



The CISG at 35: its Assessment as a Treaty and as a Legislative Model

Luca Castellani
Legal Officer, UNCITRAL Secretariat

Assessing the CISG

- Series of events to celebrate the 35th anniversary of the CISG (ongoing)
- Highlighted three uses of the CISG
 1. As a treaty;
 2. As a model law;
 3. As a source of a-national law or lex mercatoria.

1. The CISG as a treaty: promoting its adoption by States

- In the last years, there have been significant newcomers (Japan, Turkey, Brazil)
- Promotion aims at supporting regional economic integration processes (e.g., in ASEAN)
- Despite efforts, yearly adoption rate has decreased
- One reason is that many States do not have capacity to conduct trade law reform on their own
- Need to allocate additional resources to build capacity

1. The CISG as a treaty: reviewing declarations

- Declarations are permitted, but disrupt uniformity
 - Written form
 - Application by PIL (art. 1(1)(b) CISG)
 - Exclusion of Part II
- Mission in Europe (almost) accomplished
- Has the time come to start the same process in Latin America?
- Important to avoid imitation effects

1. The CISG as a treaty: highlighting complementary texts

- Limitation Convention
 - First mapping of case law
- UN Electronic Communications Convention
 - Complements and updates CISG on the use of electronic means:
 - Form requirements (writing, signature)
 - Formation of contract
 - No Oral Modification clauses (art. 29(2) CISG) and contractual management

2. The CISG as a model law: national level

- Only a handful of influential models in the field of sale of goods (and of contract law)
- The CISG is the most recent and the only one with universal appeal
- Use as a model in national legislation
 - China, Hungary, Spain, Argentina.
- CISG may be adopted as a precursor to domestic law reform
- Other times, CISG substantive provisions are adopted nationally through regional legislation, without adopting the treaty itself
- Adoption at both levels is mutually reinforcing

2. The CISG as a model law: regional level

- CISG often used as a model in regional legislation
 - Need to avoid regional fragmentation by:
 - Acknowledging source
 - Respecting original features
 - Promoting formal adoption of CISG together with regional texts
- Reasons to develop regional legislation:
 - Accommodate specific regional features
 - Improve uniformity

2. The CISG as a model law: regional level

- Examples of criticism on the uniform application of the CISG:
 - Not adopted by all States;
 - Existence of declarations;
 - Excluded matters;
 - No high court to ensure uniform interpretation.
- Features inherent to inclusive drafting mechanism and universal adoption process
 - Need to appreciate differences between global and regional levels, which are complementary, not in conflict

3. CISG as a-national law / lex mercatoria

- Global trend towards promoting and upholding freedom of contract, including choice of law and forum
- Needed to support complex business models based on cross-border supply chains
- CISG combines predictability and flexibility
- As a treaty, it promotes freedom of contract even if totally excluded
 - Can reach where contractual provisions alone don't
- A-national law is a standard for specialised dispute resolution through litigation or arbitration and CISG is a core part of it
- Need to know CISG and apply it as appropriate

What next?

- New mandate: "to report periodically on promotional and capacity-building activities aimed at supporting the Convention implementation with a view to seeking strategic guidance on those activities".
 - (A/70/17, para. 334).
- What about a guidance document on sale of goods?
- Aimed at compiling, coordinating and consolidating all texts linked to CISG from issues of private international law to commonly-related contracts (e.g. set off, distribution)
- Providing specific guidance to a) judges and arbitrators; b) practitioners; c) legislators.
- No new legislative work
- A joint venture with other IGOs?