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INTERPRETATION AND GAP-FILLING UNDER THE CISG

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Summary: 1. Introduction. 2. Interpretation of the CISG. 3. Methods of interpretation; a) Wording, Context and Purpose; b) History; c) Comparative Law. 4. Gap-Filling. 5. The CISG and the PICC. 6. Conclusion.

1 INTRODUCTION²

There is hardly any topic that has been as extensively discussed as interpretation and gap-filling under the CISG. Entire books have been devoted to this subject³ innovative theories such as the global *iuris consultorum* have been developed⁴.

The core provision for interpretation and gap-filling in the CISG is art. 7. It has been considered to be the most important provision

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² The author is deeply indebted to Mr. Claudio Marti, M.Law, attorney at law, for editing the footnotes. All web pages were last accessed on 31 julho 2014.

³ See JANSSEN, A.; MEYER, O. (Eds.), *CISG Methodology*, seller, European law publishers, Munich, 2009; ZELLER, B. *CISG and the Unification of International Trade Law*, Abingdon: Routledge-Cavendish, 2007; FELEMEGAS, J. (Ed.), *An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law*, Cambridge: Cambridge University Press, 2007; Pace *International Law Review* (Ed.), *Review of the Convention on Contracts for the International Sale of Goods (CISG) 2005-2006*, Munich: Sellier European law publishers, 2007.

⁴ See ANDERSEN, C. B. *Uniform Application of the International Sales Law*, Kluwer Law International, Alphen aan den Rijn, 2007, p. 46 et seq.

in the CISG or even its centrepiece⁵. Provisions similar to art. 7 CISG can now be found in most international instruments, be they conventions, model laws or uniform projects⁶. Besides art. 7 CISG principles for interpretation and gap-filling may also be derived from the CISG's Preamble⁷.

Art. 7(1) CISG seeks to secure the autonomous interpretation of the CISG, art. 7(2) CISG provides for possible gap-filling. I will address these two fields in the following by putting emphasis on practical questions and mechanisms rather than on theoretical and dogmatic particulars.

2 INTERPRETATION OF THE CISG

2.1 Aims and Objectives

For the interpretation of the CISG art. 7(1) CISG contains three guidelines which rather constitute aims than methods of interpretation⁸; regard is to be had to its international character, the need to promote uniformity and the observance of good faith in international trade. Principles laid down in the Preamble mainly relate to the new international economic order and the development of international trade.

a) International Character of the CISG

The first reference is to the international character of the CISG. This primarily implies that the CISG must be interpreted

⁵ See VISCASILLAS, P. Perales, *In: KRÖLL, S.; MISTELIS, L.; VISCASILLAS, P. Perales (Eds.), UN-Convention on the International Sales of Goods (CISG)*. Munich: C.H. Beck, 2011, art. 7, § 21.

⁶ See SCHWENZER, I.; HACHEM, P. *In: SCHWENZER, I. (Ed.), SCHLECHTRIEM; SCHWENZER, Commentary on the Convention on the UN Convention on the International Sale of Goods (CISG)*. 3rd edn. Oxford: Oxford University Press, 2010, art. 7, § 6 (cited as: 'CISG-Commentary').

⁷ SCHWENZER, I., HACHEM, P. *In: SCHWENZER, I. (Ed.), CISG-Commentary*, supra note 6, Preamble § 3.

⁸ MAGNUS, U. 'Tracing Methodology in the CISG: Dogmatic Foundations, *In: JANSSEN, A.; MEYER O. (Eds.), Supra note 3, p. 40. See furthermore MAGNUS, U. *In: STAJDINGER, J. (Ed.), Julius von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit EinführungsGesetz und Nebengesetzen*. Wiener UN-Kaufrecht (CISG). 15th edn. Berlin: Sellier/de Gruyter, 2005, art. 7, § 30.*

autonomously⁹. It was the explicit aim of the drafters of the Convention to develop their own legal concepts and terminology that must not be confused with similar domestic concepts or terms. Thus the concept of avoidance for breach of contract must not only be distinguished as far as its prerequisites and consequences are concerned but also as to its distinct terminology. In interpreting the Convention any homeward trend must be avoided¹⁰. Relying on domestic legal solutions and relevant case law is not permitted. Thus in each case the meaning of the CISG must be established independently even if a certain term is equivalent or resembles a term used in a domestic legal system.

b) Uniformity in Application

Art. 7(1) CISG further mentions the need to promote uniformity. Without uniform application and interpretation the very aim of the CISG to internationally unify the core areas of sales law would be jeopardized.

The crucial question is: how can we achieve a uniform application and interpretation of the CISG around the globe, among civil law and common law jurisdictions, among developed, developing and transition countries, across language and cultural barriers?

Unlike the European Communities or OHADA, the CISG has no single supreme court guarding the uniform interpretation of uniform or harmonized law and this may be regarded as a severe deficit¹¹. However, there are other means to safeguard uniformity.

Allow me to briefly mention a few of them¹². First of all, in 1988 already, UNCITRAL established the information system 'CLOUT' (Case Law on UNCITRAL Texts)¹³ which aims to enable the exchange of decisions concerning UNCITRAL Conventions. Reporting offices in the Member States collect all decisions on the CISG and transmit them to the Commission's Secretariat in Vienna, which in turn makes the original

⁹ SCHWENZER, I.; HACHEM, P. *In: SCHWENZER, I. (Ed.), CISG-Commentary*.

¹⁰ Supra note 6, art. 7, § 8.

¹¹ See e.g. PLITZ, B. *Internationales Kaufrecht*. 2th edn. Munich: C.H. Beck, 2008, § 2, § 185.

¹² Cf. DIMATTEO, L. A.; JANSSEN, A. *Interpreting Uncertainty: Methodological Solutions for Interpreting the CISG*. Nederlands Tijdschrift voor Handelsrecht. April 2012, p. 55.

¹³ See SCHWENZER, I.; HACHEM, P. *In: SCHWENZER, I. (Ed.), CISG-Commentary*. Supra note 6, art. 7 § 11.

¹⁴ Available at: <http://www.uncitral.org/uncitral/en/case_law.html>.

decisions available and subsequently publishes a translated abstract of each decision in all six UN working languages. Numerous other databases further alleviate the task of researching court decisions and arbitral awards. Finally, the UNCITRAL Digest on the CISG – the second edition having been published in March 2012¹⁴ – offers compilations of selected cases on Articles of the CISG. Since UNCITRAL is an administrative agency of the UN, however, it must refrain from any critical comments on domestic developments in Member States and thus is not able to give any valuable guidance on the future development of the CISG, especially in cases of divergent interpretation. The CISG Advisory Council¹⁵ which is a private initiative founded in 2001 and chartered in the United Kingdom is not subject to such restrictions¹⁶. It issues opinions on questions relating to the application and interpretation of the CISG that are more and more often being cited by courts and tribunals as persuasive authority. Finally, reference is to be made to truly international and comparative scholarly writing that can be found in commentaries, conference books and the like.

c) Observance of Good Faith

Finally, art. 7(1) CISG contains a reference to the observance of good faith in international trade. This introduction of the good faith principle into the CISG was very controversial at the Vienna Conference as its recognition in domestic legal systems varies considerably¹⁷. Whereas English commercial law strongly favours certainty over fairness many civil law legal systems tend to rely on notions of good faith and fair trade¹⁸.

To this very day it is disputed whether the good faith principle may also be directly applied to the parties' contractual relationship. Especially German courts often rely on good faith, for example when obliging a party introducing standard terms in the negotiation process to make them available to the other party¹⁹. However, the very wording of

¹⁴ Available at: <<http://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>>.

¹⁵ See the official website of the CISG Advisory Council available at: <<http://www.cisgac.com>>.

¹⁶ For further information on the CISG Advisory Council see SCHWENZER, I. The CISG Advisory Council. Nederlands Tijdschrift voor Handelsrecht. April 2012. p. 46-51.

¹⁷ See BONELL, M. J. /n: BIANCA, C. M.; BONELL, M. J. (Eds.), *Commentary on the International Sales Law*. Milan: Giuffrè, 1987, art. 7 § 1.7.

¹⁸ Cf. ZELLER, B. *The Observance of Good Faith in International Trade*. In: JANSSEN, A.; MEYER, O. (Eds.), *Supra note 3*, p. 133 et seq.

¹⁹ See e.g. Federal Supreme Court of Germany (BGH), 31 October 2001, CISG-online n. 617, available at: <<http://www.cisg-online.ch>>.

art. 7(1) CISG clearly shows that this was not intended. Further evidence for this position is provided by the fact that the UNIDROIT Principles contain an explicit provision obliging the parties to act in good faith²⁰. Thus, the scope of application of the principle of good faith must be restricted to the interpretation of the Convention and cannot be used as a general corrective tool as it functions in many civil law legal systems²¹.

d) New International Economic Order and Promotion of International Trade

Further objectives for interpretation of the CISG can be derived from the Preamble. Among them are the new international economic order and the promotion of international trade. Although these principles seem to be rather vague they may serve as valuable guidelines when it comes to questions of developing the CISG and adapting it to new concepts and the ever changing necessities of international trade. Two examples shall be given here: the first concerns the growing awareness of ethical standards in international trade, and the second addresses all questions surrounding the digitalization of commerce and trade that was not and could not have been foreseen when drafting the Convention.

3 METHODS OF INTERPRETATION

The CISG itself does not contain any explicit rules on the respective methods of interpretation. The Vienna Treaties Convention 1969²² does not effectively help either as it primarily aims at public international law treaties and the obligations of the Contracting States. However, some cornerstones can be derived therefrom which are also in line with most domestic concepts for the interpretation of statutes. These are in essence, wording, context, purpose and history. Special attention must be given to comparative law.

²⁰ Art. 1.7 PICC.

²¹ See MAGNUS, U. *Tracing Methodology in the CISG: Dogmatic Foundations*. In: JANSSEN, A.; MEYER, O. (Eds.), *Supra note 3*, p. 43.

²² Vienna Convention on the Law of Treaties 1969, available at: <http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf>.

a) Wording, Context and Purpose

Like in all domestic legal systems the starting point for interpretation of the CISG is its wording and the context within which a provision can be found in the Convention as well as its purpose²³. The CISG has been drawn up in the six languages of the UN; Arabic, Chinese, English, French, Russian and Spanish. All these versions are authentic. Any other versions, such as the German or the Turkish ones, are unofficial translations that may not be relied upon. However, even among the six official versions there are huge discrepancies. This primarily relates to the Arabic, Chinese and Russian versions that sometimes deviate considerably from the others. In such a case it seems advisable to consider the English version because English was the main working language in the drafting Committee and at the Vienna Conference²⁴. Thus the need to promote uniformity may lead to neglecting the different wording in another official language.

b) History

Not only civil law but also common law legal systems now recognize that recourse may be had to the *travaux préparatoires*²⁵. Materials on the CISG are readily available in form of the Official Records that can nowadays also be accessed via websites²⁶. However, the historic interpretation becomes less and less persuasive the longer the CISG is in force²⁷. It may even contradict the aim of uniformity and especially that of promoting international trade. Let me just give you one example. There is an open contradiction between art. 14 and art. 55 CISG as regards the possibility of an open price term which has given rise to many scholarly writings²⁸. Whereas art. 14(1) sent. 2 CISG denies the existence of an offer when no price is fixed, art. 55 CISG acknowledges

²³ HAGER, G. Zur Auslegung des UN-Kaufrechts – Grundsätze und Methoden. In: BAUMS, T.; WERTENBRUCH, J. (Eds.). *Festschrift für Ulrich Huber*. Tübingen: Mohr Siebeck, 2006, p. 323-324.

²⁴ SCHWENZLER, I.; HACHEM, P. In: SCHWENZLER, I. (Ed.). *CISG-Commentary*. Supra note 6, art. 7 § 21.

²⁵ See e.g. HONNOLD, J. O.; FLECHTNER, H. M. *Uniform Law for International Sales under the 1980 United Nations Convention*, 4th edn. Alphen aan den Rijn: Kluwer Law International, 2009, art. 7, § 88 et seq.

²⁶ Available at: <<http://www.cisg.law.pace.edu/cisg/conference.html>>

²⁷ SCHWENZLER, I.; HACHEM, P. In: SCHWENZLER, I. (Ed.). *CISG-Commentary*. Supra note 6, art. 7, § 22.

²⁸ See SCHROETER, U. In: SCHWENZLER, I. (Ed.). *CISG-Commentary*. Supra note 6, art. 17, § 19 notes 73-84 with further references.

an existing contract even without such a price term and provides for a mechanism to determine the relevant price in such a case. The history²⁹ reveals that the hostility towards open price terms was due to the then so-called ‘socialist’ countries as well as France. They prevailed in the discussions on art. 14 CISG but not in those on art. 55 CISG. Now that the former socialist countries do no longer control trade as they did in 1980 and that even the French Supreme Court under domestic law has attenuated the concept of *pretium certum* it is clearly preferable to discard the historic interpretation and to give prevalence to art. 55 CISG which supports the principle of *favor contractus* and thus the promotion of international trade.

c) Comparative Law

The value of the comparative law method for the interpretation of the CISG cannot be overestimated³⁰. Uniform application and interpretation of the CISG as it is called for under art. 7(1) CISG requires solutions that are acceptable for lawyers from different legal backgrounds with different conceptions of sales and contract law. Let me again give you one example³¹. According to arts. 38, 39 CISG the buyer has to examine the goods and give notice of any non-conformity within a reasonable time. Whereas some domestic legal systems do not know any such duty others provide for a very strict notice requirement allowing the buyer only some days³². Any solution under the CISG has to bear in mind this comparative background and must strike a balance between the seemingly irreconcilable approaches in order to be acceptable to lawyers from all member states. This is the only way to secure a uniform interpretation of the CISG provisions. Although courts and tribunals can rarely be expected to engage in comprehensive comparative research this task has to be undertaken by legal scholars. The results of such an

²⁹ For details see HONDIUS, E. *Comparative Law in the Court-Room: Europe and America Compared*. In: BÜCHLER, A.; MÜLLER-CHEN, M. (Eds.). *Private Law national – global – comparative*. *Festschrift für Ingeborg Schwenzler zum 60. Geburtstag*. Bern: Stämpfli Verlag, 2011, p. 772-773.

³⁰ SCHWENZLER, I.; HACHEM, P. In: SCHWENZLER, I. (Ed.). *CISG-Commentary*. Supra note 6, art. 7, § 24.

³¹ For details see SCHWENZLER, I. ‘The Noble Month (Articles 38, 39 CISG) – The Story Behind the Scenery’. *European Journal of Law Reform*, v.7, n. 3-4, p. 353-366, 2005. See for further examples SCHWENZLER, I.; HACHEM, P. In: SCHWENZLER, I. (Ed.). *CISG-Commentary*. Supra note 6, art. 7, § 24.

³² For an overview see SCHWENZLER, I.; HACHEM, P.; KEE, C. *Global Sales and Contract Law*. Oxford: Oxford University Press, 2012, § 34.42 et seq., § 34.61 et seq.

endeavour must be made available to the larger CISG community in today's *lingua franca*, i.e. in English³³.

4 GAP-FILLING

4.1 General Remarks

Whereas art. 7(1) CISG sets the scene for interpreting the Convention, art. 7(2) CISG relates to gap-filling. Although it may be easy to distinguish between interpretation and gap-filling on a theoretical basis, in practice the borderline between the two is often blurred. For example, does the term impediment in art. 79 CISG encompass economic impediment and thus hardship – a matter of interpretation –, or is there a gap in the CISG concerning hardship that must be filled according to the principles set out in art. 7(2) CISG?

Art. 7(2) CISG provides for a two-step procedure³⁴. In the first place it must be determined whether there is a question “concerning matters governed by this Convention”. These gaps are usually referred to as ‘internal gaps’ whereas matters that are outside the Convention are so-called ‘external gaps’. According to art. 7(2) CISG internal gaps in the first place “are to be settled in conformity with the general principles on which” the Convention is based. Only if such general principles cannot be discerned may recourse be had to domestic law determined by the applicable conflict of laws rules³⁵.

4.2 Matters Governed by the CISG

Which matters are governed by the Convention is primarily set out in art. 4 CISG. According to this provision the CISG governs “the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract”. However, it explicitly states that questions of validity and property issues are outside the Convention. There are other areas of contract law that are certainly not

³³ See SCHWENZER, I.; HACHEM, P.; KEE, C. *Supra* note 32, § 5.37.

³⁴ SCHWENZER, I.; HACHEM, P. *In: SCHWENZER I. (Ed.), CISG-Commentary*. *Supra* note 6, art. 7, § 27.

³⁵ See MAGNUS, U. *Tracing Methodology in the CISG: Dogmatic Foundations*. *In: JANSSEN, A.; MEYER, O. (Eds.), Supra* note 3, p. 44.

covered by the CISG such as questions of agency³⁶, multiple parties or limitation of actions, the latter however is dealt with by the CISG's sister Convention on Limitation³⁷.

It has to be emphasized that it is entirely up to the CISG itself to define autonomously which matters are governed and which ones fall outside the Convention and thus are left to the applicable domestic law³⁸. Thereby recourse may firstly be had to the original intentions of the drafters of the Convention. Furthermore, in pursuing the aim of uniform interpretation and the promotion of international trade areas that originally may have been perceived to fall outside the Convention may now be considered to be mere internal gaps to be filled by general principles. The very definition of internal gaps and gap-filling is therefore a powerful instrument for developing the Convention and adjusting it to modern needs of trade and commerce³⁹. Let me give you some important examples in this regard.

The determination of what is a question of validity has to be decided by the CISG. Thus, domestic rules may provide for the invalidity of a contract in case of initial impossibility and regard this question as being one of the validity; under the CISG, however, this is not a validity issue as can be shown by the rules on risk of loss in such cases. Likewise initial inability on the part of one party to perform its obligation under the contract is exclusively dealt with under the CISG and may not give rise to concurrent remedies under the otherwise applicable domestic law⁴⁰. Incorporation of standard terms is to be decided under the CISG. Among others this includes questions of transparency even if they may be considered as validity issues under certain domestic legal systems⁴¹.

Burden of proof is nowadays almost unanimously considered to be governed by the CISG and not by domestic law. But recently, even more and more the opinion gains ground that also the standard of proof

³⁶ HONNOLD, J. O.; FLECHTNER, H. M. *Supra* note 25, art. 7, § 98.

³⁷ The 1974 Convention on the Limitation Period in the International Sale of Goods as amended in 1980, available at: <http://www.uncitral.org/pdf/english/texts/sales/limit/limit_conv_E_Ebook.pdf>

³⁸ MAGNUS, U. *In: STAUDINGER, J. (Ed.), Supra* note 8, art. 7, § 38.

³⁹ SCHWENZER, I.; HACHEM, P. *In: SCHWENZER, I. (Ed.), CISG-Commentary*. *Supra* note 6, art. 7, § 30.

⁴⁰ Cf. SCHWENZER, I.; HACHEM, P. *In: SCHWENZER, I. (Ed.), CISG-Commentary*. *Supra* note 6, art. 4, § 33.

⁴¹ SCHROETER, U. *In: SCHWENZER, I. (Ed.), CISG-Commentary*. *Supra* note 6, Intro arts 14-24, §§ 5-6.

has to be taken from the CISG itself and shall not be left to the applicable domestic procedural law⁴².

Finally, in 1980 still clearly a matter outside the Convention was the applicable interest rate under art. 78 CISG. This has given rise to disparate decisions on the question jeopardizing uniformity⁴³. The CISG Advisory Council therefore has ventured on this area and soon will be coming up with an opinion on the applicable interest rate under art. 78 CISG treating this question as an internal gap and developing a uniform solution.

4.3 General Principles Underlying the CISG

Once an internal gap is established this is to be filled primarily by relying on general principles underlying the Convention. The list of general principles is steadily growing and it seems worth mentioning that finding a general principle in itself makes it easier to treat a gap as an internal rather than an external one.

Authors and courts from civil law legal systems first of all rely on the principle of good faith and fair dealing as an overriding general principle of the CISG. It has been shown that this approach is hardly tenable and jeopardizes the uniform application and interpretation as well as predictability under the CISG. However, there are numerous concepts undoubtedly underlying the CISG as general principles that – at least from the perspective of a civil law lawyer – themselves emanate from the general notion of good faith. Such are; party autonomy, estoppel or the prohibition of contradictory behavior (*venite contra factum proprium*), freedom of form, equality of the parties, *favor contractus*, full compensation, the right to withhold performance, set-off and many others⁴⁴.

4.4 Recourse to Domestic Law

If no general principles underlying the CISG can be found internal gaps must be filled by resorting to the domestic law designated

⁴² CISG-AC Opinion n. 6, *Calculation of Damages under CISG Article 74*, Rapporteur: Professor John Y. Gotanda; Villanova Villanova University School of Law, Pennsylvania, USA, § 2.1, available at: <<http://www.cisgac.com/default.php?pkCat=128&RCat=148&sid=148>>.

⁴³ See BACHER, K. In: SCHWENZER, I. (Ed.), *CISG-Commentary*. Supra note 6, art. 78, § 27 et seq with further references.

⁴⁴ Cf. SCHWENZER, I.; HACHEM, P. In: SCHWENZER, I. (Ed.), *CISG-Commentary*. Supra note 6, art. 7, § 32.

by the respective conflict of laws rules. However, recourse to domestic law in any case must be an *ultima ratio* that means a last resort⁴⁵. It can be expected as more and more general principles will be developed under the CISG that in the future one day making recourse to domestic law will prove superfluous.

5 THE CISG AND THE PICC

It is highly debated whether the UNIDROIT Principles of International Commercial Contracts (PICC) may be used to interpret and supplement the CISG. The Preamble of the PICC themselves states that “They may be used to interpret or supplement international uniform law instruments”. Scholars and also some tribunals rely on the PICC in different ways. They are used to interpret the CISG under art. 7(1), they are regarded to express general principles in the sense of art. 7(2) CISG and finally they are resorted to as a genuine gap-filler replacing the recourse to domestic law if no general principles under the CISG can be found⁴⁶.

However, these endeavors meet with skepticism. The first obstacle is the fact that the PICC are so called soft law drafted by UNIDROIT and in no way related to the CISG⁴⁷. The first version of the PICC was only launched in 1994⁴⁸, i.e. 14 years after the Vienna Conference. The drafters of the CISG certainly did not have the PICC in mind as an instrument for interpretation and gap-filling. The CISG has to be interpreted autonomously; the mere expression that the PICC themselves want to be applied in this context certainly is not convincing. Moreover and even more important, although in many areas the PICC reflect the modern approaches of international contract law, they do not do so in all areas. Some provisions have been heavily influenced by civil law legal thinking, some even by an exclusive French legal tradition, which makes them hardly acceptable for international trade. One striking example is the *astreinte*, a private penalty to be paid to the obligee that

⁴⁵ See only MAGNUS, U. In: STAUDINGER, J. (Ed.), Supra note 8, art. 7, § 58.

⁴⁶ See SCHWENZER, I.; HACHEM, P. In: SCHWENZER, I. (Ed.), *CISG-Commentary*. Supra note 7, art. 7, §§ 26, 36.

⁴⁷ See further SCHWENZER, I.; HACHEM, P.; KEE, C. Supra note 30, §§ 3.54, 3.55. Later versions have been launched in in 2004, available at: <<http://www.unidroit.org/english/principles/contracts/principles2004/integralversion/principles2004-e.pdf>> and 2010, available at: <<http://www.unidroit.org/english/principles/contracts/principles2010/integralversion/principles2010-e.pdf>>.

can be ordered by the court or tribunal⁴⁹. Furthermore, the PICC contain solutions that squarely contradict the CISG like the distinction between the principle of strict liability that can be found in the CISG⁵¹. It is suggested here that – just as comparative law – the PICC may serve as an illustration of modern international developments merely on a case by case basis. They should not be attributed any preponderant weight for the interpretation and gap-filling of the CISG. Again it has to be emphasized: primarily, uniform solutions must be developed from inside the CISG itself without having recourse to any outside sources.

6 CONCLUSION

The future of the CISG depends upon its interpretation and gap-filling. If uniform interpretation cannot be achieved the very purpose of the Convention – to facilitate international trade by providing predictable results – is jeopardized. The same applies to the development of the CISG. It will never be possible to gather the now 78 member states⁵² of the CISG – and more to come – to modernize the Convention. If the CISG is not adjusted to the ever changing demands of international trade this role will be assumed by domestic laws which again undermines uniformity.

The requirement established by art. 7(1) CISG that solutions are to be found which are acceptable in different legal systems with different legal traditions not only requires taking into account what courts and tribunals decide in interpreting the CISG itself but also requires carving out common grounds in the whole field of international trade law through comparative research. It is conceded that this difficult task can hardly be performed by domestic courts. Instead, it is the duty of legal scholars around the world to make these results available in different languages and it is up to university teaching and continuing legal education to make practising lawyers familiar with the CISG and convince them of the CISG's superiority for international trade compared to any domestic legal system.

⁴⁹ Art. 7.2.4 PICC.

⁵⁰ Art. 5.1.4 PICC, see criticism VOGENAUER, S. *In*: VOGENAUER, S.; KLEIN-HEISTERKAMP, J. (Eds.), *Commentary on the Unidroit Principles of International Commercial Contracts (PICC)*, Oxford: Oxford University Press, 2009, art 5.1.4, § 5.

⁵¹ See SCHMIDT-KESSEL, M. *Haftungsstandards im Internationalen Warenkauf. In*: BÜCHLER, A.; MÜLLER-CHEN, M. (Eds.), *Supra* note 29, p. 1526, who even favours this distinction under the CISG.

⁵² See: <[http://www.unictreal.org/unictreal/en/unictreal_texts/sale_goods/1980CISG_status.html](http://www.unictral.org/unictreal/en/unictreal_texts/sale_goods/1980CISG_status.html)>.