

6-15-2012

CISG Translation Issues: Reducing Legal Babelism

Claire M. Germain

University of Florida Levin College of Law, germain@law.ufl.edu

Follow this and additional works at: <http://scholarship.law.ufl.edu/facultypub>



Part of the [Comparative and Foreign Law Commons](#), [International Law Commons](#), and the [Transnational Law Commons](#)

Recommended Citation

Claire M. Germain, CISG Translation Issues: Reducing Legal Babelism (June 15, 2012), *available at* <http://scholarship.law.ufl.edu/facultypub/329>

This Book Chapter is brought to you for free and open access by the Faculty Scholarship at UF Law Scholarship Repository. It has been accepted for inclusion in Faculty Publications by an authorized administrator of UF Law Scholarship Repository. For more information, please contact outler@law.ufl.edu.

CISG TRANSLATION ISSUES: REDUCING LEGAL BABELISM

Claire M. Germain

Clarence J. TeSelle Professor of Law
Fredric G. Levin College of Law
University of Florida
Gainesville, Florida, USA
germain@law.ufl.edu

Draft Rev. June 15, 2012

Introduction

The CISG has been celebrated as the *lingua franca* for drafting international contracts.¹ *Lingua franca* was the universal language developed and used by merchants around the Mediterranean from the 14th until the 19th century.² The reason for the expression in the CISG context is to show the universality and common, uniform language produced by the Convention in spite of the variety of countries and languages. The CISG has remarkably facilitated commercial transactions across boundaries and different legal systems. This Chapter discusses some possible difficulties caused by using different languages, or words which might be interpreted differently, and some solutions and ways to deal with these.

Language and translation issues in CISG come up in a variety of ways and are subject to the multilingual inception and drafting of the Convention, as well as the rapidly expanding worldwide development of the case law and legal scholarship surrounding its application in the various countries over now several decades. Three kinds of issues have appeared: the first has to do with drafting issues, and the peculiar problem of the six official languages of the Convention. They are all deemed equally authentic, but the several language versions may contain potentially significant differences, notwithstanding the additional translations in yet other languages. Furthermore, words used in one language may have a different meaning from the ones in another

¹Peter Schlechtriem, *25 Years of the CISG: An International 'Lingua Franca' for Drafting Uniform Laws, Legal Principles, Domestic Legislation and Transnational Contracts*, in *DRAFTING CONTRACTS UNDER THE CISG* 167, 168 (Harry M. Flechtner, Ronald A. Brand & Mark S. Walter eds., Oxford: New York 2007).

² *Lingua Franca*, *ENCYCLOPÆDIA BRITANNICA* (2011),
<http://www.britannica.com/EBchecked/topic/342377/lingua-franca>.

language, even though the CISG drafters aimed to create a neutral, independent legal language.³ The second set of issues deals with the interpretation of the Convention. One is aware of the problems of statutory interpretation in general in domestic legal systems using the same language. The problems are multifold when an international convention such as the CISG is applied in countries with different legal systems, cultures, legal traditions, and usages. The third set of issues consists of contract problems among the parties involving translated documents, documents written in a language not understood by one of the parties, or by the court in charge of the litigation.

Drafting Issues: Six Official Languages

Drafting and translating a multilingual convention is a complex process. The CISG is not written in one language, but in the six official languages of the United Nations—Arabic, Chinese, English, French, Russian and Spanish—all of which are equally authentic,⁴ and further translated into additional languages. These latter translations have no binding effect and can only assist courts in the respective countries where those languages are spoken.⁵ For instance, the four German-speaking countries -- Austria, the German Democratic Republic, the Federal Republic of Germany, and Switzerland -- jointly produced a semi-official German translation of the Convention in 1983, which has not given rise to any real problems in practice in spite of some imprecision in the translation.⁶

³ Ingeborg Schwenzer and Pascal Hachem, *The CISG - Successes and Pitfalls*, 57 AMERICAN J. OF COMPARATIVE L. 457, 461 (2009).

⁴ See UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, *Witness Clause to the Convention*, in UNCITRAL DIGEST OF CASE LAW ON THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS 453 (2012 ed.), available at www.uncitral.org/pdf/english/clout/CISG-DIGEST-2012-e.pdf, [hereinafter UNCITRAL DIGEST], which explain that textual discrepancies are possible given the nature of language, and that they are subject to the rules of interpretation of the Convention on the Law of Treaties. See also Vienna Convention on the Law of Treaties, art. 33, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention]

⁵ SCHLECHTRIEM & SCHWENZER COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS 25 (Ingeborg Schwenzer ed., 3d ed. Oxford: New York 2010) [hereinafter COMMENTARY ON THE UN CONVENTION].

⁶ *Id.*; see also PETER SCHLECHTRIEM, UNIFORM SALES LAW: THE UN-CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS 114 (Manz: Vienna 1986), <http://www.cisg.law.pace.edu/cisg/biblio/schlechtriem.html>

There is a rich literature exploring the interrelationship between translation, legal drafting and the role of jurilinguists, particularly in bilingual cultures, such as Canada, at the European level, and in the international context in general.⁷

Much care has been taken by UNCITRAL in the drafting and translating of the CISG.⁸ Of course, the first issue with the CISG in several languages arises with is which one is the original one, or which one is the most authentic in case of discrepancies among the official languages of the CISG. Generally, the U.N Vienna Convention on the Law of Treaties states that, in case of discrepancies in an international text, recourse should be made to the rules of interpretation of treaties,⁹ and if it fails, to the “meaning which best reconciles the texts, having regard to the object and purpose of the Treaty.”¹⁰ Some commentators, such as Professor Schlechtriem, and now Professor Ingeborg Schwenzer,¹¹ say that the preliminary work on the Convention was done in English and French, and that it is reasonable to give priority to these two languages.¹² She further states that the majority view even gives priority to the English version.¹³ Professor Ole Lando also favors English as the working language of the drafters, although he notes that a court in some countries will rely on a translation rather than the authentic version, and noting

⁷ See MALA TABORY, *MULTILINGUALISM IN INTERNATIONAL LAW AND INSTITUTIONS* (Sijthoff & Noordhoff: Alphen aan den Rijn, The Netherlands 1980). See also Jean-Claude G mar, *L'interpr tation Du Texte Juridique Ou Le Dilemme Du Traducteur*, in *INTERPR TATION DES TEXTES JURIDIQUES R DIG S DANS PLUS D'UNE LANGUE* 103-141 (Rodolfo Sacco ed., L'Harmattan: Torino, 2002) [hereinafter *INTERPR TATION DES TEXTES*]. The EC Commission's Directorate General for Translation has an extensive website with useful information and resources to help in translation. Olivier Mor teau, *Le Prototype, Cl  de l'Interpr tation Uniforme: la Standardisation des Notions Floues en Droit du Commerce International*, in *INTERPR TATION DES TEXTES*, *supra*, at 183-202; O. Mor teau & D. Lam the, *L'interpr tation des textes juridiques r dig s dans plus d'une langue*, *REVUE INTERNATIONALE DE DROIT COMPAR * 327 (2006); *JURILINGUISTIQUE: ENTRE LANGUES ET DROITS; JURILINGUISTICS: BETWEEN LAW AND LANGUAGE* 407 (Jean-Claude G mar & Nicholas Kasirer eds., Bruylant: Brussels, 2005).

⁸See the thoughtful description of the process in Luca Castellani, *International Trade Law and Language: The UNCITRAL Experience* (2006) (unpublished draft) (on file with author).

⁹ Vienna Convention, *supra* note 4, at art. 31-32.

¹⁰UNCITRAL DIGEST, *supra* note 4, at 453 (citing Vienna Convention, *supra* note 4, at art. 33(4)).

¹¹ Schlechtriem makes the argument for using the English (and French) text to resolve discrepancies in different languages. *COMMENTARY ON THE UN CONVENTION*, *supra* note 5, at 21, 940.

¹² *Id.* at 25.

¹³ *Id.*

that the six authentic versions do not have exactly the same meaning.¹⁴ In case of discrepancies the English text and occasionally the French are used because they express the intention of the conference better than the other versions.¹⁵ They were the language of the negotiations and the drafting committee used the English language to draft the convention.¹⁶ Professor Diedrich posits that the French and English are the preferable versions.¹⁷ Professor Camille Baasch Andersen objects to the notion of the English version being the best,¹⁸ arguing that it is politically incorrect and Eurocentric.¹⁹

Not surprisingly, a commentary in French speaks against the notion that in case of doubt the English text should prevail, supposedly because of the uncertainties of the legal Anglo American language,²⁰ stating further that most contributions to the drafting were from people who did not master the language, that it is safer to rely on the concordance of texts in several official languages, and that French and Spanish could often serve as starting points.²¹

Drafting Issues: Choice of Words and Neutral Language

The drafters of the CISG came from different legal traditions, mostly from civil law and common law countries. They therefore aimed to avoid domestic legal terms and concepts, and sought to use an independent legal language.²² CISG drafters chose what was intended to be neutral language, and uniform international words, a neutral language that was not reminiscent of a domestic legal concept.²³ They succeeded to a large extent, favoring “non-legal earthy words to

¹⁴ Ole Lando, *Preface*, in CISG METHODOLOGY 3 (André Janssen & Olaf Meyer eds., Sellier: Munich, 2009).

¹⁵ COMMENTARY ON THE UN CONVENTION, *supra* note 5, at 130.

¹⁶ *Id.*

¹⁷ Frank Diedrich, *Maintaining Uniformity in International Uniform Law via Autonomous Interpretation: Software Contracts and the CISG*, 8 PACE INTERNATIONAL L. REV. 317-18 (1996).

¹⁸ CAMILLE BAASCH ANDERSEN, UNIFORM APPLICATION OF THE INTERNATIONAL SALES LAW 89 (Kluwer: The Netherlands 2007).

¹⁹ *Id.* at 89-90.

²⁰ KARL H. NEUMAYER & CATHERINE MING, CONVENTION DE VIENNE SUR LES CONTRATS DE VENTE INTERNATIONALE DE MARCHANDISES. COMMENTAIRE 100 (Francois Dessemontet ed. CEDIDAC: Lausanne 1993)

²¹ *Id.*

²² Schwenzler & Hachem, *supra* note 3, at 457, 461 n. 27.

²³ “When drafting the single provisions these experts had to find sufficiently neutral language on which they could reach a common understanding.” Michael Joachim Bonell, *Article 7*, in BIANCA-BONELL COMMENTARY ON THE INTERNATIONAL SALES LAW 65, 74 (Giuffrè: Milan 1987) See also UNCITRAL

refer to physical acts." ²⁴ For instance, to explain the passing of risk, the Convention uses the words "[goods] handed over" rather than the "title or property" passing to the buyer or seller. ²⁵

The Convention also created its own terminology displacing similar concepts under domestic law, e.g. the remedies for defects in the goods. ²⁶ If need be, neologisms were created. ²⁷

To avoid terms with a national concept, such as hardship or *force majeure*, the CISG's art. 79 uses "impediment without control" or "*empêchement indépendant de sa volonté*." The CISG solution started a drafting trend, and was influential on the terminology used in other international documents. The UNIDROIT Principles use the phrase events "beyond control" and "*événement qui lui échappe*." The PECL uses "impediment beyond its control" and "*événement qui échappe à son contrôle*."

It is a fair statement that the CISG has created an international business community, bound together by common concepts unique to this community and a common legal language. ²⁸ The examples above used in the CISG show that a common language can be achieved, with a common vocabulary and a reference terminology. This reference terminology which was elaborated is not linked to national legal systems. ²⁹ An example would be the French and English versions of Article 79. ³⁰

UNCITRAL DIGEST, *supra* note 4, at ix ("The drafters of the Convention took special care in avoiding the use of legal concepts typical of a given legal tradition. . .").

²⁴ Bruno Zeller, *Four-Corners - The Methodology for Interpretation and Application of the UN Convention on Contracts for the International Sale of Goods*, PACE LAW SCHOOL ALBERT H. KRITZER CISG DATABASE, n.187 (May 2003), <http://www.cisg.law.pace.edu/cisg/biblio/4corners.html>. [hereinafter *Four-Corners*]

²⁵ *Id.*

²⁶ [Pilar Perales Viscasillas], *Article 7*, in UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG) 115 (Stefan Kröll, Loukas Mistelis, & Pilar Perales Viscasillas, eds., Verlag C.H.Beck oHG: Munich 2011).

²⁷ Questionnaire by Antonio Gambaro, answered by Luca Castellani 3, 3.5 (2005). This questionnaire was prepared for the XVIIth Congress of the International Academy of Comparative Law held in 2006. (Unpublished, on file with author).

²⁸ Castellani, *supra* note 8 at 7-8 (citing Bruno Zeller, *International Trade Law—Problems of Language and Concepts?*, 23 J.L. & Commerce 39, 43 (2003)).

²⁹ Castellani, *supra* note 8 at 6 (citing Olivier Moréteau, *Le Prototype, clé de L'interprétation Uniforme: la Standardisation des Notions Floues en Droit du Commerce International*, in INTERPRÉTATION DES TEXTES, *supra* note 7, at 183-202).

³⁰ See UNCITRAL DIGEST, *supra* note 4, at 252.

As Professor Bruno Zeller aptly puts it, “[D]omestic legislation needs to consider the choice and clarity of words. International legislation, in addition, needs to consider the effects of translation on the meaning of words as most conventions unfortunately are not only written in one language alone.”³¹ He cites Article 3(1) as an example, on the issue that the buyer can supply a "substantial" part of material. The German “*wesentlich*” and the French “*part essentielle*” are a better match than the English adjective “substantial.” These imperfect matches may lead to ambiguities, which can be resolved by looking at the text in a different language.³²

As Professor Eric Bergsten notes, much has been written about the problems of translation, but less has been written about drafting in one language with the expectation that the text will be translated.³³ He states that ambiguities need to be eliminated, otherwise one or more of the translations will have a different meaning,³⁴ and that conceptual terms need to be eliminated, because they have a particular meaning that cannot always be translated accurately.³⁵ The CISG has performed well in that area. For instance, instead of using the term “delivery,” it mentions “handing over of the goods.”³⁶ Professor Bernard Audit also mentions the need to use a simple language, with references to material events, and not with a legal connotation. Thus was avoided the mention of French expressions such as “*délivrance*” and “*force majeure*.”³⁷ The CISG does not use the French concept of delivery which associates the delivery and the conformity of the sold good, including warranty against hidden defects (*garantie contre les vices cachés*). The translation of this concept is almost impossible in various languages and it was difficult in the previous convention to conceive that the merchandise was not delivered when the buyer had them in their hands.³⁸

The words chosen have to be comprehensive and functional enough to overcome technical divergences in the domestic legal systems. For instance, the word “Avoidance” in Art. 26, “Résolution” in the French text, covers the German concepts of Rücktritt, Wandelung,

³¹ Zeller, *supra* note 24.

³² *Id.*

³³ Eric Bergsten, *Methodological Problems in the Drafting of the CISG*, in *CISG METHODOLOGY*, *supra* note 14, at 18

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ BERNARD AUDIT, *LA VENTE INTERNATIONALE DE MARCHANDISES* 48 n.1 (LGDJ: Paris 1990).

³⁸ *Id.* at 80 n.1.

Kündigung, Irrtumsanfechtung, as well as Termination, Cancellation, Rescission, and covers the French concept of “redhibitory defects.”³⁹

An example of having to grapple with differing concepts from a French perspective is the fundamental distinction in Art. 25 between *contraventions essentielles et non essentielles*. This distinction is an echo of the traditional English law distinction between conditions and warranties. The contract can only be voided because of a violation of a condition. Without expressing it in these terms, the solution in French law is similar in regard to the application of art. 1184 of the French Civil Code.⁴⁰

Differences in the official translations of some terms may lead to substantially different texts, as Professor Flechtner explains when comparing the English and French wordings of Arts. 71 and 72.⁴¹ Article 71(1) allows a party to suspend temporarily its performance if "it becomes apparent that the other party will not perform a substantial part of his obligations. . . ." ⁴² Article 72(1), allows a party to avoid the contract, if "it is clear" that the other side "will commit a fundamental breach of contract." ⁴³ The English version of these two articles uses two different words “substantial,” and “fundamental.” The use of two different words may have implied that two different standards were contemplated by the Convention, and a higher one for the permanent avoidance of the contract. But this may not be the case, because the French version of the same articles uses the same word for both articles, “essentielle.” Art. 71 requires the non-performance of “*une partie essentielle de ses obligations*,” and Art. 72 requires the threat of a “*contravention essentielle au contrat*.”

Bergsten mentions one small discrepancy that was knowingly included with regard to the Chinese translation, but overall, he celebrates the high congruence of the English and French

³⁹ Horatia Muir Watt, Book Review, 87 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ 818 (1998); [Schlechtriem Peter (éd.), Commentary on the UN Convention on the International Sales of Goods, 2d ed., English translation by Geoffrey THOMAS, Oxford: Clarendon Press, Oxford, 1998].

⁴⁰ AUDIT, *supra* note 37, at 119 n.2.

⁴¹ Harry M. Fletcher, *The Several Texts of the CISG in a Decentralized System: Observations on Translations, Reservations and other Challenges to the Uniformity Principle in Article 7(1)*, 17 J. OF L. AND COMMERCE 187 (1998), available at <http://www.cisg.law.pace.edu/cisg/text/flechtnerauthentic.html>.

⁴² United Nations Convention on Contracts for the International Sale of Goods art. 71(1), Apr. 11, 1980, 52 Fed. Reg. 6262, 6264-6280 (1987) [hereinafter CISG] (“A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations....”).

⁴³ *Id.* at art. 72(1) (“If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.”).

CISG texts, and also the Russian text.⁴⁴ He has less confidence in the Spanish, and even less in the Arabic and Chinese. Some of the language versions have been officially rectified, which requires a formal procedure to amend the text, called *procès-verbal*.⁴⁵ He also mentions the special problem of more than one State sharing the same language such as German.⁴⁶

Although the translations were done carefully, when one looks at the different language versions synoptically,⁴⁷ one notes that some words are translated differently. An illustration is art. 3(2) where the French version refers to a “*part essentielle*” (essential part) and the English version refers to a “substantial part.” The unofficial German text refers to a “*wesentlicher Teil*, which corresponds to the French version, and would be translated as “essential part.”⁴⁸ It is instructive to go back to the legislative history, where it appears that ULIS contained both “substantial and essential,” but the English version removed “essential” and the French version removed “substantial.”⁴⁹

The Chinese and Russian versions differ markedly from the English and French ones.⁵⁰ There is also some criticism of the German translation.⁵¹ Andersen mentions some issues with the Norwegian text, an unofficial translation which was incorporated into domestic Norwegian law, creating its own problems, because it sets itself apart, not even retaining the same article numbers.⁵²

⁴⁴ Bergsten, *supra* note 33, at 19-20.

⁴⁵ For more information on the *procès-verbal* of correction, see UN OFFICE OF LEGAL AFFAIRS (OLA) TREATY SECTION, SUMMARY OF PRACTICE OF THE SECRETARY-GENERAL AS DEPOSITARY OF MULTILATERAL TREATIES, at ¶ 48-62, U.N. Doc. ST/LEG/7/Rev. 1, U.N. Sales No. Sales No. E.94.V.15, available at <http://untreaty.un.org/ola-internet/Assistance/Summary.htm>.

⁴⁶ Bergsten, *supra* note 33, at 21.

⁴⁷ For a nice synoptic display of CISG convention articles and other texts, see Heinz Albert Friehe & Winfried Huck, UNIFORM SALES LAW (CISG): SYNOPSIS OF SELECTED TEXTS (2011), <http://web.law-and-business.de/cisg7/index2.php?lang=2>, which is in ten languages – five authentic texts (Chinese, English, French, Russian and Spanish) and five translations (Dutch, German, Italian, Japanese and Swedish).

⁴⁸ COMMENTARY ON THE UN CONVENTION, *supra* note 5, at 25 n.62.

⁴⁹ *Id.* at 62. See also *Four-Corners*, *supra* note 24, at n.131. Generally on the problems raised by the different languages versions under CISG see Bergsten, *supra* note 33, at 18-21.

⁵⁰ COMMENTARY ON THE UN CONVENTION, *supra* note 5, at 123 n.22.

⁵¹ *Id.*

⁵² ANDERSEN, *supra* note 18, at 88 n.272.

Although the competing status of the different languages has been abundantly discussed by scholars, the discrepancies observed and debated above do not seem to have created particular practical problems for courts and arbitral tribunals, at least considered from the absence of reported cases or arbitral awards. This is probably due to the excellent work of UNCITRAL translators in the preparation of the texts, and the various methods available and used for comparing wording among the various versions and looking at the intent of the Convention when interpretation issues have arisen.

Interpretation and Homeward Trend

A serious issue with international sales law, called the homeward trend, is the possibility for domestic courts to distort the meaning of the international legal principles contained in the CISG by applying domestic interpretation rules.⁵³ Differences in language and other domestic peculiarities sometimes make it difficult for outsiders to even “hear” the message of foreign precedent.⁵⁴ The homeward trend appears in different ways and has been the subject of rich debate, in the face of the mandate of Art. 7(1)

The issue of language and translation arises in the interpretation of Articles 7 and 8 of the Convention. Article 7 (1) stipulates that “[I]n the interpretation of the 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. This article 7(1) aims for an autonomous interpretation of the Convention,⁵⁵ “free from preconceptions of domestic law.”⁵⁶ The general guiding principles focus on three elements, the international character of the Convention, the goal of promoting uniformity, and the promotion of good faith in international trade.⁵⁷ The Convention excludes recourse to domestic meaning of terms, with a few exceptions when domestic meaning intervenes.⁵⁸

⁵³ The expression “homeward trend” is attributed to JOHN HONNOLD. He mentions it in DOCUMENTARY HISTORY OF THE UNIFORM LAW FOR INTERNATIONAL SALES 1 (Kluwer: Denver 1989) [hereinafter DOCUMENTARY HISTORY]. See Franco Ferrari, *Homeward Trend: What, Why, and Why Not, in CISG METHODOLOGY*, *supra* note 14, at 171.

⁵⁴ Joseph Lookofsky, UNDERSTANDING THE CISG : A COMPACT GUIDE TO THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR INTERNATIONAL SALE OF GOODS 35 (Kluwer: Frederick, Md 2008).

⁵⁵ COMMENTARY ON THE UN CONVENTION, *supra* note 5, at 122.

⁵⁶ *Id.*

⁵⁷ *Id.* at 122-23.

⁵⁸ *Id.* at 123.

Professor John Honnold stated that it was assumed that we now have “uniform international words,” and the issue was whether “uniform application” of those words could be achieved.⁵⁹ Courts interpreting the CISG are not to read it domestically,⁶⁰ and the application of domestic rules of interpretation to the Convention is to be avoided.⁶¹ In general, an autonomous interpretation detached from the traditional concepts, principles, rules, and terms of a domestic legal system is to be sought, unless these domestic concepts are also commonly and internationally recognized.⁶²

Identical words in the CISG and domestic law may be *faux-amis* and have different meanings and might have developed differently since the CISG adopts a neutral and a-national language.⁶³ Some terms are not defined, such as good faith, which Art. 7(1) makes it mandatory to apply, but does not define it. This has been commented upon in depth by scholars such as Professor Zeller.⁶⁴

To expect a single interpretation of each provision of the CISG is unrealistic.⁶⁵ It is difficult enough in domestic law, and unthinkable with a text in multiple languages, where the practitioners have different preconceptions, and where no court of final appeal can give a uniform interpretation.⁶⁶ Since there is no supranational court to rule on divergent interpretations, the aim of uniformity of application can only be attained if the national courts and arbitral tribunals interpret the Convention in a uniform way.⁶⁷

To achieve this goal, they have to look at the decisions of other courts to develop a common interpretation, and also to the scholarly writings, since as Professor Honnold stated, “traditional

⁵⁹ John Honnold, *The Sales Convention in Action--Uniform International Words: Uniform Application*, 8 J.OF L.AND COMMERCE 207-12 (1988). [hereinafter *The Sales Convention in Action*]

⁶⁰ COMMENTARY ON THE UN CONVENTION, *supra* note 5, at 115.

⁶¹ *Id.* at 117.

⁶² *Id.*

⁶³ *Id.* at 118.

⁶⁴ Bruno Zeller, *The Observance of Good Faith in International Trade*, in CISG METHODOLOGY, *supra* note 14, 133, 134-35.

⁶⁵ Bergsten, *supra* note 33, at 29.

⁶⁶ *Id.* at 30.

⁶⁷ COMMENTARY ON THE UN CONVENTION, *supra* note 5, at 124.

barriers to the use of scholarly writing in legal development broke down long” in the USA and other common law countries, and civil law countries have always relied on scholarly writings.”⁶⁸

Several methods of interpretation are well documented by the scholarly literature, including access to the literature, and using the legislative history of the Convention.⁶⁹ UNCITRAL has played a fundamental role in starting a comprehensive way to gather and disseminate international case law (*jurisprudence*) and scholarly writings (*doctrine*) which in many countries have a higher authority than cases.⁷⁰ Other methods of interpretation include methods of public international law, comparative law, and uniform law projects.⁷¹

Useful information may be gathered from the experience of officially bilingual countries, such as Canada.⁷² Three methods of interpretation of bilingual legislation often occur in decisions of the Canada Supreme Court and Federal Court: unilingual, if there are no discrepancies in translation, but the meaning is ambiguous; bilingual if one version helps precise the meaning of the other one. And when the two versions are divergent, a focus on the objectives that the legislator intended to achieve with the law, using normal interpretation techniques for legislation, and then, choosing the version which is the most suited to accomplish these objectives, following Art. 8 of the Law on Official Languages.⁷³

That being said, even when there is no language issue and a common understanding of terms, for instance, the notion of “reasonable time,” similar terms can be interpreted differently. Everyone understands the term “reasonable time.” But, even when the CISG is found textually uniform, the contracting States read it and apply the text in different ways, and the “reasonable time for notice” of Art. 39 is interpreted by different courts to be from 4 days (being untimely) to four months (being timely).⁷⁴

⁶⁸ *The Sales Convention in Action*, *supra* note 59, at 207.

⁶⁹ *Id.* at 208.

⁷⁰ *Id.* at 211 n.10.

⁷¹ See COMMENTARY ON THE UN CONVENTION, *supra* note 5, at 130 for a good discussion.

⁷² Marie Lajoie, *L'interprétation judiciaire des textes législatifs bilingues* 24 no. 1 META: TRANSLATORS' J., 115-24 (1979), available at <http://www.erudit.org/revue/meta/1979/v24/n1/003376ar.html?vue=resume>.

⁷³ *Id.* at 117.

⁷⁴ COMMENTARY ON THE UN CONVENTION, *supra* note 5, at 127, 629-33; Camilla Baasch Andersen, *The Global Jurisconsultorium of the CISG Revisited*, 13 VINDOBONA J. OF INTERNATIONAL COMMERCIAL L. & ARBITRATION (Jan. 2009) 43, 45 (2009); Camilla Baasch Andersen, *The Uniform International Sales Law and the Global Jurisconsultorium*, 24 J. OF L. AND COMMERCE 159 (2005)[hereinafter *The Uniform*

Solutions and Ways to Deal with Language and Translation Issues

It is obvious that the stated goal of the uniform interpretation of the CISG presupposes the accessibility and availability of foreign legal materials, both case law and scholarly writings and commentaries. Thanks to the remarkably successful efforts of several groups, notably Professor Albert Kritzer, at the Pace Law School, and others, and the use of new technologies and the Internet, the CISG is possibly the best documented convention worldwide. Several major databases have been created throughout different parts of the world to make decisions and scholarly commentaries available.

UNCITRAL's mandate from the start in 1966 was to promote uniform interpretation and application of international trade conventions and uniform laws through the collection and dissemination of information on national legislations and case law and other legal developments in international trade.⁷⁵ Since 1983, UNCITRAL has worked on a method to disseminate court decisions and arbitral awards interpreting the CISG,⁷⁶ resulting in CLOUT (Case Law on UNCITRAL Texts) abstracts in 1988.⁷⁷ National correspondents monitor cases in their respective countries, create an abstract of each case and send it together with the full opinion to the UNCITRAL Secretariat which edits them, and adds them to the database.⁷⁸ The first edition of the CLOUT Digest came out in 2004,⁷⁹ and the second edition in 2012. The case digest is authoritative, each chapter "highlighting common views and reporting divergent approach,"⁸⁰ but

International Sales Law]; Camilla Baasch Andersen, *Reasonable Time in Article 39(1) of the CISG - Is Article 39(1) Truly a Uniform Provision*, in 1998 REVIEW OF THE CISG 63 (Pace ed., Kluwer 1998), available at <http://www.cisg.law.pace.edu/cisg/biblio/andersen.html>;

⁷⁵ UNCITRAL should be active, inter alia, in "[...] promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade [and] collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade; [...]": General Assembly resolution 2205 (XXI) of 17 December 1966, available on UNCITRAL's website at www.uncitral.org/.

⁷⁶ Rep. of the U.N. Comm'n on Int'l Trade Law on the Work of Its Sixteenth Session, May 24-June 3, 1983, U.N. Doc. A/38/17; GAOR, 38th Sess., Supp. No. 17 (1983).

⁷⁷ 7 Report of the United Nations Commission on International Trade Law on the work of its twenty-first session, New York, 11-20 April 1988, United Nations document A/43/17, paragraphs 98-109. CLOUT reports are published as United Nations documents A/CN.9/SER.C/ABSTRACTS/1 to A/CN.9/SER.C/ABSTRACTS/112 (latest document available at the date of this UNCITRAL DIGEST revision). The 112 CLOUT reports are also available on UNCITRAL's website at www.uncitral.org/clout/showSearchDocument.do?lf=898&lng=en.

⁷⁸ UNCITRAL DIGEST, *supra* note 4, at .x

⁷⁹ *Id.*

does not allow for critical comments.⁸¹ There is, however, another body, the unofficial CISG Advisory Council, which held its inaugural conference in 2003, and is composed of scholars who prepare opinions on divergent interpretations of the CISG or new developments.⁸² Other databases in different parts of the world have been extremely useful and are commented upon in another chapter by Professor Marie Newman.

One database of note, UNILEX, was started by Professor Michael Bonell, a major figure in CISG scholarship in Italy and internationally. It is a collection of international case law and bibliography on The CISG, as well as the UNIDROIT Principles of International Commercial Contracts.⁸³ It started in 1992 as a research project of the Centre for Comparative and Foreign Law Studies – a joint venture of the Italian National Research Council, the University of Rome I “La Sapienza”, and the International Institute for the Unification of Private Law (UNIDROIT), financed by the Italian National Research Council.⁸⁴

International Sales Law Thesauri

The development of international sales law thesauri is essential in promoting accessibility and promoting uniformity of interpretation. Two of them are of particular note, two, UNCITRAL and the Pace thesauri.

In 1995, the United Nations Commission on International Trade Law commissioned Professor John O. Honnold (working together with Professor Michael Joachim Bonell and Ambassador Mahmoud Soliman) to elaborate a classification of each of the provisions of the CISG.⁸⁵ UNCITRAL refers to this classification or outline available on the database as a thesaurus, but the UNCITRAL Thesaurus is more aptly described as a classified index.⁸⁶

⁸⁰ *Id.*

⁸¹ For an evaluation of the usefulness and weaknesses of the *UNCITRAL DIGEST*, see Franco Ferrari, *Remarks on the UNCITRAL DIGESTs's Comments on Article 6 CISG*, 25 J.L. & Commerce 13-37 (2005-06), <http://www.uncitral.org/pdf/english/CISG25/Ferrari.pdf>

⁸² <http://www.cisgac.com/>

⁸³ <http://www.unilex.info/>

⁸⁴ *Id.*

⁸⁵ <http://www.cisg.law.pace.edu/cisg/text/uncitral.html>

⁸⁶ http://www.uncitral.org/uncitral/en/case_law/thesauri.html

This outline classifies decisions under the CISG. It includes a detailed breakdown of the subjects addressed in each provision of the CISG, which makes it very useful to professors, students, as well as legal professionals, who can search for particular words or concepts in the outline.⁸⁷

The Pace CISG is more of what one normally considers to be a thesaurus, meaning that it includes a controlled vocabulary.⁸⁸ As an example, all information on termination of contract is put under “avoidance of contract.” Alternative terms, phrases and expressions used in the variety of legal systems around the world are cross-referenced to the controlled vocabulary. The Thesaurus provides a uniform international sales law indexing language. As an illustration for a U.S. lawyer, someone doing research may want to start by using the terminology from Art. 2 of the UCC. The Thesaurus includes terminology from the UCC, but directs the user to terms which represent parallel legal concepts in international sales law, the Global Sales Thesaurus.

Comparing the two thesauri, the UNCITRAL Thesaurus is not a technical thesaurus, rather under each CISG Article it contains a non-exhaustive list of the legal issues which are covered by the CISG Article. It is a basis to classify materials on the CISG. The Pace CISG Thesaurus, on the other hand, is a controlled indexing vocabulary, created in accordance with the ISO Standards for monolingual thesauri (ISO 2788). It establishes equivalence relationships, hierarchical relationships and associative relationships (i.e., preferred terms, broader and narrower terms and related terms). It is thus a uniform terminology that will be used to index CISG materials. The intent is to share freely the thesaurus so that other databases may use the same controlled vocabulary to index their CISG collections.⁸⁹ The thesaurus is currently monolingual. The intent is to make it multilingual but no work has been done in that direction to date.

Translation of Foreign Cases Service

The Queen Mary Case Translation program into English of foreign cases has the goal to help disseminate foreign cases which may be used as precedents or authorities by other courts in interpreting the CISG.⁹⁰ It performs a remarkably useful service. The Pace website includes a

⁸⁷ E-mail from Professor Vikki Rogers to author (Dec. 16, 2011) (on file with author).

⁸⁸ Vikki M. Rogers & Albert H. Kritzer, *A Uniform International Sales Law Terminology*, SiSU ON BEHALF OF CISG DATABASE, PACE INSTITUTE OF INTERNATIONAL COMMERCIAL LAW (Mar. 23, 2004), . http://www.jus.uio.no/sisu/a_uniform_international_sales_terminology.vikki_rogers.and.albert_kritzer/; See also *The Uniform International Sales Law*, *supra* note 74.

⁸⁹ See *supra* note 87..

⁹⁰ *The Queen Mary Case Translation Programme*, PACE LAW SCHOOL ALBERT H. KRITZER CISG DATABASE, <http://cisgw3.law.pace.edu/cisg/text/queenmary.html>.

very helpful list of cases translated, arranged by country, as well as a chart of court hierarchy in different countries.⁹¹

Reading Foreign Decisions: French *Cour de cassation*

The role of higher courts is not always the same in the different countries having adopted the CISG, and this can be misleading if one reads a foreign decision with a domestic frame of mind. Finding a common name and an English equivalent for the different courts involved in the final review of foreign law is difficult, and there is a good argument that some terms should not be translated, but used in their original language.⁹²

In France, the highest court for civil and commercial cases is the *Cour de cassation*. Its decisions, which are sketchy, half a page long, and do not include policy reasoning or citations to court cases or scholarly writings, have sometimes been the subject of misunderstandings by common law scholars. It may be misleading to translate *Cour de cassation* into “supreme court.”⁹³ It is not a supreme court in the common law sense, as it does not review the facts on appeal, but only whether the law was correctly applied to the facts as found by the lower court. The *Cour de cassation* does not re-judge cases submitted to it by *pourvoi en cassation*, but reviews the law applied in the lower court, either confirms or “quashes” (*casse*) the decision if a violation has been found, and then remands the case to another lower court for a decision.⁹⁴ The *Cour* decides which issues are matters of law, and which ones are matters of facts and left to the ‘sovereign power of assessment’ of the *juges du fonds* (lower court judges who judge the facts).⁹⁵ A long-standing tradition has left the interpretation of contracts and the measure and quantification of damages to the lower courts.⁹⁶ A 2000 *Cour de cassation* decision left the issue of “reasonable time” for a buyer to give notice of lack of conformity of goods pursuant to CISG

⁹¹ *CISG Database Country Case Schedule*, PACE LAW SCHOOL ALBERT H. KRITZER CISG DATABASE, <http://www.cisg.law.pace.edu/cisg/text/casecit.html>.

⁹² Sofie Geeroms, *Comparative Law and Legal Translation: Why the Terms Cassation, Revision and Appeal Should Not Be Translated*, 50 AMERICAN J. OF COMPARATIVE L. 201, 202 (2002).

⁹³ *Id.* See also Sofie Geeroms, *FOREIGN LAW IN CIVIL LITIGATION: A COMPARATIVE AND FUNCTIONAL ANALYSIS* (Oxford: New York 2004).

⁹⁴ *PRINCIPLES OF FRENCH LAW 3* (John Bell, Sophie Boyron & Simon Whittaker eds., Oxford: New York 1998).

⁹⁵ *Id.*

⁹⁶ *Id.*

article 39(1) left to the discretion of the lower court judge.⁹⁷ This decision was subject to criticism.⁹⁸

Another source of misunderstanding is the opacity of the decisions. These, however, have to be read together with several commentaries that are available for important decisions, including the recommendations of the reporting judge (*Conseiller rapporteur*), the recommendations of the *Avocat Général* (judge representing the public interest) and commentaries prepared by scholars in the specialized law reviews. These various commentaries go into detail into relevant cases and scholarly writings.

Several French commentators have expressed the thought that French *Cour de cassation* decisions should contain a better explanation of the policy reasoning.⁹⁹ This has come up even more recently.¹⁰⁰

Role of Foreign Decisions and Scholarly Writings (*Doctrine*)

There is agreement that case law is to be considered as one of the major sources for the interpretation of the Convention. “A consistent body of caselaw is progressively being built under the CISG.¹⁰¹ Several trends have appeared. Civil law countries are becoming increasingly sensitive to foreign case law, while common law courts have begun to approach scholarly writings as a source of interpretation.¹⁰² This leads to the elaboration of an international common law, and the CISG being considered as a general code for the international sale of goods.¹⁰³ Doctrinal writing are influent not only to describe the state of affairs of a particular issue, but also to take a position on critical issues to provide guidance to other courts, to improve uniform

⁹⁷Claude Witz, *Un arrêt regrettable: le délai de dénonciation des défauts prévu par la Convention de Vienne laissé à l'appréciation souveraine des juges du fond*, 2000 Recueil Dalloz at 788.

⁹⁸ *Id.*

⁹⁹Adolphe Touffait and André Tunc, *Pour une motivation plus explicite des décisions de justice, notamment de celles de la Cour de cassation*, 72 REV. TRIM. DT CIV. 487 (1974).

¹⁰⁰*Intervention de M. Christian Charruault, président de la première chambre civile de la Cour de cassation*, COUR DE CASSATION, April 2010.

http://www.courdecassation.fr/colloques_activites_formation_4/2010_3159/christian_charruault_15853.html.

¹⁰¹COMMENTARY ON THE UN CONVENTION, *supra* note 5, at 128, citing to other authors who think that it is the most important source.

¹⁰² *Id.* at 129.

¹⁰³ *Id.* at 130.

sales and commercial law.¹⁰⁴ Some decisions in one country cite to a decision in another country as persuasive.¹⁰⁵

The question debated, however, is how much to depend on foreign decisions and scholarship in applying the CISG when there is a need to fill gaps, and how much weight to give foreign decisions and arbitral awards. There is general agreement that there is no *stare decisis* principle, but that they have persuasive authority.¹⁰⁶ Of course, this presupposes that the foreign cases can be read or translated by lawyers and judges. The Queen Mary program is essential in providing access. The UNCITRAL Digest provides abstracts of the decisions translated into English. It contains a disclaimer advising people to read the full account of the decision before quoting from it.”¹⁰⁷

There is also the danger to read decision without being aware of the context and the existence of procedural and remedial aspects that can really make a difference in results sought by litigants.¹⁰⁸

An insightful observation has been made that it is not enough to cite to foreign precedent, but that they must be analyzed critically, otherwise a faulty reasoning may be perpetuated.¹⁰⁹

The use of comparative law is also proposed, to find solutions that are acceptable in different legal systems with different legal traditions. The question of whether standard terms have to be made available to the other party, or issues relating to the general law of damages, may be solved

¹⁰⁴ *Id.*

¹⁰⁵ Anna Veneziano, *Uniform interpretations: What is being done? Unofficial efforts and their impact*, in THE 1980 UNIFORM SALES LAW. OLD ISSUES REVISITED IN THE LIGHT OF RECENT EXPERIENCES. VERONA CONFERENCE 2003 at 326 n.6 (Ferrari, ed. Giuffrè: Milan 2003). She cites to one French decision: CA Grenoble, October 23, 1996, which cites to a German decision. *Id.* at 328 n.13.

¹⁰⁶ *Id.* at 125 (citing Lookofsky, *supra* note 54).

¹⁰⁷ UNCITRAL DIGEST, *supra* note 4, at xiii.

¹⁰⁸ Silvia Ferreri, *Remarks Concerning the Implementation of the CISG by the Courts (the Seller's Performance and Article 35)*, 25 J. of L. and Commerce 223, 229 (2005-2006), available at <http://www.cisg.law.pace.edu/cisg/biblio/ferreri.html>.

¹⁰⁹ COMMENTARY ON THE UN CONVENTION, *supra* note 5, at 126-27 (citing an Australian decision which cites the Cour de cassation decision, itself inconsistent with another decision). For a review of the main obstacles in finding and evaluating foreign decisions, see also Fabio Liguori, *UNILEX: A Means to Promote Uniformity in the Application of CISG*, 4 ZEITSCHRIFT FÜR EUROPÄISCHES PRIVATRECHT 600 (1996).

by looking at how various countries deal with this question, and come up with a common core of principles.¹¹⁰

Language Risk

When the parties to a contract use different languages, a specific problem is the allocation of risk.¹¹¹ According to Art 8, regarding the interpretation of statements made by and other conduct of the parties, the party making the statement bears the risk of defective formulation.¹¹² The advice is for the parties to specify the language of the contract, either through a practice or through one side's acceptance of a language for negotiations.¹¹³ Specifying the language transfers the risk to the person who does not correctly understand the language, which is especially important for the interpretation of standard terms and conditions.¹¹⁴

The language of the contract is in principle the language used by the party to negotiate and conclude it. If standard terms are formulated in a different language from the contract or not understood or ought to be understood, it can cause problems which vary depending on the circumstances, and whether the party actually understood the language or not.¹¹⁵ A reference in another language has, however, no effect.

To be effective, a reference by one party to its standard terms must be sufficient to put a reasonable person of the same kind as the other party in a position to understand the reference and to gain knowledge of the standard terms.

In one case, the seller's standard contract terms were not in the language of the contract, and the court held that the standard contract terms did not become part of the contract because the seller's failure to give the buyer a translation. Another court stated that standard contract terms written in a language different from that of the contract do not bind the other party.¹¹⁶

¹¹⁰ *Id.* at 132 n.74.

¹¹¹ *Id.* at 166.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 166, 173.

¹¹⁵ Ulrich Magnus, *Incorporation of Standard Contract Terms under the CISG* in SHARING INTERNATIONAL COMMERCIAL LAW ACROSS NATIONAL BOUNDARIES: FESTSCHRIFT FOR ALBERT H. KRITZER ON THE OCCASION OF HIS EIGHTIETH BIRTHDAY 303, 324 (Camilla B. Andersen & Ulrich G. Schroeter eds, Wildy, Simmonds & Hill Pub. 2008).

¹¹⁶ UNCITRAL DIGEST, supra note 4, at 58, citing ⁸⁴Rechtbank Koophandel Hasselt, Belgium, 2 June 1999, available on the Internet at www.law.kuleuven.ac.be/int/tradelaw/WK/1999-06-02.htm.

In another decision,¹¹⁷ the court ruled that a case-by-case approach must be employed in determining the effectiveness of a notice written in a language other than the language in which the contract was made or the language of the addressee, from the perspective of a reasonable person, looking at the usages and practices observed in international trade. The mere fact that a notice was in a language that was neither that of the contract nor that of the addressee did not necessarily prevent the notice from being effective if it were a pertinent language looking at the usages and practices, or as in the case before the court, the recipient might reasonably have been expected to request from the sender explanations or a translation.

In another case, the court held the standard terms have to be drafted “either in the language of the contract, or in that of the opposing party or a language that the opposing party knows” to become part of the contract.¹¹⁸ In another case, a court stated that the other contracting party had to be sufficiently notified for the standard terms to be incorporated into the contract either in the language of negotiations or in its native language.”¹¹⁹

Yet another court¹²⁰ held that, if a party accepts statements relating to the contract in a language different from the one used for the contract, it is bound by the contents, and it is their responsibility to find out about those contents. In yet another decision, one court stated that the standard contract terms could become part of the offer if they were drafted in a common language.¹²¹

Language and translation issues do not seem to have caused major problems in the application of the CISG, at least from the reported cases in the various databases available. An empirical research was conducted using the key words “translation,” “*traduction*,” “Language,” “*Langage*,” on the Pace CISG website and the French CISG website. The result is that one can only find a handful of occurrences where translation and language issues are mentioned. For

¹¹⁷UNCITRAL DIGEST, *supra* note 4, at 58, citing CLOUT case No. 132 [Oberlandesgericht Hamm, Germany, 8 February 1995].

¹¹⁸ UNCITRAL DIGEST, *supra* note 4, at 58, citing Tribunale di Rovereto, Italy, 21 November 2007, Unilex.

¹¹⁹ UNCITRAL DIGEST, *supra* note 4, at 58, citing Landgericht Memmingen, Germany, 13 September 2000, English translation available on the Internet at <http://cisgw3.law.pace.edu/cases/000913g1.html>.

¹²⁰UNCITRAL DIGEST, *supra* note 4, at 58, citing 88 CLOUT case No. 409 [Landgericht Kassel, Germany, 15 February 1996], also Unilex.

¹²¹ UNCITRAL DIGEST, *supra* note 4, at 58, citing 89 Oberlandesgericht Innsbruck, Austria, 1 February 2005, English translation available on the Internet at <http://cisgw3.law.pace.edu/cases/050201a3.html>; CLOUT case No. 534 [Oberster Gerichtshof, Austria, 17 December 2003]. For a case referring to the language issue without, however, conclusively deciding the issue, see Oberlandesgericht Düsseldorf, Germany, 21 April 2004, English translation available on the Internet at <http://cisgw3.law.pace.edu/cases/040421g3.html#law>.

instance, in one French Court of Appeals decision, the German “Auftragsbestätigung” could be translated by “*confirmation de commande*” was written in a language that the party did not understand.¹²² In another case, the documents were written in a foreign language without any translation, such that the Court could not interpret it.¹²³ In another case, the Court states that the date listed on the translation is an obvious material error.¹²⁴

Conclusion

The CISG has been an outstanding success, as shown by the large number of country ratifications, the extent of scholarly interest, and the surprisingly high degree of consistent, if not uniform interpretation.¹²⁵ It is indeed true that the CISG can be credited for the decline of a legal Babelism.¹²⁶ There has been serious progress toward the convergence of legal systems, and the CISG has had positive influence on the reform of several national systems. The most effective way to prevent the homeward trend is to educate the current and future generations of law students and lawyers about foreign legal systems and comparative law, and also the ability to read and understand foreign languages. There is a need to continue working with law schools, teach comparative law courses, and introductions to different legal systems, encourage students to pursue LL.M.s, or even better dual degree programs, incorporate teaching of CISG in all law schools in the world, as well as continue and expand the VIS Moot Court competitions.

¹²² CISG France Cour d’Appel de Paris, 5eme Chamber Section A, Sept. 10, 2003, Societe H.H. ...GMBH & Co. v. SARL MG. <http://www.cisg-france.org/decisions/100903v.htm> .

¹²³ Cour d'appel de Versailles, douzième chambre section 2, 13 octobre 2005; Société E. contre Société T...D...SARL B... <http://www.cisg-france.org/decisions/131005a.htm>

¹²⁴ Cour d'appel de Grenoble, chambre commerciale, 13 septembre 1995.Monsieur C... , R...contre Société française de f... international F... F... " S.F.F. " (SA); <http://www.cisg-france.org/decisions/130995v.htm>

¹²⁵ Bergsten, *supra* note 33, at 31.

¹²⁶ Claude Witz talks about the “recul du babélisme juridique” in *Les vingt-cinq ans de la Convention des Nations Unies sur les contrats de vente internationale de marchandises: Bilans et perspectives* [The 25th anniversary of the CISG: Evaluations and perspectives], 123 *Journal du Droit International* 5, 25 (2006). The Babel reference is also attributable to John Honnold, in DOCUMENTARY HISTORY, *supra* note 53, at 1 (noting the “Babel of diverse legal systems.”).