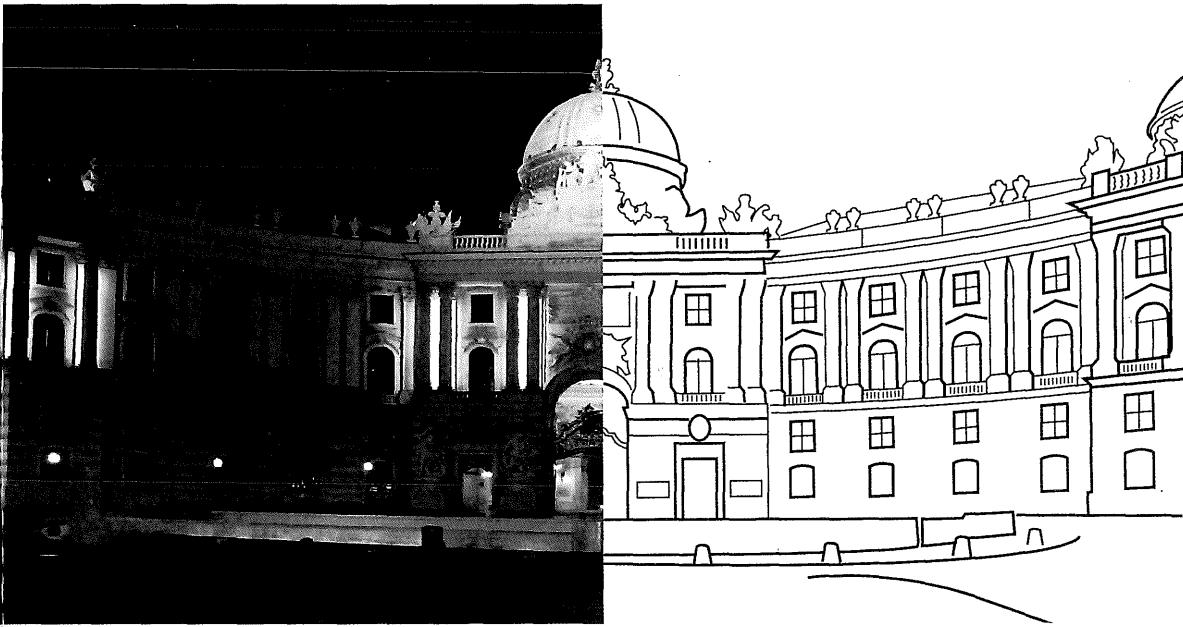


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ingeborg schwenzer  
and lisa spagnolo

# boundaries and intersections

5th annual maa schlechtriem  
cisg conference



international commerce  
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volume 18

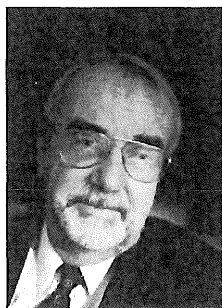
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# BOUNDARIES AND INTERSECTIONS

*5TH ANNUAL MAA SCHLECHTRIEM CISG CONFERENCE*

21 March 2013, Vienna



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INGEBORG SCHWENZER AND LISA SPAGNOLO (EDS.)

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## 7 BEYOND THE CISG

Ingeborg Schwenzer\*

Contract law and especially commercial contract law has always been at the forefront of harmonization and unification of private law. The reason is that different domestic laws are perceived as an obstacle to international trade.<sup>1</sup> This has always been true and still holds true nowadays, as has been proven by many recent field studies around the world.<sup>2</sup> In the 19th century, this prompted unification at the nation state level all over Europe; in the 20th century, the Uniform Commercial Code in the United States can be mentioned as a prominent example, as well as endeavours especially on the European level,<sup>3</sup> but also in Africa<sup>4</sup>. Most recently, we witness similar movements in East Asia with PACL.<sup>5</sup>

Let me briefly discuss who is in need of a uniform contract law and why. In general, on the international level we may roughly distinguish three different scenarios of contracting parties.

In the first group, we find parties from countries where the same language is spoken. In general, these countries also belong to the same legal family with differences between the legal systems being minor if not negligible.<sup>6</sup> This first of all applies to parties from English-speaking Common Law countries, like parties from the United States and Canada,

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1 Cf. E. McKendrick, 'Harmonisation of European Contract Law: The State We Are In', in S. Vogenauer & S. Weatherill (Eds.), *The Harmonisation of European Contract Law, Implications for European Private Laws, Business and Legal Practice*, Hart Publishing, Oxford, 2006, pp. 14-15.]

2 See only S. Vogenauer & S. Weatherill, 'The European Community's Competence to Pursue the Harmonisation of Contract Law – an Empirical Contribution to the Debate', in *The Harmonisation of European Contract Law, Implications for European Private Laws*, *supra* note 1, pp. 125-126.

3 See, e.g., the Principles of European Contract Law (PECL) (1999), available at <[http://frontpage.cbs.dk/law/commission\\_on\\_european\\_contract\\_law/PECL%20engelsk/engelsk\\_partI\\_og\\_II.htm](http://frontpage.cbs.dk/law/commission_on_european_contract_law/PECL%20engelsk/engelsk_partI_og_II.htm)>, for more information on PECL see O. Lando & H. Beale (Eds.), *Principles of European Contract Law (Parts I and II)*, Kluwer Law International, The Hague, 2000; and O. Lando & H. Beale (Eds.), *Principles of European Contract Law (Part III)*, Kluwer Law International, The Hague, 2003.

4 See, e.g., the Uniform Act on General Commercial Law by the Organization for the Harmonization of Business Law in Africa (OHADA) (Acte uniforme portant sur le Droit commercial général), available at <[www.ohada.org/presentation-generale-de-lacte-uniforme/telechargements1.html](http://www.ohada.org/presentation-generale-de-lacte-uniforme/telechargements1.html)>.

5 For further information on the Principles of Asian Contract Law (PACL) see S. Han, 'PACL: an Endeavour of Regional Harmonization of Contract Law in East Asia', *Villanova Law Review*, Vol. 58, No. 4, p. 589; see also <[www.fondation-droitcontinental.org/jcms/c\\_7718/projet-commun-de-droit-des-contrats-en-asie-du-sud-est](http://www.fondation-droitcontinental.org/jcms/c_7718/projet-commun-de-droit-des-contrats-en-asie-du-sud-est)>.

6 For an overview over the legal families with regard to domestic sales laws see I. Schwenzer *et al.* (Eds.), *Global Sales and Contract Law*, Oxford University Press, Oxford, 2012, paras. 2.01-2.135.

from Australia and New Zealand, or from India and the United Kingdom. But it also holds true for other scenarios like those of parties from France and Cameroon, from Argentina and Mexico, or from Germany and Austria. First, it is well possible that the parties can agree on one of their respective legal systems. If this is not the case, they can be expected to choose the law of a third country with the same language and belonging to the same legal tradition. In any case, the outcome of a possible dispute – be it litigated or arbitrated – will be more or less predictable. This group comes close to purely domestic contracts, and there is hardly any need for a unification of contract law, as the parties would still prefer the law that is more familiar to them than any unified law.

In the second group, a – most probably western – company with overwhelming bargaining power contracts with an economically weaker party. The powerful company will usually be able to impose anything that it wants on its contract partner. It has sophisticated in-house lawyers who carefully draft the contract, preferably with a choice of law clause designating its own domestic law. If this is combined with a forum selection clause designating the domestic courts of the economically stronger party, usually there will be no problems – at least not for the powerful party – and thus no need for a uniform contract law. The domestic courts apply their domestic law which in general will yield predictable and satisfactory results for the company seated in this country. The picture may immediately change, however, if the other party brings a suit in the domestic courts of its own country in which the forum selection clause and/or the choice of law clause are not honoured.<sup>7</sup> But even if these courts accept the choice of law, it is a totally different question how the courts will apply this foreign law. By agreeing on arbitration, many of the aforementioned imponderabilities may be circumvented. Still, problems of ascertaining and proving the chosen law – as will be described below – can be encountered.

The third group is probably by far the biggest one. It consists of parties from countries where different languages are spoken, be they from a Common Law and a Civil Law country or from two Civil Law countries. If none of the parties has the economic power to impose its own law upon the other party, that is, where the parties are dealing at arm's length with one another, more often than not they will agree on a third law. This might be a law that appears to be closely related to both parties because it influenced the law of both parties' countries in one way or the other, as is true for German law, for example, in relation to Italian and Japanese or Korean law.<sup>8</sup> If no such common background exists, more often than not the parties think to solve their problems by resorting to what they

7 A prominent example is Brazil, where the validity of choice of law and choice of forum clauses is highly controversial. For more information see D. Stringer, 'Choice of Law and Choice of Forum in Brazilian International Commercial Contracts: Party Autonomy, International Jurisdiction, and the Emerging New Way', *Columbia Journal of Transnational Law*, Vol. 44, No. 3, 2005-2006, p. 959.

8 For German influences in the East Asian region see I. Schwenzler *et al.* (Eds.), *supra* note 6, paras. 2.123-2.127. For German influences on Italian civil law see K. Zweigert & H. Kötz, *Einführung in die Rechtsvergleichung*, 3rd edition, Mohr Siebeck, Tübingen, 1996, pp. 102-104.

believe is a ‘neutral law’, thereby often confusing political neutrality with suitability of the chosen law for international transactions.<sup>9</sup> In particular, this seems to be the case with Swiss law.

In such a case, the first hurdle that the parties have to pass, at least once it comes to litigation or arbitration, is the language problem. They must investigate a foreign law in a foreign language. If the language is not the one of the litigation or arbitration in question, all legal materials – statutes, case law and scholarly writings – must be translated into the language of the court or of the arbitration. Legal experts are required to prove the content of the law that is chosen by the parties. In some countries, the experts may be appointed by the court; in others as well as generally in arbitration, each party will have to come forward with sometimes even several experts.<sup>10</sup> Needless to say, the procedures can be very expensive and may be prohibitive for a party who does not have the necessary economic power to invest these monies in the first place. This may even be harsher under a procedural system where each party bears its own costs regardless of the outcome of the proceedings, as is especially the case under the so-called “American Rule” as it applies not only in the United States but also for, example, in Japan.<sup>11</sup> However, even if a party is willing to bear all these costs to prove a foreign law in court or arbitration, the question as to how this law is interpreted and applied can be highly unpredictable.

Second, the parties will very often be taken by surprise when they realize the true content of the law that they have chosen. Just to give you one example that in my view is rather typical for an international contract between two SMEs, consider a sales contract between a Chinese seller and an Italian buyer. As German law has had great influence on both Chinese and Italian law,<sup>12</sup> the parties – although none of them speaks German – believe they have a rough idea of German law and agree on German law to govern their contract. The Chinese seller for its standard form contract copies a form it finds on the Internet, including a limitation of liability clause. Whereas the clause may well live up to the standards of the US UCC, it is totally invalid under German law that provides for substantive

9 Cf. C. Fountoulakis, ‘The Parties’ Choice of ‘Neutral Law’ in International Sales Contracts’, *European Journal of Law Reform*, Vol. 7, No. 3/4, 2005, pp. 306–307.

10 Cf. for court proceedings M. Taruffo, ‘Evidence’, in M. Capelletti (Ed.), *International Encyclopedia of Comparative Law*, Vol. 16, 2010, paras. 7.65–7.66; cf. for arbitration proceedings G. Kaufmann-Kohler, ‘Globalization of Arbitral Procedure’, *Vanderbilt Journal of Transnational Law*, Vol. 36, No. 4, 2003, p. 1330; S.H. Elsing & J.M. Townsend, ‘Bridging the Common Law-Civil Law Divide in Arbitration’, *Arbitration International*, Vol. 18, No. 1, 2002, pp. 63–64; see, e.g., Art. 25(3) ICC Arbitration Rules (2012); Art. 27(2) UNCITRAL Arbitration Rules (2010).

11 For a comparative overview as to how litigation costs and attorney fees are allocated between the parties in civil litigation see M. Reimann (Ed.), *Cost and Fee Allocation in Civil Procedure*, Springer Publishing, New York, 2012.

12 Cf. *supra* note 8.

control of standard terms even in B2B relationships.<sup>13</sup> This is certainly not what both parties wanted and expected in choosing German law.

Third, the outcome of the case under the law chosen may be highly unpredictable. This especially holds true if the parties choose Swiss law. As Switzerland is such a small country, many central questions of contract law have not yet been decided by the Swiss Supreme Court, or if such a decision has been made, it may have been rendered decades ago and is disputed by scholarly writings. This makes the outcome of the case often rather unpredictable – another reason that may well prevent a party from pursuing its rights under the contract.

Furthermore, Swiss domestic contract law in core areas is especially unsuitable for international contracts. This can be demonstrated by reference to just two examples. First, the Swiss Supreme Court distinguishes between *peius*, i.e. defective goods, and *aliud*, that is, different goods,<sup>14</sup> the latter giving the buyer the right to demand performance during ten years after the conclusion of the contract notwithstanding whether it gave notice of non-performance or not,<sup>15</sup> whilst the former requires the buyer to give prompt notice of defect according to Article 201 or to preserve any remedies for breach of contract. Where the line between *peius* and *aliud* will be drawn in a particular case can be extremely difficult to predict.<sup>16</sup> The second example is compensation of consequential losses.<sup>17</sup> Whether there is a claim for damages without fault depends on the number of links in the chain of causation.<sup>18</sup> Extremely short periods for giving notice of defects<sup>19</sup> furthermore militate against domestic Swiss law for the international context. Similar examples could be drawn from many other domestic legal systems.

This background illustrates the urgent need to further harmonize if not unify general contract law.

UNCITRAL would be the most appropriate place for such a project. Whereas any regional endeavour might mainly focus on the laws of the respective countries involved, UNCITRAL has the ability to embark upon a more truly global reflection. Indeed,

13 Cf. §§ 305-310 German Civil Code.

14 Bundesgericht [Federal Supreme Court] (BGer), Switzerland, 5 December 1996, 121 Entscheidungen des Schweizerischen Bundesgerichts [BGE] III 453.

15 Cf. Art. 127 Swiss Civil Code.

16 See C. Fountoulakis, *supra* note 9, pp. 308-309; for more information on the differentiation between *peius* and *aliud* see H. Honsell, in H. Honsell et al. (Eds.), *Basler Kommentar, Obligationenrecht*, 5th edition, Helbing Lichtenhahn Verlag, Basel, 2011, Art. 206, paras. 2-3.

17 Art. 208(2) Swiss Civil Code.

18 See Bundesgericht [Federal Supreme Court] (BGer), Switzerland, 28 November 2006, p. 133 Entscheidungen des Schweizerischen Bundesgerichts [BGE] III 257, 271; H. Honsell, in *Basler Kommentar, Obligationenrecht*, *supra* note 16, Art. 208, paras. 7-8

19 Cf. Art. 201(1) Swiss Civil Code, according to which the notice must be made immediately (“sofort”); see also Bundesgericht [Federal Supreme Court] (BGer), Switzerland, 27 June 1950, 76 Entscheidungen des Schweizerischen Bundesgerichts [BGE] II 221, 225 (notice within four days in time as these included a Sunday).



UNCITRAL is the only forum with universal participation, that is, all the regions of the world have a chance to contribute on equal footing.<sup>20</sup> This is the reason why in 2012 Switzerland made a proposal for the 45<sup>th</sup> session of UNCITRAL on possible future work by UNCITRAL in the area of international contract law.<sup>21</sup> However, this proposal did not suggest how the possible future work should be conducted, especially what kind of instrument should be aimed at if one were to come to the conclusion that such future work is desirable and feasible. Let me give some thoughts to this question emphasizing that I am speaking entirely for myself and in no way voicing the official Swiss opinion.

In principle, there is the choice between a convention and a model law. A convention is designed to unify law by establishing binding legal obligations.<sup>22</sup> Its aim is to achieve a very high level of harmonization.<sup>23</sup> Although there may be the possibility of including some reservations that allow State Parties a certain but very limited degree of choice, such reservations are easily discernible without the need to have recourse to the respective domestic law.<sup>24</sup> Thus, a convention provides the highest level of predictability for private parties. In contrast, a model law only provides for a legislative text that is recommended to State Parties.<sup>25</sup> It is used where State Parties want to retain flexibility in implementation or where strict uniformity is not desirable or necessary.<sup>26</sup> Furthermore, a model law may be finalized and approved by UNCITRAL at its annual session, whereas a convention still, in principle, necessitates a diplomatic conference.<sup>27</sup> Although, at the political level it may be certainly easier to convince state governments to agree to a model law allowing them more leeway, the needs of international commerce clearly militate in favour of a convention. Even if states were to implement a model law, not only could they deviate from the text of such a model law, making it difficult to ascertain the content of the applicable law in a specific case, but moreover, there is no obligation for courts of a state that has implemented a model law to have regard to its international character and the need to promote uniformity

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20 UNCITRAL's membership comprises states from Africa, Asia, Eastern Europe, Western Europe, Latin America and the Caribbean, thereby ensuring that the main economic and legal systems of the world are represented. For an overview of the today 60 member states see UNCITRAL, *A Guide to UNCITRAL: Basic Facts about the United Nations Commission on International Trade Law* 37-41 (Annex II) (2013) (hereinafter *A Guide to UNCITRAL 2013*), available at <[www.uncitral.org/pdf/english/texts/general/12-57491-Guide-to-UNCITRAL-e.pdf](http://www.uncitral.org/pdf/english/texts/general/12-57491-Guide-to-UNCITRAL-e.pdf)>.

21 United Nations Commission on International Trade Law, 45<sup>th</sup> session, New York, 25 June-6 July 2012, *Possible future work in the area of international contract law: Proposal by Switzerland on possible future work by UNCITRAL in the area of international contract law*, A/CN.9/758 (8 May 2012), available at <[www.uncitral.org/uncitral/commission/sessions/45th.html](http://www.uncitral.org/uncitral/commission/sessions/45th.html)>.

22 *A Guide to UNCITRAL 2013*, *supra* note 21, p. 13.

23 *Id.*, p. 14.

24 See, e.g., Arts. 92-96 CISG.

25 *A Guide to UNCITRAL 2013*, *supra* note 21, p. 14.

26 *Id.*, p. 14.

27 *Id.*, p. 15.

in its interpretation, as it is nowadays provided for in all recent international conventions.<sup>28</sup> Thus, a statute implementing a model law is purely domestic law and is legitimately interpreted against the respective domestic background. Whilst a model law may bring about some harmonization at the beginning, this will soon be lost after some time. This can especially be expected in a traditional field such as contract law where firm prevailing dogmatic conceptions and convictions have been shaped over centuries and internalized by every lawyer from the very first day in law school.

The scope of the envisaged instrument on general contract law should be similar to that of the CISG, except that it should apply to all kinds of contracts and not just to sales. That means in the first place that the instrument should only be concerned with international contracts but not with purely domestic ones. There is no reason to do so, and it is not the mandate of UNCITRAL to interfere with domestic relationships.<sup>29</sup> If a state feels the need to simplify the situation for its citizens by having the same law applied to domestic as well as to international contracts, it is free to do so and can implement correspondent domestic legislation as some states already have chosen in relation to the CISG.<sup>30</sup>

Like the CISG, the instrument on general contract law should be confined to B2B contracts without touching B2C relationships. Although Internet transactions are becoming more and more international, B2C contracts to this very day are mostly domestic contracts. Consumer protection asks for mandatory rules which stand in sharp contrast to the need for freedom of contract in B2B contracts. It is not possible to juggle the needs of both – consumers and businesses – in one single instrument. The futility of such an endeavour has been demonstrated lately by the draft of a Common European Sales Law.<sup>31</sup> Furthermore, the level of consumer protection still differs considerably around the world; an international *consensus* in this field probably cannot be achieved during the decades to come.

As regards the areas of contract law that should be addressed, it is clear that the future uniform contract instrument should cover as many areas as possible. However, there are some fields where unification is more urgent than in others. The most important area where the gaps left by the CISG are most unfortunate because they endanger uniformity already reached are questions of validity. Although it is now unanimously held that the

28 See only Art. 7(1) CISG.

29 Cf. for UNCITRAL's mandate *A Guide to UNCITRAL 2013*, *supra* note 21, pp. 1-2.

30 Cf. I. Schwenger & P. Hachem, 'The CISG – Successes and Pitfalls', *American Journal of Comparative Law*, Vol. 57, No. 2, 2009, pp. 462-463.

31 See I. Schwenger, 'The Proposed Common European Sales Law and the Convention on the International Sale of Goods', *Uniform Commercial Code Law Journal*, Vol. 44, No. 4, 2012, p. 457 *et seq.* The draft forms Annex I of the *Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law*, COM(2011) 635 final (11 October 2012), available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:EN:PDF>>.

CISG itself defines what is a question of validity left to domestic law and what is not,<sup>32</sup> many day-to-day contract problems are issues of validity. To name but a few: questions of consent, such as mistake, undue influence or fraud, and validity of individual clauses and standard terms, such as gross disparity, burdensome obligations, exclusion and limitation of liability clauses as well as fixed sums, that is, penalty and liquidated damages clauses.<sup>33</sup> It is extremely burdensome to have these questions answered by domestic law which might well lead to frictions with unified law. Also very important are issues regarding the consequences of unwinding of contracts<sup>34</sup> and set-off.<sup>35</sup> Other areas of contract law, such as third-party rights, assignment and delegation, or joint and several obligors and obligees might not be at the forefront of desirability for unification.

If one considers working on further unification of contract law, the route to be followed seems to be pretty clear. The starting point must be the CISG. It has received such tremendous acceptance that anything that might interfere with it must be refrained from.<sup>36</sup> Other UNCITRAL instruments, such as the 1974 Limitation Convention<sup>37</sup> or the 1983 Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance,<sup>38</sup> should be taken in due consideration, and whether they should be amended should be discussed. Certainly, of utmost importance are the PICC.<sup>39</sup> Most valuable work has been completed by UNIDROIT, and any duplication of efforts must be prevented. In essence, we face a similar situation as in 1968 when UNCITRAL started working on the CISG, drawing heavily on the previous work done by UNIDROIT that had led to the Hague Conventions on the sale of goods, ULIS and ULF, respectively.<sup>40</sup> However, there are certain contradictions

32 I. Schwenzer & P. Hachem, in I. Schwenzer (Ed.), *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)*, 3rd edition, Oxford University Press, Oxford, 2010 (hereinafter *Schlechtriem & Schwenzer, 3rd English edition*), Art. 4, para. 31 with references.

33 For an overview on how the issues of formation and validity of sales contracts are dealt with in the different legal systems see I. Schwenzer *et al.*, *supra* note 6, paras. 9.01-22.25.

34 For an overview on how the unwinding of contracts is dealt with in the different legal systems see *id.*, paras. 50.01-50.36.

35 For a comparative discussion on set-off see C. Fountoulakis, *Set-Off Defences in International Arbitration: A Comparative Analysis*, Hart Publishing, Oxford, 2011.

36 The CISG now has 80 member states with the number continuously increasing. Recently, Brazil and Bahrain have become contracting states to the CISG. For a list of the current contracting states to the CISG see <[www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html)>. See also I. Schwenzer & P. Hachem, 'The CISG – A Story of Worldwide Success', in J. Kleinman (Ed.), *CISG Part II Conference*, Stockholm Centre for Commercial Law Juridiska institutionen, Stockholm, 2009, p. 119.

37 Convention on the Limitation Period in the International Sale of Goods (1974), available at <[www.uncitral.org/pdf/english/texts/sales/limit/limit\\_conv\\_E\\_Ebook.pdf](http://www.uncitral.org/pdf/english/texts/sales/limit/limit_conv_E_Ebook.pdf)>.

38 Available at <[www.uncitral.org/pdf/english/texts/sales/contract/vol14-p272-273-e.pdf](http://www.uncitral.org/pdf/english/texts/sales/contract/vol14-p272-273-e.pdf)>.

39 UNIDROIT Principles of International Commercial Contracts (PICC) (2010), available at <[www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf](http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf)>.

40 For more information on the drafting history of the CISG see P. Schlechtriem, *Uniform Sales Law – The UN-Convention on Contracts for the International Sale of Goods*, Manz Publishing, Vienna, 1986, pp. 17-21.

between the CISG and PICC that need to be eliminated;<sup>41</sup> in other areas, the possible acceptance of PICC rules at a global level must be carefully scrutinized and discussed.

Having regard to what already has been achieved at the international level, a global contract law appears to be feasible within a reasonable amount of time and without consuming too many resources needed elsewhere.

How would the global picture for internationally contracting parties change if we had an UNCITRAL instrument on general contract law?

First, this instrument – just like the CISG – could be expected to represent a good compromise between Common and Civil law.<sup>42</sup> It would be acceptable to any party regardless of its own legal background. It would be a truly neutral law.

Second, it would be drawn up in the six UN languages and would be translated into the languages of the states adopting this instrument and thus be readily available in court and arbitral proceedings, rendering costly translations and expert testimony superfluous. Just as the CISG does, it could also serve as a model for further harmonization of contract law on a domestic level.<sup>43</sup> And it could be used to teach traders that cannot afford in-house counsel or legal advice the basics of contract law.<sup>44</sup>

Third, it would lead to much more predictability in international contracts. It can be expected that the same mechanisms that now support and enhance the uniform application and interpretation of the CISG will also play a decisive role for such an instrument. It must be recalled that we now have about 3,000 published cases on the CISG,<sup>45</sup> we can count about 4,000 publications freely accessible on the Internet,<sup>46</sup> we have CLOUT<sup>47</sup> (Case Law on UNCITRAL texts) and we have the UNCITRAL Digest<sup>48</sup> and further institutions worldwide such as the CISG Advisory Council<sup>49</sup> that strive to guard uniformity. Commentaries with article-by-article comments will be published in different languages. Uniform

41 For a comparison of the two instruments see M.J. Bonell, 'UNIDROIT Principles of International Commercial Contracts and the United Nations Convention on Contracts for the International Sale of Goods – Alternatives or Complementary Instruments?', *Business Law International*, Issue 1, 2000, pp. 94-96.

42 Cf. for the CISG U. Magnus, 'The Vienna Sales Convention (CISG) Between Civil and Common Law – Best of all Worlds?', *Journal of Civil Law Studies*, Vol. 3, No.1, 2010, p. 67.

43 Cf. for the CISG as a role model for domestic legislators I. Schwenzler & P. Hachem, *supra* note 30, pp. 462-463.

44 As it is true with regard to the CISG; cf. I. Schwenzler *et al.* (Eds.), *supra* note 6, para. 3.21.

45 See for cases on the CISG, e.g., the online case database CISG-online.ch, available at <[www.global-saleslaw.org/index.cfm?pageID=29](http://www.global-saleslaw.org/index.cfm?pageID=29)> and the Pace Law School CISG database, available at <[www.cisg.law.pace.edu/](http://www.cisg.law.pace.edu/)>.

46 See for publications freely accessible on the Internet, e.g., the online collection of scholarly writings at the Pace Law School CISG database, available at <[www.cisg.law.pace.edu/](http://www.cisg.law.pace.edu/)>.

47 Available at <[www.uncitral.org/uncitral/en/case\\_law.html](http://www.uncitral.org/uncitral/en/case_law.html)>.

48 Available at <[www.uncitral.org/uncitral/en/case\\_law/digests.html](http://www.uncitral.org/uncitral/en/case_law/digests.html)>.

49 For more information on the CISG Advisory Council and for the CISG Advisory Council Opinions see <[www.cisgac.com/](http://www.cisgac.com/)>.

standard forms that facilitate contracting will soon emerge on the basis of such an instrument and further add to predictability.

All in all, it can be expected that an UNCITRAL instrument on general contract law may considerably save transaction costs. It may help companies with lesser funds to be able to pursue their legal rights under an international contract and thus further promote international trade. Finally, it can support the rule of law worldwide.