

The Vienna Convention and International Business Law Practice (summary)

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The United Nations Convention on Contracts for the International Sale of Goods ('CISG') has been in effect for more than 20 years. As Japan has acceded to the CISG and it came into force from 1 August 2009, it is time that Japanese practitioners studied the CISG seriously. However, as yet few Japanese language reference materials on the drafting of international business contracts have been published which take the CISG into account.

In practice, the bulk of international contracts are written in English and Anglo-American legal principles play an important role in construing those contracts. Many international contracts are governed by English and American law and the parties very often submit to the jurisdiction of the English and American courts despite the fact that none of the parties to those contracts are English or American. Lawyers in the USA, Canada and Australia who are early signatories to the CISG have habitually excluded application of the CISG due to lack of knowledge about it and a lack of confidence in it. These facts suggest that views and comments of Anglo-American academics and practitioners may assist Japanese lawyers in considering how they should approach the CISG in business contracts.

This article summarises opinions on the CISG expressed by prominent Anglo-American lawyers and presents some of their drafting suggestions. It also takes up some of the CISG provisions and discusses practical problems which require careful attention. Some of the controversial areas are: whether or not to exclude the CISG (Art 6), the interpretation of the CISG, the international character of the CISG and the background governing law (Art 7), fundamental breach of contract and avoidance of the contract (Arts 25 and 49), notice of non-conformity of the goods (Arts 35, 38 and 39) and force majeure (Art 79).

Although much of the views introduced in this article may appear critical, this does not mean that we may ignore the CISG. On the contrary the CISG is specifically focused on the law of the sale of goods, reflecting the expectations of the merchants and embodying

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widely accepted trade practices. Its function is essentially gap-filling, *i.e.* parties are free to modify or even exclude all or a part of it as they see fit. The CLOUT and other collections of precedents are growing constantly and the number of contracting states is steadily increasing. As thousands of simple sales contracts are concluded daily around the world, there is no doubt that the CISG will increase in importance as the uniform law.