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**INTERNATIONAL  
SALE OF GOODS**

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**DUBROVNIK LECTURES**

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**PETAR ŠARČEVIĆ AND PAUL VOLKEN**

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## DUBROVNIK LECTURES

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Edited by  
PETAR ŠARČEVIĆ  
Rijeka/Lausanne

PAUL VOLKEN  
Berne/Fribourg

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OCEANA PUBLICATIONS, INC. NEW YORK • LONDON • ROME

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**Library of Congress Cataloging-in-Publication Data**

Main entry under title:

International sale of goods.

“Based on the lectures presented at a postgraduate course on the international sale of goods, held 11-23 March 1985 at the Inter-university Centre (IUC) of Postgraduate Studies at Dubrovnik, Yugoslavia”—Foreword.

Includes index.

1. United Nations Convention on Contracts for the International Sale of Goods (1980)—Congresses.  
2. Export sales—Congresses. I. Šarčević, Petar.  
II. Volken, Paul. III. Inter-university Centre of Post-graduate Studies. IV. Title: Dubrovnik lectures.  
K1028.3198.157 1985 341.7'54 85-26028  
ISBN 0-379-20835-0

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Manufactured in the United States of America

## FOREWORD

The law on the international sale of goods is enjoying a period of revival. In the wake of the unsuccessful Hague Uniform Laws of 1964, UNCITRAL has succeeded in giving new life to an old hope: worldwide unification of the law of trade.

In promoting the Vienna Sales Convention of 1980, UNCITRAL has not only reactivated old dreams. The influence of the Vienna Convention should speed up unification in other fields of international trade law as well. Efforts to establish uniform rules of law on important matters such as agency, arbitration, prescription, payments on transportation, leasing, factoring, and others have already been or are about to be completed.

The finalization of these legal instruments marks the completion of only the first phase of interplay between legal theory and commercial reality. In the next stage the new legal texts must be made an integral part of international trade practice. This is where legal academia—research and teaching—comes into play.

The fourteen articles of this book are based on the lectures presented at a postgraduate course on the International Sale of Goods, held 11 - 23 March 1985 at the Inter-University Centre (IUC) of Postgraduate Studies at Dubrovnik, Yugoslavia. The IUC is an international, interuniversity organization devoted to the purpose of furthering teaching and research cooperation between academic institutions throughout the world. At present, 140 universities and other institutions of higher learning are members of the IUC, thus enabling them to take part in course planning, recruit resource persons, support student participation, etc.

Although this was the first time that the Dubrovnik Centre sponsored a course on international trade law, the almost astonishing international response has encouraged the Direction of IUC and the course directors to organize courses on topics related to international trade law on a regular basis.

The core of the articles in this volume forms a systematic commentary on the 1980 Vienna Convention on the International Sale of Goods. The main topic has been broadened to include related subject matters such as Agency, Sales price and Customs Valuation, Usages, and Standard Forms in International Contract Law.

The organization of the Dubrovnik seminar and publication of the lectures would not have been possible without the generous personal and financial support of many persons and institutions. The course directors—editors—would like to express their gratitude to all those who have contributed to the realization of the course and this book. In particular we owe our gratitude to the Direction and Staff of the Inter-University Centre in Dubrovnik for making the course possible; to the Law Faculties at Rijeka and Trieste, Fribourg and Louvain, Trier and Vienna, Hamburg and Berlin-Potsdam, Stockholm and Helsinki, Zagreb and Novi Sad as well as to UNCITRAL and the Swiss Institute of

Comparative Law at Lausanne for supporting the participation of their professors and other specialists who lectured at the course.

Our thanks also goes to the University of Zagreb, the IUC in Dubrovnik, the Swiss National Fund, the German Akademischer Austauschdienst and the Industrie- und Handelstag for providing financial assistance and scholarships. Finally, we are deeply grateful to Dr. Susan Šarčević whose assistance has been instrumental in realizing this book. With her skill and endless patience she made the English language revisions and word-processed the entire manuscript.

Lausanne  
July 1985

Petar Šarčević  
Paul Volken

## ABBREVIATIONS

Am.J.Comp.L.	American Journal of Compative Law
Am.J.Int.Law	American Journal of International Law
Annuaire	Annuaire de l'Institut de Droit International
AWID	Zeitschrift "DDR-Aussenwirtschaft," Informationen — Dokumente
Brit.Yb.Int.L.	British Yearbook of International Law
D.P.C.I.	Droit et pratique du commerce international
ECR	European Court Reports
GA J.Int'l & Comp.L.	Georgia Journal of International and Comparative Law
Harv.Int'l L.J.	Harvard International Law Journal
I.E.C.L.	International Encyclopedia of Comparative Law
I.L.R.	International Law Reports
J.Bus.L.	Journal of Business Law
JWTL	Journal of World Trade Law
Law & Pol'y Int'l Bus.	Law & Policy in International Business
Lloyd's Mar. Comm.L.Q.	Lloyd's Maritime and Commercial Law Quarterly
NILR	Netherlands International Law Review formerly:
NTIR	Nederlands Tijdschrift voor International Recht
O.J. or O.J.E.C.	Offical Journal of the European Communities
RabelsZ	Rabels Zeitschrift für ausländisches und inter- nationales Privatrecht
Recueil des Cours	Collected Courses, Hague Academy of Interna- tional Law
Rev. belge dr.int.	Revue belge de droit international
Rev.crit.	Revue critique de droit international privé
Rev.dr.unif.	Revue de droit uniform
Rev.int.dr.comp.	Revue internationale de droit comparé
Rev.trim.dr.eur.	Revue trimestrielle de droit européen
Riv.dir.int.priv.proc.	Rivista di diritto internazionale privato e proces- suale
RIW/AWD	Recht der Internationalen Wirtschaft/Aussenwirt- schaftsdienst des Betriebs-Beraters

U.N.T.S.	United Nations Treaty Series
Vand.L.Rev.	Vanderbilt Law Review
WM	Wertpapier-Mitteilungen
YaleLJ	Yale Law Journal
ZHR	Zeitschrift für das Gesamte Handelsrecht und Konkursrecht
ZSR	Zeitschrift für Schweizerisches Recht

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## CONTRIBUTORS

GIORGIO CONETTI, Professor of Law, University of Trieste, Italy; Director of the Institute of International Law, Trieste.

ULRICH DROBNIG, Professor of Law, University of Hamburg, FRG; Director of the Max Planck Institute for Foreign and Private International Law, Hamburg.

FRITZ ENDERLEIN, Professor of Law, Academy for Political and Legal Science of the GDR, Potsdam; Director of the Institute for Foreign and Comparative Law, Potsdam.

ALEKSANDAR GOLDŠTAJN, Professor of Law, University of Zagreb, Yugoslavia.

JAN HELLNER, Professor of Law, University of Stockholm, Sweden.

BERND von HOFFMAN, Professor of Law, University of Trier, FRG.

HANS van HOUTTE, Professor of Law, University of Louvain (K.U. Leuven), Belgium.

HANS HOYER, Professor of Law, University of Vienna, Austria; Director of the Institute of Comparative Law, Vienna.

LEIF SEVÓN, Director of Legislation, Ministry of Justice, Helsinki, Finland.

KAZUAKI SONO, Professor of Law, Hokkaido University, Sapporo, Japan; former Secretary of the United Nations Commission on International Trade Law, 1980-1985.

PETAR ŠARČEVIĆ, Professor of Law, University of Rijeka, Yugoslavia; Swiss Institute of Comparative Law, Lausanne, Switzerland.

JELENA VILUS, Professor of Law, University of Novi Sad, Yugoslavia; Scientific Advisor at the Institute of Comparative Law, Belgrade.

PAUL VOLKEN, Head of Section, Federal Office of Justice, Berne, Switzerland; Lecturer at the Law Faculty of the University of Fribourg.

## CONTENTS

FOREWORD .....	v
ABBREVIATIONS .....	vii
CONTRIBUTORS .....	ix
CHAPTER ONE:	
The Vienna Sales Convention: History and Perspective (Kazuaki Sono) .....	1
CHAPTER TWO:	
The Vienna Convention: Scope, Interpretation, and Gap-Filling (Paul Volken) .....	19
CHAPTER THREE:	
Usages of Trade and Other Autonomous Rules of Inter- national Trade According to the UN (1980) Sales Convention (Aleksandar Goldštajn) .....	55
CHAPTER FOUR:	
Formation of International Contracts under the Vienna Convention: A Shift above the Comparative Law (Kazuaki Sono) .....	111
CHAPTER FIVE:	
Rights and Obligations of the Seller under the UN Convention on Contracts for the International Sale of Goods (Fritz Enderlein) .....	133
CHAPTER SIX:	
Obligations of the Buyer under the UN Convention on Contracts for the International Sale of Goods (Leif Sevón) .....	203
CHAPTER SEVEN:	
Provisions Common to the Obligations of the Seller and the Buyer (Jelena Vilus) .....	239
CHAPTER EIGHT:	
Passing of Risk in International Sales of Goods (Bernd von Hoffmann) .....	265
CHAPTER NINE:	
General Principles of European Contract Law (Ulrich Drobnig) .....	305
CHAPTER TEN:	
The Vienna Convention and Standard Form Contracts (Jan Hellner) .....	335

## CHAPTER ELEVEN:

The International Sales Price as Basis for Customs Valuation (Hans van Houtte) .....	365
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## CHAPTER TWELVE:

Uniform Substantive and Conflicts Rules on the International Sale of Goods and their Interaction (Giorgio Conetti) .....	385
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## CHAPTER THIRTEEN:

International Sales and Security Interests with an Outline of Conflicts Laws (Hans Hoyer) .....	401
--	-----

## CHAPTER FOURTEEN:

The Geneva Convention on Agency in the International Sale of Goods (Petar Šarčević) .....	443
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INDEX .....	485
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CHAPTER ONE

**THE VIENNA  
SALES CONVENTION:  
HISTORY AND PERSPECTIVE**

KAZUAKI SONO  
Secretary of UNCITRAL, Vienna

**1. Introduction**

With bright prospects for the entry into force of the United Nations Convention on Contracts for the International Sale of Goods of 1980, now popularly known as the Vienna Sales Convention,<sup>1</sup> unification at a global scale is finally in sight in this field after over half a century of efforts. The Vienna Sales Convention now enjoys praise throughout the world as a workmanlike attempt to devise legal rules and practical procedures for international sales transactions. Once the Vienna Sales Convention enters into force, it will assist to smooth the process of international sales.

The Convention will be made applicable to the sales contract concluded between parties having places of business in different Contracting States. Nationality of parties has no relevance to the application of the Convention. Freedom of contract has been retained. Most of the provisions of the Convention are supplementary to

agreements between parties. Detailed practical and basic rules are provided to assist parties in cases where their agreements do not otherwise provide.

## **2. Predecessors: the 1964 Hague Conventions**

The attempt to unify the law of international sale of goods is not new in the international arena. Indeed, the work of the United Nations Commission on International Trade Law (UNCITRAL) which resulted in the adoption of the Vienna Sales Convention was the culmination of a long process of unification in this area, whose origins go back to a decision of the International Institute for the Unification of Private Law (UNIDROIT) in 1930 to proceed with the preparation of a uniform law on the international sale of goods under the auspices of the League of Nations. As is well known, Professor Ernst Rabel's report submitted to UNIDROIT suggesting both the feasibility and the desirability for the unification was instrumental to this move. This unification effort, with an interruption between 1939 and 1951 due to the Second World War, carried on into the early 1960's, and resulted in the convening of a diplomatic conference at the Hague in 1964. The conference adopted the two uniform laws, one on the international sale of goods (ULIS) and the other on the formation of contracts for international sales, annexing them to two international conventions.<sup>2</sup> These conventions are presently in force but the number of Contracting States is limited and they are mostly from Western Europe.<sup>3</sup>

### 3. Interaction of UNCITRAL with the 1964 Hague Conventions

When UNCITRAL, which was created by the United Nations General Assembly in 1966 to promote "the progressive harmonization and unification of the law of international trade,"<sup>4</sup> held its first session in 1968, it of course considered if there was any way to promote wider acceptance of the two Hague Conventions which were, after all, precious products of international endeavours since 1930. By that time, three States had ratified the Hague Conventions, and the Conventions had thus not yet come into force. The Commission therefore considered it desirable first to inquire about the intentions of States to adhere to the Hague Conventions and the reasons there-against in case of a negative attitude.

The received replies, together with an analysis thereof, were considered by the Commission at its second (1969) and third (1970) sessions. At the second session, some representatives expressed the view that the Hague Conventions were suitable and practical instruments, and that an effort should not be undertaken at that time to revise them. Other representatives, however, believed that the Conventions were not suitable for worldwide acceptance. Above all, the responses to the questionnaire were mostly too pessimistic to promote the Hague Conventions. The reasons were diverse: The Hague Conventions were too dogmatic, complex, predominately of the European civil law tradition and lacked clarity even for ordinary lawyers. Moreover, the Hague Conventions had no global representation in the rule-making. In fact, at the 1964 Hague Conference, Latin America was only represented by Colombia, Asia by Japan and Africa by Egypt.

#### 4. UNCITRAL work toward a new convention

The Commission accordingly decided to create a Working Group on the International Sale of Goods, consisting of 14 (later increased to 15) States chosen from its members, and instructed it to ascertain whether the Hague uniform laws might be modified so as to render them capable of wider acceptance by countries of different legal, social and economic systems, or whether it would be necessary to elaborate a new text. The Working Group was also instructed to consider ways and means by which a more widely acceptable text might best be prepared and promoted.

The Working Group devoted its first seven sessions to the consideration of the Hague Uniform Law on the International Sale of Goods (ULIS), and by 1974 had considered and prepared a number of revisions of articles of that uniform law. At its sixth session (1975), the Working Group decided to draft the revised text of ULIS in the form of an "integrated" convention rather than in the form of a uniform law annexed to a convention (as was the case with ULIS) in order to make the substantive provisions of the uniform law applicable even without resort to a further domestic legislation whenever feasible (i.e., self-executory), and, at its seventh session (1976), the Working Group adopted its draft text as well as a commentary thereon prepared by the Secretariat. The Commission, on the basis of the draft text prepared by the Working Group, subsequently approved a draft convention on the international sale of goods in 1977.

Thereafter the Working Group devoted its final two sessions to a consideration of the formation and validity of contracts for the international sale of goods. It based its deliberations on the

1964 Hague Uniform Law on the Formation of Contracts for the International Sale of Goods and a draft prepared by UNIDROIT of a law for the unification of certain rules relating to the validity of contracts of international sale of goods. In 1977, the Working Group adopted the text of a draft convention on the formation of contracts for the International Sale of Goods and upon its request a commentary thereon was subsequently prepared by the Secretariat.

In 1978, the Commission decided to integrate the draft convention on the formation of contracts and the draft convention on the international sale of goods into a simple text and adopted the UNCITRAL Draft Convention on Contracts for the International Sale of Goods. At the same time, it recommended to the General Assembly that a conference of plenipotentiaries be convened for adoption of the Convention. It is noteworthy that, throughout the above process, at each stage of the adoption of a draft text of a convention either at the level of the Working Group or of the Commission, the text was sent with the accompanying commentary to Governments and interested international organizations for their comments and proposals, and that they were carefully analysed and considered in improving the text.

## **5. Adoption of the Vienna Sales Convention; a tribute to the Hague Uniform Laws**

Careful preparation for the holding of a diplomatic conference ensued thereafter including the preparation of a commentary, draft provisions for the Convention concerning implementation, reservations and other final clauses, as well as

solicitation of comments on the draft Convention from Governments and interested international organizations and the analysis thereof. At the United Nations Conference on Contracts for the International Sale of Goods, held from 10 March to 11 April 1980 at the Hofburg in Vienna, the Vienna Sales Convention was adopted unanimously on 10 April with 62 States participating. There were relatively few amendments to the UNCITRAL draft text, which attested the soundness of the preparatory work.

Retrospectively observed, it was indeed bad luck for the Hague Conventions to have been adopted in 1964, which was the wrong time. Although the legislative process was open to all States, the newly emerging developing countries were not yet necessarily at the forefront of the international scene. Socialist countries were almost about to join or even to initiate the global unification effort of the law of trade perhaps partly based on the then new trend for the strengthening of the East-West economic relations, but the timing was still a few years short. The United States decided to join in the unification movement in 1964 for the first time, but was not well-prepared for the Hague Conference although it participated. While definitely not fair at all to the authors of the Hague Uniform Laws, particularly in light of the fact that many of their substantive approaches have indeed been retained in the Vienna Sales Convention in a simplified and practical fashion, the adoption of the Hague Conventions setting forth the uniform laws for the "international" sale of goods predominantly by Western European countries was politically an unintended act of intellectual imperialism for those who did not participate in the legislative process.<sup>5</sup>

## 6. Essential characteristics of the Vienna Sales Convention

Besides retention of the principle of the freedom of contract in international sales, the essential characteristics of the Vienna Sales Convention are simplicity, practicality and clarity. It is free of legal short-hand, free of complicated legal theory and easy for businessmen to understand.

The use of any legal short-hand expression, such as force majeure, tends to produce different meanings depending upon which legal system applies. Therefore, the Convention avoids the use of any short-hand terms which might be susceptible to receiving different interpretations. In cases in which a short-hand expression had to be used, such as the word "delivery," the drafters of the Convention provided a clear definition. That the Convention is free from dogma is important because it is, after all, businessmen who must understand the meaning of the provisions. The Convention is written in businessmen's language with practical details. In a dogma-oriented jurisprudence, a rule tends to be drafted in an abstract way so as to cover all possible situations. This was the approach of the 1964 Hague Conventions. However, the Vienna Sales Convention is modest in this respect. It even admits that some matters are not covered and are left to be resolved by the law applicable under the traditional rules of private international law. Paragraph (1) of article 7 of the Vienna Sales Convention reads in part: "In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application..." This provision discourages any resort to domestic