

FROM PROFESSOR ERNST RABEL TO ARTICLE 7(1): TRACING THE ORIGIN AND INTERPRETATIVE PURPOSE OF THE *CISG*

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UNIDROIT

International Institute for the Unification of Private Law
Institut International pour l'Unification du Droit Privé



1929 - UNIDROIT

- **Is it useful and necessary to unify international sales law?**
- Can International Sales Law be Organised itself?
 - International Trade rely on standardised contractual templates
 - Verein der Getreidehändler – 1858
 - Bremer Baumwollbörse – 1872
 - Silk Association of America – 1873
 - They *may* transcend legal borders – but no uniformity

1929 - UNIDROIT

- **Is it useful and necessary to unify international sales law?**
- Is it possible to base a uniform law on typical clauses?
 - Valuable for three reasons:
 - Covering gaps in commercial clauses and regulations
 - International Uniform Law to override National Legislation
 - Bridging the Gap Between National Law and International Commercial Practice

1930 – UNIDROIT COMMITTEE

Sir Cecil B. HURST, President of the Permanent Court of International Justice (Great Britain), *Chairman*,

Mr. BAGGE, Judge of the Supreme Court of Sweden (Sweden),

Mr. CAPITANT, Professor in the Faculty of Law of Paris, Membre de l'Institut (France),

Mr. FEHR, Rector of the High School of Commerce, Stockholm, Professor of Law, Advocate (Sweden),

Mr. GUTTERIDGE, Professor of Law in the University of Cambridge (Great Britain),

Mr. HAMEL, Professor in the Faculty of Law of Paris (France),

Mr. RABEL, Professor of Law in the University of Berlin (Germany).

Mr. FICKER, Assistant Secretary-General of the Institute.





THE DEVELOPMENT OF UNIDROIT INTERPRETATION STUDIES (1955-1956)

- Two significant studies concerning the interpretation of uniform laws and methods for the unification of law
- Gap: the methods for achieving legal harmonisation and the challenges inherent in interpreting uniform laws
- *Challenges*
 - Integration into National Systems
 - Diverging Interpretations of Legal Expressions
 - The Need for International Qualification of Terms

THE DEVELOPMENT OF UNIDROIT INTERPRETATION STUDIES (1955-1956)

- *Solutions to Dispute over Interpretation*
 - Conciliatory Procedures
 - New Specialised International Tribunals
 - Use existing International Tribunals: eg ICJ
- *Other Mechanisms to Address Interpretative Divergences*
 - Advisory Opinions
 - Seek Interpretative Opinions from an International Commission
 - Permanent International Commission to Monitor interpretative disparities

THE DEVELOPMENT OF UNIDROIT INTERPRETATION STUDIES (1955-1956)

- *Sub-Commission (15-16 April 1955)*
- Three-stage approach to address interpretation divergences
 - Preventive Stage
 - Conciliatory Stage (minor vs serious divergences)
 - Judicial Stage
- *Other Strategies*
 - Establishing a ‘Massimario’
 - Establishing the Role of the Secretariat
 - Inserting an Interpretative Clause

The provisions of this uniform law shall be interpreted in each country not according to the legal concepts of that country, but in conformity with the spirit of this law, that is, with the purpose that inspired its adoption and the general principles of law recognised by all the states that have adopted it



Hungarian proposal – Sept 1964

- **Article 13(1)(a) of the *United Nations Charter*:**


1. The General Assembly shall initiate studies and make recommendations for the purpose of:

- (a) promoting international cooperation in the political field and [encouraging the progressive development of international law and its codification](#)

- **General Principle 6 of the UN Conference on Trade and Development ('UNCTAD'):**

International Trade is one of the most important factors in economic development. It should be governed by such rules as are consistent with the attainment of economic and social progress and should not be hampered by measures incompatible therewith. All countries should cooperate in creating conditions of international trade conducive, [in particular](#), to the achievement of the rapid increase in the exports earnings of [developing countries](#) and, in general, to the promotion of an expansion and diversification of trade between all countries.



 The United Nations
in Vienna

1969

- UNIDROIT submitted a report to the UNCITRAL Commission
 - Highlighting the need for an interpretation standard rule
 - To avoid domestic laws – an obstacle to the deployment of international trade

From Vision to Reality – The CISG 1980

- The United Convention on Contracts for the International Sale of Goods (**‘CISG’**).
- What is the CISG?



Legal History

International Character (Internationalisation)

- Law - transcends national boundaries
- Avoid national laws (to remove national barriers to International Trade)

Uniformity

- Consistent interpretation and application across jurisdictions

Explicit Preamble + Interpretation Rule

Article 7(1) of the CISG

- (1) In the interpretation of this Convention, regard is to be had to its **international character** and to the need to promote **uniformity** in its application and the observance of good faith in international trade.

Article 7(1) of the CISG's Influence

Convention on
Foreign Judgments
2019 – Art 20

UNCITRAL Model
Law on Mediation
2018 – Art 2(1)

UNIDROIT Principles
2016, 2010, 2004,
1994 – Art 1.6(1)

Intermediated
Securities
Convention 2009 –
Art 4

Carriage of Goods
by Sea Convention
2008 – Art 2

Hague Child
Support Convention
2007 – Art 53

Protocol on
Maintenance
Obligations 2007 –
Art 20

Securities
Convention 2006 –
Art 13

E-Communications
Convention 2005 –
Art 5

Choice of Court
Convention 2005 –
Art 23

Mobile Equipment
Convention 2001 –
Art 5(1)

Receivables
Convention 2001 –
Art 7

UNCITRAL
Insolvency Model
Law 1997 – Art 8

UNCITRAL E-
Commerce Model
Law 1996 – Art 3

Independent
Guarantees
Convention 1995 –
Art 5

Transport Terminals
Convention 1991 –
Art 14

UNIDROIT Leasing
& Factoring
Conventions 1988 –
Arts 6(1), 4(1)

International Bills of
Exchange
Convention 1988 –
Art 4

Hague Sales Law
Convention 1986 –
Art 16

UNCITRAL
Arbitration Model
Law 1985 – Art
2A(1)

Agency Convention
1983 – Art 6(1)

In practice

- Courts often fall back on **national law** when interpreting and applying international instruments
- Courts frequently **overlook** the Preamble, purpose of the law, interpretative provision, *travaux préparatoires* or legislative history and historical antecedents.

Conclusion: Reconstructing Forgotten Legal Histories

Problem

Domestic interpretation of the *CISG* – *homeward trend*, national law into an international instrument

What have we forgotten?

Historical Interpretation of Article 7(1) to uphold *CISG*'s core principles:

- **International character** → autonomous interpretation, internationalisation
- **Uniformity** → persuasive use of foreign case law, consistent interpretation

Why must we remember?

To reclaim the *CISG*'s purpose: to unify private law and avoid fragmentation through national laws (improving certainty and predictability)

THANK YOU FOR YOUR ATTENTION

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