Pace International Law Review

Volume 14
Issue 1 *Spring 2002*

Article 7

April 2002

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Recommended Citation
Bruno Zeller, *The Development of Uniform Laws - A Historical Perspective*, 14 Pace Int'l L. Rev. 163 (2002)
DOI: https://doi.org/10.58948/2331-3536.1193
Available at: https://digitalcommons.pace.edu/pilr/vol14/iss1/7

THE DEVELOPMENT OF UNIFORM LAWS – A HISTORICAL PERSPECTIVE

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I. Introduction

Since the inception of the CISG, much has been written on issues such as good faith, gap filling and fundamental breach, just to mention a few of the relevant issues. The "micro" aspect of the CISG is being explored with great vigor. This paper looks at the "macro" issues of international private law in order to refocus our attention and to take a fresh look at how the CISG best serves its constituency. This article is by no means a complete analysis of basic legal concepts. The purpose of this paper is to allow academics and the profession to take a fresh look at uniform international laws in general, and the CISG in particular. It is hoped that this paper will stimulate interest in placing the CISG into a wider context such as within the globalization debate or wider issues of an interpretational methodology of international instruments.

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II. A Description of the Problem

The United Nations Convention on Contracts for the International Sale of Goods (CISG)[1] was promulgated in 1980 and so far 60 countries have ratified the CISG. Through that process the CISG became part of domestic law. As such, any interpretation and application will be effected through domestic courts and tribunals. The application of international law through domestic courts poses a problem that can be simply illustrated by two cases using the parol evidence rule.[2] In both instances the courts were asked whether a party could rely on statements made by the parties, which were not contained in the written contract. In *MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova D'Agostino, S.P.A.*,[3] the court held, pursuant to CISG Article 8, that such statements were to be taken as expressions of the subjective intent of parties and were to be included in the contract. On the other hand, in *Beijing Metals & Minerals Import/Export Corp. v. American Bus. Ctr. Inc.*,[4] the court stated that the parol evidence rule would apply regardless of whether Texas law or the CISG governed the dispute.[5]

The argument of many writers is that the CISG should be interpreted within its "Four Corners" without regard to domestic concepts and principles. Most importantly, it should be interpreted as an international standard. Furthermore, the methods of interpretation are not to be found within domestic techniques but are subject to a new autonomous method of interpretation. CISG Articles 7 and 8 lay down the interpretational rules and will play a pivotal part in the development of a methodology of interpretation. For that reason, an understanding of CISG Articles 7 and 8 is essential; otherwise, the important principle of international uniformity cannot be achieved. In other words, the CISG will not be applied in a manner contemplated by its legislators. International case law must be analyzed to investi-

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[1] *See* United Nations Convention on Contracts for the International Sale of Goods, Apr. 11, 1980, U.N. Doc. A/CONF. 97/18, Annex I at art. 14(1), *reprinted in* 19 I.L.M. 668 [hereinafter CISG].

[2] The parol evidence rule is not discussed in detail in this paper.

[3] 144 F.3d 1384 (11th Cir. 1998), *available at* http://cisgw3.law.pace.edu/cases/980629u1.html.

[4] 993 F.2d 1178 (5th Cir. 1993).

[5] *See id.* at 1183 n.9.

gate how courts and tribunals have followed the mandate of CISG Articles 7 and 8.[6]

Any interpretation or application of the CISG must concern itself with comparative analysis, statutory interpretation and questions of contract theory. These issues should be placed within the context of internationalization and globalization. However, it is not the purpose of this paper to discuss the major ideas on the above topics in detail.[7] Some general remarks must be made to understand the basic underlying ideas. It is important to realize that the concept of globalization is not to be confused with internationalization. Internationalization is understood to refer to cooperative activities of national actors beyond the nation state.[8] Globalization is different:

> It is a multifaceted phenomenon that escapes easy definition. . . . It is sufficient to observe that it is in the present stage of development of the international system that globalization has been fully recognized as a specific feature of international relations, which impact the political, economic, ecological, social and cultural life of societies around the globe in an unprecedented manner.[9]

Whether the development of private international law is to be classed as an expression of internationalization or globalization is not important in this context. Of importance is the recognition that globalization created a new perception of the political process in which UNCITRAL[10] and other bodies could liberalize domestic laws and move beyond national borders. In

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[6] German, Swiss and Austrian courts do not generally disclose the parties to a dispute. In these cases, only the court of the relevant country is listed. Also, common law decisions are discussed in depth, whereas civil law decisions are likely to be more factual and therefore analysis is at times sparse. Opinions of the Cour de Cassation of France provide prominent examples of the latter.

[7] For a more detailed discussion, see R. GILPIN, THE CHALLENGE OF GLOBAL CAPITALISM (2000); B. S. MARKENSIS, FOREIGN LAW AND COMPARATIVE METHODOLOGY, (1997); J. BRAITHWAITE & P. DRAHOS, GLOBAL BUISNESS REGULATION (2000); C. ARUP, THE NEW WORLD TRADE ORGANIZATION AGREEMENTS: GLOBALIZING LAW THROUGH SERVICES AND INTELLECTUAL PROPERTY (2000).

[8] *See* J. DELBRÜCK, STRUCTURAL CHANGES IN THE INTERNATIONAL SYSTEM AND ITS LEGAL ORDER: INTERNATIONAL LAW IN THE ERA OF GLOBALIZATION (2001); 1 Schweizerische Zeitschrift für internationales und europäisches Recht, 1, 13.

[9] DELBRÜCK, *supra* note 8, at 14. For a comprehensive analysis, see D. HELD ET AL., GLOBAL TRANSFORMATION ch. 1 (1999).

[10] *See generally* United Nations Convention on International Trade Law *at* http://www.uncitral.org/en-index.htm

essence a "qualitative leap in the course of history"[11] has been observed.

III. The Development of Uniform Laws – a Historical Perspective

Arguably, the single most noticeable development in the last forty years in economic terms is globalization, which has naturally increased the importance of cross-border trade. These developments have contributed greatly to the internationalization of trade.

In 1935, a statement that the world was divided into States with their own independent economic, social and legal systems would not have attracted much attention. In 1935, a revolution in substantive law had started, which has not yet run its course. Ernst Rabel commenced the debates regarding the introduction of a worldwide uniform sales law.[12] Private international law was considered to be complicated and abstract and had the reputation of being the "nuclear physics of jurisprudence."[13] Scholars were debating the possibility of applying foreign laws within their jurisdiction. Uniformity was not the issue but rather the question of the correct application of the relevant domestic law.

The first tentative steps toward unified international laws resulted in the realization that the conflict of law rule using nationality as a connecting factor would lead to different results according to different domestic laws in use. In France and Italy domestic law was always kept in "reserve" should the judge experience problems applying foreign laws.[14] Kötz, among others, strongly advocated that the solution to the problem is the creation of "general principles." These general principles could be used to create the foundation for harmonization or unification of international laws.[15] Significantly, he argued that the teasing out (*Ermittlung*) of general principles is not only the task for

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[11] Delbrück, *supra* note 8, at 2.

[12] *See* Ernst Rabel, Der Entwurf eines einheitlichen Kaufgesetzes (1935); 9 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 1, at 1.

[13] H. Kötz, Allgemeine Rechtsgrundsatze als Ersatzrecht (1970); 34 *Rabels Zeitschrift für Ausländisches und Internationales Privatrecht* 663.

[14] *See id.* at 667.

[15] *See id.* at 672.

the legal academics but also for judges.[16] These issues have now come to fruition with the creation of international unified laws in the form of treaties and model laws such as the CISG.

A. *The Effects of Globalization*

A key factor in the development of international trade laws is globalization. There has been a deliberate effort on the part of government and non-government actors to liberalize or deregulate the world markets.[17] As a consequence, global responses to commercial legal issues have changed the perception of countries and boundaries. Technology transfers, the amalgamation of regions and countries into common markets, the demographic shift between old technology countries and new emerging markets as well as the increasing cost differentiation between global industries and national industries have been key points in globalization.[18]

> "Globalization simply is unstoppable. Even though it may be only in its early stages, it is already intrinsic to the world economy. . . . Companies of all sizes [must] now compete on global markets and learn to adjust their strategies accordingly, seizing the opportunities provided by globalization."[19]

In this context, the "NET, technology's latest spatio-temporally transforming offering,"[20] has become a borderless information center, marketplace and channel for communications and payments and has extended exponentially the global reach of the business community.[21] Such developments point to the need to put in place legal systems that can fulfill the needs of the international and transnational business community.

The legal systems and professions of many countries have been slow to keep pace with the needs of the new economic reality. One of the problems has been an ongoing debate between

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[16] *See id.* at 677.

[17] *See* DELBRÜCK, *supra* note 8, at 15.

[18] *See Neue Zürcher Zeitung*, (Zürich), January 16, 1998, NZZ online dossier http://www.nzz.ch.

[19] Maria L. Cattaui, *The Global Economy – an Opportunity to be Seized*, BUSINESS WORLD, July 17, 1997, *available at* http://www.iccwbo.org/home/news_archives/1997/globalec.asp.

[20] RALPH AMISSAH, REVISITING THE AUTONOMOUS CONTRACT 1 (2000), *available at* http://www.jus.uio.no/lm/autonomous.contract.2000.amissah/doc.html

[21] *See id.*

economists and jurists on the need for the creation of a "world law."[22] Economists are of a view that a State intervention, through the legal system, should be kept to a minimum as individuals and firms will inevitably reach an economic solution through market forces. The majority of jurists, on the other hand, advocate that legal coordination is required to effectively embrace globalization.[23]

B. *Unification of Laws*

There are also jurists, notably in England and to a lesser degree in the United States, who believe that it should be left to the market to decide whether the "commercial world prefers the familiar certainties of English law or the Utopian and unpredictable ideals of Conventions."[24] The argument is that unification of law is not as important as one domestic system, namely the common law via the Commercial Court in London, is in effect the compromise solution for parties who cannot agree on a governing law. A paramount need of the commercial community, namely certainty, would be best served by one coherent system rather than through a convention, which is a "multi-cultural compromise," lacking coherence and consistency.[25] The reason for such arguments is the inability to recognize that such views are untenable, as comparative law offers the only way by which laws can become international.[26] The result of "internationality" is arguably coherence and consistency in the application of international law.

Historically, England was very active in the development of international laws but failed to take the next step and ratify the CISG.[27] The English view, as explained by Barry

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[22] *Neue Zürcher Zeitung* (Zürich), January 6, 1988, NZZ online Dossier http://www.nzz.ch.

[23] *See id.*

[24] Barry Nicholas, *The United Kingdom and the Vienna Sales Convention: Another Case of Splendid Isolation?* Series No 9, 3, *available at* http://www.cnr.it/CRDCS/nicholas.htm. (Paper presented at Saggi, Conferenze e Seminari, Centro di Studi e Recherché di Diritto Comparato e Straniero).

[25] *See id.*

[26] *See* K. ZWEIGERT & H. KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW 15 (3d ed. 1998).

[27] Ernst Rabel reporting on the first draft of the international sales law notes that the Chairman of that committee was Sir Cecil J. B. Hurst who was also the President of the International Court of Justice in the Hague. Another member,

Nicholas,[28] is out of step not only in light of the historical background but also because the common law countries "have long made reciprocal reference to each other's decisions and are now invoking Continental law to a remarkable degree."[29]

As far as unified laws are concerned, history is being repeated. Roman law was the essential source of law on the Continent of Europe and only disappeared in the eighteenth century.[30] Also many countries in their modernization undertook "massive transplants" such as the introduction of the German *"Bürgerlichen Gesetzbuch"* into Japan.[31] As an interesting sideline, the only successful attempt to transplant common law was in the context of colonialization.[32]

Some scholars have argued that a "common law" is not achievable simply by a process of unification, harmonization or transplantation.[33] Such a view may be correct if attempts at the creation of a unified or common law are directed at a total body of law. Differences in political or social organization need to be overcome successfully to achieve such unification. Not surprisingly one point of view put forward states:

> "[It] is not only useless, but dangerous to extend attempts at harmonization into fields in which legal differences reflect differences in political or social organization or in cultural or social mores."[34]

Professor Gutteridge of Cambridge University, also attended all meetings together with two members from France, two from Sweden and two from Germany, assisted from time to time by two Professors from Italy, one from Denmark and Professor Llewellyn from Columbia University. Rabel, furthermore noted specifically that the English Sales of Goods Act (1893), was an example that it is possible to create from divergent municipal laws a unified sales law. England was also active in the creation of the CISG.

[28] *See* Nicholas, *supra* note 24.

[29] ZWEIGERT & KÖTZ, *supra* note 26, at 19.

[30] *See id.* at 186.

[31] *See* E. Stein, *Uses, Misuses - and Nonuses of Comparative Law*, 72 Nw. U. L. REV. 198, 202 (1977).

[32] *See* M. J. Raff, *German Real Property Law and The Conclusive Land Title Register* (1999) (unpublished Ph.D. dissertation, University of Melbourne) (on file with author).

[33] *See* Lord Bingham, *A New Common Law for Europe, in* THE CLIFFORD CHANCE MILLENNIUM LECTURES, THE COMING TOGETHER OF THE COMMON LAW AND THE CIVIL LAW 28 (B. Markensis ed., 2000).

[34] NEW PERSPECTIVES FOR A COMMON LAW OF EUROPE 164 (Capelletti ed., 1978).

The evidence supports the view that laws have been transplanted successfully and such a movement of a rule or a system from one state to another has been common in history.[35] Watson has argued that:

> Law develops by transplanting, not because some such rule was the inevitable consequence of the social structure and would have emerged even without a model to copy, but because the foreign rule was known to those with control over law making and they observed the [apparent] benefits which could be derived from it. What is borrowed that is to say, is very often the idea.[36]

It is exactly for these reasons that Ernst Rabel has succeeded in proposing a unified model law. Today many successful conventions and model laws are enshrined in legislation. It is important that a distinction is made between unification of a total system and harmonization or unification of a segment of the legal system. This is important for the purpose of market integration, or facilitation of commerce. It is the pragmatic approach, which might be thought likely to succeed.

> "The line between what is to be and what can usefully be unified must . . . be drawn pragmatically and flexibly, not dogmatically or rigidly. . ."[37]

Unification of specified areas of law such as the sale of goods has been successful internationally because of the above arguments. It is not surprising that principles or ideas of law have been slowly recognized as being universal. For example, principles of Continental laws have taken a foothold in the common law countries. Since England is now part of the European Union (EU), such trends will accelerate especially if current attempts in creating a codified European commercial law are successful.[38] A "flow on effect" can already be observed in continental Europe where a President of the German Federal Court said:

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[35] *See* A. WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW 21 (1974).

[36] A. Watson, *Comparative Law and Legal Change* 37 CAMBRIDGE L.J. 313, 321 (1978).

[37] Bingham, *supra* note 33, at 31.

[38] *See* E. Kramer, *Uniforme Interpretation von Einheitsprivatrecht – Mit Besonderer Berücksichtigung von Art 7 UNKR*, 3 JURISTISCHE BLÄTTER 137, Heft 3, März (1996).

> In giving his opinion the national judge is not only entitled to engage with the views of other courts and legal systems; he is also entitled, when applying his own law and naturally giving full weight to its proper construction and development, to take note of the fact that a particular solution conduces to the harmonisation of European law. In appropriate cases this argument enables him at the end of the day to adopt the solutions of other legal systems, and it is an argument he should use with increasing frequency as the integration of Europe proceeds.[39]

C. *The Influence of Autonomous Concepts on the Harmonization Process*

A desire for autonomous laws has passed the state of "looking" and evaluating general principles only. Private law harmonization, which includes the modeling of a commercial law infrastructure, has been taken up actively not only by the United Nations but also by other broad-membership based organizations such as UNIDROIT and the ICC, which does not exclude an option for commercial law unification among economic blocks.[40] Trade blocks such as the Association of Southeast Asian Nations (ASEAN), the EU, North American Free Trade Agreement (NAFTA) and others are also involved in providing regional solutions.[41] Trade blocks are already a force to significantly influence international legal developments. As an example, discussions in relation to the Hague Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters indicate that the EU is strongly arguing for significant amendments, to Article 37, which deals with the relationship with other conventions. Article 37 notes that the Hague Convention prevails over any other instruments.[42] The EU proposal is that the Brussels Convention and the Lugano

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[39] ZWEIGERT & KÖTZ, *supra* note 26, at 20.

[40] *See* Harold S. Burman, *Symposium – Ten Years of the United Nations Sales Convention: Building on the CISG: International Commercial Law Developments and Trends for the 2000'C*, 17 J.L. & COM. 355 (1998).

[41] *See* Ralph Amissah, *The Autonomous Contract, Reflecting the Borderless Electronic-Commercial Environment in Contracting* (1997) *Electronic Handel – rettslige aspekter* – Oslo § 2.1, *available at* http://www.cisg.law.pace.edu/cisg/biblio/amissah2.html.

[42] *See* Attorney-General's Department, *International Jurisdiction and the Recognition and Enforcement of Foreign Judgments in Civil Matters* 32 (Nov. 2000), *at* http://law.gov.au/publications/hagueissues3.html.

Convention referred to as the "European Instrument," should take precedence over the Hague Convention in all European Instrument States.[43] The conclusion is that the EU and other trade blocks are actively involved in the creation of international autonomous law instruments within their sphere of influence. Non-aligned States might take note of these developments.

The indication is that the next step in the recognition of uniform principles, namely the "formalization of principles" has been reached. The underlying goal is to unify laws, and hence an application and interpretation must be universally acceptable and not constructed with domestic solutions in mind.

The CISG is an example of a unified international law, because the CISG is based on comparative research.[44] The CISG does not provide the only set of rules governing the international sale of goods. UNIDROIT and the European Commission have introduced their own model laws or "Restatements," which are slowly gaining acceptance among the international business community. Both of these instruments, in addition to embracing common sets of legal principles, also took the opportunity to include principles found and established in the CISG. The list would not be complete if the work of the Pavia group, under its chair Guiseppe Gandolfi, was not mentioned. Their findings on the project for a European Contract Code should be published shortly.

What is the economic reality with respect to the models advanced by economists and jurists? The experience of German unification at the end of the 19th century and the beginnings of the European Communities in the 1950s show that legal harmonization follows economic harmonization.[45] The unification of eastern and western Germany, and the further developments of the EU exhibit the same tendencies.

However, it should be noted that currently the third economic harmonization process in the EU has begun, that is the

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[43] *See id.*

[44] *See* ZWEIGERT & KÖTZ, *supra* note 26, at 17.

[45] *See* Friedrich Blase, *Leaving the Shadow for the Test of Practice – On the Future of the Principles of European Contract Law*, 3 VINDOBONA JOURNAL 3, 5 (1999).

Eastern enlargement and its associated institutional reforms.[46] By analogy with earlier economic enlargements and unification moves, new developments in harmonization of trade laws will not be actively pursued for the time being. Efforts are gathering momentum to convert regional groups such as APEC and NAFTA into more active bodies to standardize commercial laws.[47] It is conceivable that in the near future the option to harmonize laws among trade blocks will be considered.

The evidence is that the members of the business community, by their political will and driven by economic reality, have opened national borders and are operating within a global economy. Of importance is the internet and e-mail, which exponentially extended the global reach of the business community. "The various dogmas and beliefs held as sacrosanct by individual sovereign legal parishes are not necessarily so hallowed by the business community."[48]

On the one hand, the business community as contracting parties, operate in an international setting, whereas legal systems generally hold on to their own national reality. David suggests that the principal reasons for such attitudes stem from conservatism, routine, prejudice and inertia.[49] In relation to unified sale of goods laws, nothing better illustrates this point than the English legal system, which as "another case of splendid isolation"[50] has not yet fully grasped the significance of the EU as a wider community with its own unified laws. It is of no surprise that Schlesinger coined the phrase "intellectual isolation."[51] It is interesting to note that in the 18th century Lord Mansfield commented:

> "The mercantile law, in this respect is the same all over the world. For from the same premises, the same conclusions of reason and justice must universally be the same."[52]

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[46] *See id.* at 10.

[47] *See* Burman, *supra* note 40, at 363.

[48] Amissah, *supra* note 41, § 1.

[49] *See* R. David, comments in *International Encyclopedia of Comparative Law* Vol II, Chap. 5, 24 and 25 (1971).

[50] Nicholas, *supra* note 24.

[51] R. B. SCHLESINGER, COMPARATIVE LAW 188 (2d ed. 1960).

[52] Pelly v. Royal Exchange Assurance Co. [1757] Burr. 341, 347.

It must be pointed out that even the British legal system has entered into the phase of "Europeanization." The application of a unified law to cross-border transactions is economically sound and produces superior results compared to the application of domestic law.[53]

D. *The Autonomous Contract*

The debate of the "autonomous contract" has long ceased to be of academic interest only.[54] It has become an economic and legal reality. In essence, to understand the transnational need for sales laws,

> "[a] study not of contract law, but rather of contract practice is the key to understanding the economic properties of contracting that are necessary to work out sensible uniform laws for commercial purposes."[55]

What then is the difference between "contract law" and "contract practice"? It is implicit in the description that contract law is tied to a system of law based on a national or domestic body of law. Through that particular municipal system, contract law would have evolved based on known and understood principles. However, contract practices are looking beyond a legal system and the law in general. Practices transcend legal, social and economic thoughts and processes and have become universal. That is, they are common elements which transcend borders.

It might be argued that once contract practices have been identified, an international law can be put into practice. Honnold looked at this issue, posing a question:

> "Can clear, predictable international law be made from the divergent rules of dozens of domestic legal systems, rules built with local idioms for which there are no equivalent terms in other languages?"[56]

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[53] *See* Blase, *supra* note 45, at 4.

[54] *See, e.g.,* Amissah, *supra* note 41.

[55] *Id.* § 1.

[56] John Honnold, *Goals of Unification – Process and Value of the Unification of Commercial Law: Lessons for the Future Drawn From the Past 25 Years*, Proceedings of the Congress of the U.N. Commission on International Trade, 11 (1992).

The answer he noted is "unhappily no, but that is not the end of the story."[57] "However, any kind of legal regulation is a potential source of unpredictability. The transnational nature of international business provides an additional dimension to the difficulty of securing these requirements."[58]

The solution is found in the work done by Kötz and even earlier by Rabel. In essence, an autonomous contract has to be constructed. Although this will not alleviate all the problems, it will provide the commercial community with a framework. Within that framework, at least one problem of municipal law can be eliminated, namely the divergence of idioms, which requires local knowledge and contribute toward cross border legal risks. In a recent paper, the Australian Law Reform Commission stated that the first principle of an international agreement

> "which aims to improve commercial law at either a procedural or substantive level should have as one of its expected outcomes the reduction or better management of cross border legal risks faced by Australian firms."[59]

On a procedural level, international developments of harmonization or assistance have not kept pace with current circumstances and there is a need for more effective arrangements.

> "The court system can no longer be regarded as an institution operating exclusively behind national walls. The system now functions increasingly in an international environment and must respond to that circumstance."[60]

The problem then is twofold. First, a clear set of autonomous contract laws should be written, which are acceptable to the legal systems of at least a significant number of countries. Confidence in such a system can be achieved only when it is tested in a practical sense. The second problem is that uniformity and predictability can be achieved only if such a system is applied and, most importantly, interpreted uniformly.

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[57] *Id.*

[58] Amissah, *supra* note 41, § 2.

[59] Australian Law Reform Commission 80, (ALRC) *available at* http://www.austlii.edu.au 12.

[60] M. Gleeson, *The State of the Judicature*, *in* THE LAW INSTITUTE JOURNAL (1990), at 67-74 (No. 55 Dec. 1999).

Ralph Amissah has recognized that the autonomous contract as a concept must be based on three ideas. The autonomous contract is first an expression of the will that governs international commerce, secondly is a means in seeking to transcend national boundaries and, lastly is designed to be virtually self-contained and self-governing.[61]

IV. CONCLUSION

This paper is not an exercise in methodology but rather an educative process directed at businesspersons and their legal advisors. Anecdotal evidence unfortunately suggests that business has frequently taken up the option contained in CISG Article 6 to exclude the CISG. Will suggests that German, French and Italian jurists, whenever possible, are trying to opt out.[62] One German global business systematically excludes the CISG in favor of German, Austrian or Swiss domestic law. The Board of Management must approve any deviation from nominated domestic systems, such as reliance on the CISG.[63]

Some legal advisors continue to believe that a choice of domestic law allows business to move in familiar territory. However, such an attitude appears to be "nationally introverted" which is specially highlighted if "nationally extroverted" systems, such as the one in Switzerland, are used as a comparison.[64] To illustrate this point and as an argument against such an attitude or assumption, we should consider the case of Turkey. What would be the effect if Turkey enters into a contract with a German business and insists on Swiss Commercial Law, that is the *Obligationenrecht*? At first glance, one would assume that a "neutral" domestic law has been chosen favoring neither party. However, that is not the case. Turkey, in the modernization of its system of law, adopted Swiss Commercial Law. To opt out of the CISG in favor of the *Obligationenrecht* means that the Turkish business uses its own domestic law. One would not consider this to be a compromise or an adoption of a "neutral" system. However, to adopt the CISG certainly does not give an

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[61] *See* Amissah, *supra* note 41, § 1.

[62] *See* Rudolf Meyer zum Abschied: Dialog Deutschland-Schweiz VII, Faculté de Droit, Université de Genève 147 (M. Will ed. 1999).

[63] *See id.*

[64] *See* Kramer, *supra* note 38, at 137.

advantage to either party and is in the true sense a "neutral" system of law. A further point must also be considered. The UNIDROIT Principles of International Commercial Contracts, which are modeled to a great extent on the CISG, have influenced the drafting of the Russian Civil Code, the Estonian Law of Obligations and the Civil Code of the Republic of Lithuania.[65] It should also be noted that the development of the New Chinese Contract Law was significantly influenced by the CISG.[66]

History has shown that unification of laws is inevitable and unstoppable. The benefits should be recognized and there should no longer be a need to pull legal advisors "kicking and screaming" into the 21st globalized century where unified international laws are the dominant feature.

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[65] *See* M. J. BONELL, AN INTERNATIONAL RESTATEMENT OF CONTRACT LAW 236 (2d ed. 1997).

[66] *See* M. Williams, *An Introduction to General Principles and Formation of Contracts in the New Chinese Contract Law*, 17 J. CONT. L. 13, 20 (2001).