

Commentary on the International Sales Law. The 1980 Vienna Sales Convention. by C.M. Bianca and M.J. Bonell et al. Milan, Italy: Giuffrè, 1987. Pp. 678 plus appendices and index.

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Americans are gradually adjusting to the international realities of economic interdependence. If, from an economic point of view, it is no longer possible to plan economic policy for the United States without taking into consideration the needs and desires of other countries, so also is it becoming increasingly difficult for U.S. traders to get their foreign trading partners to agree that U.S. law will apply to govern disputes arising out of an international sales contract.

What options are open to the U.S. trader when his foreign contract partner insists that the contract be governed by that foreigner's domestic law? In answering this question, legal counsel for the U.S. trader should be aware of the applicability of the United Nations Convention on Contracts for the International Sales of Goods. The Convention, which became part of the U.S. law on January 1, 1988,¹ provides substantive rules to govern the formation and performance of international sales contracts falling within its purview.

To be sure, the 1980 Vienna Sales Convention (also called the Convention on the International Sale of Goods, or "CISG") provides something less than a comprehensive code of international sales law. Some matters, such as consumer sales, predominantly service contracts, questions of validity, questions of the effect of the contract on property in the goods, as well as the personal injury and wrongful death aspects of products liability, are not covered and are left to be decided by the law applicable under perceived notions of conflicts of laws. In addition, as provided in Article 1(1), the "Convention applies to contracts of sales of goods between parties whose places of business are in different States." This creates a personal status

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¹ The text of the Convention, which is a self-executing treaty not requiring Congressional implementing legislation, appears at 52 *Federal Register* 6262 (1987) as well as in the pocket part of 15 U.S.C.A.

subject matter jurisdiction independent of the nationality of the contracting parties. The Convention thus applies if the buyer and the seller each have a place of business in a different ratifying country (Article 1(1)(a)).

In cases where one party to a sales contract has a place of business in a ratifying country and the other party's place of business is in a country which has not ratified the Convention, Article 1(1)(b) provides that the Convention applies "when the rules of private international law lead to the application of the law of the Contracting State." Since this provision effectively reintroduces the uncertainties of private international law which the Convention was intended to avoid, the United States ratified the Convention by making the reservation permitted by Article 95, namely, that it will not be bound by Article 1(1)(b)'s conflict of laws provisions.

An attorney whose client has a place of business in the United States need not be concerned with the Convention unless her client's contract partner has a place of business in another ratifying country. If she is dissatisfied with the substantive rules of the Convention, she can write a clause in the contract expressly excluding the applicability of all or part of the Convention. This is permitted by Article 6 of the Convention. Absent a choice-of-law/choice-of-forum clause, the contract would *pro tanto* then be governed by whatever law a court or arbitration tribunal found to be applicable.

An important goal of the Convention is to promote and eventually achieve world-wide uniformity in the law of international sales contracts. After more than fifty years of drafting and negotiation, the framers of the Vienna Convention can be justifiably proud of their accomplishments. The Convention represents a significant event, perhaps a milestone, in the progressive development of a global uniform sales law. Observers will watch closely to see how the words of the Convention are given meaning by those who apply them. If, in interpreting the Convention, contracting parties, their legal counsel, courts and arbitration tribunals begin to give varying and conflicting meanings to the Convention's rules and concepts, the goal of unification will prove elusive. Once ratified, the Convention becomes part of the law of the ratifying country. Its provisions will be read, understood and applied by individuals who lack the training, perspectives and value orientation of those who drafted it. As a French scholar (surely not an internationalist) once said, "Je ne connais que le code Napoleon." To counteract the natural tendencies of persons to interpret words and expressions of art in light of their own national legal experience, Article 7 on the Convention admonishes those who

interpret it to "regard its international character" and "the need to promote uniformity in its application and the observance of good faith in international trade." The idea behind this, as stated by Professor Bonell (p. 73), is that the Convention, a product of international drafting, "remains an autonomous body of law even after its formal incorporation into the different national legal systems." He further explains that "the Convention, once adopted, is intended to replace all the rules in [the adopting countries'] legal systems previously governing matters within its scope, whether deriving from statutes or from the case law." Although some of us may conclude that Professor Bonell is expecting too much of judges in common law jurisdictions, we are compelled to admit that he has indeed set desirable goals for the Convention's interpreters.

All of which underscores the need for materials which assist in uncovering the legislative intent of those who drafted the Convention. Attorneys seeking a better understanding of the provisions of the Convention now have an additional, extremely useful consultative reference work in the volume under review.² Compiled under the organizational supervision of Professors Bianca and Bonell, it represents the contributions of a distinguished group of international commercial law experts from fifteen countries.³ Each contributor comments on the Articles assigned to him from an historical, interpretative, teleological and problematic perspective. As an example, Professor E.A. Farnsworth, who represented the United States at the Vienna Conference which drafted the Convention, provides an incisive commentary on Articles 8 and 18 through 24. Since, as mentioned above, the Convention was intended by its drafters to be an autonomous body of rules capable of bringing certainty and predictability into international sales transactions, the great value of the instant volume lies in its tendentious effort to avoid national interpretative bias in favor of an objective analysis based on generally accepted transnational principles. Frequent references by the commentators to

² An earlier excellent commentary is JOHN O. HONNOLD, *UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION* (Boston: Kluwer, 1982). See also Peter Winship, "A Bibliography on Commentaries on the United Nations International Sales Convention," 21 *INT'L LAW* 585 (1987).

³ In addition to Bianca and Bonell (Italy), contributors include Barrera Graf (Mexico), Bennett (Australia), Date-Bah (Ghana), Eaarsi (Hungary), Evans and Nicolas (U.K.), Farnsworth (U.S.A.), Jayme and Will (F.R.G.), Khoo (Singapore), Knapp (CSSR), Lando (Denmark), Maskow (G.D.R.), Rajski (Poland), Sono (Japan) and Tallon (France).

the Official Records and other *Travaux préparatoires* reinforce the authors' goal of imparting an autonomous character to the Convention.

An Appendix reproduces the text of the Convention in the Arabic, Chinese, English, German, Italian, Russian and Spanish languages. A useful index, supplemented by a bibliography rich in foreign language source materials, is also included. Because of the high quality of its lucid legal scholarship, Bianca and Bonell's *Commentary* will be frequently used as an authoritative reference source in interpreting and applying the Vienna Sales Convention which, at the time of this writing, has been ratified by 16 countries.