

Uniform Law for International
Sales under the 1980
United Nations Convention

by

John O. Honnold

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PREFACE

The work of half a century to prepare uniform law for international sales has now come to a successful conclusion. In 1978 the United Nations Commission on International Trade Law (UNCITRAL), after a decade of work, unanimously approved a draft Convention which, in 1980, was submitted to a Diplomatic Conference of sixty-two States. After five weeks of intensive review, the Diplomatic Conference unanimously approved the United Nations Convention on Contracts for the International Sale of Goods and, by October 1981, the Convention had been formally signed by twenty-one States. By December 1986 sufficient ratifications and acceptances were completed to bring the Convention into force on January 1, 1988; ratification procedures in many other States are nearing completion. See §1, p. 47, *infra*.

This remarkable record presages the prompt establishment of a uniform legal basis for world trade. This book is designed to assist in the understanding and application of this new law.

Part I of the book is an overview of the development and salient features of the Convention. Chapter 1 places the 1980 Convention in its historical setting -- the work in Europe that in 1964 produced two Conventions on Sales, the decision by UNCITRAL to prepare a new law that could be accepted on a world-wide basis, and the legislative processes that produced the 1980 Convention. Chapter 2 completes the overview with an introduction to the major contours of the Convention -- its structure, approach and dominant themes.

Part II, the major part of the book, is a commentary on this new law. I have tried to bear in mind that most readers will not be familiar with the Convention; consequently, the book includes introductory material that will not be needed by those who shared in the Convention's preparation. In any event, the commentary quickly moves on to an intensive analysis of the new rules and their application to modern commercial transactions. One tool for this analysis is the use of factual examples that illustrate the Convention's response to the problems that arise in international trade.

A central objective is to help the reader see this new law as an

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organic whole. This objective, dominant in the overview (Part I), is also borne in mind in the commentary. For each of the major divisions of the Convention, the analysis of specific provisions is preceded by an introduction that exposes the relationship between this and the other parts of the Convention. The examples, just mentioned, yield an unexpected dividend: Working out a solution for these specific cases often brings different parts of the Convention into play and illustrates the Convention's structure.

An international law designed to achieve unification in a field occupied by domestic law poses special problems of interpretation. One problem is a temptation to leap to the conclusion that the new law is merely trying to express a familiar rule of domestic law -- a tendency that would undermine the goal of international unification. A common reference-point for interpretation, in addition to the Convention's words, is its legislative history. Consequently, the historical background summarized in the overview is supplemented in the commentary when the Convention's legislative history sheds light on decisions taken by UNCITRAL and by the Diplomatic Conference. Others who need to probe further into the legislative history may wish to follow the system for research suggested in the Bibliographic Note that precedes Part I of this book. In addition, Appendix B is a Concordance that, for each article of the Convention, provides references to the corresponding provisions in the UNCITRAL drafts and the 1964 Hague Conventions.

The international setting of the Convention is also emphasized by analyzing its provisions in relation to modern commercial practices of international trade, including standard sales contracts and definitions of trade terms. No statute that embraces the wide variety of transactions that arise in international trade can include the detail that, in some settings, would be helpful in the sales contract. Hence, the material on patterns for contracting may be useful in preparing contracts, and also may assist in applying general provisions of the Convention in the light of the special practices and needs of specific types on international transactions.

Interpretation of the Convention is also aided by attention to rules of domestic law that were used, rejected or reshaped in making the Convention. Many of the members of the legislative bodies that developed the 1980 Convention brought a cosmopolitan legal outlook to this work; others acquired this approach during UNCI-

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TRAL's decade-long seminar on comparative law as they analyzed the relative merits of a wide spectrum of competing rules. The UNCITRAL representatives quickly saw that their task was not the selection among domestic legal formulas but the creation of a new law that does not speak in local legal idioms but, instead, in words that carry the same meaning in diverse legal and linguistic settings. In spite of this outlook, this new international text necessarily includes many provisions that bear a family resemblance to rules of domestic law. To deepen our understanding of the Convention, this study often projects its provisions against comparable rules out of which the Convention grew. When this comparison shows that domestic legal systems and the Convention produce a common solution the language of the Convention has a deeper resonance. On the other hand, where the draftsmen chose among conflicting results or devised a new solution this background adds emphasis and clarity to the Convention's words.

A word of caution – the writer's native legal habitat has been the common law. In spite of years of collaboration with representatives of other legal systems in the preparation of the Sales Convention and other unification projects, and in spite of generous criticism of the manuscript by scholars from other legal systems, references to national law where the writer is an alien should be taken *cum grano salis*; on doubtful or important points one will wish to consult the sources cited in the notes.

Other dominant themes of this book are discussed in Chapter 2 of the overview and need only be mentioned here. One of these is the appropriate response to the Convention's invitation to minimize the impact of diverse domestic law by the analogical extension of the Convention's provisions in the light of the general principles on which the Convention is based. A second persistent issue is the relationship between the provisions of the Convention and of domestic law that address similar problems under different labels. Surely these are among the challenging issues that will emerge from the international case-law and scholarship that will develop under the Convention.

JOHN HONNOLD

Philadelphia
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