


*John Honnold*



***Uniform  
Law for  
International  
Sales***

*Under  
the 1980  
United Nations  
Convention*



Second Edition



***Kluwer***

# Uniform Law for International Sales under the 1980 United Nations Convention

Second Edition

by

John O. Honnold

Schnader Professor of Commercial Law Emeritus  
University of Pennsylvania  
Secretary, UNCITRAL, and Chief, U.N. International Trade  
Law Branch, 1969–1974

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**To My Colleagues  
of the  
United Nations Commission on International Trade Law  
The Vienna Diplomatic Conference  
and the  
United Nations International Trade Law Branch**





## PREFACE TO THE SECOND EDITION

Uniform law for the international sale of goods at long last is now in force in each continent and is well on the way to world-wide acceptance.

Initiatives taken a half-century ago in Europe and a decade of intensive work by the United Nations Commission on International Trade Law produced unanimous agreement on a draft Convention that in 1980 was finalized and unanimously approved by a diplomatic conference of 62 States.

Then came another decade while domestic legal, commercial and governmental bodies examined the proposed uniform law, comparing it with their domestic laws and weighing the uncertainties and dangers of change against the problems of coping in international trade with a wide variety of foreign legal systems. Further delay resulted from the difficulty of getting attention and action from domestic law-making bodies that were trying to cope with current international problems that seemed more urgent, and certainly were more exciting, than a uniform law for the international sale of goods.

Surprisingly, in various parts of the world the necessary steps for adherence were gradually completed and the Convention went into force for eleven States on January 1, 1988. This decisive step stimulated action elsewhere. By March 1991 thirty States have adhered and further adoptions are nearing completion; contrary to all reasonable expectations we can now envisage the general establishment of uniform international law for the most basic transaction of international commerce.

The first edition of this book, hammered out at white heat during the year that followed the 1980 Vienna Conference, responded to pressing questions about the law's preparation and scope and provided commentary on each article of the uniform law. Work on the first edition was aided by decades of research and writing on uniform law for international sales and by intense hands-on participation in the preparation and adoption of the Convention. However, the intensity of treatment was then subject to practical limits, including the limited patience of readers who had reason to doubt that the Convention would ever go into force.

The Convention's world-wide success calls for a more intensive treatment. The writer has devoted most of the past decade to studying, lecturing and teaching about the Convention in various national

## PREFACE

settings and, like all who work in this field, has been instructed and stimulated by an amazing outpouring of legal literature and by inquiries about the Convention's response to current commercial situations.

Perhaps the most important task of this book is to present the Convention as an organic whole. One who faces a problem in international trade probably can find an applicable article of the Convention; it is much more difficult to bring all of the relevant provisions of the law to bear on the problem.

In commercial life one faces situations, not individual articles. For example, less than half of the articles of the uniform law state the parties' duties; many of the remaining articles, in various parts of the Convention, are devoted to remedies -- requiring performance, avoiding the contract, measuring damages, preserving rejected goods. Rules on rights and remedies (like scissor-blades) need to work together -- a point that was driven home by working with the many concrete "examples" that are used to illustrate and test the Convention's response to problems that arise in international trade. Working with these problems also revealed important resources for resolving ambiguities and for filling "gaps" by the application of policies that underlie analogous provisions.

Those familiar with the first edition will find even greater attention to the boundaries between the uniform international rules and domestic law -- especially the effect of the labels given to domestic rules. This book also makes more effective use of legislative history. As will be explained more fully later, it was necessary to interrupt work on the present edition to put the decade of legislative history into manageable form and then to make this work available to others by publishing a *Documentary History* of the Convention.

Fuller development of issues treated in the first addition and the handling of new questions have substantially increased the length of the book. Users of the first edition may wish to consult the list of major revisions and additions that follows this preface.

This work often faces problems for which the uniform law does not provide a clear and compelling answer. Some of these problems arise at the fringes of commercial practice; in any event one cannot expect a law of manageable length to deal in detail with all situations that can arise in the virtually infinite universe of world-wide trade. When this occurs how should we respond?

When adoption of the Convention was under consideration a natural response was to fear the worst: What were the most inept

## PREFACE

solutions that the words of the text could bear? Now, as after the birth of a child, we need to emphasize ways to nurture the new life. When the decisions embodied in the law's words permit a choice we ask this question: Which choice is more consistent with other provisions of the Convention and with its objectives? Others will develop different answers; a continuing dialogue, spanning legal and economic backgrounds, can play a vital role in the development of this epoch-making uniform international law.

JOHN O. HONNOLD

Philadelphia  
March 1991



## MAJOR CHANGES FROM FIRST EDITION

Listed below are portions of the present work which provide substantially new treatment or examine topics not considered in the first edition. (Less substantial revisions are pervasive and are not listed.)

*Article 1*, §§45.1–47.6: Applicability based on private international law; Effect of different options by States as to an Article 95 declaration not to be bound by Article 1(1)(b).

*Article 2*, §§56–56.3: Applicability of the Convention to exchanges of goods, framework agreements (franchises), undivided shares in fungible goods. Turn-key contracts (§ 60.3).

*Article 9*, §§114–122: Usage of trade and practices of the parties (major revision).

*Part II. Formation of the Contract*: Re-evaluation of the role of rules on “offer” and “acceptance” (§ 132.1). Rule on contractual provision for price: interpretation or validity; concession to domestic law. *Article 14*, §§ 137.1–137.7 and *Article 55*, §§325–325.3.

*Article 19*, §§170–170.4: Performance after different terms in “offer” and “acceptance”.

*Article 29*, §§204.1–204.4: The Convention and common-law “consideration”.

*Article 42*, §270: Requiring defense by seller of third-party claims.

*Article 67*, §§368–369.3: Risk of loss in transit (revision).

*Articles 75–76*, §§412.1–412.3: Damage measurement after avoidance.

*Article 77*, §§419–419.3: Mitigation of damages (major revision).

*Article 78*, §§420–422: Measuring interest recovery (major revision).

*Article 79*, §§423–423.4, 432–435.5: Exemption where non-performance caused by impediment (“*force majeure*”) (major revision).

*Article 80*, §§436.1–436.4: Standards for liability for causing non-performance.

*Article 84*, §§451.1–451.3: Measuring claims for restitution.

*Part IV. Final Provisions* (Arts. 89–101, §§458–474) Entire treatment is new. Note: *Article 90*, §§462–465: Relation to other Conventions, including the Hague Conventions of 1955 and 1986 on private

## MAJOR CHANGES FROM FIRST EDITION

international law; *Article 100*, §473: Effective date as to offers and contracts under alternate grounds for applicability -- Articles 1(1)(a) and 1(1)(b).

*Appendix F*, pp. 693–694. Data on Contracting States including effective dates and reservations or declarations affecting the Convention's applicability.

## ACKNOWLEDGMENTS

The international collegial help that contributed to the First Edition continues to nourish the present revision. During the past decade sensitive portions of my drafts have been subjected to international review by symposia and by responses to my importuning inquiries. Obligations to the vast and ever-growing body of scholarship are indicated in the footnotes. In short, the multilateral dialogue needed to strengthen and discipline the growth of this new law is well under way and can be expected to become increasingly intense and productive.

I am very grateful to those who literally “wrote” the book. (Secretarial help during the last decade has been too widely shared for individual recognition.) One vital resource, fortunately, has been constant: the skillful and responsive staff of the Biddle Law Library, including two decades of superb professional assistance by Marta Tarnawsky, Associate Library Director for Foreign and International Law.

Thanks again are due to John Berger who cheerfully and ably coordinated Kluwer's far-flung production activities in making this book.

To these and many others who helped, my deep gratitude.

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