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## A Note on the Commentary of the 1980 Vienna Convention

Peter Winship

*Southern Methodist University, Dedman School of Law*

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# A Note on the Commentary of the 1980 Vienna Convention

PETER WINSHIP\*

Although a commentary on the UNCITRAL draft sales convention had been prepared by the Secretariat and circulated to Governments, the diplomatic conference which met in Vienna did not decide to sanction the publication of an official or semi-official commentary on the final text of the international sales convention.<sup>1</sup> There was no formal debate on the question of a commentary as there had been at the 1978 Hamburg Conference on Carriage of Goods by Sea, where a decision was taken not to publish a commentary. Several precedents in favor of a commentary could be cited: the official records for the 1964 conference held at The Hague included a commentary on the uniform sales laws which was written by Professor Andre Tunc Wroner,<sup>2</sup> and the conference which adopted the 1974 Limitations Convention prepared under the auspices of UNCITRAL, authorized the publication of a commentary prepared by Professor Kazuaki Sono.<sup>3</sup>

The United States expressed particular interest in the adoption of a commentary. In its comments on the 1978 UNCITRAL draft, the U.S. government commented as follows:

The United States strongly urges that a commentary accompany the final text. The existing commentary has been prepared by the Secretariat and has thus far accompanied the draft as an explanation of its provisions. Such a commentary, including unofficial captions to each section, has proved most helpful to practitioners in the United States who have studied the draft CISG. It can be expected that a commentary would facilitate efforts to have the resulting convention ratified. Since the draft CISG contains a number of concepts that are unknown in common law systems, a commentary is of special importance to a common law country such as the United States.<sup>4</sup>

In the absence of recorded debate on the question of a commentary one can only speculate on the reasons for not adopting the U.S. suggestion. Perhaps there was fear that the text of the convention would be ignored in favor of a more easily read, but unofficial, text of a commentary.

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\*Associate Professor of Law, Southern Methodist University.

<sup>1</sup>Commentary on the Draft Convention on Contracts for the International Sale of Goods, prepared by the secretariat, A/CONF.97/5 (14 March 1979), reprinted in Official Records 14-66 (A/CONF.97/19; Sales No. E.82.V.5).

<sup>2</sup>I DIPLOMATIC CONFERENCE ON THE UNIFICATION OF LAW GOVERNING THE INTERNATIONAL SALE OF GOODS, RECORDS AND DOCUMENTS 357 (1966).

<sup>3</sup>Commentary on the Convention on the Limitation Period in the International Sale of Goods, A/CONF.63/17 (27 June 1978), reprinted in X UNCITRAL Yearbook: 1979 at 145.

<sup>4</sup>A/CONF.97/8, p. 26 (11 January 1980).

Several substitutes for a commentary have been published. Professor John Honnold has published a comprehensive commentary in English<sup>5</sup> and Professor Peter Schlechtriem has prepared a similar commentary in German.<sup>6</sup> Both books provide valuable insight into the background of the Convention and extensive analysis of the final text. In addition, the U.S. Department of State prepared an introduction to the Convention which comments on the most important concepts and provisions.<sup>7</sup> Law journals, of course, have published articles analyzing specific aspects of the Convention.<sup>8</sup>

Nevertheless, although the Secretariat's Commentary is not an official document and has not been updated, it remains an important source of background information about the policies behind specific provisions of the Vienna convention.<sup>9</sup>

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<sup>5</sup>J. HONNOLD, *UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION* (Boston: Kluwer, 1982).

<sup>6</sup>P. SCHLECHTRIEM, *EINHEITLICHES UN — KAUFRECHT* (Tubingen: J.C.B. Mohr, 1981).

<sup>7</sup>Message Transmitting the United Nations Convention on Contracts for the International Sale of Goods, Treaty Doc. 98-9, 98th Cong., 1st Sess. (Sept. 21, 1983).

<sup>8</sup>See Winship, *Bibliography: International Sale of Goods, infra*, at 53 ed.

<sup>9</sup>For a comparative table of the numbering of the articles in various drafts, see Official Records, *supra* note 1, at 483; or J. HONNOLD, *supra* note 5, at appendix B.