

Letters to the Editor

Sales Convention Dialogue

Dear Editor:

With respect to Mr. Trumpy's earlier letter to you, (19 INT'L LAW. 415 (1985)), I have the following comment.

Identical nationality cannot lead to the non-applicability of the Convention. Its application depends on the situation of the places of business in different Contracting States. (Art. 1, para. 1). Para. 3 of the same Article provides that "(n)either the nationality of the parties nor . . . is to be taken into consideration in determining the application of this Convention." Thus, in a sale between an American established in New York and an American established in Paris (France, not Texas), the Convention will apply.

Under the 1964 Hague Convention on International Sales, parties may choose the international sales law for contracts outside its scope of application. ULIS Art. 4 provides: "The present Law shall also apply where it has been chosen as the law of the contract by the parties, whether or not their places of business or their habitual residences are in different States and whether or not such States are Parties to the Convention . . . , to the extent that it does not affect the application of any mandatory provisions of law which would have been applicable if the parties had not chosen the Uniform Law." "Opting in" is advised for chain transactions, lest remedies get lost; it may also be advisable if the parties cannot agree on an applicable national law. This provision has been deleted in the revision of ULIS. But writers seem to agree that CISG may also be chosen for contracts not within its scope of application (*cf.*, HONNOLD, UNIFORM LAW FOR INTERNATIONAL SALES §§ 78-83; SCHLECHTRIEM, EINHEITLICHES UN-KAUFRECHT, 22). For Continental law, this follows from the principle of freedom of contract. I cannot judge if the same is true for American Law, and I doubt it after reading Joseph D. Becker's paper in TIL (19 INT'L LAW. 371 (1985)).

So national legislation as proposed by Mr. Trumpy may be useful. It could be modeled on Art. 4 of ULIS. The right to "opt in" should not be restricted by a requirement of a reasonable relation or contact; some firm may simply find it more efficient to work with only one sales law.

Hans Moller
Munich, West Germany

Kennan and the Marshall Plan

Dear Editor:

In reading my latest issue of *TIL*, I noted in a footnote to Louis Sohn's article (19 *INT'L LAW.* 599 (1985)) that George Kennan is identified as "architect of the Marshall Plan." I suspect this may come as a pleasant surprise to Kennan.

Gary Christiansen
San Francisco, California

Dear Gary:

That footnote was prepared from some literature made available to me that identified individuals who, in addition to Professor Sohn, have received the Grenville Clark Prize. Your inquiry, however, stirred me to do some research. I found that Mr. Kennan served as chairman of the Policy Planning Staff which was assembled to address the question of European recovery. In that position, he drafted recommendations to George Marshall that led to the Marshall Plan. Certainly Kennan's containment theory also influenced post-WW II foreign policy, including the Marshall Plan. It is true, however, that he freely admits that "[w]e were far from the only people, or even the first, in official Washington to sweat over these same problems." G. KENNAN, MEMOIRS: 1925-1950, 328-29 (1967).

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Revised Restatement

Dear Reader:

In the last issue of TIL, in an editor's introductory note to the Symposium on The Revised Restatement (see 19 INT'L LAW. 429 (1985)), it was noted that the final vote on the Restatement was "scheduled" for the May 1985 meeting of the American Law Institute in Washington, D.C. Although the note was correct—the final vote was in fact scheduled for May of this year—something happened on the way to that meeting. A number of organizations and agencies (including the ABA and State Department) requested that the

ALI postpone final approval of this Restatement until the 1986 meeting, and the ALI graciously accommodated this request.

Hopefully, this extra time will provide Section members and others with an opportunity to offer additional suggestions and clarifications about the current draft. We also hope that the postponement will enable qualified authors to publish their analyses of the Revised Restatement. Feeling that this is an important event in the development of International Law in the United States, we will continue to be alert to opportunities to publish articles on it.

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