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Harmonization of contract law and its impacts on China's contract law

Zhang Yuejiao

Professor of Law, Shantou University of China, Vice President of China's International Economic Law Society, Senior Counsel and lawyer of Junhe Law Office, former Governor to UNIDROIT, Assistant General Counsel, Director General of ADB, Director General of the Department of Treaty and Law of Ministry of Trade of China

1. Introduction

Uniform law and harmonization of regulations present itself in numerous manifestations, both under UNIDROIT and UNCITRAL on contract law and between Multilateral Financial Organizations such as the World Bank, Asian Development Bank, African Development Bank on International Procurement Procedures, etc. Multilateral Financial Development Institutions under the Development Assistance Committee (DAC) of OECD. There are the well known international Conventions, prepared by international organizations, adopted at a diplomatic conference and afterwards hopefully ratified by a significant number of states such as the International Convention on Sales of Goods of UNCITRAL. There are model laws, drafted with a view to being adopted by national legislators such as the UNCITRAL Arbitration model law. Furthermore, there are legal guides, designed for use by private or public operators in the field of international trade, such as the General Principles of Commercial Contract of UNIDROIT. The next category are standard terms (general conditions), drafted either by an organization of interested business people or by an international intergovernmental organization, such as ICC on INCOTERMS which only become binding provisions between the parties after having been adopted by parties to an individual contract. All these types of international instruments present their contribution to the harmonization of international commercial rules and regulations to facilitate cross borders transactions of goods and services.

I was very fortunate to attend the discussion and preparation of the UNCITRAL Sales of Goods Convention and joined the preparation work for China's ratification to this Convention. As elected Governor of UNIDROIT from 1992 to 1999, I attended several preparation works for the General Principles of Commercial Contract of UNIDROIT and the International Financial Leasing Convention and Factoring Convention, etc. When I served the Director General of the Department of Treaty and Law, I participated in the preparation of the Foreign Economic

Contract law and the Contract law of China. I would like share my personal observation on the impacts of the harmonized international contract law on China's legislation of the Contract law. When I served the Director General of the Asian development Bank to Europe, I was a member of the Development Assistance Committee (DAC) of the OECD worked on the harmonization of Procurement guidelines and financial report guidelines used by the Multilateral Development Banks. I will give a brief survey of their work on harmonization of law and contracts. I will conclude with some comparative remarks on the work of global harmonization of contract law and some suggestions for future work.

2. The UNCITRAL the 1964 Hague Uniform Laws on the International Sale of goods which subsequently served as a key source of inspiration for the 1980 UN-convention on the International sale of goods (CISG), already ratified by more than 30 states. China participated in the UNCITRAL missions since 1980 and became member of UNCITRAL since May of 1983. China is very active in sending its legal experts to join the unification and harmonization of international trade law in order to promote international trade. China was one of the founding member s of the International Convention of Sales of Goods and signed CISG on 11 December of 1986 together with the US and Italy. CISG entered into effective on 1 January 1988.

For the qualified parties of member countries, if they do not exclude the application of CISG for their contract, the CISG will automatically apply for their signed contract.

The CISG has been widely used for private parties' negotiations on their sales of goods contracts. The number of member States is increasing rapidly. As of 2 December 2006, the United Nations reports that 70 States have adopted CISG. The USA and most European states are parties to the CISG, but the UK does not yet join the CISG. With the anticipated acceleration of globalization and liberalization movements in the near future, there will be a greater demand for global harmonization of contract law. The CISG will surely enlarge its membership.

3. UNIDROIT

UNIDROIT (Institute International pour l' Unification du Droit) was founded in 1926 under the aegis of the League of Nations to promote the unification of private law. The Institute has its seat in Rome and counts 61 Member States, including many European States such as France, Germany and the UK as well as the United States of America, the Russian Federation and the People's Republic of China. The activities of the Institute are directed by a Governing Council consisting of 25 eminent lawyers and professors of law from different Member States (mostly academics, some state officials) who are elected by the General Assembly every five years.

Until recently, the Institute directed its activities exclusively towards international conventions, its most renowned success being As early as 1971 the Governing Council decided to embark upon the project of the "Progressive Codification of International Commercial Law"; however, it soon became apparent that the project's title could give rise to misunderstandings. Also several drafted International Conventions were adopted by the Diplomatic Conferences but never signed or ratified by the required number of States, therefore the preparation of International Conventions failed to be adapted as much as it should be. As a result, the project was categorized as a legal guide named the Principles for International Commercial Contracts to show its flexibility for adaptation. In fact it has been widely used in international commercial

circle.

Preparatory work was carried out by three well known comparatists representing three major legal systems and at the end of the 1970s a working group was formed. The group eventually consisted of all members States originating both from civil law and common countries in accordance with the universal vocation of the Institute including Great Britain, France, Germany, Italy, Spain, Portugal, USA, Canada, Australia, Russia, Japan, China and Ghana. Preliminary drafts for the separate chapters or sections were produced by members of the group and were then discussed by the group as a whole; each chapter or section underwent at least two readings (one reading normally taking a session of a week's length). Decisions normally were made by consensus, but sometimes, in exceptionally arduous cases, after long discussions this consensus was brought about by abiding to the outcome of an indicative vote.

The Principles are drafted articles accompanied by comments, which include illustrations wherever deemed useful to illustrate their content and scope, and references to other pertinent international instruments of unified law. The comments do not refer to national legal systems, unless a specific rule or institution is borrowed from a national source and it is felt useful to indicate such origin; or, conversely, unless a rule intends- without expressly saying so- to exclude the application of a national rule.

Since 1980 the working group has met once or twice a year for a one week session. In 1994 the group finished the first part of its work and in the same year the governing Council of UNIDORIT- which in the preceding years had already discussed a number of controversial questions- approved the work of the working group and consented to the publication of the Principles.

The UNIDROIT Governing Council at its 1996 meeting decided to reconvene the working group in order to continue its work on other topics. This second phase of the group's activity was finished in 2003. The enlarged version of the Principles was published in 2004.

The Principles may serve as a model law that could inspire legislators who strive for law reform. The Principles (and their accompanying comments) may serve to enlighten parties negotiating a contract in order to identify the problems to be resolved in their contract and, possible, to find suitable rules to settle them.

Parties to an international contract could choose the Principles as the law applicable to their contracts

4. Comparison between CISG, Principles and China's Contract Law

4.1 General Provisions and Principles of China's Legislation

China's legislation on Contract law has four principles: 1. In accordance with the Constitution; 2. Based on actual circumstances and China's existing legal system; 3. promote economic development and be consistent with reform and opening to the outside world; and 4. Take international conventions and international practices as reference.

It reflects in the Legislative Law of China published on January 1 2000. In the Legislative Law, Article 3 says that "Lawmaking shall follow the basic principles of the Constitution,

center around economic development, ... and be consistent with reform and opening up to the outside world.” and Article 6 indicates “Lawmaking shall be based on actual circumstances, and shall, in a scientific and reasonable way, prescribe the rights and obligations of citizens, legal persons and other organizations, and the powers and duties of state organs.”

Along with the economic reform and the implementation of the opening to the outside policy of China since 1978, China has harmonized its Contract Law gradually. China published the Economic Contract Law in 1982 mainly applicable to domestic contracts reflecting the central planned economy in China. For example, the contracts could be void if the State plan had changed. To meet the needs of the foreign economic and trade development, on 21 March 1985, China promulgated the Law on “Foreign Economic Contract”. The Foreign Economic Contract Law was much open than the Domestic Contract Law. For instance: 1. Delete the impacts of State planning on the validity of contracts; 2. Parties can select the applicable law including foreign laws; 3. Formation of a contract should be in writing; 4. Limitation period is four years.

There were many problems for the application of the systems parallel under the two Contract laws. The formation of contracts was different. The domestic contract law allowed oral contract but the foreign economic contract required all contracts in writing. The Foreign Economic Contract Law allowed parties to select the applicable law including foreign laws, but the domestic contract law didn't. The limitation period for domestic contracts was two years and the foreign economic contracts were four years. How to define the qualification of parties were sometimes very difficult, therefore to define the application of foreign economic contract law or domestic law was difficult. Unification of Contract law was very much needed and over called. Particularly China is under economic reform and deepens its market economy. China has achieved great success in its opening to the outside policy. China becomes the biggest developing country with largest foreign investment. China's foreign trade volumes increased rapidly during the last decade. China becomes the third largest trading country in the world. China needs to bring its commercial law comparable to the world trading system. After almost ten years of extensive studies on contract law legislation under the two legal systems and careful domestic market and law research work as well as the detailed contract law preparation work, the Contract Law of China was finally adopted on 15 March 1999 and entered into effective on 1 January 2000; meanwhile, the domestic Contract Law of 1982 and foreign economic Contract Law of 1985 were both the previous domestic Contract Law and the Foreign Economic Contract Law abolished. The new Contract Law is a unified, comprehensive and modern contract law. During the preparation of the Contract Law, Chinese legislators listened widely the opinion of Chinese and foreign legal scholars, practitioners. The Contract Law drafting committee has conducted many consultations meetings with representatives of all levels in the society, top experts, as well as experts of UNCITRAL and UNIDROIT to share their experience on the preparation of CIGS and Principles.

4.2 Comparison between China's Contract Law and CIGS and Principles

The UNIDROIT Principles consist of a preamble and 10 Chapters: general provisions, formation and authority of agents, validity, interpretation, content and third party rights, performance, non-performance, set-off, assignment of rights and limitation period.

CISG has 6 Chapter and 101 articles: General Provisions, Formation of the Contract, Sale of Goods ,Obligations of the Seller , Delivery of the goods and handing over of documents , Conformity of the goods and third party claims, Remedies for breach of contract by the seller , Obligations of the Buyer , Payment of the price , Taking delivery, Remedies for breach of contract by the buyer , Passing of Risk , Provisions Common to the Obligations of the Seller and of the Buyer, Anticipatory breach and installment contracts ,Damages , Interest , Exemptions , Effects of avoidance , Preservation, and Final Provisions.

China's Contract Law has two parts: General Provisions and Specific Provisions; 24 Chapters and 428 articles. It includes Basic Principles, Conclusion of a contract , Validity, Performance, Modification & Transfer, Termination of Rights & Duties, Liability for Breach of Contracts and Other Provisions; and Specific Provisions: Sales Contracts, Contracts for the Supply & Use of Electricity, Water, Gas & Heat, Contracts for Gifts, Contracts for Loan, Contracts for Lease, Contracts for Financial Leasing, Contracts for Work, Contracts for Construction Projects, Contracts for Carriage, Contracts for Technology, Contracts for Deposit, Contracts for Warehouse, Contracts for Mandate, Contracts for Commission, Contracts for Brokerage and Supplementary Provisions.

The coverage of China's Contract law is much larger than CISG and the Principles. CISG covers only the international sales of goods. The Principles covers commercial contracts. The Principles open with the statement (preamble, al. 1) that they set forth general rules for international commercial contracts. These concepts are not defined. However, the comments indicate that "commercial" is not to be understood in the sense of those legal systems whose codified law distinguishes between civil and commercial law, but is meant-following the example of FCISG- to exclude the so called consumer contracts for which many states have specially legislated rules of a protective and mandatory character. China's Contract law covers not only sales contract, but also contracts of leasing, transportation, transfer of technology, gift and contract, deposit and warehouse contracts, etc. The CISG governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. CISG is not concerned with: (a) the validity of the contract or of any of its provisions or of any usage; (b) the effect which the contract may have on the property in the goods sold.

Art. 5 indicate that CISG does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

CISG is applicable only to a sales contract between two parties in two different member States ratified the CISG. China's Contract law as a country domestic law can supplement the issues not in the CISG such as contracts concluded between a Chinese company and a foreign company in a country not member to CISG, as well as the validity of a contract and compensation for damages and injuries of goods to a third party, etc.

4.3 Common principles and similar provisions

- 4.2.1 **Principles of autonomy:** Art. 2, 3 and 4 of China's Contract Law, reduce the interference of the State (Art. 10 and 12). Article 3 of China's Contract Law says: "The contractual parties are of equal status. Neither party may impose its will on the other party. Article 4 indicates:"The contractual parties are free to enter into a contract according to law. No organization or individual may illegally interfere this right." and Article 12 says: "The contents of the contract shall be agreed upon between the parties."

Chapter 1 of the Principles formulates some general principles, including the principle of freedom of contract,

- 4.2.2 **Binding character of contract,** The Preamble of CISG indicates parties are bound to usages. Article 14 of CISG says "A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offer or to be bound in case of acceptance".

Article 8 of China's Contract Law indicates that "A contract legally formed is binding upon the parties. Each party shall perform its duties according to the terms of the contract. Neither party may unilaterally modify or discharge the contract.

- 4.2.3 **Good faith.** CISG Article 7 indicates its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

China's Contract Law says: Article 5 "The contractual parties shall ascertain their rights and duties in accordance with the principle of fairness." Article 6 "The contractual parties shall exercise their rights and perform their duties in accordance with the principle of good faith."

- 4.2.4 **Formation of contract**

In the first section (formation) some ten articles on offer and acceptance closely follow the pattern offered by CISG..

China's Contract Law requires "The parties concluding a contract shall have correspondent civil right capacity and civil conduct capacity. (Article9); each party may authorize an agent to conclude a contract.

A contract may be concluded in written, oral or other forms.

Where a contract is required to adopt written form by law or administrative regulations, the written form shall apply. Where the parties have agreed that the contract shall be in written form that form shall apply. (Article 10)

The written form refers to written contracts, letters, data message (including telegram, telex, telecopy, electronic data interchange, and electronic mail)etc. whose contents can be manifested in visible form.(Article 11).

The CISG Article 11 indicates "A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be

proved by any means, including witnesses” The definition of “writing; CISG has a similar provision than China’s Contract Law: “For the purposes of this Convention "writing" includes telegram and telex.” (Article 13).

4.2.5 Authority of Agents

The second section (authority of agents) of the Principles governs the ‘external aspect’ of agency: the authority of a person, the agent, to affect the legal relations of another person, the principal, by a contract with a third party. Where the third party knew or ought to have known that the agent was acting as an agent (and the agent acts within the scope of its authority) there will be a contract between the principal and the third party. Where an agent acts without authority, the third party is protected if the principal caused the third party reasonably to believe that the agent has authority.

The problem of ‘undisclosed agency’ is solved in the following way. Where the third party neither knew nor ought to have know that the agent was acting as an agent (and the agent acts within the scope of its authority) the agent binds himself; but where the agent, when contracting with the third party on behalf of a business, represents itself to be the owner of that business, the third party, upon discovery of the real owner of the business, may exercise also against the latter the rights it has against the agent.

China’s Contract Law stipulates “A commission contract is a contract under which the factor engages in trade activity in its own name for the principal, while the principal pays remuneration.”(Article 414).

Article 396 says “A mandate contract is a contract under which the mandator and the mandatory agree that he mandatory handles the affairs of the mandator.”

Article 402 dealing with undisclosed “principle”: “Where the mandatory, in the name of himself, concludes a contract with a third party within the scope authorized by the mandator, the contract is directly binding over the mandator and the third party if the third party has the knowledge of the relationship of agency between the mandator and the mandatory, unless definite evidence is given to prove that the contract is binding over only the mandatory and the third party.”

Article 400 stipulates: “...If the mandate by the mandatory to a third party is upon the mandator's Consent, the mandator may give direct instruction to the third party as to the trusted affairs. and the mandatory is only liable for the choice of the third party and its direction to the third party.

If the mandate by the mandatory to a third party is not upon the mandator's consent, the mandatory shall be liable for the act of the third party, except for the case under which the mandate by the mandatory to a third party is needed for the protection of the mandator's interest under urgent circumstance.

4.2.6 Validity

The chapter on validity deals with a subject-matter which is nearly entirely excluded from the scope of CISG. Article 4 of that Convention states that it is not concerned

with the validity of the contract or of any of its provisions.

Article 3.2 lays down the important rule that a contract is concluded, modified or terminated by the mere agreement of the parties, without any further requirement. The main purpose of this Article is to do away with the civil law doctrine of cause and with the common law doctrine of consideration.

The rest of this Chapter is devoted to the so called defects of consent. Mistake, fraud and threat are dealt with, as well as “gross disparity”, namely the situation where either the contract or an individual term unjustifiably gives a party an excessive advantage over the other party.

In the cases mentioned above, the contract may be avoided by the disadvantaged party by a notice to the other party which must be given within a reasonable time after the avoiding party either knew or could not have been unaware of the relevant facts and became capable of acting freely. Avoidance may be partial and it has retroactive effect. The party who is entitled to avoid the contract may also claim damages (so as to put it into the same position it would have been in, if it had not concluded the contract) if the other party knew or ought to have known the ground for avoidance. In the cases of mistake and of gross disparity, it is possible for the other party to prevent the avoidance of the contract by a reasonable offer to modify the contract.

Chapter 3 of China’s Contract Law deals with Validity of Contract. Article 44 stipulates that “A contract shall take effect at the moment it is formed according to law. Where laws or regulations require a procedure of approval, registration etc., and those provisions shall be followed.

The validity of a contract may be subject to conditions by agreement between the parties. (Article 45). The validity of contract may be subject to time limit agreed upon between the parties. A contract subject to time limit for validity becomes effective when the time limit is mature. (Article 46). A contract concluded by a person with limited civil conduct capacity shall takes effect after it is ratified by his legal representative. (Article 47) A gratuitous contract or a contract concluded in conformity with his age, intelligence or mental health condition however does not need to be ratified by the legal representative. (Article 48). Where a contract is concluded in the name of the principle by a doer without agent rights or exceeding his authority or after the termination of the agency, the contract shall be invalid to the principle in the absence of his ratification and the doer shall be liable.

Where a contract is concluded in the name of the principle by a doer without agent rights or exceeding his authority or after the termination of the agency, this agency is effective so long as it is reasonable for the counterpart to believe that the doer has the agent right. (Article 49).

Article 52 stipulates: A contract is void: if it is concluded through fraudulence or duress of one party to harm the interests of the State ; involves maliciously conspiring to injure the interests of the State, of a collective, or of a third party; uses a lawful form to conceal an illegal purpose ; impairs the social public interests and violates the

compulsory provisions of laws or administrative regulations.

Article 53 says “ The following exemption clauses in a contract is void:

- (1) one in connection with physical injury caused to the other party
- (2) one in connection with property losses caused to the other party due to a deliberation or gross negligence.

An avoided contract or a rescinded contract has no legal restraint from the time when it is concluded. Where the invalidity of a part of a contract does not affect the validity of the other parts. The other parts remain valid (Article 56)

the avoidance, revocation and termination of a contact shall not affect the validity of the independent clauses in the contract in connection with dispute settlement. (Article 57).

Article 58 further stipulates “After a contract is avoided or is rescinded, the property acquired under the contract shall be returned. Property that can not be returned or is not necessary to be returned shall be reimbursed in money. The party who was at fault must compensate the other party for the loss caused thereby, where both parties were at fault, each must bear an appropriate amount of liability”.

4.2.7 Performance

The first section of the CISG is devoted to many problems that are well known to lawyers familiar with a codification of private law: time of performance, order of performance, place of performance, payment by cheque or other instrument (a subject which as yet has found its way only into some national codes), currency of payment, imputation of payments and the like. A new topic is concerned with national public permission requirements affecting the validity of the contract or making its performance impossible. The rules state which party shall take the measures necessary to obtain permission, and the position of the parties where permission is either refused or neither granted nor refused.

The section on hardship begins by stating that if the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform his obligations. However, Article 6.2.2 allows for an exception in the case of hardship, described as the situation where the occurrence of events (specified in litt.a-d) fundamentally alters the equilibrium of the contract either because the cost of a party’s performance has increased or because the value of the received performance has diminished. In the case of hardship the disadvantaged party is entitled to request renegotiations and upon failure to reach agreement the court may, if reasonable, either terminate the contract at a date and on terms to be fixed or adapt the contract with a view to restoring its equilibrium.

Chapter 4 of China’s Contract Law deals with Performance. Article 60 stipulates”The parties shall fully perform the obligation according to the contract.

The parties shall perform such duties as notification, assistance, confidentiality etc., observing the principle of good faith and in accordance with nature and purpose of the

contract and trade usage.”

4.2.8 Non-Performance

The chapter 7 of the Principles is divided in 4 sections: general provisions, right to performance, termination, damages and exemption clauses.

Following the CISG-approach the Principles have adopted a unitary concept of “non-performance” (Article 7.1.1): the term denotes any failure of a party to effect due performance, including late performance and defective performance.³¹ the term has been preferred to the term “breach” used in CISG, since the breach in the common law is restricted to non-performance which gives the other party the right to claim damages, whereas non-performance may also lead to the use of other remedies, such as termination of the contract and withholding performance, for which there is no requirement that the non- performing party must be liable in damages. This can be illustrated by the operation of the rule which relates to *force majeure*, where a party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably have been expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences (Article 7.1.7). Although the remedy of damages is not available the other party is not precluded from exercising the remedies mentioned above.

Section 2 relates to the right to claim specific performance. Not only the obligee of a monetary obligation disposes of that right, but also the obligor of a non- monetary obligation, unless one of the specific exceptions spelled out in Article 7.2.2 lit. A-e occurs. To this innovation (a compromise between the civil law and the common law systems) another is added in Article 7.2.4, whereby a court ordering a defaulting party to perform is authorized to award a penalty in the event of non-compliance with the order; and that this penalty be paid to the aggrieved party unless mandatory provisions of the law of the forum provide otherwise.

Section 3 deals with the right to terminate the contract in the case of a fundamental non- performance; this concept is described in Article 7.3.1 para.2 in a more elaborate manner than in Article 25 of CISG. Similar to ‘avoidance’ in Chapter 3, the right to terminate is exercised by a notice to the other party within a reasonable time. This Section also addresses issues of anticipatory non- performance, the effects of termination (which does not preclude a claim for non-performance) and, very briefly restitution.

Finally, the right to damages is set out in Section 4: the principle of full compensation (including compensation for non-pecuniary harm), certainty of harm, foreseeability of harm, mitigation of harm, the right to interest in case of failure to pay a sum of money.

The chapter contains two modern rules restricting the freedom of the stronger party to impose unfair contract clauses on the other party. According to art.7.1.6, exemption clauses may not be invoked if it would be grossly unfair to do so, having regard to the purpose of the contract. According to Article 7.4.14 a contractually specified sum to be paid in the case of non-performance may be reduced to a reasonable amount where it is

grossly excessive in relation to the non-performance and the other circumstances.

Article 112

if the party fails to perform contractual duties or the performance of the duties fails to conform to the Agreement it shall after performing the duties or adopting remedial measures compensate for the losses to the other party in case the other party still suffers from other losses.

Article 8 of China's Contract Law insists on the parties' obligation to perform its contractual obligations. "A contract legally formed is binding upon the parties. Each party shall perform its duties according to the terms of the contract. Neither party may unilaterally modify or discharge the contract."

Article 113 of China's Contract Law stipulates "Where one party fails to perform contractual duties or the performance fails to conform to the agreement and Thereby causes losses to the other party the amount for losses compensated shall be equal to the losses caused by the breach of contract including possible profit realized if contract duly performed but shall not Exceed the possible loss caused by breach of contract which can be foreseen by the breaching party at the time of contract formation.

Where the business operator has fraudulent conduct in supplying goods and service for consumer it shall take liability for compensation according to the provisions in "law of the people's Republic of China on Protection of the Rights and interests of Consumers".

Article 114

the parties may agree that one party pays liquidated damages to the other in case of breach of contract according to the circumstance of the breach they may also agree on the calculating manner of damages caused by the breach.

If the agreed liquidated damage is excessively higher than the actual loss the party may apply to the People's court or an arbitration body for suitable mitigation if the agreed liquidated damage is excessively lower than the actual loss the party may apply to the people's court or an arbitration body for a suitable extension

4.2.9 **Assignment of rights, Transfer of Obligations, Assignment of contracts**

Chapter 9 of the Principles containing 30 articles, of which 15 (section 1) on assignment of rights. A right assigned by mere agreement between assignor and assignee, without notice to the obligor. Articles 9.1.5 and 9.1.6 allow for the assignment of future rights and of rights without individual specification. Non- assignment clauses are to a large extent deprived of their effect (see Article 9.1.9). Until receiving a notice of assignment the obligor is discharged by paying according to the order in which the notices were received.

Chapter 5 of China's Contract Law deals with Modification and Transfer

The parties may modify the contract upon agreement. If the procedure of approval or registration is required for the modification of contract by the laws or administrative regulations, provisions of the laws or administrative regulations shall apply. (Article

77).

The creditor may transfer whole or partial contractual rights to a third party, except transfer is not permitted by the nature of contract; transfer is not permitted according to the parties' agreement and not permitted by legal provisions. (Article 79)

The creditor shall notify the debtor in case of transfer of rights; otherwise, the transfer will not bind on the debtor.

The creditor's consent is required if the debtor transfers the contractual duty in whole or in part to a third party. (Article 84).

If the procedure of approval or registration is required for the transfer of the obligatory right by the creditor or the transfer of the debt by the debtor according to laws or administrative regulations, provisions of laws and administrative regulations shall apply. (Article 87)

Upon the other party's consent, one party may transfer both contractual right and duty in general to a third party.

If the party combines after the formation of a contract, the legal person or other organization after combination shall exercise contractual right and fulfill contractual duty. If the party separates after the formation of contract, except for otherwise agreed by the creditor and the debtor, the legal person or other organization after separation shall enjoy joint and several creditors' rights and bear joint and several debts. (Article 90)

4.2.10 Limitation Periods

The general limitation period is three years after the day the obligee knows or ought to have known the facts as a result of which the obligor's rights can be exercised. The maximum limitation period is ten years beginning on the day after the day the right can be exercised. The running of the limitation period is suspended in case of judicial or arbitral proceedings, in case of alternative dispute resolution and in case of force majeure. The parties may modify the limitation periods within the limits indicated in Article 10.3. of the Principles.

Article 129 of China's Contract Law stipulates : "The time limit of bringing suit or applying for arbitration in a dispute over an international contract of sales of goods and contract of technology export and import shall be four years, counting from the day when the party is aware or ought to be aware of its rights' being infringed upon.

As to the time limit of bringing suit or applying for arbitration in other contract disputes, relevant legal provisions shall apply accordingly."

5. Concluding Remarks

The UNIDROIT Principles have produced remarkable results, especially in the field of international commercial arbitration. Now that the study group also has finished the second part of its work, an interesting option would be to resume and continue the work in UNCITRAL with

a view to preparing an international convention on the general part of the law of contracts. The success of CISG, also in a sense a combined effort of both organizations, should provide inspiration and courage to undertake such a momentous, albeit arduous, enterprise.

Under the globalization and rapid development of international trade and economic cooperation, harmonization of contract law can provide a sound legal instrument to achieve efficiency and economy for cross border movement of people, goods and services. The advantage of harmonization of contract law is obvious and evidenced all over the world.

- Reduce transaction costs: The advantage of a harmonized set of legal rules is that the information costs about the relevant legal situation for the users of the legal rules (firms and consumers) might be considerably lower than in a number of domestic different legal systems.
- Avoidance of conflict of law: With a uniformed international applicable law for commercial transaction can avoid conflict of law with different domestic legal systems.
- Support economic reform and law reforms by providing harmonized contract law: Many countries are undertake domestic economic and law reform to build up a market economy and ruled by law. They need to draft or revise the Contract Law making it suitable to their economic reform toward market economy. The harmonized contract law can be a good reference or a model.

Under the globalized trading system and new forms of international transaction, the harmonized international business rules can make the transaction faster and more efficient. It will further promote international trade and improve the standard of living of people.

The harmonized business rules will support the world rule based trading system by education stake holders of business transaction to perform their promise and enhance the performance of contracts and to reduce disputes and waste of time and energy.

Just like the WTO, regional free trade agreements are still grey areas of the uniformed rule based world trading system, we should encourage global harmonization of contract law to reduce as much as possible some regional harmonization of contract law approach. The current more than 300 regional free trade agreements make the trading system and rules segmented and different from region to regions. It will produce barriers and obstacles for entrepreneurs out of the region. They have to invest in getting knowledge of the regional contract law, spent more legal fees to settle their disputes arising from the contract between two parties in the region and non regional enterprises. It is against the objective of harmonization and unification of international trade mandate given by the UN Assembly to UNCITRAL two decades ago.

UNCITRAL and UNIDROIT should play an import role in the harmonization of contract law.

To conclude, I would emphasize that “Globalization of Trade needs badly Harmonization of Contract Law. Harmonization is a voluntary participation of all interesting States. It is not an order imposed from outside of the State, therefore it does not affect the sovereignty of a State; Unification is not one size fits all. Mutual respect of each other’s legal system is the key for success of harmonization of law. As indicated in the Preamble of CISG: “that 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...”

For reaching our common goal, all countries and legal experts should take active part to the harmonization of contract law and seek common grounds to adopt the modern provisions of contract law so that the harmonized contract law can better serve the society and to facilitate lawyers, practitioners, judges, teachers and arbitrators, business men and ordinary people.