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THE ACCEPTANCE OF THE UNIFIED SALES LAW (CISG) IN DIFFERENT LEGAL SYSTEMS

AN INTERNATIONAL COMPARISON OF THREE SURVEYS ON THE
EXCLUSION OF THE CISG'S APPLICATION
CONDUCTED IN THE UNITED STATES, GERMANY AND CHINA

Martin F. Koehler* & Guo Yujun**

I. REASON FOR THE SURVEY

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is a unified sales law currently in force in 70 countries of the world, including all important industrialized nations with the exception of the United Kingdom and Japan (for current ratification standings see the listing at <http://www.cisg.law.pace.edu>).¹ The CISG has thereby advanced to the most widespread of international conventions in the field of substantive law. The CISG is extremely significant, particularly for export-oriented contracting states such as Germany. Trade with the USA, for instance, was around 105,067 million euro in 2004 and comprises more than 8% of German trade.² Trade between China and the USA reached 262,680.50 million dollars, and trade between China and Germany reached 78,194.43 million dollars in 2006.³

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¹ See Hiroo Sono, Japan's Accession to the CISG: The Asia Factor, 13 J. JAPANESE L. 25 (2008).

² Cf. *Rangfolge der Handelspartner im Außenhandel der Bundesrepublik Deutschland*, presented by the Federal Statistical Office of Germany for 2004, available at <http://www.destatis.de>.

³ Presented by Comprehensive Department of Ministry of Commerce of People's Republic of China, available at <http://zhs.mofcom.gov.cn/aarticle/Nocategory/200702/20070204346971.html> (last visited July 4, 2008).

And yet, even after more than twenty years since the commencement of the CISG in 1988 (the Convention has been in effect in the USA and China since 1 January 1988, and in Germany since 1 January 1991), its application is still often excluded in spite of the fact that, in the academic world, the belief in the advantages of the uniform law has increasingly prevailed⁴ and the fact that the CISG has repeatedly been enlisted as a model for legislative projects or amendments to national sales law.⁵

The investigation of the reasons for such an exclusion forms the core objective of a survey which was conducted in 2004/2005 in the USA and Germany, and a following survey conducted in 2007 in China (the results of which shall be presented here). In order to arrive at comparable conclusions, the investigation took place in Germany and the USA, in the latter case with the kind support of Prof. Alejandro M. Garro, Law School of Columbia University (New York), and Prof. Albert H. Kritzer, Pace University School of Law (New York). The survey conducted in China took the same questionnaires with the encouragement and support of Prof. Albert H. Kritzer.

II. FOCUS GROUP

The survey primarily targeted practicing attorneys. The survey was sent to attorneys in private practice and in-house counsel in the USA and Germany, both directly and via various discussion forums or e-mail distribution (*e.g.*, the listserve of the International Transactions Committee of the American Bar Association). In China, in addition to mailings to attorneys in private practice and in-house counsel, the survey was also sent to people's courts and arbitration commissions by post or e-mail. The fact that, in the USA alone, it is likely that more than 3,000 practitioners were addressed, mainly through listserves, and only about 50 questionnaires were returned, can be seen as an

⁴ Cf. Ulrich Magnus, *in* J. Von Staudinger, *Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetzen und Nebengesetzen Buch 2: Recht Der Schuldverhältnisse (F.R.G.)* (2005) (almost too evident "are the reasons for the efforts for the international unification of law.") Text also quoted in the opinion of Bonell *in* M.J. Bonnell, *et al.*, *Commentary on the International Sales Law: The 1980 Vienna Sales Convention* 3 (1987).

⁵ Peter Schlechtriem, *in* *Kommentar zum Einheitlichen UN-Kaufrecht*, (Peter Schlechtriem & Ingeborg Schwenzer eds., 2004).

early indication of poor acceptance of the CISG. In Germany, where the response to online inquiries was even less, 33 useable questionnaires were completed – approximately two thirds by attorneys in private practice and one third by in-house counsel. 860 practitioners were addressed in China. 245 questionnaires were sent to attorneys in private practice, 86 to in-house counsel, 389 to people's courts and 140 were sent to arbitration commissions. 48 of the total questionnaires were returned, including 13 responses from people's courts and 8 from arbitration commissions. In order to comply with the questionnaires' responses in Germany and the USA, the following analysis of the situation in China was based on a total of 27 questionnaires, completed by 18 attorneys in private practice and 9 in-house counsels. All in all, the following analysis of the USA, Germany and China was based on 108 completed questionnaires.

Only 2.8% of all respondents indicated never having had any contact with the CISG (USA: 4.2%, Germany: 3.0%, whereas in China no respondent indicated never having had any contact). Most Germans (69.7%) had contact with the CISG in their day-to-day work, whereas in the USA and China this answer amounted to only 29.2% and 30%, respectively. The majority of the US practitioners (58.2%) knew of the CISG only from hearsay (29.2%), from their studies (16.7%), from literature (10.4%) or from colleagues (2.1%), whereas this answer was supplied by only 27.3% in Germany. The Chinese responses were much similar to the USA respondents: 30% of the respondents had contact with the CISG in their day-to-day work. A further 60% had contact with the CISG in other ways, namely 13.3% of the respondents knew of the CISG from hearsay, 26.7% from their studies, 16.6% from literature, and 3.4% from colleagues.

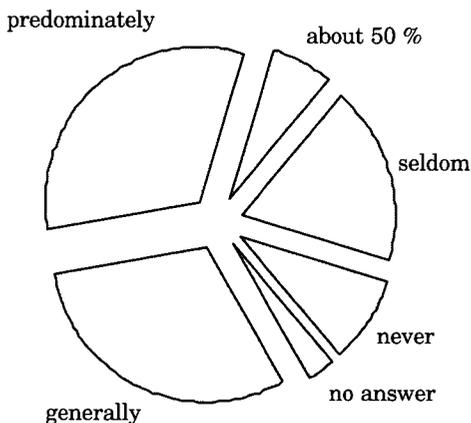
At first glance, this difference – namely the low rate of contact with the CISG on a day-to-day basis in the USA and China – is surprising, as 41.7% of all respondents indicated that at least half of the business transactions dealt with by them had something to do with international sales contracts. An explanation for this can be the fact that the application of the CISG is dependent on, among other things, whether the respective business partners reside in signatory States, and the fact that the

Convention is not applicable to every international contract of sale.

III. FREQUENCY AND METHOD OF EXCLUSION

Only 10 of 108 respondents (9.3%) answered that they never excluded the application of the CISG. In contrast, 64.8% excluded the CISG principally or preponderantly (USA: 70.8%, Germany: 72.7%, China 44.4%). This assessment was comparable in both USA and Germany, but there was a manifest difference between Chinese respondents and American or German respondents. An explanation for the Chinese respondents can be that some of them did not realize that they could opt out of the CISG, they thought some principles of the CISG were absorbed into Chinese contract law, they believed there was no significant difference between the CISG and Chinese law, or, if the foreign traders did not want to apply Chinese law, they viewed the CISG as a "neutral law" that would be better than an unfamiliar foreign law.

FREQUENCY OF CISG'S EXCLUSION



81.4% of the respondents (in USA and Germany 77.8%, in China 92.5%) preferred an explicit exclusion of the CISG (in USA and Germany 55.6%, in China 51.9%) and answered that they mostly explicitly excluded the applicability of the CISG in their individual contracts; in USA and Germany a further 22.2%, and in China 40.7%, inserted an explicit exclusion of the applicability of the CISG into the general terms and conditions

of the contract. Implicit exclusion, therefore, appears to play only a minor role in practice (38% settled for an implicit exclusion through the selection of the national law of a non-signatory state, and 3.7% through choice of forum). With respect to the significance of a forum selection as an implicit exclusion, it must be noted that such an exclusion – although often accepted in the literature as an indication for an exclusion – cannot be seen as a *per se* expression of a definite intention of exclusion. In fact, such a conclusion can only be drawn if the forum is located in a Contracting State, so that one can infer from the parties' forum selection their clear intention to have the domestic law of the State where the forum is located to govern their contract.⁶ It shows that most of the respondents preferred an explicit exclusion.

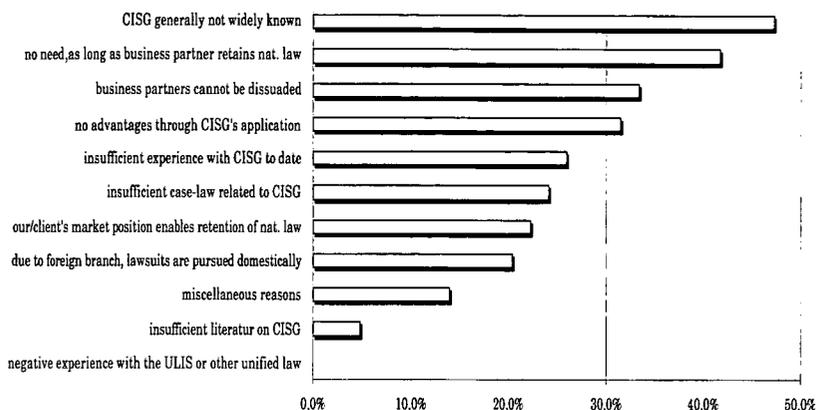
IV. PRACTICAL VIEWPOINTS FOR EXCLUSION

By far, the most often selected practical reason for exclusion was because the CISG is generally not widely known (47.2%). Other often submitted reasons for exclusion were that there is no need to make use of the unified law as long as business partners continue to apply national law (41.7%). About one-third of all respondents stated as a reason for excluding the CISG that their business partners, or the business partners of their respective clients, could not be dissuaded from the application of national law (33.3%) or that no advantage was seen in the application of the uniform law (31.5%). Approximately every fourth respondent answered that their firms still have insufficient experience with the application of the CISG (25.9%), or that there is still insufficient case-law related to the CISG (24.1%).

However, marked differences among China, the USA and Germany are noticeable for often selected reasons. The results of often stated practical reasons for exclusion are differently ordered in USA, Germany, and China. In China, the most often selected answer was “because there is no reason to make use of the unified law as long as our business partners or the business partners of our client continue to apply national law.” This rea-

⁶ Cf. Franco Ferrari, *CISG Rules on Exclusion and Derogation: Article 6*, in *The Draft UNCITRAL Digest and Beyond: Cases, Analysis, and Unresolved Issues in the U.N. Sales Convention* 114, 129 (Franco Ferrari, et. al. ed., 2004).

**PRACTICAL REASONS FOR CISG'S EXCLUSION
(COMBINED RESULTS)**

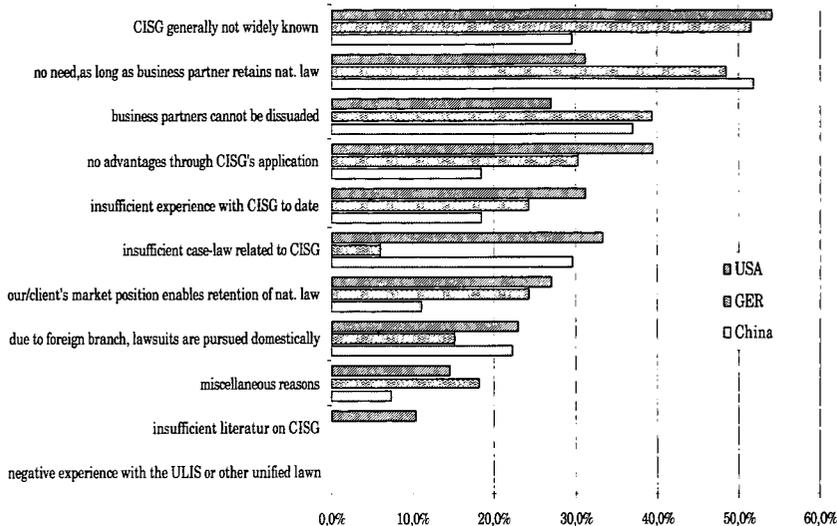


son was submitted by 51.9% of the Chinese respondents, likewise in Germany by 48.5% (here second most selected answer), but in contrast to this in the USA by just 31.3%. Uniformly, in the USA and Germany, the first highest answer was “because the CISG is generally not very widely known” (54.2% in USA and 51.5% in Germany), whereas this answer was only given by about every third respondent in China (27.1%).

The second most often selected reason in China was “because it is not possible to dissuade our business partners or the business partners of our client from the application of their national law” (37%), while this answer was – again quite similarly – chosen in Germany by 39.4% of the respondents, it was only chosen by 27.1% in the USA. In the USA the second most chosen answer was that there is still “insufficient case-law to date related to the CISG.” This answer was also given quite often in China (29.6%), whereas in Germany this answer was seldomly submitted (6.1%).

The particular importance of the degree of familiarity of the CISG is also made obvious by the fact that the respondents often repeated or underlined these points in their individual additional comments. Remarks regarding the practical reasons for exclusion such as “one thinks one knows the national law better” or the saying “you can’t teach an old dog new tricks” enable one to see that it is not so much a matter of a general degree of recognition as it is of the individual lack of familiarity with the

PRACTICAL REASONS FOR CISG'S EXCLUSION
(INDIVIDUAL RESULTS)



uniform law. Any references to a close connection to legal training or to a willingness to partake in post-graduate education are few and far between (only once is it stated: “lawyers are generally trained in, and thus more comfortable with, their national law and would have a steep learning curve to buy into the CISG”). Most comments refer to “uncertainty / ignorance among jurists in dealing with the CISG [. . .]” or thereto that because of their lack of knowledge of the CISG the “legal consequences can’t be evaluated” by the respondents.

Incidentally, several US practitioners presume that the uncertainty of their jurists in dealing with the CISG concerns not only the regulations themselves, but also the relevant legal system. It has also been said that, because the CISG tends to follow the principles of Civil Law rather than those of Common Law, it deviates from the Uniform Commercial Code and thereby from the legal sources with which US practitioners are generally acquainted. In this respect, it must be further pointed out that dealing with foreign judgments is also considered to be unusual. The reason for this lies not only in the language difficulties, but also in the varying structures of American judgments and the unusual opinions in Common Law legal circles.

It is evident that lawyers hardly put the option of the application of the Uniform Law to their clients, let alone explicitly suggest it because of their preference for the application of national law. Indeed, this presumption is confirmed by the statement of a respondent, who candidly admits: "Our preference is to attempt to have the business partner agree to apply U.S. law," although he indicates in the practical reasons for exclusion that he merely sees no practical advantages in the application of the CISG, and further that he considers neither national law nor the CISG legally advantageous.

A further practical example given for exclusion was that, through the choice of national law, the difficulties that lie in the designation of the applicable law via the rules of conflict of laws could be avoided. For whenever a choice of law is lacking and only one of the contracting partners is domiciled in a CISG signatory State, the applicability of Art. 1(1)(b) CISG is dependent on the question of whether the rules of Private International Law (PIL) of the forum leads to the application of the law of a signatory State. It must however be noted here that, in our opinion, this is not an argument in favor of exclusion, but merely a good reason for a definite choice of law. For, on the one hand, the CISG can be chosen as the applicable law (opting-in), whereby the reference to the PIL within the operation of Art. 1(1)(b) CISG becomes gratuitous. On the other hand, in the case of an exclusion of the Convention, without a choice of any other law, recourse to the rules of PIL becomes necessary in order to determine which law should be applied instead of the uniform law.

Another interesting argument is that General Terms and Conditions of Contracts should be drawn up uniformly and without variations for domestic and foreign business deals. Wherefore, in this area, if necessary through a choice of uniform law, the application of the same non-uniform law is advisable. The idea is not the desire to dictate the conditions or the choice of a certain national law as an endeavor to rationalize work processes. Conversely, another respondent argued that, both with respect to the general drafting of contracts and to the consideration or drafting of General Conditions, the inclusion of the CISG is particularly recommended because it is a "neutral" law. What is meant by this is that both parties to a contract of sale

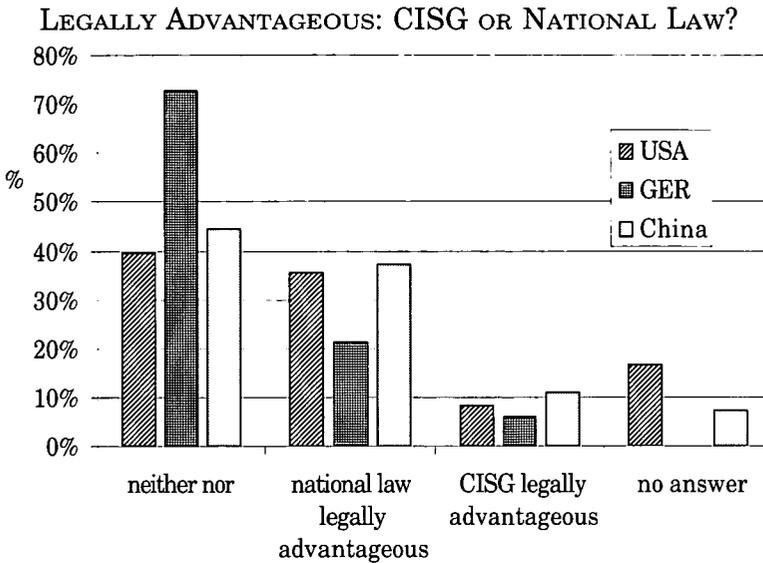
have a similar association with this law, or that neither party enjoys a closer relationship to his national law, so that neither party is at a disadvantage.

V. LEGAL VIEWPOINTS FOR EXCLUSION

With a view to any legal considerations regarding an exclusion, only a few respondents (8.3%) stated that, in their opinion, the CISG is legally advantageous. On this point, the American, German and Chinese respondents were largely unanimous (Germany 6.1%, USA 8.3%, China 11.1%). Apart from this, however, considerable differences between the national groups regarding the legal considerations have come to light: The number of respondents in the USA who consider the national law an advantage (35.4%) is approximately the same as the number of those who see an advantage in neither the one law nor in the other (39.6%). In China, 37% of the respondents consider the national law an advantage, while 44.4% of the respondents view neither of the legal systems as legally superior. It was approximately the same as the number in the USA. In Germany, however, only 21.2% consider the national law advantageous, while the considerable majority (72.7%) view neither of the legal systems as legally superior.

This insight gained from the survey is inasmuch conclusive as that the modernization of the German Law of Obligations effective as of 1 January 2002 is, in large part, oriented at the CISG and that the German Civil Code is accordingly, to a large extent, now more similar to the CISG.⁷ The respondents themselves pointed out several times and quite explicitly that, from a legal viewpoint, existing differences have been minimized by the modernization of the Law of Obligations. This is also the case in China. The Chinese Contract Law effective as of 1 October 1999 has similar rules to that of the CISG in many aspects,

⁷ Franz-Josef Schillo, *UN-Kaufrecht oder BGB? - Die Qual der Wahl beim internationalen Warenkaufvertrag - Vergleichende Hinweise zur Rechtswahl beim Abschluss von Verträgen [CISG or BG? The Agony of Choice in International Sales of Goods: Comparative Guidelines for Choosing Law During Contract Formation]*, 6 *Internationales Handelsrecht [IHR]* 257-268 (2003) (F.R.G.). Sven Regula & Bernd Kannowski, *Nochmals: UN Kaufrecht oder BGB? Erwägungen zur Rechtswahl aufgrund einer vergleichenden Betrachtung [Once Again: CISG or BGB? Considerations on Choice of Law Based on a Comparative View]*, *Internationales Handelsrecht [IHR]*, 2004/2, at 45-54 (F.R.G.).



such as provisions relating to the formation, performance of the contracts and remedies for breach of contracts.⁸

Although the respondents only occasionally elaborated on individual legal systems and the existing differences between laws, the following observation can be made: The decision reached by the majority of the respondents that the CISG is not more advantageous, at least legally, than the non-uniform law contradicts the opinion prevailing in the literature. The literature rates the unifying of Sales Law as predominantly advantageous and refers to general advantages – *e.g.*, the uniform text available in official translations (in six languages), the uniform standards of interpretation, a balanced distribution of risk and the creation of legal security or equality in competition, and the resulting reduced incentive for forum-shopping.⁹ Consequently, only isolated comments by the respondents lead to the conclusion that the unifying process undertaken by the CISG is itself valued as a legal advantage. For example, the advantage of an “authoritative translation,” meaning that a contracting party could “read the legal elements of the contract in his language or

⁸ See XU Junke, *The CISG in Chinese Legal Practice*, available at <http://www.contracts.com.cn/web.asp?id=227>.

⁹ See, *e.g.*, Magnus, *supra* note 4; see, *e.g.*, Schlechtriem, *supra* note 5.

have them explained to him by a lawyer from his own country," was mentioned or highlighted in only two cases.

A point repeatedly seized on, however, was the lucidity or clarity of the provisions of the CISG, which are also often praised in literature. The CISG is considered "simpler and more comprehensible than the new German Civil Code" by the group of German jurists. And even the US respondents consider the CISG "transparent." However, the CISG is just as often criticized for its apparent indefinite legal terminology or provisions. Several US respondents are of the opinion that the provisions of the CISG are "too flexible" and therefore "unpredictable," as opposed to the UCC which is "far more specific" and contains "fewer and clearer requirements."

Several US respondents referred to the importance of comprehensive case law or to an orientation on such, which had also become clear with regard to the practical reasons for exclusion. It was argued that a large number of decisions "interpreting UCC" have led to "greater certainty as to how [the law] will be applied by courts / arbitrators" or that in comparison to the CISG the UCC is more "developed by decisional law." Remarkable in this respect, however, is the statement of a German jurist (from an internationally operating office originating in the USA) that the CISG provides a "greater legal security to international contracts because of the existing case law in the contracting states."

The legal department of a German company supplied information to the effect that, after the sale of most products, service contracts (in part within the same contract) not subject to the CISG had to be entered into. In such cases, because the application of the CISG would lead to a splitting of the contracts, exclusion of the Convention is deemed favorable. Otherwise, overlaps could only be avoided through commensurate cross references or such like. Similarly, an American firm supplied similar information with respect to business with incorporeals. The CISG has a disadvantage in contracts relating to intellectual property because these rights are to be licensed and not sold and because the necessary licensing documents must be governed by contract provisions that provide meaningful ownership protection and confidentiality standards for the technology. As such, provisions are only to be found in non-uniform law, con-

siderations of practicality lead to the result that the seller – *e.g.*, the technology vendor – chooses the national non-uniform law which conforms to the corresponding national licensing provisions, also taking into consideration that common law concepts of ownership of this kind of property are different from civil law.

In the Chinese survey, some of the respondents indicated that it was difficult to say whether domestic law or the CISG was legally advantageous; the choice should be made on basis of specified cases, different from case-to-case. The reason for regarding national law as advantageous was that the respondents were much more familiar with domestic law. A reason for regarding the CISG as legally advantageous was that the CISG was better known by foreign traders; it was easier to persuade foreign parties to designate the CISG as applicable law other than Chinese law, especially in cases of clients who are unwilling to apply a foreign law. One respondent indicated that if there was no possibility to know the relevant foreign law, it would be a good choice to apply the CISG, otherwise Chinese law should prevail.

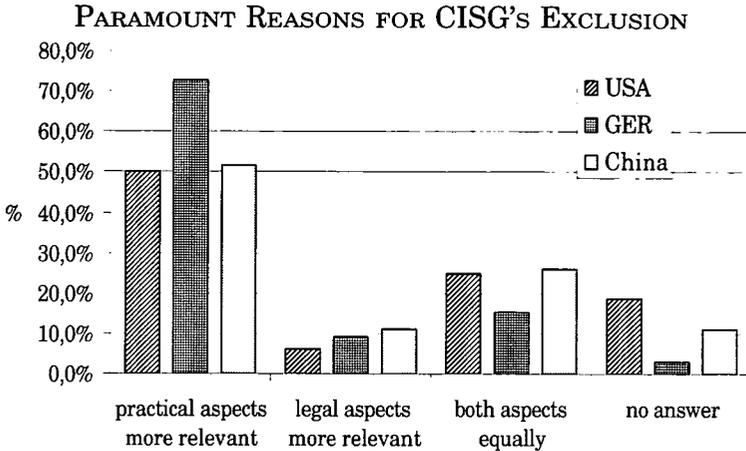
VI. WEIGHING OF PRACTICAL AND LEGAL CONSIDERATIONS

The majority of the respondents (57.4%) judged the practical considerations more relevant for exclusion than the legal ones. In all of the three countries, the legal reasons were considered far less relevant than the practical reasons (in China 11.1% of the respondents considered the legal considerations crucial, as compared to 9.1% in Germany and 6.3% in the USA).

VII. MODIFICATION OF THE CISG

The respondents were further asked to indicate whether, in those cases in which they assume the CISG applies and is not entirely excluded, they undertake any modification to the CISG (*i.e.*, exclude, replace or vary any individual provisions or parts thereof).

The majority of the respondents (54.6%) denied undertaking any modifications (Germany 66.7%, USA 52.1%, China 44.4%). The results indicate that the American or Chinese jurists, insofar as they undertake any modifications, do so not only more often, but also more regularly in comparison to their German colleagues. Of those who undertake modifications,



30% do so in Germany “normally” and 70% “occasionally,” whereas the figures amount in the USA to 42% and 58% and in China to 41.7% and 58.3%, respectively. From the answers that contained any further specifications, it could be established that the buyers and sellers were mostly concerned with extending or limiting liability by various means.

VIII. CONCLUSIONS

The survey’s respondents’ familiarity with the CISG cannot be seen as representative of the general familiarity with the Convention. The result that 97.2% of all the respondents had had some kind of contact with the CISG is due to the fact that the questionnaire was deliberately sent to specialists who were likely to have regular dealings with international Sales Law.

As far as the general familiarity with the uniform law is concerned, reference can be made to a survey conducted by Michael Wallace Gordon in Florida in 1997, where approximately 30% of the respondents indicated having “reasonable knowledge” of the CISG.¹⁰ Although the 124 respondents were specialists, namely members of the Bar Section on Interna-

¹⁰ Michael Wallace Gordon, Some Thoughts on the Receptiveness of Contract Rules of the CISG and UNIDROIT Principles as Reflected in One State’s (Florida) Experience of (1) Law School Faculty, (2) Members of the Bar With an International Practice, and (3) Judges, 46 AM. J. COMP. L. 361, 365 (Supp. 1998); William S. Dodge, Teaching the CISG in Contracts, 50 J. LEGAL EDUC. 72-94 (2000), available at <http://cisgw3.law.pace.edu/cisg/biblio/dodge.html>.

tional Law, 90% of them were of the opinion that the national Sales Law of Florida had prior applicability.

What stands out in the first place, when one considers the PRACTICAL REASONS for exclusion, is that the apparent unfamiliarity of the CISG constitutes, by far, the main reason. The respondents' comments do not imply that those aspects which are seen in the literature as advantages of the uniform law are considered reason enough to abstain in practice from exclusion.

The manifest relevance in the USA, compared to the German and Chinese group of respondents, of the availability of comprehensive case law is basically self-evident in the face of the prevailing legal system, largely based on case law. To raise this argument as a practical reason for exclusion of the CISG does not appear convincing, however. In the interim, many international decisions have been reached regarding all the fundamental legal issues. These decisions are easily available, free of charge, via internet databases (see particularly the Web links listed in the sidebar). More importantly, the existence of international case law databases means that decisions relating to the CISG are available in the various languages of the member States. As a result, a typical problem occurring in international contractual relations is reduced;¹¹ the problem being that – as long as an agreement regarding jurisdiction is lacking – a court must determine foreign law or the relative case law in a language which is possibly foreign to that court.

As to the assessment of the LEGAL ADVANTAGE of one law or another, a comparison of the results in Germany, the USA and China shows that all groups consider the CISG only minimally advantageous. Yet, a significantly larger number of German jurists than their American or Chinese colleagues indicated that neither the CISG nor the national law is legally advantageous. A reason for this could be that the non-uniform German Sales

¹¹ UNILEX on CISG & UNIDROIT Principles, [http://www. Unilex.info](http://www.Unilex.info) (collection of decisions of the International Institute for the Unification of Private Law (UNIDROIT) in Rome, managed by M. J. Bonell, offers a number of decisions – sorted according to subject as well as chronologically – either in full or as summaries). Electronic Library on International Commercial Law and the CISG, <http://cisg.law.pace.edu> (the comprehensive database of the Pace Law School in White Plains (New York), initiated by Albert H. Kritzer, contains over 2,000 cases (partly in full, partly as summaries or with commentaries), copious material relating to the origins of the CISG, guidelines, references to literature and further links).

Law (the German Civil Code) has, through the reforms to the Law of Obligations, been strongly aligned with the CISG. It may seem surprising that notwithstanding the indicated legal equality the German respondents decided comparatively often in favor of exclusion of the uniform Law. The reason for this could be that, according to the information provided by all respondents, it is only in the rarest of cases that the legal aspects are crucial to the decision in favor of an exclusion of application.

In light of a trend towards irrelevance of the legal aspects, on the one hand, and the familiarity, or lack thereof, as the paramount reason for exclusion, on the other hand, it can be surmised that a large number of the respondents have not yet taken the trouble to compare the legal aspects of the two laws in detail. This aspect is particularly important, as all of the responding attorneys, and many even regularly, deal with the CISG, and therefore ought to be able to appraise the legal differences between the uniform and non-uniform law accordingly.

However, in any case, it is understandable that the respondents undertake no legally material MODIFICATIONS of the provisions of the Convention in the majority of cases. The reason for this is not only to be seen in the fact that modifications are not to be expected when the CISG is excluded anyway. It is, rather, to be seen in the fact that the legal reasons for exclusion are considered less relevant than the practical reasons, and the latter cannot be influenced by a modification of the provisions of the uniform law.

The central, although hardly the most surprising, finding of this empirical survey is that the overriding reasons for an exclusion of the Convention are practical, and that the lack of familiarity with the Convention provides by far the most important reason for exclusion. The problem of the lack of familiarity with the uniform law as a primary reason for its exclusion lies in the self-generating *circulus vitiosus*: the familiarity and acceptance of a law arises, in the long term, from its use and the positive experiences arising therefrom. If a law is not applied, then the practitioners slip by the chance to make use of, or at least experience, the advantages “preached” about the law in the literature, with the result that any incentive to apply the law fails to arise. As a result the Convention’s goal of unifying the law and the literature’s much-vaunted advantages of the unified law are

the victims of certain indolence in practice. What appears at first to be a somewhat severe reproach is confirmed by a glance at the final questions of the survey. Even in those cases in which an application of the CISG became, in retrospect, apparent, only two-thirds of those affected (63.9%) indicated that these cases actually led to any changes in their companies' procedures or with respect to consultations with their clients. The regularly expressed opinion in the literature to the effect that "the devil you know is better than the devil you don't know"¹² has thereby been empirically proved.

¹² Robert Koch, *Wider den formularmäßigen Ausschluß des UN-Kaufrechts* [Against the exclusion of the CISG on the basis of standard terms and conditions], *Neue Juristische Wochenschrift* 910-915 (2001) (F.R.G.). See also, Peter Mankowski, *Überlegungen zur sach- und interessengerechten Rechtswahl für Verträge des internationalen Wirtschaftsverkehrs* [Considering factually justifiable choice of law adjusting to the parties' interests in international business relations], *49 Recht der Internationalen Wirtschaft* 2, 8 (2003) (F.R.G.).