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Introduction

Over the past two decades, the 1980 Convention on Contracts for the International Sale of Goods (CISG) has made great strides in achieving status as an expression of transnational commercial law, being used not just as the law it was drafted to be in the states which have ratified it, but seeing a wider usage. The CISG has been used as a benchmark for international sales law and practice in different contexts: as a blueprint for new laws, as a contract checklist for negotiating, and as an expression of good transnational commercial practice, and has even been recognised by the European Union as part of its aquis.

With the United Kingdom yet to join the CISG sister states, despite repeated promises in principle to do so, it is interesting to note that even in UK courts, the CISG finds its way in as an expression of customary law. In two Court of Appeal cases from 2006, the judges used CISG art. 8 as a source of inspiration for a reasonable rule for interpreting conduct. In a 2009 House of Lords case, Lord Hoffmann refers to the CISG as a basis for a continental acceptance of considering pre-contractual liability. Whether these dicta considerations of the CISG are a support for future adoption of the CISG in the United Kingdom or not is outside the scope of this article; the United Kingdom has a rich and complicated history of non-commitment to the CISG, and much has been written on the topic elsewhere.

What is interesting is that as the CISG gains momentum as a general expression of transnational trade law, the fact that there are several versions of the CISG in existence owing to its permitted reservations is rarely mentioned, nor is the fact that the CISG is often misrepresented in terms of its popularity in application.

The CISG currently applies throughout 78 countries, and with Brazil soon to follow, the CISG website is technically correct in saying that the CISG states collectively represent more than three-quarters of the world’s trade. CISG connoisseurs will not be fooled by this, however. Although it is true that the CISG is the applicable law for international contracts of sale in jurisdictions which represent this volume of trade, it is exempted and disregarded and opted out in part or in whole in so many contracts, that this "more than three-quarters" statistic becomes hollow.

There are various reasons for this, which in turn vary hugely from country to country.
that the CISG, for all its occasional virtues, is not as widely appreciated as it may appear. This should not be too surprising. As previous writing indicates, uniformity and harmonisation are not easily achieved goals, and unifying such a wide area as "commercial transactions" globally was always going to present a challenge. Both on a textual level (in the achievement of the creation of a law text purporting to be uniform) and at an applied level (in the commercial usage, and the cases and dispute resolutions handed down by courts and tribunals in different jurisdictions) uniformity remains elusive. The fact that various versions of the CISG exist certainly does not help.

It is thus in the context of the semblance of textual unity that the reservations of the CISG are bitter-sweet pills to swallow, because they are equivocators of uniformity:

On one hand, the drafting history of the CISG demonstrates with no uncertainty that the reservations which are part of the final text were an absolute necessity if agreement was to be reached in diplomatic conference. So without them, it is likely that no CISG could ever have been agreed on at all. Since it was 13 years in drafting as it is, they are therefore a necessary evil.

On the other hand, the fact that they exist at all means that there are different versions of the convention applied throughout the CISG states. This represents a real potential pitfall, not just to the lofty goal of theoretic uniformity, but—more importantly—to the certainty of business. By having varying versions of the same text apply in a seemingly uniform framework, businesses can be misled to think the same law applies where it does not. This presents a somewhat deceptively uniform facade, which leads some extreme critics like Bailey to label the CISG an "obstacle" to uniformity. Those of us fortunate enough to teach the CISG drill into our students that they must always check for reservations and that they must not automatically presume that the same "version" of the CISG applies, because the differences can be hugely significant in terms of whether there even is a CISG contract or even if there is a contract at all. These two sides must both be taken into account, and are equally significant; for any phenomenon where there is a necessary evil, the reasoning is relevant. But the bottom line is that these different versions of the CISG present a nasty pitfall for those who expect a nice, congruent single text.

It is therefore very reassuring to see two important emerging trends in the CISG ratifications. The first is a very tangible decline in the number of states taking out reservations which vary the application of the text. And the second, more dynamic, development is a sudden activity in different global regions in removing existing reservations among existing Member States—this has never happened before in the history of the Convention. Seeing the different versions of the CISG minimised by the removal of reservations at a national and regional level is certainly encouraging in the pursuit of a uniform international sales law.

The present article will examine these reservations. It will first explain and outline the reservations and their origins, then it will explain some of the issues and potential problems to uniform interpretation and commercial certainty which they represent as they render the CISG textually non-uniform in key areas. It will then describe some of the significant recent changes which are occurring in removing some of them in various national jurisdictions of CISG states (Scandinavia and China), some of which have already had legislative effect. Finally, the article will conclude on an optimistic note, observing what a positive a step it is to see the winds of change remove declarations, so the CISG can come closer to representing the unity in law it attempts to be.

**Overview of the reservations of the CISG**

There are five permissible reservations of the CISG, which fall into three main categories.

*Reservations which may prohibit the application of the CISG: 93, 94, 95*
Article 93

Article 93 allows a ratifying state to decide that the CISG does not extend to all the territories of a Federal State. This simply means that a signatory state is opting not to sign the CISG on behalf of a territory, thus rendering territories of specific signatory states non-CISG states/areas. Pursuant to art.93, several states have made territorial declarations: Australia has declared that the Convention shall not apply to the territories of Christmas Island, the Cocos (Keeling) Islands and the Ashmore and Cartier Islands; Denmark has declared that the Convention shall not apply to the Faroe Islands and Greenland; New Zealand has declared that the Convention shall not apply to the Cook Islands, Niue and Tokelau. Although seemingly uncomplicated, this reservation has caused some issues with regard to the return of Hong Kong to China. Although it is agreed that art.93 would allow a territory gained after initial ratification of the CISG to be subject to a reservation, it has been disputed whether China adequately met the requirements under art.93(2) in depositing such a declaration, in a diplomatic letter allowing Hong Kong its own sovereignty. The prevailing opinion is that a declaration has not been taken out, and that the CISG thus extends to Hong Kong, since the requirements of art.93 for properly exempting Hong Kong were never met or even properly attempted.

Article 94

Article 94 provides that the CISG may not apply to contracts between parties residing in states who have agreed to mutually exclude the CISG. This reservation is referred to as the "sisterhood reservation", and is taken by the Scandinavian countries (Norway, Sweden, Iceland and Denmark). The reason for this reservation—a communal Scandinavian sales law—did not bear close examination for many years, but now an intra-Scandinavian sales law is in place, and the reservation makes sense from the perspective that another shared law is in place. In hindsight, it is puzzling that the CISG was not chosen to embody this shared law in Scandinavia, as it was in place first. But the new Scandinavian sales law was inspired by the CISG in certain aspects.

Article 95

Article 95 regulates the way in which the CISG applies to parties’ contracts. Article 1 of the CISG provides two different bases for application. The first, and main, basis is art.1(1)(a), which prescribes that the CISG will apply automatically when the buyer and seller both have their places of business in contracting CISG states. However, art.1(1)(b) extends the scope of the CISG further, allowing its application where conflict of laws rules appoint the law of one CISG state. This is what makes the CISG the domestic law for international sales of a contracting state, and extends it beyond a multilateral convention’s regular application, by not requiring both parties to have their places of business in Member States. An art.95 reservation invalidates applications of the CISG through art.1(1)(b). By restricting the status of the CISG as a fully integrated domestic law, art.95 thus also questions the otherwise settled issue of what it takes to opt out of the CISG. For instance, while it is established that reference to "German law" in a contract for international sales is a reference to the CISG as the CISG is the German domestic law for international sales, a reference to "American law" would not seem to imply the same. Precision in drafting choice-of-law clauses by specifying individual Codes and Regulations would still seem advisable when a party from an art.95 state is involved in negotiations (i.e. "UCC", "BGB", "Code Civile" or "Domestic Law of Sales", etc).

This reservation has been taken out by PRC China, Singapore, St Vincent and the Grenadines, and the United States. There is a unique situation surrounding the former Czechoslovakia, which made an art.95 declaration upon ratification before its dissolution. The two succeeding states, the Czech and Slovak Republics, have not confirmed the old reservation with their instruments of succession from 1993, but have nevertheless filed declarations of succession of the old accession without deleting the reservation. Fritz Enderlein believes the non-confirmation of the reservation to be more significant, but it must be stressed that

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without deelopment of the initial reservation which was succeeded to, the declaration is still in place.

Reservations which limit the application of the CISG: 92

Article 92 represents a limitation of the parts of the CISG applicable to a specific contract by allowing either Pt II (on formation) or Pt III (on substantive law) to be excluded upon ratification.20 This reflects the fact that the CISG is a "double convention", embodying both the ULF (formation) and ULIS (substantive regulations) restatements, and it is possible to ratify only one of the two parts. A nation taking such a declaration, to exclude one part of the CISG, is thus not a contracting state with regard to any issue pertaining to that part of the CISG, under art.1(1). This can cause some unpleasant twists in connection with art.95.

For instance, if a Danish buyer contracts with an American seller, and the dispute in question concerns the formation of contract, then the US art.95 reservation will prohibit the use of the CISG as Denmark is not a contracting state with regard to formation issues, and art.1(1)(b) cannot be applied. This scenario may well present itself as an unpleasant surprise, to both buyer and seller. Conversely, for the Danish judge in a dispute applying art.1(1)(b) appointing the laws of another CISG state which has not taken out an art.95 reservation, it may be an unpleasant surprise to find that Pt II does apply and is suddenly "alive and well"—more on this later: see below under "Development 1".

It is worth noting that there have been no recent declarations under this provision, and that with the developments in Scandinavia set out below, it may well soon become a hypothetical scenario as the Scandinavian states are the only ones to have taken out this declaration.

Reservations which alter the rules of the CISG: 96

Article 96 has the potential to render oral contracts and oral contract modifications inapplicable. Although art.11 of the CISG clearly prescribes that there are no form requirements in the convention, thus ensuring that oral contracts and modifications are valid, ratifying states may employ art.96 to declare that art.11 shall not apply. But, unlike other reservations, this one has a prerequisite: states may only take out such a reservation where their own national law does not permit oral contracts. The touchy issue of what happens when this prerequisite is removed is analysed below under "Development 2".

Article 96 directly alters the substantive content of the CISG so that, for parties with their places of business in states taking out this declaration, contracts must be evidenced in writing. The consequences of this reservation, where only one party is in a State imposing such a form requirement, have become a topic of much debate. Some commentators have stated that in such a case, PIL rules must be applied to determine which version of the CISG (i.e. with or without form*705 requirement) should apply.21 and there is one reported case which supports this.22 However, entering into such a "version conflict" would seem at odds with the wording of art.96, which does not change the status of a CISG state in the way that art.92 specifically does; the CISG is still applied by 1(1)a, and not 1(1)b. Moreover, there are more reported cases which have clearly extended the effects of the reservation on to the application of the CISG regardless of PIL. This is true both in cases where the lex fori is in the state taking out the declaration,23 but also—and more importantly—in cases where a non-art.96 state extends the form requirement to its own application of the CISG.24 The wording of art.96 is specifically "where any party has his place of business in that state", and the extent of such a declaration into the Courts or Tribunals of other states must be considered an issue of extension of comity. A similar view is supported by other scholarship, including the US delegate to the drafting of the CISG, John Honnold, and Peter Winship who analyses the topic in detail and with reference to the legislative history of the CISG.25

This reservation is the result of the demands at the diplomatic conferences from the USSR and Eastern bloc countries, which imposed strict formal requirements in legislation for international contracts of sale. It was
thus a diplomatic necessity. Many of the post-Soviet states reformed at the reshaping of the former Soviet Union, have restated the reservation (Russian Federation, Belarus, Ukraine, Estonia, Hungary, Latvia and Lithuania). It has also been taken out by selected countries in the South American region (Chile, Paraguay and Argentina). It is encouraging to note that currently, during negotiations for ratification of the CISG in Brazil, no intention to take out any declaration has been mentioned. There is a unique situation in China concerning art.96, which is set out below under "Development 2".

All of the above-mentioned declarations of reservation against the application of the CISG, in part or in whole, represented some form of diplomatic necessity at the time of drafting of the convention. These could be classified as either a strong objection to further unification from a group of pre-existing sister nations (Scandinavia and art.94), a concern of incompatibility with legal principles (socialist blocks and art.96) or a delicate need to reflect the presence of two conventions in one (art.92). All of these concerns made the declarations a "necessary evil"—for the want of a better expression—in the pursuit of the creation of a universally acceptable text. The question which this leaves us with today, is whether the declarations present problems in pursuit of uniform application today. The answer is nuanced.

Understanding uniform law: the problem with textual uniformity

Previous writing has postulated that the most meaningful aspect of uniform laws is the uniform application. In an ideal world, uniform laws would be created on the back of uniform practices in an environment of comparatively similar legal systems that all interpret and apply these equally understood uniform laws similarly. That would ensure the application of uniform rules in a uniform way. This utopian ideal requires:

- uniform rules;
- uniform business practices; and
- uniform legal approaches and interpretations. All of the above would then, ideally, inform each other to ensure that the rule or law is applied uniformly throughout its multijurisdictional territory.

But, as mentioned, this ideal remains utopian, and does not reflect reality. In most cases, we would be lucky to have just one of the above being sufficiently uniform for any uniform application to be dependable. Reality is much more blurred. In an endeavour to speed up uniform laws (often because they are thought to reduce transactions costs and "promote trade"), they are formed despite the fact that business practices may not be sufficiently similar to sustain such uniform regulations, and legal systems do not converge sufficiently (or even sufficiently swiftly) to ensure uniform interpretations.

In the world of the CISG, the degree to which these prerequisites for the application of uniform law converge will differ depending on the nature of the transaction and the legal systems involved. But if we simply focus on one prerequisite, the uniform rule itself, then it becomes necessary to examine the textual uniformity as well as the applied uniformity.

The reference to "textual" uniformity is taken loosely from Flechtner, who referred to textual non-uniformity facing the CISG and its various versions. Basically, this paper employs the concept to mean the creation of a single text purporting to be "uniform" which is shared by multiple jurisdictions. This is different from applied uniformity, which is the actual uniformity as seen when the rules are used, interpreted and applied by practitioners and courts/tribunals in dispute resolution.

Textual uniformity faces varying issues and challenges, most notably: translation, language, divergences in meaning, and reservations, which may vary the convention text. Obviously, for the purposes of the present article, we will focus on the latter.
In essence, unless businesses and the courts and tribunals engage in dispute resolution have reached a consensus on the interpretation of a rule, then it is the written text of that rule which forms the foundation of its uniformity. If the appearance and plain meaning of the rule differs, then so will the applied uniformity.

Logically, where reservations allow a rule to be implemented and applied differently, then this presents obvious disparities in the textual uniformity which will in turn affect its applied uniformity. It can be argued that since this is a built-in flexibility of the harmonising instrument itself, then this is not a problem of uniform application, but rather the price of its existence—a necessary compromise in the development of uniform rules. However, in an international arena of increasingly similar commercial practices and legal environments, it may be time to renegotiate this price. Reservations are becoming increasingly unnecessary, disused and even—as this article will report—removed from existing practice.

What follows is a report of developments in two different regions of the world—Scandinavia and China—where reservations are being removed. Some of the sources of information for some of the nuances of some of these developments have asked not to be cited, so please excuse the lack of referencing where some sensitive political developments surrounding the removal of reservations of the CISG are concerned.

Development 1: article 92 in Scandinavia

The Scandinavian countries (Sweden, Norway, Denmark and—although not classically Scandinavian—Finland) initially took out a joint reservation under art. 92 against the application of Pt II of the CISG in their territories.

The declarations were made jointly, as was the art. 94 Declaration, owing to the perceived brotherhood of shared Scandinavian (or Nordic) sales law. The reasons for the reservation were twofold. First, selected aspects of Pt II CISG were seen to be very "common law" in nature in the formation of contracts, and thus unsuitable for application in Scandinavian courts (most notably art. 16(1) on revocation), and secondly, an argument was made that since the CISG did not govern validity, its formation rules could only lead to uncertainty. Both these reasons have been subject to considerable criticism.

However, despite the reservations taken out, Pt II of the CISG was not removed from the Scandinavian legal systems. Even before the CISG entered into effect, it was pointed out in legal commentary that Pt II of the CISG had to be applied to the contract if nominated by conflict of laws rules. As Schroeter points out:

"[A]n Article 92-reservation does not affect Article 1(1)(b) CISG in situations where the conflict of law rules point to the law of another Contracting State, which has not made a reservation under Article 92 CISG — in these cases, the rules of the Convention have to be applied …." As Schroeter points out:

Very few scholars have disagreed with this throughout the history of CISG scholarship. In 1998, the Danish Eastern Appellate Court (Østre Landsret) found this to be correct, and applied Pt II in just such a case where the 1955 Hague Convention appointed the law of the contract as the law of France, which for international sales was the CISG (including Pt II). With that judgment, as pointed out by Lookofsky, the CISG formation rules were thus still very much "alive and well" in Scandinavia.

With the perceived problems of Pt II CISG failing to materialise, and familiarity with Pt II removing any discomfort, the grounds for reasoning for the Declaration under art. 92 thus seemed to be continually eroding. In 1999, Lookofsky wrote that:

"Since this flickering and essentially fortuitous application of CISG can hardly have been what Scandinavian legislators sought to achieve by their Article 92 declarations, and considering that the CISG default rules on Contract Formation seem well-suited to their international objective, it is submitted that the Scandinavian
States would all do well to withdraw their reservations to CISG Part II."

For a while, this inherently sensible recommendation seemed overheard. But then, 10 years later, in October 2009, a joint declaration was made by the Ministries of Justice of Denmark, Finland and Sweden to remove the art.92 reservation, and embrace Pt II. A happy ending would seem imminent. And although the course of sensible legal reform never does run smooth, change is now underway.

There have been certain complications, of a delicate political nature, regarding the timing of the notifications of withdrawal with the Secretariat at the United Nations Commission on Trade Law (UNCITRAL, the caretakers of the CISG) and the issue of whether the declarations were to be removed jointly. In order to remove a declaration of reservation, in accordance with CISG art.97(4), a notification of withdrawal is deposited with the UN Secretary-General and a six-month wait then takes place before the reservation can lifted. Since the initial declaration of reservation was jointly made, and the initial public declarations to remove the reservations from all four Scandinavian states. So were some of the ministries involved. When one of the four countries deposited their notification with UNCITRAL for the removal of the reservation before others were ready, it thus rocked a surprisingly unstable boat. Initially, UNCITRAL simply needed to know how to treat the deposited notifications: either as parts of a joint declaration requiring them to wait for the others, or as individual declarations which would start the proverbial clock of the obligatory six-month waiting period of art.97(4). When UNCITRAL was told by the country who had deposited a notification first to treat it as an individual withdrawal, instead of parts of as joint removal, it seems to have greatly upset diplomatic relations with those who felt it should have remained an entirely joint operation. The reactions were extraordinary. Sources in one Ministry of Justice (who cannot be named) revealed in early spring that, owing to this, the removal of the art.92 declaration was no longer considered a priority. Luckily, wheels were in motion and progress was made anyway.

The respective necessary parliamentary approval for this legislation amendment has thus been obtained in three of the four Scandinavian states, and withdrawals have been deposited with the UN Secretary-General for the removal of the art.92 reservation in these three states. We now solely await a final withdrawal from Norway, which is reported to have scheduled a final hearing on this soon. But change is irrevocably coming—or has come already in the case of Finland—in other Scandinavian states.

The dates when the changes will take effect vary. Since the various withdrawals have been deposited independently, there are three different dates for the entering into force of Pt II CISG as the reservations are officially removed. Since Finland deposited their withdrawal on November 28, 2011, Pt II of the CISG has already been welcomed into the Finnish law for international sales as of June 1, 2012. Sweden deposited its withdrawal on May 25, 2012, and Pt II of the CISG will therefore take effect in Sweden on the December 1, 2012. Finally, the deposit of the Danish withdrawal with UNCITRAL on July 2, 2012 means that Pt II CISG will take effect in Denmark on February 1, 2013.

Although the final date for the Norwegian removal of the art.92 reservation cannot be calculated at the time of writing, since the parliamentary hearings are not completed, there is ample reason to remain optimistic—eventually the reservations will be removed in all Scandinavian countries and Pt II CISG will apply throughout all CISG states.

So, when the final declaration for removing art.92 has been deposited, and the obligatory period of six months has passed in accordance with art.97(4), then there will be no countries with an art.92 reservation. CISG art.92 can be forgotten; at least for now. It is still part of the CISG, and so in theory it still remains an option for a CISG state to make a reservation against one of either Pt II or Pt III. Consequently, although it is tempting to declare art.92 dead and bury it, it is technically more appropriate to apply a metaphorical
cryostasis in lieu of death... This author would venture the opinion, however, that with the growing trend for non-reservations among new Member States, art.92, which represents the most intrusive reservation, is unlikely to be relevant again. Fingers crossed that once it is completely removed in Scandinavia, we need never see art.92 surface again.

But, regardless of possible future events, with the removal of art.92 from all Scandinavian countries, we can at least rejoice in the fact that Pt II CISG is not only "alive and well" in Scandinavia, but fully operational, thus reducing the textual non-uniformity of the CISG considerably.

**Development 2: China and oral contracts**

In another commercially significant place of the world, namely the People's Republic of China (PRC), other developments are taking place.

Upon its adoption of the CISG, the PRC took out a declaration which was a reflection of art.96, although not an actual art.96 reservation. Instead of making a declaration under art.96, the PRC declared the following:

"The People’s Republic of China does not consider itself bound by ... article 11 as well as the provision of the Convention relating to the content of article 11."

The language of this declaration by China mirrors art.96, but the language is less encompassing; it is a matter of discussion how this difference in wording is significant, but in practice the declaration has had the same effect as any art.96 declaration would. As it is art.96 which establishes the basis for the legality of the declaration, the difference is thus negligible.

Aside from the wording, there is an additional problem with the Chinese declaration against oral contracts which surfaced in 2000. Article 96 requires any state taking out the reservation to also prohibit the legality of oral contracts in its own legal system. As it is art.96 which, as mentioned above, provides any declaration against oral contracts with a legal basis, this prerequisite must extend to all such declarations. This presented no problem when China ratified the CISG, as the domestic sales laws of China at that point did not permit oral contracts. But following the modernisation and comprehensive revision of China’s commercial laws, and the introduction in 1999 of the Uniform Contracts Act, oral contracts have been permitted in China since it took effect in 2000. This thus undermines the legal basis of the declaration, but also introduces uncertainty regarding the validity of oral contracts. Scholars have thus been calling for the removal of this declaration for many years. 41

China is not the only CISG state in this predicament of domestic law reform overtaking pre-existing declarations (in the interest of attempts to be diplomatic I shall name none, but they know who they are)—but aside from Estonia, they are the only reported CISG state which has now elected to fix the problem.

At the end of 2011, it was reported that the Chinese Ministry of Justice declared that they would now commence the abolition of this declaration. 43 Joyous news indeed, as such a removal would seem overdue. There has been no (English language) progress reported on this since, but a reliable source confirms that work is underway.

It can only be hoped that other states which continue to uphold art.96 although their domestic laws no longer support such a reservation will take note and follow suit.

**Development 3: China and article 95**

More surprisingly, the news from the Chinese Ministry of Justice in November 2011 also included a declaration to remove the art.95 reservation. This is a surprise indeed. China would be the first state to remove...
This author speculates that with the modernisation of commercial law in China, the CISG has gained tremendous support, for several reasons, and the lifting of art.95 is a mirror of that support. The CISG is used in China not only as a blueprint for law reform (such as the 1999 Uniform Contract Act) but also as an instrument for shaping trade practice. Through institutions like CIETAC, whose CISG practice is well reported and widely known, the CISG gives credit to Chinese commercial reasoning. The CISG has also, arguably, helped support a surge in Chinese exports, as "removing the barriers of international trade" which is was intended to do. Therefore, by removing art.95, the status of the CISG is strengthened in China. Article 95 removes the status of the CISG as a national law for international sales, and reduces it to a multilateral convention, by removing its application through art.1(1)(b). With the removal of art.95, the CISG becomes the domestic law for international sales—no matter what.

The removal in China of this reservation may well represent a wish to recognise the CISG more firmly as the Chinese domestic law for international sales, and to increase transparency in applicable law on a transnational level.

It can only be speculated whether the remaining states with an art.95 reservation (Singapore, St Vincent and the Grenadines, the Czech and Slovak Republics and the United States) will follow China’s lead. This author would be reluctant to think so, but welcomes the Chinese development, and feebly hopes it may inspire.

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**Conclusion**

Reservations were a necessity when the CISG was drafted—of that there is no doubt. But it is doubtful whether they remain necessary in the light of more congruent commercial practices today.

The developments outlined above are some of the first of their kind; they represent the most significant removals of declarations in CISG history. Coupled with the fact that new reservations are on the decrease, that paints a very interesting bigger picture: no new CISG state has taken out a declaration for a reservation since St Vincent and the Grenadines. Hence the ratio of states with reservations to states without reservations has been steadily declining since the mid-1990s as more states join without reservations.

There is no doubt that these winds of change towards fewer states with reservations against aspects of the CISG will herald a more textually uniform age for the CISG. And this optimist must conclude that removing reservations will ultimately lead to greater applied uniformity, by increasing the textual uniformity. By making the sharing of the same text more widespread, more uniform practices will follow—especially in relation to the removal of art.92 and the Chinese declaration against oral contracts. Both represent significant steps towards more congruent CISG usage, which will increase certainty and predictability.

Forgive the obvious pun, but—all in all—the world is becoming less reserved against the CISG; a move that is most welcome. Will this make it more palatable for the United Kingdom? We CISG enthusiasts can but dream…

**Dr Camilla B. Andersen**

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1. The present article is an extended version of a paper delivered at the 4th Annual MAA Schlechtriem CISG Conference City University, Hong Kong in March 2012, "Reservations of the CISG: Regional Trends and Developments", parts of which will be published in I. Spagnolo and L. Schwenzer (eds), Globalization versus Regionalization: The 4th Annual MAA Schlechtriem CISG Conference (Eleven International Publish-


6. House of Lords judgment of July 1, 2009, Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38; [2009] 1 A.C. 1101. Lord Hoffmann goes on to refer to the CISG as representing "the French philosophy of contractual interpretation, which is altogether different from that of English law": at [39]. This is not an altogether fair representation of the CISG's international character; while the CISG does not preclude the possibility of including pre-contractual liability, it does not prescribe it either. During its drafting, a suggestion from the German delegate to include it was deliberately rejected; see UNCITRAL Yearbook IX (1978) pp.66–67, paras 70–86, http://www.uncitral.org/pdf/english/yearbooks/yb-1978-e/yb_1978_e.pdf [Accessed September 28, 2012].


8. Although there is a technical difference between "reservations" and "declarations" in other UN treaties (see United Nations Treaty Reference Guide, http://untreaty.un.org/ola-internet/Assistance/Guide.htm#declarations [Accessed September 28, 2012]), the terms are interchangeable in the CISG. In scholarship, they are usually referred to as "reservations", which is the term used in this article. But note that the CISG text labels them "declarations" as does UNCITRAL in-
ternal usage. For more information see C. Andersen, F. Mazzotta and B. Zeller, Practitioners Guide to the CISG (Juris 2010), pp.831–832 at para.11.2.3.


10. The 15th CISG Advisory Council Meeting in Sao Paolo concluded with firm reassurances that Brazil would soon ratify the CISG, as early as 2012. See also B. Piltz, "Recent Developments in UN Law on International Sales (CISG)" (2011) 3/4 European Journal 75: "In addition, the ratification procedure has been initiated in Brazil."


12. See Andersen, "CISG in National Courts" in DiMatteo, Global Challenges of International Sales Law (2012), para.1.1. ("National Non-application within the Sphere") and para.4.2 ("Blatant Disregard").


16. An analysis of the reservations, including cases which demonstrate their impact, is found in Andersen, Mazzotta and Zeller, Practitioners Guide to the CISG (2010), pp.832–857.


18. China may soon remove its art.95 reservations; see below.


20. Reservations are taken in Scandinavia to exclude Pt II, but this is currently being withdrawn; see below.

21. This PIL solution is often misrepresented as the "majority view", see P. Schlechtriem, in "Commentary on the UN Convention on Contracts for the International Sale of Goods (CISG)" (Oxford: Oxford University Press, 2005), p.169–170 at art.12, para.2 although he refers to numerous scholars who share what he calls a minority view (Reinhart, Rehbinder, Piltz, Stoffel, Medwedew/Rosenberg, etc) in fn.5. This dichotomy is repeated by Schmidt-Kessel in the 2010 edition at pp.214–215. See also J. Herre, Kröll, Mistelis & Viscasillas (eds), UN-Convention on the International Sales of Goods (CISG) (Beck/Hart/Nomos, 2011), p.1214, who refers to this as the majority view, although he references more cases which share the opposing view in his
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fn.4.


24. See for example United States case of October 7, 2008 from the Federal District Court [New Jersey] (Forestal Guarani S.A. v Daros International Inc (03-4821 JAG)) available at:http://cisgw3.law.pace.edu/cases/081007u1.html[Accessed October 17, 2012], which does not even attempt to advance the argument that the Argentinian reservation cannot bind a US Court applying the CISG as applicable American law for international sales. See Belgium District Court Hasselt of May 2, 1995 (Vital Berry Marketing v Diria-Frost (A.R. 1849/94, 4205/94)) available athtp://cisgw3.law.pace.edu/cases/950502b1.html[Accessed October 17, 2012], where the Court states that the form requirement is to be applied where one of the parties has his pace of business in a state taking out an art.96 declaration.


27. The closest we get to this picture perfect idealistic uniformity of laws is in the application of a set of regulations which is not—essentially—a law at all but a banking regulation, namely the UCP 600. For more on its success see J. Ulph, "The UCP 600: Documentary Credits in the 21st Century" [2007] J.B.L 355, 374.

28. Previous writing has grappled with the concept of uniformity and defined it as follows: "We can define ‘uniform laws’ as specific legal rules or instruments of some form [not necessarily defined as law in all jurisdictions] deliberately designed to be voluntarily shared across boundaries of different jurisdictions which, when applied, result in varying degrees of similar effects on a legal phenomenon”; see Andersen, Uniform Application of the International Sales Law (2007), p.7; and more generally Andersen, "Defining Uniformity in Law”[2007] Uniform Law Review 5.


30. These reasons are noted in the Danish parliamentary reports; see Folketingstidende 1988–89 tillæg A, sp. 1015 (in Danish).


33. U. Schroeter, "Backbone or Backyard of the Convention? The CISG’s Final Provisions” in Andersen and
37. Article 97(4) states: “(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.”
38. The present author is not gifted with the ability to be diplomatic, and so will refrain from commenting on the obvious absurdity of such childish reactions to a small sidestep in the common pursuit of removing reservations. Suffice it to say that there is much relief that this political licking of imaginary wounds did not cause more delay than it did.
39. See O. Lando, Ugeskrift for Rettsvæsen, U.2012B.149, p. 150. Indeed, as pointed out by T. Neumann, “De nordiske landes tilbagekaldelse af forbeholdet mod CISG del II” (2012) 4 Juristen 186, the deadline for this hearing was in August 2012 according to the Norwegian legislative documents; see “Høyring — forslag om å trekke den norske reservasjonen mot FN-konvensjonen 11. april 1980 om kontrakt for internasjonale lausøyrekjøp (CISG) del II om avtaleinngåing m.m., 18. maj 2012 fra det norske Justits- og Beredskabsdepartementet”.
42. Estonia faced a similar issue, and in 2004 withdrew its art. 96 reservation.
43. Reported by Prof W. Li from China University of Political Science and Law at the “Global Challenges of International Sales Law” conference in Florida, in November 2011.
44. There are stirrings in the United States about the removal of art. 95, although it may not lead to any developments. In a letter addressed to Keith Loken of the US State Department, Prof Harry Flechtner argues eloquently for the US removal of the art. 95 declaration. Prof Flechtner was subsequently invited to make a presentation to the annual meeting of the US State Department’s Advisory Council on Private International Law in Washington D.C. on the October 11, 2012, see http://www.law.pitt.edu/news/1012/harry-flechtner-urges-us-to-withdraw-treaty-declaration. The letter is reproduced in Annex 1 of Prof Peter Winship’s paper “Should the United States withdraw its CISG Article 95 Declaration?” prepared for the Advisory Council above for a panel at the Fall Meeting of the International Law Section of the American Bar Association on October 18, 2012 [International Lawyer, forthcoming].
45. In addition to the 2004 removal of the art. 96 Declaration in Estonia mentioned above, there has also been a removal from Canada. Canada had initially filed an art. 95 declaration providing that the province of British Columbia would not be bound by art. 1(1)(b) of the CISG. However, this declaration was withdrawn on July 31, 1992.

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