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DOMESTICATION OF THE CISG: EXAMPLES FROM A FEW JURISDICTIONS

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DOMESTICATION OF THE CISG: EXAMPLES FROM A FEW JURISDICTIONS

*Dr. Vjosa Osmani-Sadriu**

*“Si les marchandises ne traversent pas frontières, les soldats le feront.”
“If the goods do not cross the borders, the soldiers will.”*

Frédéric Bastiat

ABSTRACT

The importance and influence of the CISG as an international treaty should not only be assessed from the perspective of the number of ratifications it received from around the globe. It should, rather, also include an analysis of the impact the Convention has had on domestic jurisdictions, either by being used as a model law for domestic sales law, or simply by influencing the reform process while different countries were drafting their new contract law. For that reason, this paper shall present a number of examples where the effect of the CISG has gone beyond its initial purpose of creating uniform rules in international trade. This paper initially shows the interesting case of Kosovo, where the text of the CISG was used as domestic law for sales contracts for more than a decade. It further shows some other examples, from Nordic countries and beyond, where the CISG was either used as a model for domestic sales or as a source of inspiration for drafting contract law.

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I. INTRODUCTION

The UN Convention on Contracts for the International Sale of Goods (hereinafter “CISG”), is one of the most important treaties in the area of trade, the purpose of which is to provide a modern, uniform and fair regime for contracts for the international sale of goods.¹ As such, this treaty has had tremendous success and wide acceptance around the world.² But beyond its initial function, which is to unify international trade law, the text of this treaty, as will be shown below, has had an important impact on domestic laws of many countries.

The phenomenon of the “domestication” of the CISG, which has already occurred in a number of countries,³ primarily involves “borrowing” or “copy-pasting” the text of the CISG into the domestic sales law of a certain country. Depending on the approach, this may result in the application of the provisions of the CISG not only for cross-border sales, but also for sales where both parties to the contract are located in the same country.

As we will see from the examples below, such a domestication did not always produce desirable results in application. However, no matter the success of the CISG as a sample or model for domestic sales laws in some

¹ See United Nations Convention on Contracts for the International Sale of Goods, *opened for signature* Apr. 11, 1988, 1489 UNTS 3 (entered into force Jan. 1, 1988) [hereinafter CISG]; see also United Nations Convention on Contracts for the International Sale of Goods, Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods, Apr. 11, 1988, 1489 UNTS 3.

² The CISG is currently applicable in 89 countries, according to the official UNCITRAL website. See UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE, http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html.

³ Apart from Kosovo, examples include Norway, Sweden, Finland and the Tokelau Islands. See Peter Schlechtriem, *Basic Structures and General Concepts of the CISG as Models for Harmonization of the Law of Obligations*, JURIDICA INT'L 27, 30 (2005).

Some countries have enacted the CISG not only as their law for cross-border sales but also as their domestic sales law. The Scandinavian countries are the examples that are best known, although there are some differences in their respective implementations. While Sweden and Finland introduced the CISG alongside domestic sales laws based on the CISG, Norway enacted just one sales law—Kjopsloven—for both international and internal sales. Norway is not the only example for a nation implementing the CISG both as an international convention and as its domestic sales law—and, lacking codified rules on the general law of obligations, thereby provisions on breach of contract and the obligee’s remedies in general. The Tokelau Islands . . . in the South Pacific . . . enacted the CISG in 2004 as a sales law, both for international and domestic sales, along with some supplementation to make it a basic set of rules for contracts in general.

jurisdictions, its international effect as a treaty is no longer questionable. And while the use of the CISG as a model, where the majority of the text was copy-pasted to be turned into domestic law has not occurred too often, its text has still inspired a number of reform and harmonization processes of legislation in different countries around the world, as will further be elaborated in this paper.

This paper is certainly not the first, nor will it be the last, to discuss the impact the CISG has had around the world, beyond its role as an international convention. It simply aims at adding to the important work that has already been presented and published in order to show how the CISG has been utilized in segments that were not initially envisioned. As previously stated, the tendency of domestication was mentioned by late Professor Schlechtriem in 2005, where he addressed the role of the CISG as a model of harmonization for laws on obligations.⁴ It was further elaborated, among others, in a book edited by Professor Ferrari, where the impact of the CISG on a number of national legal systems was presented.⁵ Different authors⁶ have written about the influence of the CISG in domestic sales law reforms as well as in regional unification efforts in Asia,⁷ Europe⁸ and in Africa.⁹ This only shows that the impact of the CISG is growing and so will the scholarly work addressing this phenomenon.

⁴ *Id.*

⁵ THE CISG AND ITS IMPACT ON NATIONAL LEGAL SYSTEMS (Franco Ferrari ed., 2008).

⁶ See Ulrich G. Schroeter, *Does the 1980 Vienna Sales Convention Reflect Universal Values? The Use of the CISG as a Model for Law Reform and Regional Specificities*, 41 LOY. L.A. INT'L & COMP. L. REV. 1 (2018) (explaining how the CISG has inspired reform and harmonization processes around the world); see also CISG VS. REGIONAL SALES LAW UNIFICATION (Ulrich Magnus ed., 2012); see also Juana Coetzee & Mustaqeem de Gama, *Harmonisation of Sales Law: An International and Regional Perspective*, 10 VINDOBONA J. INT'L COM. L. & ARB. 15–26 (2006); see also Schlechtriem, *supra* note 3; see also INGEBORG SCHWENZER & PASCAL HACHEM, *The CISG—A Story of Worldwide Success*, in CISG PART II CONFERENCE 119, 140 (Jan Kleinemann ed., 2009).

⁷ See, e.g., Gary F. Bell, *Harmonisation of Contract Law in Asia—Harmonizing Regionally or Adopting Global Harmonisations—The Example of the CISG*, SINGAPORE J. LEGAL STUD. 362–72 (2005).

⁸ See STEFANO TROIANA, THE CISG AND ITS IMPACT ON NATIONAL LEGAL SYSTEMS 345–412 (Franco Ferrari ed., 2008); Schlechtriem, *supra* note 3, at 3–8; Magnus, *supra* note 6; see also generally HERBERT BERNSTEIN & JOSEPH LOOKOFSKY, UNDERSTANDING THE CISG IN EUROPE (2002).

⁹ See, e.g., Eiselen Sieg, *Adoption of the Vienna Convention for the International Sale of Goods, The CISG in South Africa*, 116 SOUTH AFRICAN L.J. 323–70 (1999); see also Nwekwo Tochukwu, *A Critical Analysis of the CISG in the Harmonization and Unification of International Trade Law in Africa-Nigeria* (2015), <http://dx.doi.org/10.2139/ssrn.2565013>; see also Aristide Kahindo Nguru, *The Attitude of OHADA Law Countries Towards the CISG*, 3 J.L. SOC'Y & DEV. 1, 99 (2016).

II. THE INFLUENCE OF THE CISG IN KOSOVO

Kosovo emerged as an independent country from the dissolution of former Yugoslavia. In its Declaration of Independence¹⁰ (Article 9) and its Constitution¹¹ (Article 145) it pledged to continue to apply, based on the principle of succession, all treaties that had been adopted on its behalf by former Yugoslavia and by the United Nations.¹² Before it became independent, Kosovo was administered by the United Nations Mission in Kosovo, for a period of almost nine years (1999–2008).

While Kosovo's statehood has become quite an interesting example in international law, its application of the CISG is equally as interesting. As mentioned above, Kosovo's stance is that all treaties to which Yugoslavia was a party continue to apply in Kosovo after independence based on the principle of succession.¹³ This, however, is not going to be addressed in this paper. The paper will mainly focus on the status of the CISG while Kosovo was administered by the UN, which exemplifies the heavy influence of the CISG on domestic sales law, as well as the influence this Convention has had in Kosovo's domestic law after the declaration of independence, namely Kosovo's new Law on Obligations.

A. Applicability of the CISG While Kosovo Was Administered by the United Nations (1999–2008)

United Nations Resolution 1244 of 1999¹⁴ on the administration of Kosovo by the United Nations provided that Kosovo would be administered by the UN, but at the same time referred to Federal Republic of Yugoslavia's territorial integrity during this interim period, until the final status of Kosovo

¹⁰ Declaration of Independence of the Republic of Kosovo, http://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf.

¹¹ Kushtetuta e Kosovës [CONSTITUTION] Apr. 9, 2008, art. 145 (Kos.).

¹² See Vjosa Osmani-Sadriu, *Treaty Application in Kosovo Through Rules of Succession and as Domestic Law: The Example of the CISG* (Mar. 10, 2015) (unpublished S.J.D. thesis, University of Pittsburgh) (on file with the Barco Library, University of Pittsburgh).

¹³ *Id.*

¹⁴ S.C. Res. 1244 (June 10, 1999).

was resolved.¹⁵ This meant that until Kosovo resolved its final status, international treaties that were adopted by Yugoslavia would continue to apply in the territory of Kosovo. The International Court of Justice explained in 2010 that the legal regime in Resolution 1244 was an interim one, and thus would not be applicable after Kosovo's final status was defined through a Declaration of Independence.¹⁶ To put it simply, the application of international treaties in Kosovo, including the CISG, never stopped, since they initially applied because of UNSC Res. 1244, and then because of the principle of succession, enshrined in Kosovo's Declaration of Independence and Constitution.

While cases of application of the CISG as an international treaty during the period of UN administration are unknown, there were some instances when the text of the CISG was applied to domestic sales, since the text of the CISG had become a part of Kosovo's own sales law through Regulation 2000/68. The number of these cases, however, is very few, and the judges have only agreed to give this author information about the existence of cases, not their content, and have refused to share their decisions.¹⁷

While the reasons behind Kosovo's adoption of the CISG as domestic sales law are not known (and some believe it was simply an experiment), a brief analysis of Kosovo's administration by the UN from 1999 to 2008, as well as its political and legal system, can shed some light on these reasons.

¹⁵ See Written Contribution of the Republic of Kosovo, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2009 I.C.J. Pleadings (Apr. 17, 2009)

Resolution 1244 (1999) provided for an interim period, during which the United Nations would establish an international civil presence in Kosovo headed by a Special Representative of the Secretary General (SRSG). The purpose of that presence was to provide for an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia with gradual transfer of powers and responsibilities to Kosovo institutions of self-government. Following the period of interim administration, governance would be assumed by the institutions under the final status settlement, for which independence was one clear option.

<https://www.icj-cij.org/files/case-related/141/15678.pdf>.

¹⁶ See *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 I.C.J. 1 (July 22), <https://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>.

¹⁷ The author has met with and interviewed a number of judges that were involved in contracts cases. They agreed that UNMIK Regulation 2000/68 was rarely applied, because they continued to apply the old Law on Obligations of 1978. Moreover, none of the court cases from that period that involve contract law are published or available to the public.

The legal office of UNMIK, which administered Kosovo for about nine years, confirms that it looked to UN documents as examples when laws and regulations for Kosovo were drafted and adopted.¹⁸ This may be the reason why, when Kosovo's law on sales was being drafted, the UN legal office in Kosovo simply decided to take the text of the CISG and "domesticate" it.¹⁹

Regulation No. 2000/68 on Contracts for the Sale of Goods, which was adopted in Kosovo in 2000, is almost identical to the text of the CISG. Only a few provisions from the CISG text were removed or replaced when it was adopted as Kosovo's domestic sales regulation.²⁰ Section 1 of this Regulation provides that "[t]he present regulation is based on the United Nations Convention on the International Sale of Goods, and accordingly *shall be interpreted consistently with reported decisions on that Convention.*"²¹ What makes this requirement interesting is not only that uniformity with the international interpretation of the CISG is required in domestic sales, but that the level of observance of the uniformity mandated is higher than that required by the text of the CISG itself.²² While the CISG provides that those who interpret the Convention shall "have regards to . . . uniformity,"²³ Kosovo's domesticated version of the CISG mandates interpretation "consistently with reported decisions on the Convention."²⁴ These and other differences are presented in more detail below.

B. Differences Between UNMIK Regulation 2000/68 and the CISG

Pursuant to the authority given to him under United Nations Security Council Resolution 1244 (1999) of June 10, 1999, the Special Representative of the UN Secretary General (SRSG) adopted UNMIK Regulation 2000/68 on Contracts for the Sale of Goods.²⁵ In 2000, none of the competences for

¹⁸ Discussions with United Nations Legal Office in Kosovo (1999–2008) which took place in 2014.

¹⁹ U.N. Mission in Kosovo Regulation 2000/68 (Dec. 29, 2000), <http://www.unmikonline.org/regulations/2000/reg68-00.htm> [hereinafter UNMIK Regulation 2000/68].

²⁰ *Id.* § 7.

²¹ *Id.* § 1 (emphasis added).

²² See CISG, *supra* note 1, art. 7(1) ("In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application.").

²³ See CISG, *supra* note 1, art. 7(1).

²⁴ UNMIK Regulation 2000/68, *supra* note 19, § 1.

²⁵ See S.C. Res. 1244, *supra* note 14, art. 11 (explaining the authority of the international civilian presence in Kosovo).

adopting laws or regulations were vested in the local Kosovo authorities. All these functions were included in the authority given to the SRGS, who exercised these powers by adopting Regulations, which, in terms of legal hierarchies, were equal to laws.²⁶

UNMIK Regulation 2000/68, as stipulated in its Preamble, was adopted for the purpose of reconstructing and enhancing the economy of Kosovo and creating a viable market-based economy by providing for the regulation of contracts for the sale of goods. This suggests that the drafters of this Regulation (or at any rate, those who decided to use the text of the CISG) understood the importance of having this text apply in Kosovo, rather than simply choosing it because it was easier to copy-paste than to draft something from the very beginning.

Section 1 of the Regulation,²⁷ perhaps the most important one, explains that it is based on the United Nations Convention on Contracts for the International Sale of Goods. More importantly, it requires that the text of the Regulation “shall be interpreted consistently with reported decisions on that Convention.” As is evident from the text, this requirement is mandatory, and not a simple consideration that courts must keep in mind while interpreting the Regulation. It entails an obligation for those who interpret the Regulation to look at CISG decisions on a matter before making a final decision, and to ensure that their decision is based in an interpretation consistent with the reported decisions of the CISG.

Apart from the changes in the preamble, this requirement in Section 1 is another change, which the authors of the Regulation decided to make to the approved text of the CISG. The reasons behind this change are unknown. However, it may be that the authors of the Regulation felt that it was necessary to include this requirement since they had deleted CISG Article 7 from the text of the Regulation. CISG Article 7 provides that “regard is to be had to its international character and to the need to promote uniformity in its application” whenever a judge or other authority interprets the provisions of the CISG. This has been interpreted to encourage courts and tribunals to look

²⁶ See S.C. Res. 1244, *supra* note 14, art. 11.

²⁷ UNMIK Regulation 2000/68, *supra* note 19, § 1 (explaining that, for ease of reference, the organization and numbering system of the regulation follows that of the Convention, with the exception that “sections” in the Convention are “subchapters” in the regulation, and “articles” in the Convention are “sections” in the regulation. Where the corresponding provisions in the Convention are not applicable and have been deleted, this is indicated by an asterisk under the relevant sections).

at previous CISG decisions, including those from foreign jurisdictions, before making a final decision. Nevertheless, the “requirement” of CISG Article 7 is much milder compared to the one in Section 1 of UNMIK Regulation 2000/68. If, on the other hand, the provision in Section 1 of the Regulation would have been respected, this would have led to quite a high level of uniformity between international practice and the practice in Kosovo in the interpretation of CISG provisions (which, in the case of Kosovo, became domestic law provisions). As explained below, compliance with Section 1 of the UNMIK Regulation would have been hard to achieve for provisions of the CISG that were deleted in the Regulation. Apart from Article 1, provisions that have either been changed or deleted include Articles 2, 7, 12, 13, and 28, as well as the Final Provisions of the Convention.

Section 2 of the Regulation (Article 2 of the CISG) was changed in order to include a definition for “goods” as well as to delete paragraph 1 of CISG Article 2 which refers to the sale of “goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use.” While the CISG excluded this category of sales and made the Convention inapplicable to them, the Regulation applies to that category. On the other hand, the definition of goods added in the Regulation reads as follows:

“Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities and things in action. “Goods” also includes the unborn young of animals and growing crops and other identified things attached to but severable from realty.²⁸

The text quoted above is a copy-paste of the definition of goods provided in Section 2-105 of the Uniform Commercial Code of the United States (UCC). It is unclear why the authors of the Regulation chose a definition of goods from the UCC while basing the Regulation on the text of the CISG. A possible motivation is that the CISG does not offer a clear definition of “goods” but rather lists categories of transaction that are not covered by the Convention.²⁹ Another reason may be the influence of U.S. lawyers in Kosovo’s legislative process. Because of the large U.S. presence, mainly

²⁸ UNMIK Regulation 2000/68, *supra* note 19, § 2.1 (emphasis added).

²⁹ CISG, *supra* note 1, art. 2.

focused in the area of rule of law and law reform, many pieces of legislation drafted in Kosovo received U.S. expertise and support.

Article 7 of the CISG was deleted from the text of the Regulation. This Article, in addition to promoting uniformity in interpreting the CISG (a requirement that has been included in Section 1 of the Regulation), addresses the international character of the Convention and the need to observe good faith while interpreting it.³⁰ Paragraph 2 of CISG Article 7 addresses the principles according to which questions that are not governed by the Convention would be settled.³¹ The deletion of the two paragraphs of CISG Article 7 might have occurred because of references to the international character of the Convention and to international private law, since the Regulation is a piece of legislation representing domestic law. The same reasons might have led to the deletion of Article 12 (Section 12 in the Regulation), which refers to the right of Contracting States that have made an Article 96 reservation.³² Regulation's Section 13, on the other hand, has been modified to include "facsimile, e-mail, and any similar form of electronic communication" in the definition of "writing," in addition to telegrams and telexes that are mentioned in CISG Article 13.³³

Another provision deleted in the Regulation is CISG Article 28, which provides "[i]f, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention." Again, since this Article has to do with the international character of the Convention, it has been deleted from the

³⁰ CISG, *supra* note 1, art. 7(1) ("In the interpretation of this 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.").

³¹ CISG, *supra* note 1, art. 7(2) ("Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.").

³² CISG, *supra* note 1, art. 12 ("Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.").

³³ CISG, *supra* note 1, art. 13 ("For the purposes of this Convention 'writing' includes telegram and telex."); UNMIK Regulation 2000/68, *supra* note 19, § 13.

Regulation. Finally, Part IV of the Convention (Final Provisions) has been deleted entirely, as it deals with rules related to the signing, ratification, entering into force of the Convention and other issues related to reservations and declarations.

Since the Regulation is domestic law and not an international treaty, such provisions were not necessary. However, two new provisions were added to the Regulation under Final Provisions: one explains the language used in the Convention, and the other provides that December 29, 2000 was the date the Regulation was entered into force. The Regulation remained in force until 2012 when Kosovo adopted a new Law on Obligations. The Law, among others, included a chapter on Sales Contracts, but it also included the CISG as the law applicable to international sales.³⁴

C. Influence of the CISG on Kosovo's New Law on Obligations

When Kosovo adopted its new Law on Obligations, it repealed UNMIK Regulation 2000/68, which had based its text on the CISG. Nevertheless, if we go through the law on obligations, we can see that in many of its provisions it drew inspiration from the CISG. Obviously, the law deals with much more than just sales contracts. It covers all obligational relationships and all sorts of contracts.³⁵ Even in its chapter that relates to sales, it covers issues that are not covered by the CISG.

Below are some of the provisions where the influence of the CISG is apparent. To begin with, the provisions related to offer and acceptance, including their effect and withdrawal, as well as the counter-offer, have been heavily influenced by the CISG, and in some parts are a copy and paste of the CISG provisions.³⁶ A provision identical to that found in the CISG is the article in the Law on Obligations dealing with the time of the conclusion of

³⁴ Kosovo's Law on Obligations was adopted by the Assembly of the Republic of Kosovo on May 10, 2012 and promulgated by the President on May 30, 2012. Pursuant to Article 1059 of that same Law, it entered into force six months after its publications in the official Gazette. See *Ligji NR. 04/L-077 Për Marrëdhëniet E Detyrimeve [Law No. 04/L-077 On Obligations]*, GAZETA ZYRTARE E REPUBLIKËS SË KOSOVËS [OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVO], May 10, 2012 [hereinafter *Kosovo's Law on Obligations*].

³⁵ *Id.*

³⁶ See *id.* at arts. 22, 25, 28, 29, 30 (provisions related to offer and acceptance).

the contract.³⁷ Just like in the CISG, contracts formed under this law have no form requirement³⁸ and similar to the CISG this law gives weight to business practices established between the parties, including usages and customs.³⁹ Important similarities can be seen if we look at provisions related to rights and obligations of buyer and seller,⁴⁰ passing of risk,⁴¹ provisions related to price,⁴² and provisions related to delivery of goods.⁴³

The law has almost entirely copied and pasted CISG Article 35 when dealing with the issue of non-conformity of goods,⁴⁴ and includes similar provisions when it comes to a buyer's obligation to inspect the goods and notify for nonconformity.⁴⁵ The Law also addresses the issue of avoidance, but it contains a lower threshold requirement when it comes to breach. While the CISG requires the breach to be fundamental, the provision in the Law on Obligations allows the buyer to avoid the contract if there is a "defect" in goods, or if the seller has not delivered within the additional time fixed after the delay of delivery.⁴⁶ Similar provisions are added when it comes to installment contracts and partial defects,⁴⁷ as well as in those that cover time and place of payment of the price.⁴⁸ If we look at the provisions of the law dealing with remedies, we can see quite a few parallels with the CISG in those articles dealing with the effects of avoidance of contract, rules related to restitution, and general rules on damages.⁴⁹ Last, but not least, Article 1058 of the Law on Obligations has dealt with international sales, making the CISG the law applicable to contracts of an international character. The relevant provision reads as follows:

1. On the day of entry into force of the present law, the provisions of the UNMIK Regulation 2000/68 on contracts of sales of goods shall cease to exist.

³⁷ *Id.* art. 21.

³⁸ *Id.* art. 51.

³⁹ *Id.* art. 11.

⁴⁰ *Id.* art. 438.

⁴¹ *Id.* art. 439.

⁴² *Id.* art. 445.

⁴³ *Id.* art. 450.

⁴⁴ *Id.* art. 462.

⁴⁵ *Id.* arts. 464, 467.

⁴⁶ *Id.* art. 473.

⁴⁷ *Id.* art. 475.

⁴⁸ *Id.* art. 499.

⁴⁹ *Id.* arts. 480, 506.

2. In the meaning of this Law, and in accordance with Article 145 of the Constitution of Republic of Kosovo, the applicable Law on Contracts on International Sale of Goods shall be the United Nations Convention on Contracts for the International Sale of Goods.

As we can see from the examples above, the CISG has inspired many provisions in Kosovo's Law on Obligations, thus proving once again its successful utilization as a model of reform and harmonization.

III. THE NORWEGIAN MODEL

Norway, as previously stated, is one of the countries where the CISG has had an effect on domestic law.⁵⁰ This country decided to adopt an act which transformed and integrated rules for domestic and international sales into a single Code, an approach that has been criticized because, instead of adopting the text of the CISG as is, Norway created a Norwegian version of the CISG that, in some respects, is quite distinct from the original CISG and includes a number of non-uniform rules.⁵¹ This has resulted in conflicting interpretations, which is in contradiction with the principle of uniformity that is a central policy of the CISG. For that reason, there have been suggestions that the Norway model should be avoided.⁵²

Norway has chosen a different way of making the Sales Convention applicable to international sales.⁵³ The Ratification of the CISG in the Norwegian Parliament was made through a separate piece of legislation and was adopted by way of a "consolidated act" that included provisions which,

⁵⁰ According to Schlechtriem, Norway is not the only country that has adopted the CISG as both domestic and international sales law. Tokelau Islands, as he explains (a territory of New Zealand) has enacted the CISG for both domestic and international sales. *See* Schlechtriem, *supra* note 3, at 30; *but see* CISG: *Table of Contracting States*, PACE LAW SCH. INST. INT'L COMMERCIAL LAW, <http://www.cisg.law.pace.edu/cisg/countries/cntries.html> (last visited Nov. 4, 2019) (providing that New Zealand adopted the Convention with a declaration of non-application to the Cook Islands, Niue and Tokelau. It appears that despite this declaration, Tokelau has unilaterally decided to apply the Sales Convention).

⁵¹ JOSEPH LOOKOFKY, UNDERSTANDING THE CISG IN SCANDINAVIA 5–6 (2d ed. 2002).

⁵² FRA KAI KRÜGER, INTERNATIONAL SALES UNDER PRESENT NORWEGIAN LAW § 26.1 (4th ed. 1999); LOOKOFKY, *supra* note 51, at 5.

⁵³ Norway and the other Nordic countries have all made an Article 94 reservation, which means the CISG would not be applicable to contracts between parties which both have their places of business in Scandinavian countries. *See* CISG: *Participating Countries—Norway Declarations and Reservations*, PACE LAW SCH. INST. INT'L COMMERCIAL LAW, <http://www.cisg.law.pace.edu/cisg/countries/cntries-Norway.html> (last visited Nov. 4, 2019).

in conjunction with domestic rules, were meant to reflect the Convention.⁵⁴ This means that the final “consolidated” act did not reflect the Convention in its entirety, but rather modified some provisions so that the Act (hereinafter referred to as SGA of 1988) could apply to both domestic and international sales.

According to Kruger, the SGA makes 6 *specific exceptions* within the provisions otherwise common for national and international sales, stating that provisions otherwise applicable *shall not apply to international sales*.⁵⁵ Moreover, Sections 88 and 89 of the SGA set out the rules for interpreting the provisions of the Act, and they are not the same for international and domestic sales. Thus, the very same provision with the very same text has different rules of interpretation, depending on whether it is being applied to a domestic or international contract. Therefore, there can be different results under the exact same wording of the exact same provision.⁵⁶

As we can see from this example, the method of adopting a unified code cannot work if the text of the Convention is transformed and changed to also apply to domestic sales. The homeward trend is already happening quite often in many CISG contracting states, and a method similar to Norway’s would only complicate the application of the Convention further and would go against the goal of uniform interpretation.

IV. THE INFLUENCE OF THE CISG IN SOME OTHER JURISDICTIONS

The CISG, as we have seen so far, has proven successful in influencing national legal systems.⁵⁷ Even in cases when the entire text of the CISG was not taken as a model for domestic law, it had an impact on the commercial law reform process in many countries, especially in those that have gone through transformation of their social and political systems. This is especially the case for former socialist countries which underwent such transformation, a process which included quite a lot of legislative reforms.⁵⁸ In addition,

⁵⁴ KRÜGER, *supra* note 52.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ SCHWENZER & HACHEM, *supra* note 6.

⁵⁸ Schlechtreim, *supra* note 3, at 30.

reforms of commercial codes have been influenced by the CISG, even in important countries like China, Russia and Germany.⁵⁹

Sweden and Finland,⁶⁰ for example, introduced the CISG alongside domestic sales laws based on the CISG, and are considered among the Scandinavian models⁶¹ where the CISG has had an enormous influence on their domestic law.⁶² These two countries have revised their domestic sales law in light of the CISG,⁶³ using it as a blueprint for reform of their domestic Sales Acts.⁶⁴ Finland and Sweden did not transform the provisions into a general Act on the Sale of Goods, like Norway did, but made the Convention applicable to international sales while their Sales Act was influenced and based on the CISG.⁶⁵ This is to avoid the problems raised with the Norwegian model, since the provisions applicable to international sales are international in character and should be interpreted differently from those of a national character.⁶⁶ However, the starting point of these two states was that the CISG would also be appropriate in the context of national sales, resulting in acceptance within national legislation of a number of policies within the CISG.⁶⁷

Sevon's work shows a great comparison between the CISG and the Nordic Acts. For example, as expected, provisions that are of an international character and provide for rules of interpretation of the Convention do not

⁵⁹ See TROIANA, *supra* note 8, specific chapters on China, Russia, and Germany.

⁶⁰ Originally Finland and Sweden filed reservations under Articles 92 and 94, ratifying the CISG without Part II. In 2012, these countries withdrew these reservations and began applying both CISG Part II and Part III. On the status of Sweden and Finland, see *CISG: Participating Countries—Sweden*, PACE LAW SCH. INST. INT'L COMMERCIAL LAW, <https://www.cisg.law.pace.edu/cisg/countries/cntries-Sweden.html> (last visited Nov. 4, 2019); and *CISG: Participating Countries—Finland*, PACE LAW SCH. INST. INT'L COMMERCIAL LAW, <https://www.cisg.law.pace.edu/cisg/countcoun/cntries-Finland.html> (last visited Nov. 4, 2019).

⁶¹ At this time, the CISG does not apply to contracts concluded by parties that have their place of business in five Nordic States (Denmark, Iceland, Finland, Norway and Sweden). See Joseph Lookofsky, *Alive and Well in Scandinavia: CISG Part II*, 18 J.L. & COM. 289–99 (1999).

⁶² Schlechtreim, *supra* note 3.

⁶³ Lief Sevon, *The New Scandinavian Codification on the Sale of Goods and the 1980 United Nations Convention on Contracts for the International Sales of Goods*, in *EINHEITLICHES KAUFRECHT UND NATIONALES OBLIGATIONENRECHT, BADEN-BADEN: NOMES 343–57* (Peter Schlechtreim ed., 1987), <https://www.cisg.law.pace.edu/cisg/biblio/sevon2.html>.

⁶⁴ Lookofsky, *supra* note 61, at 289.

⁶⁵ Peter Winship, *Domesticating International Commercial Law: Revising U.C.C. Article 2 in the Light of the United Nations Sales Convention*, 37 LOY. L. REV. 43–49 (1991–92).

⁶⁶ *Id.* at 46.

⁶⁷ Sevon, *supra* note 63, at 351.

correspond to any of the provisions in the Nordic Acts.⁶⁸ Moreover, there are numerous issues where the Nordic Acts have taken a different view, such as contract formation, fundamental breach, notice of avoidance, specific performance, and modification of contracts.⁶⁹ Many of the other provisions have, however, much inspiration from the CISG,⁷⁰ these Nordic countries an addition to the set of countries where we can take note of CISG's great impact.

Denmark,⁷¹ on the other hand, seems to have not received the same influence from the CISG.⁷² The CISG has not led to direct reform of the Danish Sales Act.⁷³ However, according to Lookofsky, we should consider the fact Denmark implemented EU Directives on Unfair Contract Terms and Consumer Guarantees, both of which were inspired by the CISG, leading us to the conclusion that the CISG has indirectly affected the Danish contract and sales law.⁷⁴

The Convention has also influenced states in the Baltic region, such as Estonia.⁷⁵ In Estonia, the CISG has had an important influence not only on the domestic law concerning contracts of sales, but also served as a basis for

⁶⁸ *Id.* at 348.

⁶⁹ *Id.* at 350.

⁷⁰ *Id.*

⁷¹ The CISG entered into force in Denmark on March 1, 1990, with reservations under Articles 92, 93 and 94. In 2012, Denmark joined Finland and Sweden in withdrawing from the Article 92 reservation and thus became a party to Part II of the CISG. See *Vienna, Denmark Becomes a Party to Part II (Formation of the Contract) of the United Nations Convention on Contracts for the International Sale of Goods (CISG)*, UNITED NATIONS INFO. SERV. (July 6, 2012), <http://www.unis.unvienna.org/unis/pressrels/2012/unis1168.html>.

⁷² See TROIANA, *supra* note 8, at 128.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ According to the official information provided by UNCITRAL, in September 1993 the Soviet Republic of Estonia ratified the CISG. When, after the dissolution of the USSR, Estonia became an independent state, it elected to adopt the Convention in 1994. At that time, Estonia filed a declaration which stated,

In accordance with articles 12 and 96 of the Convention, any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in Estonia.

However, such declaration was withdrawn on March 9, 2004. See *CISG: Participating Countries—Estonia*, PACE LAW SCH. INST. INT'L COMMERCIAL LAW, <https://www.cisg.law.pace.edu/cisg/countries/cntries-Estonia.html>; see also UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en#EndDec.

drafting general provisions of contracts.⁷⁶ Schlechtriem confirms that the Estonian domestic law, specifically the Estonian Law of Obligations Act (LOA),⁷⁷ is an illustration of the influence that the CISG has on domestic legal systems.⁷⁸ While working on the LOA, its drafters have looked at other examples of domestic legislation that were influenced by the CISG.⁷⁹ They looked particularly at domestic laws of Finland and Sweden, two countries that are Estonia's biggest trade partners.⁸⁰

Numerous articles of the LOA are conceptually the same as those in the Convention. As Irene Kull argues in her analysis on this reform process, the CISG proved to be the foundation of the reform process. She enumerated some of the provisions where the LOA provides for identical provisions to those of the CISG, for example:

. . . among them that of the binding nature of usages and practices (CISG article 9, LOA § 25), objective interpretation of declaration of intention (CISG article 6, LOA § 29), freedom of form (CISG articles 6 and 12; LOA § 11 (1)), mitigation of harm (CISG articles 77, 85, and 86; LOA § 139 (2)), and prohibition of abuse of rights (CISG article 80, LOA § 101 (3)).⁸¹ Furthermore, “in the special part of the LOA, the rules on the obligations of the seller in §§ 208–211 are in accordance with the CISG provisions in articles 30–32. Also the rules regulating the conformity of goods under a contract of sale in the LOA § 217 are similar to the rules in the CISG article 35.”⁸²

Moreover, LOA has included two important principles contained in the CISG, good faith and reasonableness, and as Paul Varul explains, “this may be associated with varying application of the good faith principle in different countries and regions.”⁸³

Despite the similarities, LOA and CISG still have some differences regarding various issues. For example, as authors Arsi Pavelts and Karen Sein provide, “under the Estonian Law, the nature of the claim for repair

⁷⁶ See TROIANA, *supra* note 8, at 428.

⁷⁷ See Kosovo's Law on Obligations, *supra* note 34.

⁷⁸ Schlechtriem, *supra* note 3, at 30.

⁷⁹ J. Peter Byrne & Philip G. Schrag, *Law Reform in Estonia: The Role of Georgetown University Law Center*, 25 LAW & POL'Y INT'L BUS. 449, 458 (1994).

⁸⁰ *Id.*

⁸¹ Irene Kull, *Reform of Contract Law in Estonia: Influences of Harmonisation of European Private Law*, XIV JURIDICA INT'L 122, 128 (2008).

⁸² *Id.*

⁸³ Paul Varul, *CISG: A Source of Inspiration for the Estonian Law of Obligations*, 8 UNIFORM L. REV. 209, 210 (2003).

costs is secondary and the buyer must submit a claim for performance to the seller, in order for the buyer to have the chance to claim reimbursement of repair costs.”⁸⁴ This form of regulation does not conform with that set by the CISG, under which the buyer does not have to bear the risk of active intervention with regard to the non-performance, but it is the seller that should counter the claim, requiring him to offer to cure.⁸⁵ Nevertheless, these differences do not undermine the impact the CISG has had on the content and structure of Estonian domestic law on sales contracts. It simply proves that while the text of the CISG has not been transposed into national legislation as a whole, many of its provisions were, making Estonia one of the typical examples showcasing CISG’s success in its function as a model law.

Another important example of CISG’s impact is China (PRC).⁸⁶ As the country with the largest population and one of the biggest trading nations in the world, China is certainly an extremely significant case. The contract law reform in this country was a result of general reforms in its economic system, which followed a route from planned economy to market economy.⁸⁷

The CISG has greatly influenced Chinese Contract Law on a number of issues that go beyond just sales. For example, provisions related to contract formation, such as those on offer and acceptance, the rules for interpreting the contract, and contract avoidance are heavily based on the CISG.⁸⁸ Additional issues that have been treated similarly to the CISG are the passing of risk and liability for breach, whereas provisions in the Chinese contract law relating to conformity of goods and fundamental breach are only partially similar to those in the CISG.⁸⁹ However, as Han rightfully points out, “the

⁸⁴ Arsi Pavelts & Karin Sein, *The Buyer’s Right to Require Reimbursement for Repair Costs of Defective Goods Under the CISG, the CESL, and Estonian Law*, 21 JURDICA INT’L 147, 158 (2014).

⁸⁵ *Id.*

⁸⁶ The CISG entered into force in China on 1 January 1988. China had filed an Article 95 declaration and a declaration on the general subject of Article 96. In 2013 China deposited an instrument with the Secretary-General of the United Nations withdrawing its “written form” declaration under the CISG, thus now it does not require the written form for contracts for the international sale of goods. See *China Withdraws “Written Form” Declaration Under the United Nations Convention on Contracts for the International Sale of Goods (CISG)*, UNITED NATIONS INFO. SERV. (Jan. 18, 2013), <http://www.unis.unvienna.org/unis/pressrels/2013/unis1180.html>.

⁸⁷ Shiyuan Han, *The CISG and Modernization of Chinese Contract Law*, 17 COMP. L.J. THE PAC. 1, 4 (2014).

⁸⁸ TROIANA, *supra* note 8, at 476 (citing Professor Huixing Lang, who is the main drafter of China’s contract law).

⁸⁹ Han, *supra* note 87, at 71–77.

impact should not only be at the blackletter rule level, but also be at theoretical understanding level.”⁹⁰ Taking examples from CISG provisions and making them part of the domestic law is not sufficient if these provisions would still be given a completely different interpretation and understanding, which is heavily influenced by domestic legal cultures and customs.

The examples above show how important the CISG has been when used in the legislation reform process in some countries. Even if the entire text of the CISG was not taken as a model, its heavy impact lies in the values it contains which were borrowed in domestic legislation. In the long run, as Schlechtriem argues, this is even more important to determine the influence of the CISG internationally than the cases when its entire text had been domesticated.⁹¹

V. CONCLUSION

Authors have rightfully pointed out two functions of the Convention. The first aims at unifying the rules applicable to international trade, thus bringing uniformity in application and fostering trade between different nations,⁹² and the second is its use as a model for harmonization and reform in national legislation of different countries.⁹³ While the second function may not have been the intention of the drafters of the CISG, it is proving to be as important as the first function, thus making certain provisions and principles of the CISG, as Schroeter argues, a universal value in international commercial law.⁹⁴

⁹⁰ Han, *supra* note 87, at 79.

⁹¹ Schlechtriem, *supra* note 3, at 4.

⁹² Text of the preamble of the CISG refers to “the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade.” See CISG, *supra* note 2, at 1. On CISG’s important function in promoting uniformity, as well as challenges in this function, see generally HARRY FLECHTNER, Festschrift für Ulrich Magnus 193–207 (Peter Mankowski & Wolfgang Wurmnest eds., 2014); see also generally John Felemegas, *The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation*, PACE LAW SCH. INST. INT’L COMMERCIAL LAW, <http://cisgw3.law.pace.edu/cisg/biblio/felemegas.html> (last updated Nov. 5, 2002).

⁹³ See *supra* notes 4–10.

⁹⁴ Schroeter, *supra* note 6, at 51.

As the number of ratifications of the CISG continues to grow, further strengthening its deserved denomination as an international lingua franca,⁹⁵ it seems likely the number of cases in which the CISG will be used as an inspiration for changes in domestic legislation will also rise. This role as a “model law” is now not only being used for individual countries, but also for regional unification efforts.⁹⁶ This function of the Convention is an example of its importance and its impact in the foundation, content and structure of domestic and regional normative acts. It also speaks to the impeccable work of its drafters, who, despite enormous challenges resulting from varying legal systems and cultures, managed to draft a unifying text that is now exceeding its initial expectations. With enormous success as both an international treaty and a model for domestic and regional harmonization efforts, the CISG has come to deserve the qualification attached to it by Professor Karollus, as the “Magna Charta of international trade.”⁹⁷

⁹⁵ See Peter 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, THE UNCITRAL DIGEST AS A CONTRACT DRAFTING TOOL* (Brand, Flechtner & Walter eds., 2008).

⁹⁶ See *supra* notes 7–10.

⁹⁷ Martin Karollus, *Judicial Interpretation and Application of the CISG in Germany 1988–1994*, PACE LAW SCH. INST. INT’L COMMERCIAL LAW, <https://www.cisg.law.pace.edu/cisg/biblio/karollus.html> (last updated Oct. 9, 2008).

