dutch judges have used the *CISG* in numerous decisions to interpret national law, for example in matters regarding the formation of the contract, breach of contract and non-conformity of the goods sold.[16] In this context, however, analysis of the *CISG* as a model of comparative law is limited to the phenomena of circulation at a legislative level.

(a) The case of the Scandinavian states is well known: unfortunately, the desire for regional harmonisation has not been coordinated very efficiently by recourse to the *CISG*. The result is now somewhat complex, and does not represent a successful example of a uniform international approach to sales of goods. Early in the 20th century, the Scandinavian states adopted almost identical versions of laws on sales (*Nordic Sales Acts*), introducing a sort of uniform law regulating sales between parties having their places of business in Denmark, Finland, Iceland, Norway and Sweden. When they adopted the *CISG* these countries excluded the application of the Convention to cases of Nordic sales. However all the Scandinavian countries, except Denmark, revised their national *Sale of Goods Acts*, bringing them into line with most

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[14] It is much easier for a state to adopt a United Nations convention, like the *CISG*, than to introduce in its legal system a new body of national law based on 'soft law' texts, like the UPICC ("UNIDROIT Principles of International Commercial Contracts") or the PECL ("Principles of European Contract Law"). For this reason I think the *CISG* will always be more successful than any 'soft law' proposal. *Cf* the different idea of Lando, "CISG Proposal", *supra* note 6, to promote the UNIDROIT Principles to rules of law binding upon the courts, as a basis of a World Code of International Commercial Contracts, where the rules of *CISG* will deal only with sales of goods; Ole Lando, "A Merger of the United Nations Convention on Contracts for the International Sale of Goods and the Unidroit Principles of International Commercial Contracts" in *Mélanges offerts à Marcel Fontaine* (Brussels: Larcier, 2003), 451; Lars Meyer, "Soft Law for Solid Contracts? A Comparative Analysis of the Value of the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law to the Process of Contract Law Harmonization" (2006) 34 Denv J Int'l L & Pol'y 119.

[15] *Cf* Franco Ferrari, ed, *The CISG and its Impact on National Legal Systems* (Munich: Sellier European Law Publishers, 2008) [Ferrari, *CISG*]; Franco Ferrari, ed, *The 1980 Uniform Sales Law: Old Issues Revisited in the Light of Recent Experiences: Verona Conference 2003* (Munich: Sellier European Law Publishers, 2003); Peter Schlechtriem, "Basic Structures and General Concepts of the CISG as Models for a Harmonisation of the Law of Obligations" (2005) 10 Juridica Int'l 27.

[16] *Cf* Sonja A Kruisinga, "The Impact of Uniform Law on National Law: Limits and Possibilities: CISG and Its Incidence in Dutch Law", online: (2009) 13:2 EJCL <http://www.ejcl.org/132/art132-2.pdf>.

of the contents of the *CISG*: Finland in 1988, Norway in 1989, Sweden in 1991, and Iceland in 2000.[17] Norway and Iceland in particular incorporated *CISG* rules into their national sale of goods law, with the result that the national law is also applicable to international sales (with rules identical to those of the *CISG*, except for a few differences, such as the formation of the contract). This produces a complex situation, because of the simultaneous application of both the *CISG* and national law. On 1 November 2014, the *CISG* became directly applicable in Norway, instead of the national law that was inspired by it.

(b) In Europe the *CISG* influenced the reform of contract law in Estonia (the *Law of Obligations Act*, enforced on 1 July 2002). The new law almost identically transposed the binding nature of usages and practices, the objective interpretation of the declaration of intent, the freedom of form, the mitigation of harm and the prohibition of abuse of rights.[18]

(c) The world's smallest economy[19]—the Tokelau Islands—has adopted the rules of the *CISG* as domestic law both for sale of goods and for general contract law. Tokelau is an autonomous territory of New Zealand (the inhabitants of the islands have twice voted against independence) made up of three small coral atolls (a total of 10 square kilometres), inhabited by 1400 people, with a maximum altitude of 4 metres above sea level, with no airports or commercial ports. New Zealand ratified the *CISG*, effective 1 October 1995, but excluded the application of the Convention to Tokelau. The small archipelago is primarily regulated by local laws and customs: the New Zealand *Sale of Goods Act 1908* was not applicable there (*Tokelau Act 1948*). The Council of Elders finally adopted the *Contract Rules 2004*, which uses the rules of the *CISG* not only for domestic and international sales but also for contract law generally.[20]

(d) Even in what is fast becoming the world's largest economy, China, the *CISG* has essentially become part of domestic law.[21] The elaboration of

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[17] *Cf* Jan Ramberg, "The Vanishing Scandinavian Sales Law" (2007) 50 Scand Stud Law 257; Thomas Neumann, "The Continued Saga of the CISG in the Nordic Countries: Reservations and Transformation Reconsidered" (2013) 1 Nordic J Com L 1; Lief Sevón, "The New Scandinavian Codification on the Sale of Goods and the 1980 United Nations Convention on Contracts for the International Sale of Goods" in Peter Schlechtriem, ed, *Einheitliches Kaufrecht und nationales Obligationenrecht: Referate und Diskussionen der Fachtagung Einheitliches Kaufrecht am 16-17 2 1987* (Baden-Baden: Nomos Verlagsgesellschaft, 1987) 343. The *Sale of Goods Acts* dated back to 1905 for Sweden and 1907 for Norway.

[18] *Cf* Irene Krull, "Reform of Contract Law in Estonia: Influences of Harmonisation of European Private Law" (2008) 14 Juridica Int'l 122.

[19] Central Intelligence Agency, *The World Factbook*, online: CIA <https://www.cia.gov/library/publications/the-world-factbook/>; not even considered in World Bank or International Monetary Fund ("IMF") statistics.

[20] *Cf Contract Rules 2004* (Tokelau), 2004/7, s 2:

> The purpose of these Rules is -
>
> (i) to provide a basic set of rules for all contracts for Tokelau;
>
> (ii) to establish the principles of the United Nations Convention on Contracts for the International Sale of Goods 1980 [CISG] as the foundation for the contract law of Tokelau;
>
> (iii) to apply CISG rules to domestic and international contract situations;
>
> (iv) to extend CISG principles beyond contracts for sales of goods to all contracts…

[21] *Cf* Bruno Zeller, "CISG and China" in Michael R Will, ed, *The CISG and China: Dialog Deutschland-Schweiz VII* (Geneva: Faculté de droit, Université de Genève, 1999) 7; Mark R Shulman & Lachmi

> the *Contract Law of 1999* was amply supported by *CISG* rules. We can see very strong similarities in the rules on the conclusion of contracts, the vendor's responsibility for non-conformity of goods, the transfer of risk and the delivery of the goods sold.[22] Then even the theoretical approach of Chinese jurists is influenced by the *CISG* and by its principles: "Modernisation of contract law means not only a set of modernised black-letter rules, but also modernised understandings, ideas or theories of contract law."[23] In 2013 the removal, by China, of its reservations to art 11 of the *CISG* on the written form of the contract led to further alignment of domestic law to *CISG* rules. Finally also, the drafters of the new Chinese *Civil Code* were able to find in the *CISG* a very important resource of rules both for the sale of goods and the contract law in general.[24]

In some legal systems, the reform of national laws for the sale of goods has begun or has been suggested, because they are deemed obsolete and unsuitable to the needs of modern trade. In some cases, their replacement by *CISG* rules has also been suggested.

(a) For example, in New Zealand, the *Sale of Goods Act 1908* is no longer considered in step with the times, particularly where contract remedies are concerned, and some scholars would like *CISG* rules to be introduced directly into domestic law.[25]

(b) The case of Australia is even more complex.[26] Australia is a federation, and the various states have adopted the rules of English contract law and the sale of goods, in many different ways. This creates in domestic business to business sales a problem of information costs that is entirely similar to the one emerging in international trade. What is more, the vastness of the territory poses the typical problems of the transport of goods and long distance deliveries tackled by the *CISG*.

(c) The situation is similar in Nigeria—the largest economy in Africa—which has not ratified the *CISG*. At a workshop on 2 September 2014, the Nigerian Law Reform Commission began to consider a reform of the *Sale of Goods Act*, 1893, which still reproduces the old English law without substantial

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Singh, "China's Implementation of the UN Sales Convention Through Arbitral Tribunals" (2010) 48 Colum J Transnat'l L 242 that demonstrates the importance of arbitration practice in introducing *CISG* principles in China; Shiyuan Han, "The CISG and Modernisation of Chinese Contract Law" in Luca Castellani, Tony Angelo & Yves-Louis Sage, eds, "Contributions to the Study of International Trade Law and Alternative Dispute Resolution in the South Pacific" (2014) 17 Comp LJ Pacific 67 [Han, "CISG"]; Shiyuan Han, "China" in Ferrari, *CISG*, *supra* note 15, 71.

22 For a precise list of the correspondence between the Chinese *Contract Law of 1999* and *CISG* see Han, "CISG", *supra* note 21.

23 *Ibid* at 79.

24 *Cf* the text in Liang Huixing, ed, *The Draft Civil Code of the People's Republic of China* (Leiden: Brill Academic Publishers, 2010); the studies in Lei Chen & CH (Remco) van Rhee, eds, *Towards a Chinese Civil Code: Comparative and Historical Perspectives* (Leiden: Martinus Nijhoff Publishers, 2012).

25 *Cf* Nicholas Whittington, "Reconsidering Domestic Sale of Goods Remedies in Light of the CISG" (2006) 37 VUWLR 421.

26 *Cf* Marcus S Jacobs, Katrin Cutbush-Sabine & Philip Bambagiotti, "The CISG in Australia-to-Date: An Illusive Quest for Global Harmonisation?" (2002) 17 Mealey's Int'l Arb Rep 24, with a review of the early Australian cases; Benjamin Hayward, "The CISG in Australia: The Jigsaw Puzzle Missing a Piece" (2010) 14:2 Vindobona J 193; Lisa Spagnolo, "Law Wars: Australian Contract Law Reform vs CISG vs CESL" (2013) 58 Vill L Rev 623.

innovations. Now there is a call for the reform to take the *CISG* as the model law.[27]

(d) For a long time, Japan did not ratify the *CISG*. However, in the meantime the *CISG* rules gradually became more familiar to the legal community, and they have come to modify the interpretation of national law. This seems to be the case in the area of the avoidance of contracts: in Japan, as a general rule, the injured party may avoid the sale no matter what type or how important the breach may be. The exceptions to this principle, scattered around the *Civil Code*, are now interpreted in the light of the *CISG* as being themselves the principle, so that the limitation of avoidance to cases of fundamental breach is becoming part of domestic law.[28] The ongoing reform of the Japanese law of obligation could raise the level of reception of *CISG* principles and rules in the Japanese legal system: according to some scholars, "[t]he content of [*CISG*] is arguably far better than Japanese sales law."[29]

(e) Turkey ratified the *CISG* in 2010 (effective 1 August 2011). The new *Turkish Code of Obligations* (effective 1 July 2012) deeply reformed the contract law, still based on the Swiss model adopted in the 1920s. A very important change invests the rule on passage of risk of accidental destruction or deterioration of the goods sold. The old Code connected the passage of risk with the conclusion of the contract. The new Code (art 208) follows the solution of the *CISG* (arts 67, 68): risk and benefit on the goods sold pass to the buyer at the moment of the transfer of possession. The change of this rule was expressly justified by mentioning the *CISG* rule.[30]

IV. The *CISG* and Regional Harmonisation

A. *An Unsuccessful Attempt: The European* CESL *Project*

The history of the *CISG* intersects with various attempts at regional harmonisation of the law on international sales of goods.[31] The evolution of the European project is particularly significant.

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27 *Cf* Nkiruka Maduekwe, "The CISG and Nigeria: Is there a Meeting Point?" (2009/10) 14 CEPMLP Ann Rev, online: CEPMLP Gateway <http://www.dundee.ac.uk/cepmlp/gateway/index.php?news=31303>.

28 *Cf* Hiroo Sono, "Japan's Accession to the CISG: The Asia Factor" (2008) 25 J Japan L 195.

29 *Cf* Noboru Kashiwagi, "Accession by Japan to the Vienna Sales Convention (CISG)" (2008) 25 J Japan L 207 at 214.

30 *Cf* Seda İrem Çakirca, "Passing of Risk According to the United Nations Convention on Contracts for the International Sale of Goods and the New Turkish Code of Obligations from a Comparative Perspective" (2012) 16:4 Gazi UL Dergisi 91, online: Gazi Üniversitesi <http://webftp.gazi.edu.tr/hukuk/dergi/16_4_3.pdf>; Bahadir Demir, "Passing of Risk in Contract of Sale" (Paper delivered at the 10th International Academic Conference, Vienna, 3 June 2014), online: International Institute of Social and Economic Sciences <http://www.iises.net/proceedings/10th-international-academic-conference-vienna/table-of-content? cid=2&iid=38&rid=1535>.

31 For a recent discussion of the issue, see Bruno Zeller, "Recent Developments of the CISG: Are Regional Developments the Answer to Harmonisation?" (2014) 18:1 Vindobona J 112; about the role of the *CISG* in the European regional harmonisation of private law see Ewoud Hondius, "CISG and a European Civil Code: Some Reflexions" (2007) 71 Rabels Zeitschrift 99; Ulrich G Schroeter, "Global Uniform Sales Law: With a European Twist? CISG Interaction with EU Law" (2009) 13:1 Vindobona J 179 [Schroeter, "Global"].

In October 2011 the European Commission proposed a new uniform European law on the sale of goods, intending to solve the problems arising from this diversity of national contract laws (draft of *Regulation on a Common European Sales Law* ("*CESL*")).[32] On 26 February 2014, the European Parliament approved the draft at its first reading, introducing several changes to the texts.

The *CESL* should govern sales to both consumers and businesses. Cross-border sales to businesses currently come under the *CISG* (all European Union ("EU") member states, except the United Kingdom, Ireland, Malta and Portugal are parties to the *CISG*): therefore the proposed *CESL* is meant to be a uniform second contract law regime. It does not amend national laws, and should be applied on a voluntary basis, by agreement of the parties to the international sale (it is an opt-in law).

The *CESL* would then offer a new choice between the legal systems that the parties can make freely: any national law, either of EU members or of other states.

The Commission proposal is that the *CISG* and the *CESL* should co-exist in business to business international sales. The *CISG* remains the default regime for international sales of goods, whereas the *CESL* could be explicitly chosen by the parties. But it is clear that the existence of two different uniform systems of law governing international sales may confuse businesses, making negotiations on the applicable law more difficult, and thereby raising transaction costs.

Neither the *CISG* nor the *CESL* covers the entire life of a contract for the sale of goods. As indicated by the European Commission, the *CESL* is slightly broader because it also covers defect in consent, duty to inform, fairness and the validity of standard terms. However, every question relating to the matters still not covered by the *CESL* requires research into the applicable law under the usual conflict rules. In this respect, the situation is similar to matters not covered by the *CISG*.

The German rules governing good faith also appear in the European *CESL* project. Article 2 of the *CESL* sets out the general principle to act in "good faith and fair dealing": these are legal duties of the parties, and their breach can cause contractual liability and give rise to remedies.[33] Furthermore, judges are allowed ample discretion to intervene to ensure that good commercial practice is observed (for example, art 89.2 of the *CESL* gives the judge the power to "adapt the contract", under particular conditions, in the case of changed circumstances). The tension between certainty and fairness is solved by the *CESL* in favour of the fairness principle: many authors point out that this solution could raise transaction costs related to uncertainty, and could discourage businesses from opting into the *CESL*.

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[32] References: Law Commission & Scottish Law Commission, *An Optional Common European Sales Law: Advantages and Problems: Advice to the UK Government* (UK: Law Commission & Scottish Law Commission, 10 November 2011); Ulrich Magnus, "CISG and CESL" in Michael Joachim Bonell, Marie-Louise Holle & Peter Arnt Nielsen, eds, *Liber Amicorum Ole Lando* (Copenhagen: Djøf Forlag, 2012) 225; Nicole Kornet, "The Common European Sales Law and the CISG: Complicating or Simplifying the Legal Environment?" (2012) Maastricht European Private Law Institute Working Paper 4; Michael Joachim Bonell & Ole Lando, "Future Prospects of the Unification of Contract Law in Europe and Worldwide" (2013) 18 Unif L Rev 17. On 27 April 2012, the Chicago Law School hosted the "Conference on European Contract Law: A Law-and-Economics Perspective", whose contributions are published in (2013) CML Rev Issue 1/2. In general *cf* Mel Kenny, "Globalization, Interlegality and Europeanized Contract Law" (2003) 21 Penn St Int'l L Rev 569.

[33] In the Commission's proposal "'good faith and fair dealing' means a standard of conduct characterised by honesty, openness and consideration for the interests of the other party to the transaction": art 2(b) (this rule was amended with even more flexibility by the Parliament: Amendment 37).

The *CESL* is intended to create "within each Member State's national law a second contract law regime for contracts within its scope" (recital (9)). Ultimately we could end up with three systems for the sale of movable goods: national law, the uniform law of the *CESL* and the *CISG*.

Many scholars believe that a similar solution to regional harmonisation is destined to fail. Taking the various criticisms on board, the European Commission has withdrawn the *CESL* project, intending to replace it with regulations focusing on e-commerce and destined to create a digital single market in Europe.

B. *A Possible Project: The Southeast Asian States*

A powerful regional harmonisation engine was set in motion in Asia and the Pacific basin. In 2009, the community of states known as the Association of Southeast Asian Nations ("ASEAN") (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam) approved the *ASEAN Trade in Goods Agreement*.[34] Free trade agreements are also in place with India (*AIFTA*), China (*ACFTA*), South Korea (*ASKFTA*), Japan (as an economic partnership: *AJCEPT*) and Australia and New Zealand (*AANZFTA*). These treaties expand the free trade area well beyond the borders of the community of ASEAN countries, and envisage the gradual implementation of the free circulation of goods between ratifying states, eliminating customs and protectionist barriers. However the treaties do not contain rules to be applied to the international trade contracts, but are limited to encouraging strong regional standardisation.

The countries that have signed up to the *ATIGA* set out the goals of the agreement in the Preamble to the treaty:

- **DESIRING** to move forward by developing a comprehensive ASEAN Trade in Goods Agreement which is built upon the commitments under the existing ASEAN economic agreements *to provide a legal framework to realise free flow of goods in the region*;
- **CONFIDENT** that a comprehensive ASEAN Trade in Goods Agreement would minimise barriers and deepen economic linkages among Member States, *lower business costs*, increase trade, investment and economic efficiency, create a larger market with greater opportunities and larger economies of scale for the businesses of Member States and create and maintain a competitive investment area…[35]

The agreement for the free flow of goods will only be able to achieve its goals in full if it is accompanied by uniform regulation of the international sales. This has driven a number of illustrious scholars to pass the project known as the Principles of Asian Contract Law ("PACL"), but this will demand long development times and could encounter political obstacles to its implementation. As the Singapore Academy of Law underlined, "[a]s ASEAN is a microcosm of the world's different legal systems, any attempt to harmonise international trade law from scratch is a herculean task."[36]

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[34] 26 February 2009 (entered into force 17 May 2010) [*ATIGA*].

[35] *Ibid* [emphasis in italics added].

[36] Singapore Academy of Law, *supra* note 3 at para 43. On the PACL project see Shiyuan Han, "Principles of Asian Contract Law: An Endeavor of Regional Harmonization of Contract Law in East Asia" (2013)

The *CISG* is already a suitable instrument to achieve the purpose that the *ATIGA* treaty set itself. The Preamble to the *CISG* states that:

> [T]he adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade.

This is exactly the purpose that the Asian free trade treaty hopes to achieve. Some states who signed the free trade agreement have also ratified the *CISG* (Japan, Singapore, Australia, New Zealand and China); if the other states were also to ratify the *CISG* the free trade area in Southeast Asia would immediately have the legal instrument necessary to facilitate the circulation of goods.[37]

Alternatively, the Southeast Asian nations could pursue the goal of adopting a uniform regional law. Once again, the *CISG* would be a suitable source of rules for the regional harmonisation of laws on the sale of movable goods. Among other things, numerous *CISG* rules encourage the parties to preserve the contract (for example, the right to cure), rather than starting litigation: "[t]his [is] a more Asian and consensual approach than the Western confrontational approach."[38] In this sense the *CISG* can also recover the specific legal sensitivity of the Asian systems.

C. *A Successful Attempt: The African OHADA Uniform Law*

The Organisation pour l'Harmonisation en Afrique du Droit des Affaires ("OHADA") was set up in Africa, with a treaty signed on 17 October 1993, and revised in 2008. 17 central African countries are currently members of OHADA (Benin, Burkina Faso, Cameroon, Central African Republic, Côte d'Ivoire, Republic of the Congo, Comoros, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Mali, Niger, Democratic Republic of the Congo, Senegal, Chad and Togo). The purpose of the organisation is to remedy the legal and juridical uncertainty that exists among the signatory states, because of the backwardness of many legal texts, which reflect the colonial period and no longer reflect the current economic situation and international relations.[39]

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58 Vill L Rev 589; Jungjoon Ka, "Introduction to PACL" in Castellani, Angelo & Sage, *supra* note 21 at 55.

37 The adoption of the *CISG* as a useful step towards the integration of ASEAN is supported by Gary F Bell, "Harmonisation of Contract Law in Asia: Harmonising Regionally or Adopting Global Harmonisations: The Example of the CISG" [2005] Sing JLS 362; see also Luca Castellani, "CISG and Harmonization of Asian Contract Law" (Paper delivered at the NYSBA Hanoi Conference, 24 October 2013), online: New York State Bar Association <http://www.nysba.org/Sections/International/Seasonal_Meetings/Vietnam/Program_4/CISG_Paper.html>; on this subject see also Bruno Zeller, "Facilitating Regional Economic Integration: ASEAN, ATIGA and the CISG" in Ingeborg Schwenzer & Lisa Spagnolo, eds, *Towards Uniformity: The 2nd Annual MAA Schlechtriem CISG Conference: International Commerce and Arbitration: Volume 8* (The Hague: Eleven International Publishing, 2011) 255.

38 Singapore Academy of Law, *supra* note 3 at para 43.

39 For an overview, *cf* Marcel Fontaine, "Law Harmonization and Local Specificities: A Case Study: OHADA and the Law of Contracts" (2013) 18 Unif L Rev 50; Claire Moore Dickerson, "Harmonizing Business Laws in Africa: OHADA Calls the Tune" (2005) 44 Colum J Transnat'l L 17; Juana Coetzee & Mustaqeem de Gama, "Harmonisation of Sales Law: An International and Regional Perspective" (2006)

In 1997 the signatory states adopted a uniform law governing commercial law (*Acte Uniforme relatif au Droit Commercial Général*[40]), which was modified and modernised in 2010 (*Acte Uniforme Révisé portant sur le Droit Commercial Général*[41]). This law regulates also the sales of goods between companies, and excludes the sales to consumers (*AUDCG*, arts 202, 203; *AURDCG*, arts 234, 235). The clauses of the uniform law follow the rules of the *CISG* in great detail, with only marginal differences.

It is extremely interesting to note that the OHADA member states are nearly all former French colonies (the only exceptions being Guinea-Bissau, a former Portuguese colony, Equatorial Guinea, a former Spanish colony, and Cameroon, whose mixed legal system is of French/English origin), which take their inspiration from the French model to regulate domestic law. In spite of this, these countries—most of them Francophile and with a French legal culture—have adopted the *CISG* approach to domestic sales of goods, including several typical rules deriving from English Common Law (for example the formation of the contract and withdrawal and acceptance of the proposal: *AUDCG*, art 211; *AURDCG*, art 242).

On the other hand, the European historical and cultural legacy curiously emerges in relation to the transfer of property. As we saw earlier, civil law systems generally establish when property passes to the buyer. French law, as we have seen, links the transfer of property to the simple contract, independently of delivery or payment of the price. The African uniform law does not avoid the need to provide a specific rule on the transfer of property, but adopts the German rule, which links the transfer of property to the delivery of the goods sold (*AUDCG*, art 283; *AURDCG*, art 275). However, the adoption of a precise decision regarding the transfer of property does not modify the rules applied, which remain those of the *CISG*. The passage of risk, for example, takes place with delivery (*CISG*, art 69); except that the OHADA uniform law introduces the logical medium of the passage of property (*AUDCG*, art 285; *AURDCG*, art 277: "Le transfert de propriété entraîne le transfert des risques à l'acheteur.").

The text of the *AUDCG* was adopted as domestic law by a number of signatory states. For example, in the Senegalese *Civil Code*, the sale of goods is regulated by arts 202-288, which reproduce word for word the text of the *AUDCG* uniform law.[42] The *CISG* has thus become the national law for the sale of goods in countries that have signed up to OHADA.

D. *Medium Regional Harmonisations*

Three important economies joined the *CISG* quite recently: Japan (2009), Turkey (2011) and Brazil (2014); while South Africa did not until now. We can analyse the consequences of becoming a party of the *CISG*, when the ratifying state is a regional leading economy.

10:1 Vindobona J 15, with the discussion on the possible coexistence of universal uniform instruments (like the *CISG*) and regional harmonisation (like OHADA law).

40 17 April 1997, Journal Officiel No 1 (entered into force 1 January 1998) [*AUDCG*].

41 15 December 2010, Journal Officiel No 23 (entered into force 16 May 2011) [*AURDCG*].

42 Senegal until now has not changed its civil code to adopt the revised text of the OHADA uniform law.

The case of Turkey is very interesting. This state is playing a leading political, cultural and economic role in the Cooperation Council of Turkic-Speaking States ("CCTS"), founded in 2009 (*Nakhchivan Agreement*). The member states of the Council are Azerbaijan, Kazakhstan, Kyrgyzstan, Turkey, while Turkmenistan and Uzbekistan are considered possible future members. Only Kyrgyzstan (effective 1 June 2000) and Uzbekistan (effective 1 December 1997), after the dissolution of the Soviet Union, were already parties to the *CISG*. Among the main objectives of the Turkic Council we can find: *creating favourable conditions for trade and investment*; *aiming for comprehensive and balanced economic growth, social and cultural development*; and *promoting exchange of relevant legal information and enhancing legal cooperation*. The Council also works to boost economic development in all regions of member states. It is clear that Turkey is the leading state in the Turkic Council.[43] Therefore the adoption of the *CISG* by Turkey will certainly have a wider effect. All the member states of the Turkic Council, which are not parties to the *CISG*, will be stimulated to ratify it. The leading role of Turkey in this medium regional harmonisation will both be helped by adopting the *CISG* and determining new adhesions to the Convention.[44]

In the Pacific Asian area many states did not ratify the *CISG* until now: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Taiwan, Thailand and Vietnam. The application of the *CISG* in Hong Kong is still under discussion.[45] The accession of Japan to the *CISG* in 2009 can influence these states, because of the leading economic role played by Japan in the region. The international trade between Japan and any other regional economy could be boosted by a widespread use of the *CISG*. The Philippines, for example, is currently preparing for *CISG* membership.[46]

In these two cases the accession to the *CISG* by the regional strong economy (Turkey and Japan) can bring about the adoption of the uniform sale of goods law under the lead of the strong economy. The other states will feel the pressure and will probably decide to adopt the sale legal tool for the international trade of goods.[47]

The case of Brazil is different. All the states of South America already signed the *CISG* (with the only exception of Venezuela). With its own accession to the *CISG* Brazil reached the same level of uniform law already present in the other South American states.[48] This will help the Brazilian regional trade in goods and will

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[43] Turkey's gross domestic product amounts to the double of the other states belonging to the Council, according to current IMF statistics.

[44] *Cf* William P Johnson, "Turkey's Accession to the CISG: The Significance for Turkey and for Sales Transactions with US Contracting Parties" (2011) 8 Ankara L Rev 1, online: Social Science Research Network <http://ssrn.com/abstract=1947587>, with a discussion of Turkey's role in international trade and regional leadership in the Caucasus and Southwest Asia.

[45] *Cf* Ulrich G Schroeter, "The Status of Hong Kong and Macao under the United Nations Convention on Contracts for the International Sale of Goods" (2004) 16 Pace Int'l L Rev 307.

[46] *Cf* Rosario Elena A Laborte-Cuevas, "The Philippines' Perspective on United Nations Convention on Contracts of International Sales of Goods", online: Victoria University of Wellington <http://www.victoria.ac.nz/law/nzacl/pdfs/special%20issues/hors%20serie%20vol%20xix/rosario%20elena%20a.%20laborte-cuevas%20for%20printing.doc>; Sono, *supra* note 28.

[47] But it should be recognized that the accession of China to the *CISG* in 1988, and the growing leading role of the Chinese economy in the Asian region, had until now no influence on ratification by other ASEAN countries.

[48] *Cf* Iulia Dolganova & Marcelo Boff Lorenzen, "The Brazilian Adhesion to the 1980 UN Vienna Convention on Contracts for the International Sale of Goods" (2009) 13:2 Vindobona J 351, with the discussion of the advantage of Brazil accession to the *CISG*. The efforts for the early harmonisation in Central and

lower the transaction costs for Brazilian businesses. In this case the strong economy of the region does not lead the regional unification, but instead follows a trend already existing in the neighbouring countries.

Finally we can remember that only six southern African states adopted the *CISG* (Madagascar, Gabon, Uganda, Zambia, Republic of the Congo and Burundi). The Republic of South Africa is the first economy in the continent, but it is not a party to the *CISG*. The leading role of South Africa has led some to urge the adoption of the *CISG* as a tool "to unify the law of sale applicable in the southern African region".[49] Once more the *CISG* could appear very useful for achieving uniformity in the trade law in a medium range regional scale, under the leadership of the most economically advanced state.

V. Why the *CISG* is a Good Model Law

In its 35 years of life, the *CISG* has gone through a decisive process of maturity. Its solutions have been the subject of numerous decisions, of both national courts and arbitral tribunals, and academic output is extremely vast. The result of all this has been to greatly attenuate the risk of a lack of uniformity in the interpretation and application of the Convention.[50]

The *CISG* can now be considered as an autonomous, consistent body of law, fully capable of bridging legislative gaps and of evolving to meet any new requirements of international and domestic trade. It has definitively acquired the status of a *model* of the law regulating the sale of goods.

Which are the factors that have made the *CISG* a *model* for the sale of goods, to be used by national law-makers to regulate even domestic sales?

In my opinion, the answer lies in three features of the *CISG*: its *prestige*, its *intrinsic equilibrium* and its *derogability.*

The *CISG* has acquired significant *prestige*—according to the comparative law analysis mentioned at the start of this paper—in the context of the regulation of international trade. The authority of the UNCITRAL and the growing number of countries signing up, certainly make it increasingly attractive for countries to ratify the Convention. Obviously the *prestige* of a model is recognised by each national system in comparison with its own rules. This explains why the Tokelau Islands adopted the *CISG* to a full extent; and also explains why the United Kingdom does not ratify the Convention, that is not considered a better model than the domestic *Sale of Goods Act*.

South America are discussed in Alejandro M Garro, "Unification and Harmonization of Private Law in Latin America" (1992) 40:3 Am J Comp L 587.

[49] In this sense *cf* Sieg Eiselen, "Adoption of the Vienna Convention for the International Sale of Goods (the CISG) in South Africa" (1999) 116 SALJ 323 at 367.

[50] *Cf* the remarks by Franco Ferrari, "Gap-Filling and Interpretation of the CISG: Overview of International Case Law" (2003) 7 Vindobona J 63; and by Joseph Lookofsky, "Digesting CISG Case Law: How Much Regard Should We Have?" (2004) 8 Vindobona J 181. It is true that some scholars contest the role of the *CISG* in the uniformation of law process: *cf* Paul B Stephan, "The Futility of Unification and Harmonization in International Commercial Law" (1999) 39 Va J Int'l L 743; Clayton P Gillette & Robert E Scott, "The Political Economy of International Sales Law" (2005) 25 Int'l Rev L & Econ 446; Gilles Cuniberti, "Is the CISG Benefiting Anybody?" (2006) 39:5 Vand J Transnat'l L 1511; but the recent increase in accessions to the *CISG* demonstrates how desirable the *Vienna Convention* is for the uniformation of international trade laws.

But the *prestige* alone is not sufficient to explain why the *CISG* can also become a model both for domestic law and regional harmonisation.

One very important aspect is the internal *equilibrium* that the *CISG* offers the jurist, from all parts of the world. In the field of the various models of sale of goods laws, the *CISG* avoids occupying the extreme points of the opposition indicated at the start and offers solutions that are often intermediate. It also escapes ideological conflict—for example the rift between the French model and the German model—that is still perceived today in the legislative process of the EU.

It is probable that nearly all the legal systems in the world—with the relevant exception of certain Islamic countries—include some characteristics of English Common Law, or of European civil law in their national laws. Ultimately the sale of goods is the sector in which the rules of Western legal systems have been expressed most effectively, and in which the cases of non-Western rules/principles are less important.[51]

The eclecticism of the *CISG* allows the jurists of each national system to perceive and appreciate the rules of the Convention that are shared with their own system, rather than underlining the differences. The national jurist thus tends to reward the compatibility of its own system with the *CISG*, and puts any conflict between the *CISG* and the domestic system in second place. For example, the Report of the Singapore Academy of Law, preparatory to signing up to the *CISG*, underlines that the *CISG* is rooted in Common Law.[52] Even the experiences of the OHADA countries are particularly informative: the systems derived from French law have easily incorporated all the rules of the *CISG*, including the rules deriving from Common Law and from the German system.

The absence of a rule on the transfer of property is an advantage of the *CISG* as the model for sales of goods. This absence allows the rules of the Convention to be received without forcing the receiving system to decide which solution to adopt for the transfer of property.

And finally the *derogability* of the *CISG* appears to meet the needs of all the systems. First of all we can mention the principle of freedom of contract, which constitutes the bearing framework of the Convention.[53] Or the norm that grants the specific performance in case of breach of contract, only if the right of the *lex fori* grants that remedy in the specific case to be decided. Or the criterion of interpretation of the Convention in conformity with the principles that it is based on (*CISG*, art 7), which provides the *CISG* with an effective instrument to adapt to new circumstances and to evolve, independent of national law.

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[51] Bell, *supra* note 37 at 367, concludes: "for the international sale of goods within Asia, we should probably try to harmonise, not our different and diverse cultural values, but our formal, Western-based laws of sale. The CISG does just that".

[52] Singapore Academy of Law, *supra* note 3 at para 38:

> [I]t should be noted that many of the provisions in the Convention are similar to the [*Sale of Goods Act*] and Common Law doctrines of contract law. Some of the provisions even represent innovations and improvements on the Common Law principles of contract law.

Cf ibid at Appendix G which provides a "Comparative Table of Convention Provisions with Singapore Law".

[53] *Cf* Lando, "CISG Proposal", *supra* note 6 at 385; also the informality in the conclusion of the sale is an important feature of the *CISG*.

VI. Moving the *CISG* Forward

So the *CISG* is a healthy model. What might it reserve in future?

We should begin considering the issues not covered by the *CISG*. There are two contexts in which the *CISG* is not applicable.

The first regards sales to consumers, which nearly always bring into play mandatory rules of domestic law and therefore demand a different legislative set-up. The example of the European *CESL* project, which linked both commercial sales and sales to consumers in a single text, demonstrates that a similar solution is untenable.

The second context in which the *CISG* is not applicable derives from its arts 2 and 3: shares of companies and financial instruments, ships, vessels, hovercraft and aircraft, and electricity are all excluded;[54] contracts related to goods to be manufactured are excluded, if the buyer undertakes to supply a substantial part of the materials, or if the preponderant part of the obligation of the party who furnishes the goods consists in the supply of labour or other services. Here however the *CISG* can still be chosen by the contracting parties, possibly together with other rules dedicated to specific aspects (taken from soft law instruments or from individual national systems).

There is also the problem of the contractual matters not covered by the *CISG* rules: the validity of an international contract of sale is one of them, as well as third-party rights, or the liability for death or personal injury.[55] In these cases the judge has to refer to the national law applicable under the usual conflict of law rules. In these topics a model law—rather than a Convention[56]—prepared by UNCITRAL for the adoption by the states parties to the *CISG* could help to reduce the drawbacks deriving from the application of the domestic law.

The perspective of the *CISG* as an available model for various levels of reform is much more attractive.

In the first place, the *CISG* can be used as a model for the reform not only of the sale of goods law, but also—more generally—of contract law. The formation of the contract and remedies for breach of contract, for example, are easily adapted to general contract rules. The evolution of Chinese law is an important example of this. It is interesting to note that it refers once again to the historical process by which the

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54 Some authors consider that the *CISG* discipline is not totally appropriate for the needs of the international commodities market: see Michael Bridge, "A Law for International Sales" (2007) 37 Hong Kong LJ 17.

55 The 'validity exclusion' covers many important issues, from capacity to agency, mistakes, and administrative regulations prohibiting certain international sales: Peter Schlechtriem, "Requirements of Application and Sphere of Applicability of the CISG" (2005) 36:4 VUWLR 781; *cf* also Michael B Lopez, "Resurrecting the Public Good: Amending the Validity Exception in the United Nations Convention on Contracts for the International Sale of Goods for the 21st Century" (2010) 10 J Bus & Sec L 133; Henry Mather, "Choice of Law for International Sales Issues Not Resolved by the CISG" (2001) 20 JL & Com 155, with interesting proposals.

56 A strong initiative on a new comprehensive convention on international contract law probably is not needed nor feasible at this time: see Michael J Dennis, "The Guiding Role of the CISG and the UNIDROIT Principles in Harmonizing International Contract Law" in Castellani, Angelo & Sage, *supra* note 21, 19, with a thoughtful criticism on the so called "Swiss Proposal" that asked the UNCITRAL Secretariat to consider a new codification (*Possible Future Work in the Area of International Contract Law: Proposal by Switzerland on Possible Future Work by UNCITRAL in the Area of International Contract Law: Note by the Secretariat*, UNCITRAL, 45th Sess, UN Doc A/CN.9/758 (2012), online: UNCITRAL <http://www.uncitral.org/uncitral/commission/sessions/45th.html>.

rules of Roman sale of goods became the blueprint for rules regulating contracts in general in the history of continental European law.[57]

Secondly, the *CISG* constitutes a useful model for countries that intend to reform their domestic law governing the sale of goods. This has seemed more significant until now for countries with a colonial past, which have therefore imported European models into their domestic systems, such as the English *Sale of Goods Act*, often without assimilating any changes introduced in the original system.

The decisive influence of the *CISG* can be expressed in terms of regional harmonisation, which will probably acquire increasing importance in future. In fact, the adoption of free trade conventions constitutes a pre-condition for the harmonisation of juridical structures. Regional economic integration will continue in future, creating increasingly vast areas of integration: the case of the states in Southeast Asia is a clear example of this. The countries interested will therefore need to rapidly harmonise the law on commercial trade law, which economic integration intends to simplify. Sometimes it may not be necessary to reform: for the *North American Free Trade Agreement* area, for example, the *CISG* is already a uniform applicable law of the three founder states (the United States, Canada and Mexico). In this context, it will be necessary to avoid the emergence of a 'regional' interpretation of the *CISG*.[58] However, in most cases, countries will be able to use the *CISG* as a model to harmonise the law, even in the broader area of contract law.

Neutrality with respect to the various national solutions, and above all neutrality with respect to politically or ideologically sensitive legislative choices, constitutes a profound characteristic of the *CISG* that makes it perfectly suitable as a base for the various attempts at regional harmonisation.

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[57] *Cf* Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Edinburgh: Scottish Academic Press, 1974).

[58] *Cf* Schroeter, "Global", *supra* note 31 at 190, with remarks on the *CISG* interpretation by courts in Europe.