

## Introduction to the Symposium

Uniform law for international sales, after a half-century of conception, gestation and delivery, is now a vigorous child calling for our attention. The child's ancestors include the 1964 Hague Sales Convention, adopted by nine countries primarily in Western Europe. Unfortunately, most areas of the world did not share in this effort. As a consequence, both technical and psychological problems prevented world-wide acceptance.<sup>1</sup>

The necessary next step was the establishment of a law-making body with world-wide representation, the United Nations Commission on International Trade Law (UNCITRAL). The Commission's membership, limited to 36 States, includes representation of each region of the world and each major legal and economic system. A decade of intense work produced agreement on a draft Convention that a diplomatic conference of 62 States unanimously finalized and approved in 1980.

Domestic response to major lawmaking treaties is slow even in parliamentary systems that are not hampered by our constitutional division between the executive and the legislature and by our requirement of approval by a two-thirds vote of the Senate. However, the 1980 Sales Convention has been implemented with unprecedented speed. In November, 1986, the United States Senate gave its unanimous approval and by December, 1987, the United States and ten other countries deposited instruments of ratification. For this initial group the uniform

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\* The *Journal* is grateful to Professor Honnold for his contribution to this Symposium. Professor Honnold, described variously as "architect" and "midwife" of the 1980 Sales Convention, was a United States delegate and member of the drafting committee at the 1964 Hague conference that finalized the first conventions in this area. From 1969 to 1974 he was in charge of the legal work for the United Nations Commission for International Trade Law (UNCITRAL); his studies and drafts were a basis for substantial parts of UNCITRAL's work. He was co-chairman, with Professor Farnsworth, a contributor to the Symposium, of the United States delegation at the Vienna Diplomatic Conference that finalized the uniform law. Among his writings about the Convention are his 1982 commentary-treatise, *UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 U.N. CONVENTION*, and his *DOCUMENTARY HISTORY OF THE 1980 UNIFORM LAW FOR INTERNATIONAL SALES* (1989).

1. For further background on the 1964 Sales Convention see Honnold, *A Uniform Law for International Sales*, 107 U. PA. L. REV. 299 (1959) and *The Uniform Law for the International Sale of Goods: the Hague Convention of 1964*, 30 LAW & CONTEMP. PROBS. 326 (1965).

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rules came into force on January 1, 1988.<sup>2</sup> As of August, 1988, six additional states had adopted the Convention; additional ratifications are pending.<sup>3</sup>

The uniform rules apply to sales of goods between sellers and buyers whose places of business are in different ratifying States.<sup>4</sup> The parties, however, may choose to exclude the Convention altogether or derogate from its provisions,<sup>5</sup> thus basing the applicability of the Convention on an old-fashioned idea, freedom of contract. The Convention does not apply to sales to consumers and claims for liability for death or personal injury.<sup>6</sup> Further information on the Convention's provisions must be left to the papers in this Symposium and to the voluminous literature that keen interest in the Convention has generated.<sup>7</sup>

What can one expect from a uniform law for international sales? One who has shared in the preparation and consideration of the Sales Article of our Uniform Commercial Code has learned at least this: it is unrealistic to expect that solutions to all imaginable problems can be embodied in either a domestic or international law of acceptable length. The world, its people and their economic arrangements are too complex, dynamic and unpredictable. Indeed, the Sales Article of the UCC, in spite of its great value, has been least successful where it has attempted the greatest degree of detail.<sup>8</sup> The most solid achievements of the UCC and of the Convention are akin: the elimination of archaic and unworkable ideas, such as "title-hunting", and the establishment of legal principles that are sound and sufficiently flexible to provide room for growth. To this end the 1980 Convention replaces the Babel of diverse laws and languages with rules that have been internationally developed and accepted. For the first time we have a workable basis—a legal *lingua franca*—for the guidance, criticism and further development of experience in the field of international commercial law.

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2. The term "ratification" as used here includes adoption by accession or other equivalent action. The eleven initial States are Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, United States of America, Yugoslavia and Zambia.

3. The six additional States, with the date of entry into force, are: Austria (1 January 1989), Finland (same), Mexico (same), Sweden (same), Australia (1 April 1989) and Norway (1 August 1989). The date of entry into force reflects the delay of approximately a year following ratification prescribed by Article 99 of the Convention.

4. Article 1(1)(a) of the Convention (CISG).

5. CISG, art. 6.

6. CISG, art. 2(a). Articles 2, 3 and 4 contain other less significant exclusions.

7. Professor Winship, a contributor to this Symposium, has prepared invaluable bibliographic materials on the Convention. See *A Bibliography of Commentaries on the United Nations International Sales Convention*, 21 INT'L LAW. 585 (1987) and *Bibliography*, 22 INT'L LAW. 605 (1988) (supplementing the 1987 bibliography).

8. See, e.g., the attempt to prescribe the words that will (and will not) restrict the buyer's expectations of sound merchandise in U.C.C. § 2-316 (1978) and the elaborate rules on the measurement of damages for breach, U.C.C. §§ 2-701 to 2-725 (1978).

### Contributions to the Symposium

All that remains is to give readers a taste of the offerings in this inviting smorgasbord.

Professor Farnsworth (p. 439) analyzes the relative authority, or "hierarchy," of domestic law, the contract and the Convention. Against this background he illustrates the vital role of the contract and helpfully suggests contract provisions, including the use of standard terms, that can avoid doubt or controversy.

Professor Winship (p. 487) carefully explores the interplay between the Convention and rules of private international law ("conflict of laws"). Devotees of this subject will be glad to learn that although the uniform substantive law narrows their domain, there remains substantial room for their specialty in various settings, especially in deciding what system of domestic law governs areas that lie outside the uniform international rules.

Professor Schlechtriem (p. 467), an authority on uniform law under both the 1964 Hague Sales Conventions and the 1980 Vienna Convention, discusses the important and difficult issue of the relationship between the Convention's uniform rules on rights arising from the sales contract and domestic tort law that has been applied to sales transactions. This study, reminiscent of our troubled border between uniform sales law and product liability, provides an approach to basic questions about the interplay between international and domestic law.

Professor Sono (p. 477), who served as Secretary to UNCITRAL from 1980-1985, illustrates the extent to which common law and civil law rules, although differing in expression, reach similar results under the Convention. This study also examines the extent to which the international rules cut through legal technicalities to give controlling effect to the reasons that underlie the rules of different legal systems.

Professor Hillman (p. 449) draws on his writings about "no oral modification" clauses—an area of domestic law that is "shrouded in mystery"—to explore the Convention's handling of this difficult problem. This study exposes the intrinsic conflict between the general principle of freedom of contract and the effect of parties' attempts to restrict their contractual freedom by contract.

Professor Berman (p. 423) brings his scholarly work on *lex mercatoria* to bear on the relationship between the Convention and mercantile understandings, including widely-used trade terms, and suggests that the Convention should have gone further to codify *lex mercatoria*. This article also suggests contract clauses to overcome problems in this area that may arise under the Convention.

The Symposium closes with a review-essay in which Professor Rosett (p. 575), from his perspective as a critic of the Convention, examines a recent commentary prepared by several authors, most of whom played a role in the framing of the uniform law. Readers will be intrigued by many features of this essay, including the complaint that the

Convention does not adequately deal with imbalance between the parties' bargaining power, and concern about the compromises that resulted from the need to reach agreement among the approaches urged by delegates from different legal, economic and ideological settings.