

**JOINT PROPOSAL ON CO-OPERATION IN THE AREA OF INTERNATIONAL COMMERCIAL
CONTRACT LAW (WITH A FOCUS ON SALES)**

*proposed by the Secretariats of the Hague Conference on Private International Law,
the United Nations Commission on International Trade Law and
the International Institute for the Unification of Private Law*

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**PROPOSITION CONJOINTE SUR LA COOPÉRATION DANS LE DOMAINE DU DROIT DES
CONTRATS COMMERCIAUX INTERNATIONAUX (PRINCIPALEMENT SUR LES VENTES)**

*présentée par les Secrétariats de la Conférence de La Haye de droit international privé,
la Commission des Nations Unies pour le droit commercial international et
l'Institut international pour l'unification du droit privé*

*Preliminary Document No 6 of February 2016 for the attention
of the Council of March 2016 on General Affairs and Policy of the Conference*

*Document préliminaire No 6 de février 2016 à l'attention
du Conseil de mars 2016 sur les affaires générales et la politique de la Conférence*

Joint proposal on co-operation in the area of international commercial contract law (with a focus on sales)

1. At its forty-third session in 2010, the United Nations Commission on International Trade Law (“UNCITRAL”) encouraged its Secretariat to explore ways of collaborating further with other organisations, such as the Hague Conference on Private International Law (the “Hague Conference” or “HCCH”) and the International Institute for the Unification of Private Law (“UNIDROIT”), to jointly promote related texts.¹
2. In 2012, UNCITRAL, the Hague Conference and UNIDROIT jointly published an explanatory text in the area of security interests.²
3. At its forty-eighth session in 2015, UNCITRAL expressed support for increasing, within available resources, the number of promotional and capacity-building activities aimed at supporting the adoption and effective implementation of the *United Nations Convention on Contracts for the International Sale of Goods* (Vienna, 1980).³
4. In furtherance of that mandate, the UNCITRAL Secretariat has discussed with the Permanent Bureau of the Hague Conference and the secretariat of UNIDROIT the possibility of co-operating in preparing an explanatory text in the area of international commercial contract law (with a focus on sales).
5. The annex to this note contains a proposal on the preparation of an explanatory text in the area of international commercial contract law (with a focus on sales).

¹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No 17 (A/65/17)*, para. 287.

² UNCITRAL, Hague Conference and UNIDROIT Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions, available at < www.uncitral.org/uncitral/uncitral_texts/security.html >.

³ *Official Records of the General Assembly, Seventieth Session, Supplement No 17 (A/70/17)*, para. 333.

ANNEX / ANNEXE

Joint proposal on co-operation in the area of international commercial contract law (with a focus on sales)

The Hague Conference on Private International Law (the “HCCH”), the International Institute for the Unification of Private Law (“UNIDROIT”), and the United Nations Commission on International Trade Law (“UNCITRAL”) regularly co-ordinate their activities in order to ensure a concerted approach to common issues.

Recently, that co-ordination has led to jointly publishing an explanatory text in the field of security interests, which lists and summarises the work of the three Organisations in that area. In particular, that explanatory text illustrates how the various instruments produced by the three Organisations interact and provides a comparative understanding of the coverage and basic themes of each instrument.¹

Similar co-operation is suggested in the area of international commercial contract law with a focus on sales in light of the renewed interest for further promoting the adoption, application and uniform interpretation of texts in that area.

Over the decades, the HCCH, UNIDROIT and UNCITRAL have prepared legislative and non-legislative instruments related to international commercial contract law. Often, those efforts have been conducted in close co-operation. One example of such co-operation may be found in the legislative history of the *United Nations Convention on Contracts for the International Sale of Goods* (Vienna, 1980)² (the “CISG”). In particular, the influence on the CISG of pre-existing uniform law texts developed by other Organisations is well known.³

The CISG is one of the most successful uniform law texts in light of State participation, application by courts and arbitral tribunals and influence on sales law reform. That success highlighted the desirability of further supporting its implementation in line with its goals and guiding principles.⁴

UNCITRAL has already developed tools providing support to CISG implementation. Those tools include cases reported in the Case Law on UNCITRAL Texts (CLOUT) information system as well as the CISG Digest. However, experience demonstrates that a number of challenges to the use, application and interpretation of the CISG arise from insufficient awareness of the relation between the CISG and other uniform law texts, including those prepared by the HCCH and UNIDROIT. It is submitted that a joint effort aimed at providing guidance on how those texts relate would be beneficial for all texts concerned.

Examples of texts closely related to the CISG include the Principles on Choice of Law in International Commercial Contracts (the “Hague Principles”)⁵ and the UNIDROIT Principles of International Commercial Contracts (the “UNIDROIT Principles”),⁶ both of which have been endorsed by UNCITRAL. Moreover, UNCITRAL has prepared treaties that are closely related to the CISG such as the *United Nations Convention on the Use of Electronic Communications in International Contracts* (New York, 2005) (the “Electronic Communications Convention”)⁷ and the *Convention on the Limitation Period in the International Sale of Goods*⁸ (the “Limitation Convention”) as well as other instruments of legislative and non-legislative nature.

¹ UNCITRAL, Hague Conference and UNIDROIT Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions, available at < www.uncitral.org/uncitral/uncitral_texts/security.html >.

² United Nations, *Treaty Series*, vol. 1489, No 25567.

³ See, *inter alia*, as to UNIDROIT instruments: *Convention Relating to a Uniform Law on the International Sale of Goods* (The Hague, 1964), available at < www.unidroit.org/instruments/international-sales/international-sales-ulis-1964 >; *Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods* (The Hague, 1964), available at < www.unidroit.org/instruments/international-sales/international-sales-ulfc-1964-en >; or the Hague Conference: *Convention of 15 June 1955 on the law applicable to international sales of goods*, available at < <https://www.hcch.net/en/instruments/conventions/full-text/?cid=31> >.

⁴ *Official Records of the General Assembly, Seventieth Session, Supplement No 17 (A/70/17)*, para. 334.

⁵ Available at < www.hcch.net/en/instruments/conventions/full-text/?cid=135 >.

⁶ In their most recent iteration: UNIDROIT Principles of International Commercial Contracts 2010, available at < www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2010 >.

⁷ General Assembly resolution 60/21, annex.

⁸ *Convention on the Limitation Period in the International Sale of Goods* (New York, 1974), United Nations, *Treaty Series*, vol. 1511, No 26119; as amended by the Protocol of 11 April 1980 (Vienna), United Nations, *Treaty Series*, vol. 1511, No 26121.

The substantive overlap and cross-fertilisation of those and other texts prepared by the HCCH, UNIDROIT and UNCITRAL⁹ has highlighted the desirability for greater clarification of the relationship among those instruments with a view to jointly promoting their adoption and use. It is important to recall that the primary texts in this field are of an optional nature. With this in mind, co-ordinated presentation and guidance as to the content and consequences of the available options would be of clear value in further developing the understanding and appropriate use of these texts.

Accordingly, the goal of the suggested document on international contracts law with a focus on sales would be to guide across a range of relevant issues, from choice of law to identification, among existing texts, of those most suitable for each type of transaction. That document would reference relevant uniform texts of a legislative, contractual or other nature. It could also examine how existing texts and standards relate to emerging issues such as the legal treatment of global supply chains.

If desirable and feasible, the document could address specifically issues relevant for various legal actors, including legislators, judges and arbitrators, legal counsels and commercial operators. It could also provide a solid teaching reference.

It should be stressed that the suggested document would not require new legislative work. It would analyse existing texts, co-ordinate them by highlighting mutual relationships and consolidate them, including clarifying whether texts have had limited success or have been replaced by more recent ones.

One important dimension of the suggested work would be to refer, as appropriate, to relevant texts developed by other intergovernmental organisations, including at the regional level, and by the private sector. Those references would be prepared in consultation with the relevant institutions, in line with the usual inclusive approach of the HCCH, UNIDROIT and UNCITRAL.

The outcome of the suggested project could provide an important contribution to establishing clarity in the field by taking stock of the many achievements made in the past. It could also offer a clearer picture of lessons learned and best practices for the pursuit of greater legal uniformity and broader contractual freedom.

Mindful of increasing constraints on existing resources and of concurring priorities in each organisation's intense work programme, it is suggested that a significant amount of the preparatory work in drafting the guidance document be carried out in an agile yet fully inclusive manner. To this end, a small joint panel of experts could be set up to provide further details on suggested scope and methodology. One possible first step could consist of mapping the most relevant texts and arranging them according to their scope. At a second stage, the panel could provide a short description of the content and relevance of those texts and assess their interaction.

The composition of the expert panel should reflect representation from different legal traditions and levels of economic development as well as, where appropriate, from other organisations active in the field. The HCCH, UNIDROIT and UNCITRAL would oversee the work of that panel through their Secretariats and provide guidance and co-ordination as appropriate.

The final product of the expert panel's work would be determined by the HCCH, UNIDROIT and UNCITRAL in light of the findings of that panel and of its recommendations. Appropriate venues for finalising and adopting the project's outcome could also be considered at a later stage.

⁹ Consider, for example, the UNCITRAL Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance (1983), *Official Records of the General Assembly, Thirty-eighth Session, Supplement No 17 (A/38/17)*, annex I; UNCITRAL texts on electronic commerce, available at < www.uncitral.org/uncitral/uncitral_texts/electronic_commerce.html > or the Hague Conference *Convention of 22 December 1986 on the Law Applicable to Contracts for the International Sale of Goods* (which however is not in force (yet), and for which there is little prospect of wide ratification), available at < www.hcch.net/en/instruments/conventions/full-text/?cid=61 >.