Peter Huber, Dr. iur., LL.M. (London),
Professor of Private Law, Private International Law and Comparative Law
at the Johannes Gutenberg-University Mainz (Germany):
present website: www.jura.uni-mainz.de/huber.

Alastair Mullis, LL.M. (Cantab).
Professor of Law at the University of East Anglia Norwich (England).

ISBN 978-3-86653-020-1

Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen
Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über

© 2007 by sellier. european law publishers.

Information contained in this book has been obtained by the publisher from sources
believed to be reliable. However, neither the publisher nor its authors guarantee the
accuracy or completeness of any information published herein. Neither the publisher
nor its authors shall be responsible for any errors, omissions or damages arising from
the use of this information. Neither the publisher nor its authors are attempting to
render legal or other professional services. If such services are required, the assistance
of an appropriate professional should be sought.

Dieses Werk einschließlich aller seiner Teile ist urheberrechtlich geschützt. Jede
Verwertung außerhalb der engen Grenzen des Urheberrechtsgesetzes ist ohne
Zustimmung des Verlages unzulässig und strafbar. Das gilt insbesondere für
Vervielfältigungen, Übersetzungen, Mikroverfilmungen und die Einspeicherung
und Verarbeitung in elektronischen Systemen.

Druck und Bindung: Friedrich Pustet KG, Regensburg. Gedruckt auf säurefreiem,
alterungsbeständigem Papier. Printed in Germany.
Today, international sales contracts are frequently governed by the 1980 UN Convention on Contracts for the International Sale of Goods (CISG). The CISG is in force in more than 60 States from all parts of the world, among them both industrial nations and developing states. It has been widely applied in international commercial transactions in the past twenty years with more than 1500 decisions by state courts and arbitral tribunals having been reported so far. It therefore seems fair to say that the CISG has in fact been one of the success stories in the field of the international unification of private law.

The CISG applies to contracts of sale of moveable goods between parties which have their place of business in different states when these States are Contracting States (Art. 1(1) lit. (a) CISG) or when the rules of private international law lead to the application of the law of a contracting state (Art. 1(1) lit. (b) CISG). Certain types of contracts are excluded from its scope of application by virtue of Art. 2 CISG. By way of example, most consumer sales will not fall under the CISG (cf. Art. 2 lit. (a) CISG).

With regard to the substantive issues, the CISG basically governs three areas: the conclusion of the contract, the obligations of the seller including the respective remedies of the buyer and the obligations of the buyer including the respective remedies of the seller. The CISG therefore provides both a

---

1 For a shortened version of this Part see P. Huber, Internationales Handelsrecht (IHR) 2006, 228.
4 Several states have however declared a reservation against the application of the rule in Art. 1(1) lit. (b) CISG under Art. 95 CISG.

Peter Huber
substantive “law of sales” and a regulation of certain issues of the general law of contract, albeit limited to those international sales transactions which fall under its scope of application.

I. History and background of the CISG

The CISG is the result of a rather long process which started in the 1920s and was initially guided by the International Institute for the Unification of Private Law (UNIDROIT) and the Hague Conference for Private International Law, then by the United Nations Commission on International Trade Law (UNCITRAL).5

I. Ernst Rabel, UNIDROIT and the Hague Uniform Law of International Sales (ULIS)

The story of the international unification of the law of sales contracts is inextricably linked to the Austrian scholar and academic Ernst Rabel (1874-1955). Rabel not only prepared the basis for any comparative study of the modern law of sales in his epochal treatise “Das Recht des Warenkaufs”6, but he also initiated the process of world-wide harmonisation of the law of (international) sales. In 1928, Ernst Rabel suggested to the newly established (1926) UNIDROIT Institute that it adopt the unification of the law of international sales of goods as one of its first projects. One year later, Rabel submitted a preliminary report to UNIDROIT and in 1930 UNIDROIT set up a committee charged with the elaboration of a uniform law for international sales. Between 1930 and 1934 the committee, of which Ernst Rabel had since become a member, met eleven times and in 1934 it submitted a preliminary draft,7 which was, of course, considerably influenced by the comparative studies on the law of sales which Rabel and his colleagues at the Berlin Institute for international and foreign private law had undertaken. After comments from member states of the League of Nations, the Governing Council of UNIDROIT adopted in 1939 a revised version of the draft.

5 For a short account see Bonell, in: Bianca/Bonell, Commentary, ‘Introduction’ para. 3 et seq. See also P. Huber, in: Reimann/Zimmermann (eds.), The Oxford Handbook of Comparative Law, 2006, p. 938 et seq.
7 Rabel could, however, not attend the final session in 1934, because Germany had in the meantime left the League of Nations, cf. Rabel, Der Entwurf eines Einheitlichen Kaufgesetzes, Rabels Zeitschrift für ausländisches und internationales Privatrecht (RabelsZ) 9 (1935), 3 et seq.
The Second World War interrupted the work on the harmonisation of international sales law, but in 1951 the government of the Netherlands convened a Conference in The Hague which appointed a special Sales Commission. Ernst Rabel – now living in the U.S. – was a member of this Commission and again had a considerable impact on its work until his death in 1955. The Sales Commission produced two drafts which were generally well received by the interested authorities and in 1964 a Diplomatic Conference was convened in The Hague which adopted two Conventions: the Convention on a Uniform Law of International Sales (ULIS) and the Convention on a Uniform Law on the Formation of Contracts for the International Sale of Goods (ULFC). Both Conventions entered into force in 1972. They proved however unsuccessful as only a very limited number of (mostly European) states ratified them and they were not widely applied in international trade.8

2. UNCITRAL and the 1980 Convention

While the process of ratification of ULIS and ULFC was still pending, a new player entered the field of the international harmonisation of commercial law: the United Nations Commission on International Trade Law (UNCITRAL) which was established in 1966. After consulting the Member States of the UN on their assessment of both Hague Conventions, UNCITRAL decided in 1968 to set up a Working Group in order to modify the Conventions or to produce a new text which would have a better chance of being accepted world-wide. The Working Group in 1978 submitted a Draft Convention (the “New York Draft”) which covered both the specific rules on sales and the rules on the formation of a sales contract and in the same year the UN decided to convene a Diplomatic Conference on this matter.

The Diplomatic Conference took place in Vienna in spring 1980. After intense deliberations and several modifications of the New York Draft the Conference finally adopted the 1980 UN Convention on Contracts for the International Sale of Goods (CISG, often called Vienna Convention). The CISG entered into force in January 1988 for eleven states; since then the number of contracting states has been steadily growing.9

9 For the history of the CISG see: Schlechtriem, in: Schlechtriem/Schwenzer, Commentary, ‘Introduction’ para. 1 et seq. (with further references).
II. Structure of the CISG

The Convention is divided into four parts:

(1) The first part (Art. 1-13 CISG) contains rules on its sphere of application (Chapter I, Art. 1-6 CISG) and a number of general provisions (Chapter II, Art. 7-13 CISG).

(2) The second part (Art. 14-24 CISG) deals with the formation of the contract.

(3) The third part (Art. 25-88 CISG) is by far the most comprehensive part of the Convention. It is entitled “Sale of Goods” and provides the actual “sales law” of the Convention. It is subdivided into five chapters:

Chapter I (Art. 25-29 CISG) contains some general provisions which may be relevant throughout the entire sales law,\textsuperscript{10} in particular the definition of the notion of “fundamental breach” which will be relevant in particular as a precondition to the availability of certain remedies including the right to avoid the contract (cf. Art. 49, 64, 72 et seq. CISG).

Chapter II (Art. 30-52 CISG) deals with the obligations of the seller. After the general rule in Art. 30 CISG setting out the obligations of the seller in broad terms, Section I (Art. 31-34 CISG) deals with the delivery of the goods and the handing over of documents. Section II (Art. 35-44 CISG) deals with the conformity of the goods and with third party claims, and finally, Section III (Art. 45-52 CISG) contains the core element of every sales law, the buyer's remedies for breach of contract by the seller.

Chapter III (Art. 53-65 CISG) has a similar structure: Art. 53 CISG states the buyer's obligations in a general way. Section I (Art. 54-59 CISG) deals with the obligation to pay the price. Section II (Art. 60 CISG) deals shortly with the obligation to take delivery. Section III (Art. 61-64 CISG) governs the seller's remedies for breach of contract by the buyer.

\textsuperscript{10} In the course of this book these provisions will not be dealt with as one separate chapter, but will be mentioned where they become relevant.
Chapter IV (Art. 66-70 CISG) deals with the passing of risk. This section is closely linked to the buyer’s obligation to pay the price and will therefore be dealt with in the chapter on the payment obligation.

Chapter V (Art. 71-88 CISG) contains provisions common to the obligations of the seller and of the buyer. Section I (Art. 71-73 CISG) deals with anticipatory breach and instalment contracts. Section II (Art. 74-77 CISG) contains the extremely important rules on damages; this section is closely linked to Section IV (Art. 79-80 CISG) which governs the exemptions from the strict liability for damages that the Convention imposes on the parties. Section III (Art. 78 CISG) contains a short (and fragmentary) rule on interest. Section V (Art. 81-84 CISG) governs the effects of an avoidance of the contract and Section VI (Art. 85-88 CISG) deals with the preservation of the goods.

(4) The fourth part of the Convention (Art. 89-101 CISG) contains the public international law elements of the Convention which deal in particular with the details of ratification etc., with possible reservations against certain parts or provisions of the Convention and with the entry into force of the Convention. These provisions will not be dealt with in detail in this book. Suffice it to give a short outline of some of these provisions:

Art. 92 CISG provides that a Contracting State may declare (up to a certain moment in time) that it will not be bound by Part II (i.e. the formation rules in Art. 14-24 CISG) or by Part III (i.e. the sales rules in Art. 25-88 CISG) of the Convention. Such a reservation has been made by several Scandinavian states with regard to Part II; see in more detail below p. 69 et seq.\(^\text{11}\)

Art. 94 CISG gives those Contracting States which have reached a certain degree of (regional) unification of their sales laws or contract laws the possibility to declare that the Convention is not to apply to contracts of sale or their formation where the parties have their places of business in those states. Several Scandinavian states have made such a declaration.\(^\text{12}\)

Art. 95 CISG permits the Contracting States to declare (up to a certain moment in time) that it will not be bound by Art. 1(1)(b) CISG; for more details on this provision see below p. 52 et seq. Art. 96 CISG allows certain reservations concerning the provision on form requirements (Art. 12 CISG); for more detail see below p. 38 et seq. Art. 97 CISG provides rules on the

---

\(^\text{11}\) For a list of Reservation States see www.uncitral.org.

\(^\text{12}\) For a list of Reservation States see www.uncitral.org.

Peter Huber