

CISG vs. Regional Sales Law Unification

CISG vs. Regional Sales Law Unification

With a Focus on the
New Common European Sales Law

edited by
Ulrich Magnus

s|e|l|p

sellier european law publishers

ISBN (print) 978-3-86653-230-4

ISBN (eBook) 978-3-86653-966-2

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.dnb.de>.

© 2012 by sellier european law publishers GmbH, Munich.

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior permission of the publisher.

Production: Karina Hack, Munich. Typesetting: fidus Publikations-Service GmbH, Nördlingen. Printing and binding: AZ Druck und Datentechnik GmbH, Kempten. Printed on acid-free, non-ageing paper. Printed in Germany.

Foreword

This book unites the papers presented at a conference that took place on 11 and 12 May 2012 at the Max-Planck-Institute in Hamburg. The publication of the Proposal for a Common European Sales Law (CESL) by the European Commission on 11 October 2011 gave reason to reconsider the relationship between the global unification of the law for international sales of goods and the different approaches and attempts to maintain or introduce regionalised uniform sales law. The global perspective is represented by the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG); the regional perspective focussed on the new CESL Draft and how it compares to the situation in the United States with its coexistence of CISG and Uniform Commercial Code, in Australia where the rivalry is between the CISG and the all-embracing Common Law as well as in the African OHADA (Organisation pour l'Harmonisation en Afrique du droit des Affaires) whose Member States enacted a CISG-light version as mandatory law.

It was a particular advantage of the conference that renowned experts, in particular from the United States and Australia, could authentically describe and assess in which way their countries and regions coordinate international and regional sales law unification. But also the audience assembled scholars not only from Germany but also from other European countries and even from Japan and Vietnam. The interest also of extra-European countries in CESL and how Europe organises its variant of a co-existence of global and regional sales law is remarkable.

The editor owes many thanks to many: first of all to the speakers who delivered the paper version of their contributions more than punctual and thus enabled the prompt publication. Thanks are also due to sellier european law publishers and there in particular to Andreas Pittrich for supporting the publication in the best possible way. Last but not least I want to thank the Max-Planck-Institute in Hamburg and its very supportive and effective staff for hosting the conference.

Hamburg in May 2012

Ulrich Magnus

List of Contributors

Larry A. DiMatteo

J. D., LL.M., PhD, Huber Hurst Professor of Contract Law & Legal Studies,
Warrington College of Business Administration, University of Florida, USA
Affiliate Professor of Law, Levin College of Law, University of Florida, USA

Franco Ferrari

Professor of Law, New York University School of Law New York, USA
Director of the Center for Transnational Litigation and Commercial Law
at New York University

Harry M. Flechtner

Professor of Law, School of Law, University of Pittsburgh, USA

Robert Koch

LL.M. (McGill), Professor of Law, University of Hamburg, Germany
Executive Director of the Institute for Insurance Science

Ulrich Magnus

Professor of Law Emeritus, University of Hamburg, Germany
Judge (ret.) at the Hanseatic Court of Appeal, Hamburg, Germany
Associate Scholar at the Max-Planck-Institute, Hamburg, Germany

Bruno Zeller

Adjunct Professor, School of Law, Murdoch University, Perth, Australia
Associate Scholar at the Institute for Logistics and Supply Chain Management,
Associate Professor of Law, Victoria University, Australia

Table of Contents

Foreword	v
List of Authors	vii
Introduction <i>Ulrich Magnus</i>	1
The U.S. Experience with the UCC and the CISG: Some Insights for the Proposed CESL? <i>Harry M. Flechtner</i>	5
The Curious Case of Transborder Sales Law: A Comparative Analysis of CESL, CISG, and the UCC <i>Larry A. DiMatteo</i>	25
The CISG and the Common Law: the Australian Experience <i>Bruno Zeller</i>	57
CISG and OHADA Sales Law <i>Franco Ferrari</i>	79
CISG vs. CESL <i>Ulrich Magnus</i>	97
CISG, CESL, PICC and PECL <i>Robert Koch</i>	125
Concluding Remarks <i>Ulrich Magnus</i>	147
Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law	153