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## WHO NEEDS A UNIFORM CONTRACT LAW, AND WHY?

INGEBORG SCHWENZER\*

CONTRACT law, 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 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 is another prominent example, as well as endeavours not only on the European level<sup>3</sup> but also in Africa.<sup>4</sup> Most recently we witnessed similar movements in East Asia with the Principles of Asian Contract Law (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 their legal systems being minor if not neg-

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1. See Ewan McKendrick, *Harmonisation of European Contract Law: The State We Are In*, in *THE HARMONISATION OF EUROPEAN CONTRACT LAW: IMPLICATIONS FOR EUROPEAN PRIVATE LAWS, BUSINESS AND LEGAL PRACTICE* 5, 14–15 (Stefan Vogenauer & Stephen Weatherill eds., 2006) (noting that “differences in national contract law do act as a barrier to trade”).

2. See Stefan Vogenauer & Stephen 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, BUSINESS AND LEGAL PRACTICE*, *supra* note 1, at 125–27.

3. See, e.g., *THE COMM’N OF EUR. CONTRACT LAW, PRINCIPLES OF EUROPEAN CONTRACT LAW, PARTS I & II* (Ole Lando & Hugh Beale eds., 2000) [hereinafter PECL]; *THE COMM’N OF EUR. CONTRACT LAW, PRINCIPLES OF EUROPEAN CONTRACT LAW, PART III* (Ole Lando et al. eds., 2003) [hereinafter PECL III].

4. See, e.g., *Acte Uniforme portant sur le Droit commercial général [Uniform Act on General Commercial Law]*, Dec. 15, 2010, ORGANIZATION POUR L’HARMONISATION EN AFRIQUE DU DROIT DES AFFAIRES [ORGANIZATION FOR THE HARMONIZATION OF BUSINESS LAW IN AFRICA] [hereinafter OHADA], available at <http://www.ohada.org/presentation-generale-de-lacte-uniforme/telechargements1.html>.

5. For further information on PACL, see Shiyuan Han, *Principles of Asian Contract Law: An Endeavor of Regional Harmonization of Contract Law in East Asia*, 58 *VILL. L. REV.* 589 (2013); see also *Harmonization of Regional Laws on Obligations*, FONDATION POUR LE DROIT CONTINENTAL, [http://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) (last visited Apr. 15, 2013).

ligible.<sup>6</sup> This first of all applies to parties from English-speaking common law countries, like parties from the United States and Canada, 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 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 usually will 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 that country. The picture may immediately change, however, if the other party brings suit in the domestic courts of its own country and there the forum selection clause and/or the choice of law clause is not honoured.<sup>7</sup> But even if these courts accept the choice of law, it is a totally different question of 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 largest 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, i.e., 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 influ-

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6. For an overview of the legal families with regard to domestic sales laws, see INGBORG SCHWENZER ET AL., *GLOBAL SALES AND CONTRACT LAW* paras. 2.01–.135 (2012).

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 Dana Stringer, Note, *Choice of Law and Choice of Forum in Brazilian International Commercial Contracts: Party Autonomy, International Jurisdiction, and the Emerging Third Way*, 44 COLUM. J. TRANSNAT'L L. 959 (2006).

enced the law of both parties' countries in one way or the other, like 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 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 take, at least once it comes to litigation or arbitration, is the language problem. The parties have to investigate a foreign law in a foreign language. If the language is not the one of the litigation or arbitration in question then all the 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, these 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 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 be-

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8. For German influences in the East Asian region see SCHWENZER ET AL., *supra* note 6, ¶¶ 2.123–.127. For German influences on Italian civil law, see KONRAD ZWIEGERT & HEIN KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW, 102–04 (Tony Weir trans., 3d ed. 1998).

9. *Cf.* Christiana Fountoulakis, *The Parties' Choice of 'Neutral Law' in International Sales Contracts*, 7 EUR. J.L. REFORM 303, 306–07 (2005).

10. *Cf.* Michele Taruffo, *Evidence*, in 16 INT'L ENCYCLOPEDIA COMP. L. ch. 7, 7.65–.66 (Mauro Cappelletti ed., 2010) (regarding court proceedings); *cf.* Siegfried H. Elsing & John M. Townsend, *Bridging the Common Law-Civil Law Divide in Arbitration*, 18 ARB. INT'L 59, 63–64 (2002) (regarding arbitration proceedings); INT'L CHAMBER OF COMMERCE, RULES OF ARBITRATION art. 25(3) (2012); UNITED NATIONS COMM'N ON INT'L TRADE LAW [hereinafter UNCITRAL], ARBITRATION RULES art. 27(2) (2010); Gabrielle Kaufmann-Kohler, *Globalization of Arbitral Procedure*, 36 VAND. J. TRANSNAT'L L. 1313, 1330 (2003).

11. For a comparative overview of how litigation costs and attorney fees are allocated between the parties in civil litigation, see Mathias Reimann, *Cost and Fee Allocation in Civil Procedure: A Synthesis*, in COST AND FEE ALLOCATION IN CIVIL PROCEDURE: A COMPARATIVE STUDY, 11 IUS GENTIUM: COMPARATIVE PERSPECTIVE ON LAW AND JUSTICE (Mathias Reimann ed., 2012).

tween two small and medium enterprises (SMEs); 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 to 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 United States' Uniform Commercial Code, it is totally invalid under German law that provides for substantive control of standard terms even in business-to-business (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, the Swiss Supreme Court has not yet decided many central questions of contract law or if so, the decision may have been rendered decades ago and is disputed by scholarly writings. This often makes the outcome of the case rather unpredictable; another reason that may well prevent a party from pursuing its rights under the contract.

Furthermore, especially Swiss domestic contract law in core areas is not suitable for international contracts. This can be demonstrated by reference to only two examples. First, the Swiss Supreme Court distinguishes between *peius*, i.e., defective goods, and *aliud*, i.e., 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> while 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

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12. For further discussion on the influence of German law on Italian law, see ZWIGERT & KÖTZ, *supra* note 8.

13. Cf. BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE], Jan. 2, 2002, BUNDESGESETZBLATT, Teil I [BGBL. I], as amended, §§ 305–310 (Ger.).

14. See Bundesgericht [BGer] [Federal Supreme Court] Dec. 5, 1995, 121 ENTSCHEIDUNGEN DES SCHWEIZERISCHEN BUNDESGERICHTS [BGE] III 453 (Switz.).

15. Cf. OBLIGATIONENRECHT [OR] [CIVIL CODE] Dec. 10, 1907, SR 210, art. 127 (Switz.). For an English translation, see *id.*, available at <http://www.admin.ch/ch/e/rs/2/210.en.pdf>.

16. See Fountoulakis, *supra* note 9, at 308–09. For more information on the differentiation between *peius* and *aliud*, see BASLER KOMMENTAR, OBLIGATIONENRECHT I art. 206, ¶¶ 2–3 (Heinrich Honsell et al. eds., 5th ed. 2011) [hereinafter OBLIGATIONENRECHT I].

17. See OBLIGATIONENRECHT [OR] [CIVIL CODE] Dec. 10, 1907, SR 210, art. 208(2) (Switz.). For a translation, see *id.*, available at <http://www.admin.ch/ch/e/rs/2/210.en.pdf>.

in the chain of causation.<sup>18</sup> Extremely short periods for giving notice of defects<sup>19</sup> further militate against domestic Swiss law in the international context. Similar examples can also be drawn from many other domestic legal systems.

This background illustrates the urgent need to further harmonize, if not unify, general contract law. The United Nations Commission on International Trade Law (UNCITRAL) would be the most appropriate place for such a project. Whereas any regional endeavor might mainly focus on the laws of the respective countries involved, UNCITRAL has the chance to embark upon a more truly global reflection. Indeed, UNCITRAL is the only forum with universal participation, i.e., 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 45th 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 having some reservations allowing state parties a certain, but very limited degree of choice, such reservations are easily discernible without the need to have recourse to the respective

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18. See Bundesgericht [BGer] [Federal Supreme Court] Nov. 28, 2006, 132 ENTSCHEIDUNGEN DES SCHWEIZERISCHEN BUNDESGERICHTS [BGE] III 257, 271 (Switz.); see also OBLIGATIONENRECHT I, *supra* note 16, art. 208, ¶¶ 7–8.

19. Cf. OBLIGATIONENRECHT [OR] [CIVIL CODE] Dec. 10, 1907, SR 210, art. 201(1) (Switz.). For an English translation, see *id.*, available at <http://www.admin.ch/ch/e/rs/2/210.en.pdf> (according to which notice must be made immediately (“sofort”)); see also Bundesgericht [BGer] [Federal Court] June 27, 1950, 76 ENTSCHEIDUNGEN DES SCHWEIZERISCHEN BUNDESGERICHTS [BGE] II 221, 225 (Switz.) (notice within four days was in time as these included Sunday).

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), available at <http://www.uncitral.org/pdf/english/texts/general/12-57491-Guide-to-UNCITRAL-e.pdf> [hereinafter *A Guide to UNCITRAL 2013*].

21. See UNCITRAL, June 25–July 6, 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*, U.N. Doc. A/CN.9/758 (May 8, 2012) [hereinafter *Swiss Proposal*], available at <http://www.uncitral.org/uncitral/commission/sessions/45th.html>.

22. *A Guide to UNCITRAL 2013*, *supra* note 20, at 13.

23. See *id.* at 14.

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 necessary or desirable.”<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 favor of a convention. Even if states were to implement a model law they could still deviate from the text of such a model law, which would make it difficult to ascertain the content of the applicable law in a specific case.

Moreover, there is no obligation for courts of a state that has implemented a model law to regard its international character and the need to promote uniformity 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. If 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 dogmatic conceptions and convictions prevail that have been shaped over centuries and that every lawyer has internalized from the very first day in law school.

The scope of the envisaged instrument on general contract law should be similar to the one of the United Nations Convention on Contracts for the International Sale of Goods (CISG), except that it should apply to all kinds of contracts and not just to sales. This means, in the first place, that the instrument should only be concerned with international contracts and not with purely domestic ones. There is no reason, 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 implement corresponding domestic legislation as some states already have chosen in relation to the CISG.<sup>30</sup>

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24. See, e.g., U.N. Comm’n on Int’l Trade Law, United Nations Convention on Contracts for the International Sale of Goods arts. 92–96, Apr. 11, 1980, 1489 U.N.T.S. 3 [hereinafter CISG], available at <http://www.uncitral.org/pdf/english/texts/sales/cisg/VI056997-CISG-e-book.pdf>.

25. See *A Guide to UNCITRAL 2013*, *supra* note 20, at 14.

26. *Id.*

27. See *id.* at 15.

28. See CISG, *supra* note 24, art. 7(1).

29. Cf. *A Guide to UNCITRAL 2013*, *supra* note 20, at 1–2.

30. Cf. Ingeborg Schwenzer & Pascal Hachem, *The CISG—Successes and Pitfalls*, 57 AM. J. COMP. L. 457, 462–63 (2009).

Like the CISG, the instrument on general contract law should be confined to b2b contracts without touching business-to-consumer (b2c) relationships. Except for Internet transactions that become more and more international, b2c contracts, to this very day, are mostly domestic contracts. Consumer protection asks for mandatory rules, which stands 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 endeavor 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.

In regard to the different 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 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, i.e., 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 relating to consequences of unwinding of contracts<sup>34</sup> and set-offs.<sup>35</sup> Other areas of contract law, on the other hand, such as third party rights, assignment and delegation, or

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31. See Ingeborg Schwenzer, *The Proposed Common European Sales Law and the Convention on the International Sale of Goods*, 44 UCC L.J. 457 (2012). 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. See *Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law* COM (2011) 635 final (Oct. 11, 2011), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:EN:PDF>.

32. See SCHLECHTRIEM & SCHWENZER, COMMENTARY ON THE CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) art. 4, ¶ 31 (Ingeborg Schwenzer ed., 3d ed. 2010) (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 SCHWENZER ET AL., *supra* note 6, ¶¶ 9.01–22.25.

34. For an overview on how the unwinding of contracts is dealt with in the different legal systems see *id.* ¶¶ 50.01–.36.

35. For a comparative discussion on set-offs, see CHRISTIANA FOUNTOLAKIS, SET-OFF DEFENCES IN INTERNATIONAL COMMERCIAL ARBITRATION: A COMPARATIVE ANALYSIS 7–128 (2011).

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 into consideration, and it should be discussed whether they should be amended. Certainly, of utmost importance are the Principles of International Commercial Contracts (PICC).<sup>39</sup> The most valuable work has been completed by the International Institute for the Unification of Private Law (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, the Convention relating to a Uniform Law for the International Sale of Goods (ULIS), and the Convention relating to Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF), respectively.<sup>40</sup> However, there are certain contradictions between 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.

Considering what has already been achieved at the international level, global contract law appears to be feasible within a reasonable amount of

36. The CISG now has seventy-eight member states with the number continuously increasing. Recently, the Brazilian Senate approved the text of the CISG. Upon completing the accession process Brazil will become the 79th contracting state. For a list of the current contracting states to the CISG, see UNCITRAL, *CISG Status*, [http://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 Ingeborg Schwenzer & Pascal Hachem, *The CISG—A Story of Worldwide Success*, in CISG PART II CONFERENCE 119 (Jan Kleinemann ed., 2009), available at [https://ius.unibas.ch/uploads/publics/9587/20110913164502\\_4e6ff6c6e5b746.pdf](https://ius.unibas.ch/uploads/publics/9587/20110913164502_4e6ff6c6e5b746.pdf).

37. See UNCITRAL, *Convention on the Limitation Period in the International Sale of Goods*, June 14, 1974, 1511 U.N.T.S. 3, available at [http://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. See UNCITRAL, *Texts on Liquidated Damages and Penalty Clauses*, U.N. Doc. A/CN.9/243, Annex I, June 29, 1983, available at <http://www.uncitral.org/pdf/english/texts/sales/contract/vol14-p272-273-e.pdf>.

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

40. For more information on the drafting history of the CISG, see PETER SCHLECHTRIEM, *UNIFORM SALES LAW—THE UN-CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS* 5, 17–21 (1986).

41. For a comparison of the two instruments, see Michael Joachim Bonell, *UNIDROIT Principles of International Commercial Contracts and the United Nations Convention on Contracts for the International Sale of Goods—Alternatives or Complementary Instruments?*, 2000 BUS. L. INT'L 91, 94–96 (2000).

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 United Nations languages and it 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. Similar to the CISG, it could serve as a model for further harmonization of contract law, also on a domestic level.<sup>43</sup> Furthermore, it could be used to teach traders, who 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 by now we have about 3,000 published cases on the CISG,<sup>45</sup> we count about 4,000 publications freely accessible on the Internet,<sup>46</sup> we have CLOUT<sup>47</sup>—Case Law on UNCITRAL Texts, 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 standard forms that facilitate contracting will soon emerge on the basis of such an instrument and further add to its predictability.

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42. Cf. Ulrich Magnus, *The Vienna Sales Convention (CISG) Between Civil and Common Law—Best of All Worlds?*, 3 J. CIV. L. STUD. 67, 74 (2010) (comparing to CISG).

43. Cf. SCHLECHTRIEM & SCHWENZER, *supra* note 32, at 462–63 (comparing CISG as role model for domestic legislators).

44. As it is true with regard to the CISG; cf. SCHWENZER ET AL., *supra* note 6, ¶ 3.21.

45. For cases on the CISG, see CISG online case database, GLOBAL SALES LAW, <http://www.globalsaleslaw.org/index.cfm?pageID=29> (last visited Apr. 16, 2013); see also *CISG Database*, PACE LAW SCHOOL, <http://www.cisg.law.pace.edu>.

46. For publications freely accessible on the Internet, see *CISG Database*, PACE LAW SCHOOL, <http://www.cisg.law.pace.edu/>.

47. See UNCITRAL, *Case Law on UNCITRAL Texts (CLOUT)*, [http://www.uncitral.org/uncitral/en/case\\_law.html](http://www.uncitral.org/uncitral/en/case_law.html) (last visited Apr. 16, 2013).

48. See UNCITRAL, *Digests*, [http://www.uncitral.org/uncitral/en/case\\_law/digests.html](http://www.uncitral.org/uncitral/en/case_law/digests.html) (last visited Apr. 16, 2013).

49. For more information on the CISG Advisory Council and for the CISG Advisory Council Opinions, see *Welcome to International Sales Convention Advisory Council (CISG)*, CISG ADVISORY COUNCIL, <http://www.cisgac.com/> (last visited Apr. 16, 2013).

All in all it can be expected that an UNCITRAL instrument on general contract law may considerably save transaction costs. It may also help companies with fewer 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.