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Comparative interpretation standards in uniform international law

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Comparative interpretation standards in uniform international law

Maren Heidemann*

Introduction

Interpretation standards in international law

One of the most important mechanisms in the successful use and application of international law are interpretation standards. These are contained partly in the individual rules themselves, partly in special international legislation on the matter and partly in the law, customs and practices of the country or institution where the uniform law is applied. So, while uniform law is specifically made by supranational legislatures or institutions to address cross-border affairs such as private and commercial contracts and their performance, its practical usefulness and success depends on the way this law is interpreted on its application. Will the interpretation give due consideration to the underlying purpose of the uniform law or will it provide an obstacle to the transaction performed under the law and its adjudication? Interpretation standards exist autonomously within many uniform instruments but they also form an important part of national legal doctrine in most domestic jurisdictions. From this simultaneous presence of potentially differing standards conflicts can arise. Such conflicts are often settled in a way indicating a weak position of the international law itself. Often, domestic legal positions are given preference over the intended solutions of the international legal instrument by way of the interpretation standard and method. In this way, the true purposes of the specialised uniform law cannot be realised and the international transaction lacks the legal protection that it was awarded by an international rule maker by way of the relevant international legal instrument. This paper will explain how interpretation standards have evolved in uniform law over the past decades, how they can be enforced and what a desirable continuation of this process and a desirable standard may look like.

Comparative method

Uniform international law poses a challenge in that a comprehensive description of available interpretation standards can only be effected by comparing the fragments contained in each instrument. By carrying out a horizontal comparison at international level in contrast to the more common comparison of laws across separate jurisdictions the fragments can be grouped both according to a timeline and according to the creator of each instrument, the respective law maker. This allows conclusions as to the intentions and the potential behind each of the different rules and a projection into the future based on these observations. A precondition for this horizontal comparison is the fact that the uniform instruments are legally separate from each other due their allocation to the supranational law making sphere. No legal link exists between them and none of them has any effect beyond its immediate scope and group of signatory states, ie materially and territorially. Therefore the fragments of interpretation standard can be looked at individually and

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compared due to the difference between these standards and the separateness of the legal instrument containing them. At the same time, the separateness of the instruments necessitates a comparative exercise in order to gain a comprehensive view of available forms of interpretation, application standards and methods in uniform international law allowing the development of a modern approach to the use of such tailor made law.

In this way the comparative method can be a basis for law reform and legal evolution.

Uniform international law - terminology

Uniform international law as the object of this paper needs an introduction. With the European Union on the brink of enacting the first substantive law on contracts for all Member States,¹ a recapitulation of the nature of this law and the international setting into which it may be ‘born’ seems appropriate.

The expression international law most commonly denotes public international law which traditionally consists of treaties between states and customary rules of law as well as case law addressed to and binding for states. The complementary expression ‘private international law’ however is traditionally domestic law directing issues arising from civil matters² with a crossborder element within each country. Efforts to harmonise such rules among countries have led to international treaties establishing conflict rules.³ The underlying rules of private and contract law, however, have been the subject of international legal instruments of a varying legal nature only for a comparatively short time within legal history, hardly spanning a century. This particular type of legal instrument is the main focus of interest in this paper. The expression ‘uniform law’ has been coined in connection with the earliest efforts to create substantive rules of private law, namely contract law which eventually manifested in the Hague Conventions of the 1st of July 1964 on International Sale of Goods and the Formation of the Contract of Sale.⁴ While it may appear to be a common place that such a law is uniform, this convention and its successors distinguish itself from traditional treaties by providing substantive rules of contract law directly addressed to and applicable by the private parties of a contract whereas the traditional treaties regulated the actions of states. At the same time of course ULIS is a convention, a traditional treaty, as is the 1980 Vienna Convention on the International Sale of Goods, CISG, and a number of other modern conventions regulating private law issues relating to a range of international trade contracts and their performance, for example shipping, including air and road transport.⁵ Uniform legal instruments which have been adopted as treaties therefore also bind states and their actions. If they have not undergone the formal procedure of adoption and ratification they may not be binding on the

¹ See the Draft Proposal for a Common European Sales Law, COM (2011) 635 final (CESL).

² Civil matters traditionally covered by conflict law include contract law, matrimonial and parentage law, inheritance, property and tort law.

³ For example the 1980 Rome Convention on the law applicable to contractual obligations (consolidated version) (1998), and the 1968 Brussels and corresponding 1988 Lugano Conventions on jurisdiction and the enforcement of judgments in civil and commercial matters.

⁴ ULIS, Convention relating to a Uniform Law on the International Sale of Goods, and ULC, Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, both concluded in the Hague on 1 July 1964 and prepared by UNIDROIT.

⁵ Examples are the Hague Visby Rules on sea carrier’s liability (1924/1968), the Hague Rules on Bills of Lading (1924), the Hamburg Rules (UN, 1968), the Warsaw Convention on air carrier liability (1929)

signatory states in the same way as treaties but they are still uniform international instruments as they still have the quality of law.⁶ All these instruments seek to provide a uniform source of law to international private actors. The expression uniform law has therefore come to denote legal instruments providing substantive rules of private law in the form of a traditional instrument of international law. Uniform international law is therefore intended to formally govern matters of a civil or commercial nature with a varying degree of binding force on an international, non-domestic level.

Interpretation

In the application of any law interpretation of its individual rules is an integral part. Domestic legal systems have developed their own methods and practices over long periods of time. These differ often quite substantially between the legal systems as they have arisen from various historic and political origins. As they form part of the legal identity of those different legal systems, not only are stipulations on interpretation needed in each uniform instrument, but these are also subject to dissent in drafting and adoption negotiations just as many other core provisions such as performance rules or remedies. At the same time, uniformity of international law requires a degree of uniform application in addition to a uniform source. In some areas this can be provided by a centralised adjudication system such as that of the European Union, the International Court of Justice in the Hague or the dispute settling mechanism of the World Trade Organisation, WTO. In many other areas such a system does not exist or is fragmented. The CISG relies solely on an informal database offering reference to domestic court decisions on international sales contracts using CISG.⁷

To guide the application of uniform law interpretation provisions have been included into each of them. These can be compared and a development observed over the years. Whether this has resulted into an international doctrine of interpreting and applying uniform law which could be called a method or whether it would be possible and desirable to use such a method is the subject of this paper.

Sources of interpretation rules

Treaties

General rules for the interpretation of treaties are provided by the 1969 Vienna Convention on the Law of Treaties, VCLT.⁸ Concluded under the auspices of the United Nations the VCLT is a treaty itself and contains in its Arts 31-33 provisions about the application and interpretation of treaties. These govern the application of all those uniform laws which have amounted to treaties such as the CISG, the ULIS, and many conventions created by UNIDROIT and UNCITRAL, for example the conventions on factoring and leasing concluded in Ottawa in the 1980s. Together with the

⁶ See for further detail on this issue M Heidemann, *Methodology of Uniform Contract Law - the UNIDROIT Principles in International Legal Doctrine and Practice* (Springer, Berlin Heidelberg New York 2007), chapters 6 and 7.

⁷ <http://www.cisg.law.pace.edu/>.

⁸ Text and materials available from <http://untreaty.un.org/cod/avth/vclt/vclt.html>.

individual provision contained in those treaties they might constitute the basis for an international method of interpretation. The next step would then be to ask if this amounts to a legal obligation for the lawyers and parties using the instruments and whether these extend to uniform international instruments which are not formal treaties, for example the UNIDROIT Principles of Commercial Contracts, UPICC,⁹ or indeed the proposed CESL¹⁰ which is meant to be an EU regulation and not a treaty.

Current rules and methods in uniform international law

It is possible to discern three types of interpretation standards in uniform law instruments, having evolved during the decades of their successive creation.

The first type was created in the course of the creation of ULIS in The Hague. The second type can be established in the 1980 Vienna Convention on the Law of International Sales, CISG, created by UNIDROIT and the UN. The third is a combination of both, where the interpretation rule is extended by reference to the ‘object and purpose’ of the convention and can be observed in the UNIDROIT conventions of the 1980s, namely the so-called ‘Ottawa’ conventions.

The interpretation provisions of the VCLT apply generally to all of the aforementioned instruments and possibly beyond. They could be classed as a forth or general standard.

The interpretation standards generally consist of two components - the actual interpretation of individual rules of a legal instrument and a method providing for how to proceed in case no answer can be derived from those rules for the matter in hand. I want to refer to these in the following as an interpretation rule and a method.

The first type of standard in ULIS consists of only the method, the other two both include a method and an interpretation rule while the VCLT itself does not provide for a method. I want to look at these rules in detail now and compare them with each other. After that I want to discuss what this means for the development of a consistent and meaningful interpretation standard for current uniform international law.

The first type – Art 17 ULIS

ULIS was the instrument first adopted (in 1964) even before the VCLT in 1969.

Art 17 ULIS reads:

Questions concerning matters governed by the present Law which are not expressly settled therein shall be settled in conformity with the general principles on which the present Law is based.

The absence of an actual interpretation rule providing how questions ought to be decided under the present law or guidelines of how to use the rules makes Art 17 look like making the second step before the first. However, it has to be borne in mind that this type of legal instrument and with it any type of application standard was the first of its kind and the result of many years of academic work and diplomatic negotiation. Interpretation and application of the law is not often subject to express legislation in many domestic legal systems, so Art 17 ULIS sets uniform law apart from domestic sales law. Art 17 ULIS introduces ‘general principles on which the present Law is based’ as a

⁹ Available at <http://www.unidroit.org/english/principles/contracts/main.htm>.

¹⁰ Note 1.

reference point. This requires not only the identification and acceptance of those general principles, it also presupposes the prior exhaustion of meaning derived from the whole of the set of rules, conceiving of the rules as a comprehensive instrument, not as a ‘toolbox’ as is often advertised presently and practiced all too often.¹¹ Art. 17 ULIS requires the user to establish whether or not a matter is expressly settled in the convention before he or she moves on to the ‘general principles’ on which ULIS is based. Leaving the question aside for a moment, of what these general principles might be, I want to look at the other available standards and compare to each other before evaluating the usability of each of the standards.

The second type – CISG

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (1980) [CISG]

Article 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.

(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.

The wording of this article displays a method article preceded by an interpretation rule in the above explained sense.

The method article in the second para of all these articles commences identical to ULIS and then continues on to add another step to this method. In addition to referring to underlying principles these conventions point to private international law to establish the next point of reference to decide a question arising under the conventions. This point of reference will be a national law under current private international law rules. There even seems to be a preferred hierarchy between the domestic law summoned by way of private international law rules and the underlying principles. Only in the absence of the underlying principles should domestic law be used. It is not, however, a clear progression of first exhausting possible answers from underlying principles and then proceeding to domestic law. It is only if no underlying principles can be found the applying lawyer or party is to resort the national law pointed out by conflict rules. It is unclear if this is meant to be a choice of terminology equalling a lack of result from underlying principles with the absence of the same or the assumption that conventions can be drafted without underlying principles. Assuming underlying principles in the first place seems to forbid the assumption of their absence.

The third type – Ottawa

In 1988, UNIDROIT called a diplomatic conference in Ottawa where two conventions on international leasing and factoring were adopted. These contain both an interpretation rule and a method which are identical to the wording of CISG, but they also introduce the important additional reference to the ‘object and purpose’ of the convention. This component will be looked at in more detail below.

¹¹ The expression has been coined and elevated to *quasi*-official language in the course of the drafting project for the ‘Common Frame of Reference’ (DCFR) and the subsequently published Green Paper consulting ‘stakeholders’ on their preferred option for the eventually proposed ‘Common European Sales Law’, see ‘Green Paper from the Commission on Policy Options for Progress towards a European Contract Law for Consumers and Businesses’, COM(2010) 348 final (2010).

UNIDROIT Convention on International Factoring (Ottawa, 28 May 1988)

Article 4

1. - *In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.*
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.*

UNIDROIT Convention on International Financial Leasing (Ottawa, 28 May 1988)

Article 6

1. - *In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.*
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.*

The 1969 VCLT

For ease of reference the relevant text of the VCLT is also included here despite its greater length compared to the above cited convention articles.

Vienna Convention on the Law of Treaties 1969 ¹²

SECTION 3. INTERPRETATION OF TREATIES

Article 31 General rule of interpretation

1. *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
2. *The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:*
 - (a) *any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;*
 - (b) *any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.*
3. *There shall be taken into account, together with the context:*
 - (a) *any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;*
 - (b) *any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;*
 - (c) *any relevant rules of international law applicable in the relations between the parties.*
4. *A special meaning shall be given to a term if it is established that the parties so intended.*

Article 32 - Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from

¹² Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331.

the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.

Article 33 - Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

It can be seen that the significance of the object and purpose of an international legal instrument, private or public, has been part of the general interpretation process introduced by the VCLT in its Art. 31, along with other elements of Art. 31, repeated in the later conventions. The fact that reference to object and purpose is not expressly included in ULIS does not mean that the standard was unknown or dismissed by the drafters at the time of drafting ULIS which of course coincided with or preceded that of the VCLT. Equally, while the VCLT codified a lot of customary law the contents of Art 31 should not be taken as an agreed standard of customary law without more. Too great are the differences in practices between different legal systems so that, eventually, the VCLT provided a common basis among the signatory states.¹³

Legal nature of the sources

The above listed examples of uniform international law belong to one category of source of law - they are international treaties, conventions adopted at diplomatic conferences and ratified subsequently within each signatory state under national constitutional procedures. They therefore have the quality of formal law even though this may not lead to identical consequences within each signatory state as ratification is followed by varying types of implementation procedures.¹⁴ So, here we can now see the peculiarity of uniform international law as described here which starts its life as a treaty clearly assigned public law qualities and addressed to states but at the same time providing substantive rules of contract law to private parties. According to the varying implementation procedures, the treaties then may turn into directly applicable domestic rules of contract law¹⁵ applicable to international contracts while they simultaneously remain treaties at supranational level and continue to bind states. What is the role of interpretation rules in this situation? As far as the

¹³ See for example F Ferrari, 'Das Verhältnis zwischen den Unidroit-Grundsätzen und den allgemeinen Grundsätzen internationaler Einheitsprivatrechtskonventionen' 1 Juristenzeitung (1998) 9.

¹⁴ See for further details Ferrari F. (ed.). The CISG and its Impact on National Legal Systems, Sellier, Munich, 2008 (from IACL Comparative Law Congress, Mexico City 2008).

¹⁵ Depending on the method of implementation, see previous note.

interpretation rules arise from treaty law as the VCLT provisions do they are clearly addressed to states and stipulate how they should interpret the provisions of conventions they conclude. But do they also bind private parties who conclude private contracts under the treaties? Do they bind judges when they adjudicate disputes arising out of such contracts?

It is clear that uniform international law can appear in many shapes and forms depending on who is using and applying it. The VCLT rules do not distinguish, however, or specify to what situation they apply - only when states apply the uniform laws, when private parties negotiate their contracts or when state judges apply the uniform law conventions?

The first case, states applying uniform law conventions, is – due to the subject matter of the conventions – the least likely scenario. Uniform international law is indeed made by state parties under public international law including the VCLT to be applied by private parties and by domestic judges to their private albeit transnational contracts.

Due to the inherent discrepancy between the motivations of those two distinct participants in the global trade and negotiations of uniform contract law regimes the object and purpose of any of these instruments as mentioned in the VCLT and in the 1988 Ottawa conventions in my view play the most crucial part in the interpretation and application of any uniform international law.¹⁶

The problem is exacerbated by the fact that there are uniform instruments that are not conventions. A number of so called Model Laws (UNCITRAL) and other ‘general principles’¹⁷ have been prepared and published by institutes and scholarly groups with different forms of mandates and authority. These sets of rules can be said to have the quality of law even if they are not formally enacted under any national legislative procedure. Some of them have served as a model for law reform such as the UNCITRAL Model Law on international arbitration. This does not confer the force of law directly onto the Model Law though, but all these uniform laws are available and applied as a legal framework for international contracts and aspects surrounding their performance. They play a role in international arbitration and sometimes even in state court procedures.¹⁸ All uniform international law can be made contractual content by the parties and would subsequently itself be subject to the national interpretation rules of the law applicable by virtue of the general conflict law.

It is therefore clear that one standard for public international law treaties cannot fit all the various types of uniform international law. In addition, the VCLT as the only general standard applying to all treaties, does not provide a method.¹⁹

¹⁶ See below for further discussion.

¹⁷ Examples are the UNIDROIT Principles of International Commercial Contracts, available at <http://www.unidroit.org/english/principles/contracts/main.htm>; the Principles of European Contract Law available at http://frontpage.cbs.dk/law/commission_on_european_contract_law/pecl_full_text.htm, and the Draft Common Frame of Reference, available at http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf

¹⁸ A good illustration of this is provided by the Eurotunnel litigation *Eurotunnel v Balfour Beatty* [1992] 2 Lloyd’s Rep 7 (CA); [1993] 1 Lloyd’s Rep 291 (HL).

¹⁹ Art. 32 VCLT could be seen as supporting method articles in uniform instruments because it can provide guidance as to the identification of the underlying principles pointed to in the methods outlined above on encountering an internal gap. The article itself does not seem to be intended to establish a method in the above described sense.

Both treaty and non-treaty uniform laws, or non-state laws as they shall be called here, therefore require and incorporate individual interpretation rules. As can be seen from the above list, these rules are not identical across the board and may not even have any legal effect beyond each of the uniform international laws. It is for this reason that a comparison is carried out here in order to establish if and by what legal mechanism a general standard is effective for all types of uniform law and why one would be needed and if so which.

Another quite different form of law is suggested by the Draft Proposal for a European Sales Law, CESL.²⁰ Being a European regulation it is part of the internal secondary law of a supranational organisation. According to the established case law and the EU treaties regulations are directly applicable in the Member States (MS) without needing a separate implementation process as treaties often do. CESL, however, introduces a novel form of legal structure to the regulation by offering the actual substantive rules of CESL in the form of an Annex (I) and by declaring in the Explanatory Memorandum and Recital that this Annex be part of the national contract laws of the MS thus avoiding the need for a choice of law in the classic sense even though CESL is ‘optional’, ie only operational upon a choice by the parties. There is much debate around how this choice may operate²¹ and especially how the ‘unchosen’ CESL will operate as part of that MS whose law is not ‘chosen’ by the parties to govern their contract but whose CESL is deemed to govern the contract in its capacity as the consumer’s habitual residence’s law.²² It remains to be seen whether or not CESL will be enacted and what the judgement of the judiciary in the MS will be about this point. CESL deserves a mention in this context, however, due to its interesting range of elements of interpretation standards contained in Recital 29 of the Preamble and Article 4 of the Annex I to the Regulation, see the text below in the next section. The elaborate structure of the whole instrument may have been developed after the model of the ULF which also has the operative text in its Annex, a method also used in UK legislation such as the Contracts Applicable Law Act 1980. But as CESL is neither intended to be an international convention nor a domestic act of parliament the choice of structure is certainly unusual and of doubtful legal effect.

Non-state uniform law

To complete the set of examples of interpretation standards, I want to look at three non -state uniform laws issued by three different sources, UNIDROIT in Rome,²³ UNCITRAL²⁴ and the EU Commission.

²⁰ Note 1.

²¹ See for example Sixto A Sanchez-Lorenzo, “Common European Sales Law: Some Critical Remarks” 5 *Journal of Private International Law* (2013) 191-217, 216 and Simon Whittaker, “The Proposed ‘Common European Sales Law’: Legal Framework and the Agreement of the Parties”, 75 *Modern Law Review* (2012)(4) 578-605.

²² Art. 6 (2) 2nd sentence Rome I Regulation; see A Briggs, *Agreements on Jurisdiction and Choice of Law* (Oxford Private International Law Series, OUP, Oxford New York 2008), 383 for general discussion of the role of ‘unchosen’ law in the context of the doctrine of mandatory rules of law.

²³ Institute for the Unification of Private Law.

²⁴ The United Nation’s Commission for International Trade Law.

The UPICC

The method article Art. 17 ULIS is almost repeated in the Art. 1.6. (2) of the UPICC²⁵ which reads
The

ARTICLE 1.6 (Interpretation and supplementation of the Principles)

(1) In the interpretation of these Principles, regard is to be had to their international character and to their purposes including the need to promote uniformity in their application.

(2) Issues within the scope of these Principles but not expressly settled by them are as far as possible to be settled in accordance with their underlying general principles.

The method is somewhat toned down by the addition of ‘as far as possible’ into the phrase. The article also introduces the actual interpretation standard including part of the ‘object and purpose’ element.

The UNCITRAL Model Law on international arbitration (as revised 2006)

Article 2 A.

International origin and general principles (As adopted by the Commission at its thirty-ninth session, in 2006)

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

The interpretation rule is reminiscent of CISG, the method rule of ULIS. Interesting to note is the replacement of the reference to the ‘international character’ of rules by its ‘international origin’ to be observed. Due to its recent inclusion in to the Model Law it is fair to conclude that this standard represents a modern take on the catalogue of rules on interpretation and method seen so far. It may even be representative of a desirable standard as discussed below.

The draft regulation on a Common European Sales Law, CESL

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Common European Sales Law, COM(2011) 635 final

Preamble, Recital

(29) Once there is a valid agreement to use the Common European Sales Law, only the Common European Sales Law should govern the matters falling within its scope. The rules of the Common European Sales Law should be interpreted autonomously in accordance with the well-established principles on the interpretation of Union legislation. Questions concerning matters falling within the scope of the Common European Sales Law which are not expressly settled by it should be resolved only by interpretation of its rules without recourse to any other law. The rules of the Common European Sales Law should be interpreted on the basis of the underlying principles and objectives and all its provisions.

²⁵ UNIDROIT Principles of International Commercial Contracts, 2010.

*Regulation, Article 11**Consequences of the use of the Common European Sales Law*

Where the parties have validly agreed to use the Common European Sales Law for a contract, only the Common European Sales Law shall govern the matters addressed in its rules. Provided that the contract was actually concluded, the Common European Sales Law shall also govern the compliance with and remedies for failure to comply with the pre-contractual information duties.

*Annex I**SECTION 2 APPLICATION**Article 4**Interpretation*

- 1. The Common European Sales Law is to be interpreted autonomously and in accordance with its objectives and the principles underlying it.*
- 2. Issues within the scope of the Common European Sales Law but not expressly settled by it are to be settled in accordance with the objectives and the principles underlying it and all its provisions, without recourse to the national law that would be applicable in the absence of an agreement to use the Common European Sales Law or to any other law.*
- 3. Where there is a general rule and a special rule applying to a particular situation within the scope of the general rule, the special rule prevails in any case of conflict.*

The rules in these three instruments have been drafted drawing upon experience with preceding uniform law. While the UPICC use only one article for the core interpretation provisions, the CESL displays a more expanded structure. In fact, it spreads out its rules on interpretation over all those components that are mentioned in Art. 31 (2) VCLT as possible sources of meaning in an individual rule, it consists of a preamble, the regulation itself and of two annexes, one of them containing the actual sales law. Whether or not the drafters had the VCLT in mind when designing the instrument is questionable however as CESL is not to be a treaty but secondary law within the EU.

Comparison of the interpretation rules and methods

It is now time to look at the different standards displayed in this array of uniform laws in more detail and compare them to each other.

Method

It is possible to derive the impression from the wording in each of the rules quoted above that there are two general types of rules, one that is created for the purposes of political agreement at diplomatic conferences and one that is created for informal use by the legal community without state sanctioning or formal approval by the legislative process. This does not apply to the first example of its kind, ULIS, which contains only a basic rule, or compared with subsequent models, almost a torso.

The rule in ULIS was expanded in all subsequent treaties by the continuation of the phrase pointing the user to ‘the rules applicable by virtue of private international law’ which effectively *de lege lata* means national law.²⁶ The other models that have not been formally adopted do not contain this prescription but limit themselves to stipulating the underlying principles of the instrument as a supplementary means of interpretation. They do not, however, comment on any further possible

²⁶ See below.

step to establish external sources of law in order to interpret a rule of a given uniform law. For example, the UPICC could stipulate that rules of ULIS or CISG can be consulted to find an answer to a problem under the UPICC if none can be found within UPICC themselves, or it could point to ‘general rules of international law’. This is not a chosen route, though, and it is not difficult to see that it would not be practical to specify such a course of action. Not only is the scope of UPICC different from the sales law conventions and therefore reference to them would be arbitrary but ‘general principles of international law’ might either be deemed to be too vague by a user or they may quite to the contrary be taken for granted and therefore not need specific inclusion in the uniform law in question. The question of where to turn upon encountering a ‘matter not expressly settled’ in a uniform international law is one of general doctrine at international level and currently therefore effectively left to be decided by the background of each individual applying the instrument. It is the purpose of this paper to contribute to the formation of such a doctrine in order to decrease the uncertainty connected with this application process and increase the ease of use of uniform international law.

Example

An example may illustrate the significance and functionality of the method article in uniform laws.

When the UPICC were first published in 1994, UNIDROIT held a number of conferences in different countries to introduce and discuss the new set of rules. One item on the list was the rules on payment obligations. The payment rule in Art. 7.2.1. UPICC was heavily criticised by a scholar as providing for an overly rigid payment obligation and therefore for being incompatible with most European legal systems.²⁷ The argument was derived from the fact that Art.7.2.1 other than Art. 7.2.2. on non-monetary obligations, does not contain any express limitations.

(Performance of monetary obligation)

Where a party who is obliged to pay money does not do so, the other party may require payment.

(Performance of non-monetary obligation)

Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance, unless

(a) performance is impossible in law or in fact;

(b) performance or, where relevant, enforcement is unreasonably burdensome or expensive;

(c) the party entitled to performance may reasonably obtain performance from another source;

(d) performance is of an exclusively personal character; or

(e) the party entitled to performance does not require performance within a reasonable time after it has, or ought to have, become aware of the non-performance.

This example provides an opportunity to apply the method article and examine the outcome.

The critique expressed about the above mentioned article results from a comparison of this rule with domestic law and legal doctrine and a value judgement. This is of course exceeding a simple application to a given case. Has this been done in accordance with Art. 1.6 (2) UPICC? This would presuppose that a matter is not expressly settled in the convention. This matter would be the limitation to a payment obligation, effectively a defense against the monetary payment obligation or

²⁷ I Schwenzer, “Specific Performance and Damages According to the 1994 UNIDROIT Principles of International Commercial Contracts” 1 European Journal of Law Reform (1998/1999) 289-303.

an excuse for non-payment. The wording of Art. 1.6 (2) already contains part of the answer - it is the whole convention which can provide for the solution to a problem, not just the immediate rule on its own. The scholar is missing express limitations to the right to performance of monetary obligations in the way it is included in Art. 7.2.2. UPICC. Looking at those limitations, however, it becomes clear that some of those hardly ever apply to monetary obligations in most legal systems: payment cannot become impossible in law or fact or unreasonably burdensome. The rules in Art. 7.2.2. (a) to (d) are not applicable to payment obligations according to most domestic legal viewpoints. On the contrary, payment obligations are often treated quite differently from non-monetary ones. The fact that the rule is worded differently should as such not be cause for alarm therefore. But how are the legitimate defenses and excuses supposed to operate then under the UPICC?

First and foremost, the answer is in the wording of the rule itself. By reading the rule carefully, the user is actually following Art. 31 VCLT, referring to the wording of the rule and the ordinary meaning of its terms. The rule says ‘...a party, who is obliged to pay money’... This means that Art. 7.2.1. UPICC does not actually create the obligation but refers to the remedy or right of the obligee. The first question to ask would therefore be if the payment obligation has arisen and if it is due. This in turn will depend on the contractual terms but also on other provisions within the UPICC.

To consider that Art. 7.2.1 provides for an unlimited right to performance works only when the article is read in total isolation. This, however unfortunate, is exactly the way most provisions in uniform laws are used, the above mentioned ‘toolbox approach’. The scholar in her article on payment obligations demonstrates a very common attitude maintained by many lawyers towards uniform international law. In essence, lawyers tend to use much lesser standards when dealing with uniform law than those they would apply when dealing with their own domestic law in which they are trained. This mechanism is what interpretation and method rules are designed to counteract.

Comprehensive use of uniform law - autonomous method

As regards the UPICC we can see that the method provided for in Art. 1.6 (2) UPICC is imperfect in that it omits an important step in the application process - it does not, neither *incidenter* nor expressly, instruct consultation of the whole of the instrument as a default method of application. Interestingly, this is now provided by the draft CESL. The interpretation rule in CESL as quoted above instructs the user to use ‘all its provisions’,²⁸ but also *only* the CESL and no other law. So there is no method of how to proceed if no answer can be found within CESL itself. There is also a comment on how to proceed with *lacunae intra legem*, external gaps which are matters outside CESL’s scope. Here, CESL instructs to use the method provided for internal gaps in international uniform instruments specifying and limiting the ‘law applicable by virtue of...’ to the EU legislation in use in the area of PIL. CESL further provides for the autonomous interpretation method which is to be understood as deriving meaning predominantly from the uniform instrument before referring to other law. At the same time, CESL astonishes by declaring that it is not to be conceived as international law (but domestic contract law) so that the value of this standard for other uniform instruments is questionable.²⁹

²⁸ CESL Rec. 29 and Art. 4 (2) of the Annexe I read “... and all its provisions.”

²⁹ The main purpose of this characterisation of CESL seems to be the avoidance of a choice of law in the traditional sense and in particular the avoidance of a necessity to modify Art. 6 of the Rome I Regulation which provides for consumer protection rules.

A good illustration of the value of this method however can be derived from an observation of yet another category of uniform law - although not commonly referred to as such - double taxation conventions (DTCs). These bilateral treaties have been concluded according to the OECD Model Tax Convention for the past 4 decades now but there are also a number still in use that preceded this Model. The key provision in the OECD Model is Art. 3 (2)³⁰ establishing a rather confusing standard for the application and interpretation of these conventions which clearly disregards or even derogates from the standards established in the VCLT. Instead of advocating a shared understanding of each norm and in particular a method of arriving at a meaning specific to the uniform instrument, Art 3 authorises the use of domestic law and interpretation standards in order to fill a term of the DTC with meaning. In practice this often leads to the use of this rule much in the way of a conflict norm authorising the use of national tax law instead of the international instrument which is after all purpose made for the underlying facts in question.³¹ The development or revelation of a meaning specific to an international instrument is what the autonomous interpretation method wants to achieve. This has been recognised by the British courts in *Fothergill v Monarch Airlines*³² where it was expressly conceded that the same term can be assigned different meaning depending on its context in national or international law.³³ They went on further to elaborate on the way to arrive at such different meanings in *Memec*³⁴ where a three tier test was applied to the same term (dividends) depending on its ordinary meaning (as required by the VCLT), on its meaning in domestic tax law and its meaning in the context of the German-UK DTC. There was even reference to German domestic decisions on the understanding of profits derived from limited liability companies even though the crucial difference in the understanding of the treatment of such profits under the common DTC remained undetected. This difference however stems precisely from the fact the German counterpart do not carry out the same diligence when deriving meaning from a term under the (same) DTC. The German courts and authorities rely all too readily on a very superficial reading of Art II (3) of the Germany-UK DTC³⁵ which is almost identical to the Model Tax article³⁶ and classify the term according to domestic tax law only if in doubt. The resulting discrepancy is most obvious when looking at the *Memec* case series but has significance beyond this because it bars an appropriate treatment of cases arising under DTCs. There is a modern trend not only in German

³⁰ From the OECD Model Tax Convention On Income And Capital [text as it read on 22 July 2010]

Article 3 General Definitions ... 2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

³¹ I have discussed this in detail elsewhere demonstrating this mechanism using the example of the terms *entreprise* and *silent partner* in the German-UK DTC, M Heidemann and A Knebel, "Double Taxation Treaties: The Autonomous Interpretation Method in German and English Law; as Demonstrated by the Case of the Silent Partnership" 38 *Intertax* (2010) 136-52.

³² [1981] AC 251; [1980] 2 All ER 696; [1980] 3 WLR 209; [1980] 2 Lloyd's Rep 295, (33 ICLQ 797).

³³ It can even have three different meanings in the case of DTCs, see the *Memec* case series.

³⁴ *Memec plc v Inland Revenue Commissioners (IRC)* Simons Tax Cases Ch D [1996] STC, 1336 STC1336 (Chancery Division); *Memec plc v Inland Revenue Commissioners (IRC)* CA [1998] STC, 754

³⁵ Tellingly called 'Oeffnungsklausel', opening clause, in German doctrine.

³⁶ The original German-UK DTC was concluded before the OECD Model was published and this article was not amended by recent renegotiation. The original 1951 German-US DTC mentioned here, too, was more recently amended, in 1989.

case law³⁷ but also in the wording a recent new DTC between Sweden and Germany where a reformed wording³⁸ reflects a more appropriate understanding of the underlying interests and the affected parties of DTCs. The new DTC emphasises more clearly the need for the users to derive meaning from the convention itself rather than from domestic tax law and it also introduces the idea that a taxpayer can have a self standing and enforceable interest to have the convention applied in the proper way.³⁹ This clearly shows the mechanism to be observed in the use of uniform law: the role of the objects and purposes and the contracting parties. In DTCs the two contracting parties are states and the object and purpose of the treaties can be derived from their titles and preambles of the conventions. They serve the avoidance of double taxation and the prevention of ‘double non-taxation’ which is tax avoidance or even evasion. It is clear that the former of the two purposes is not benefitting the contracting parties but a third party, the tax payer, who is not negotiating and not expressly protected by the wording of the resulting treaties. The second aim is not even expressly mentioned in the actual rules of the treaties but clearly directly serves the contracting parties. An assumption as to whether the interests of the tax payer and the contracting parties are generally at

37 With a more recent German-US case, judgement of 17 Oct 2007 by the German Federal Fiscal Court, BFH, Bundesfinanzhof, IR 5/06 confirming whether or not an ongoing (mal)practice of the German authorities could have amounted to a subsequent amendment of the German-US DTC in the sense of Art. 31 (3) (b) VCLT. It was held the mere non-intervention of the US authorities could not be read as a consensus.

38 Doppelbesteuerungsabkommen mit Schweden (DBA 1992) - (DTC Germany with Sweden, 1992)

Artikel 3 - Article 3 Allgemeine Begriffsbestimmungen (General definitions)

(2) Dieses Abkommen ist bei seiner Anwendung durch beide Vertragsstaaten übereinstimmend aus sich selbst heraus auszulegen. Ein in diesem Abkommen nicht definierter Ausdruck hat jedoch dann die Bedeutung, die ihm nach dem Recht des anwendenden Staates zukommt, wenn der Zusammenhang dies erfordert und die zuständigen Behörden sich nicht auf eine gemeinsame Auslegung geeinigt haben (Artikel 39 Absatz 3, Artikel 40 Absatz 3). (An interpretation of this convention is to be derived from the convention itself when applied by both contracting states. A term which is not defined in this convention however, has the meaning which it has according to the law of the applying state if the context so requires and if the competent authorities have not reached an agreement on a joint interpretation, Art. 39 (3) and Art. 40 (3).)

39 Artikel 39 Konsultation - [general consultations between fiscal authorities]

(1) [comprehensive consultation options]

(2) Die zuständigen Behörden der Vertragsstaaten können im Wege der Konsultation Vereinbarungen treffen, um

a) künftige Zweifel zu klären, für welche Steuern das Abkommen nach seinem Artikel 2 Absatz 3 gilt;

b) festzulegen, wie die Begrenzungsbestimmungen des Abkommens, insbesondere der Artikel 10 bis 12, durchzuführen sind.

(3) Die zuständigen Behörden der Vertragsstaaten können gemeinsam über allgemeine Regelungen beraten, um auf der Grundlage des Abkommens den Anspruch der Steuerpflichtigen auf abgestimmte Anwendung des Abkommens in beiden Staaten durch gemeinsame Auslegungen oder durch besondere Verfahren zu sichern. [The ...authorities... can conduct joint consultations in order to secure the taxpayer's right to a coordinated application of the convention in both states by way of joint interpretation or special procedures.]

Artikel 40

Verständigung - [direct conciliation between fiscal authorities initiated by taxpayer]

(1) Ist eine Person der Auffassung, daß Maßnahmen eines Vertragsstaats oder beider Vertragsstaaten für sie zu einer Besteuerung führen oder führen werden, die diesem Abkommen nicht entspricht, so kann sie unbeschadet der nach dem innerstaatlichen Recht dieser Staaten vorgesehenen Rechtsbehelfe ihren Fall der zuständigen Behörde des Vertragsstaats, in dem sie ansässig ist, oder, sofern ihr Fall von Artikel 38 Absatz 1 erfaßt wird, der zuständigen Behörde des Vertragsstaats unterbreiten, dessen Staatsangehöriger sie ist. [A person is entitled to refer his or her case to the authorities of his or her state of residence or nationality irrespective of national procedure if they think that measures taken by one or both contracting states will lead to a taxation that does not comply with this convention.]

(2) Hält die zuständige Behörde die Einwendung für begründet und ist sie selbst nicht in der Lage, eine befriedigende Lösung herbeizuführen, so wird sie sich bemühen, den Fall durch Verständigung mit der zuständigen Behörde des anderen Vertragsstaats so zu regeln, daß eine dem Abkommen nicht entsprechende Besteuerung vermieden wird. Die Verständigungsregelung ist ungeachtet der Fristen des innerstaatlichen Rechts der Vertragsstaaten durchzuführen. [If the competent authority considers the complaint justified... they can seek an understanding with... the other contracting state, in order to resolve the case in such a way that a taxation that does not comply with this convention is avoided]. [Note the ‘negative’ formulation.]

odds presupposes a full discussion of state theory and other empirical data which is not the purpose of this paper. Here it is sufficient to highlight the importance of identifying the object and the purposes of an international uniform instrument, again according to the VCLT. If these are not in line with the declared content of an instrument, be it express or in the underlying principles or implied in negotiations and subsequent behaviour (in the sense of the VCLT) the resulting interpretation and application methods of such an international treaty or other legal instrument is not likely to be consistent or easy for its users.

Referring back to the contract law related uniform international law an observation of their objects and purposes reveals a similar potential conflict as in the DTCs. What is the purpose of CISG concluded by states and used by private contracting parties? Who benefits from its creation? The creators of CISG and its beneficiaries are potentially not identical and not necessarily co-ordinated regarding the outcome of CISG's application. The relationship between the creators of CISG and the other uniform laws described above and its beneficiaries' needs is not self evident and can be subject to further discussion. Reference to the preamble often illumines these aims and objectives but often also reveals a multitude of objectives which again may be difficult to reconcile such as with CESL and therefore stand in the way of a successful and concise interpretation standard.

The desirable interpretation standard - a combination of the fragments

The problems can be tackled using the VCLT as a starting point as this is an overarching standard which may allow to extend value beyond its actual scope. This can then be complemented by fragments existing in other uniform instruments which have not found their way into the VCLT. As the VCLT does not contain a method in the above described sense it will be necessary to expand a comprehensive desirable standard for a contemporary use of uniform international law.

Components of such a comprehensive standard should include the observance of the international character of the uniform law as it is found in the instruments described above. However, it is important to expand the wording to include expressly the international character of its object. The object and purpose as a reference point in the VCLT is the second most important component. It can be noted from the list above that the wording in the various uniform laws is not identical. Sometimes only one of the two is mentioned as in the UPICC. Both object (the subject matter to be regulated in the uniform law) and its purpose (objectives and aims of the legislation) are decisively prompted by the international character of the object. This is an element of uniform law which remains too often overlooked. On examining the objects and purposes of uniform international laws closely, one cannot help noticing that it is often the object itself which is met with a degree of ambiguity, sometimes even resistance and suspicion by the creators of the law. It is therefore not at all surprising to see that the purposes as they can be deciphered from the express content, the underlying principles and the materials referred to in the VCLT reveal a misalignment of object and purpose or sometimes several purposes which are incompatible with each other. Difficulties and inconsistencies in the interpretation efforts are an unavoidable result. Furthermore, the objects to be regulated have themselves often been created by the same legislators who then try to contain rather than foster them. This is apparent in the EU where a barrier free internal market and politically a borderless society have continuously been created and expanded in the form of the 'four freedoms' and the treaty of Schengen. Work on the draft CESL is the expression of an

identified need to regulate cross border contracts for the sale of goods.⁴⁰ This is the object of the uniform law. However, the additional purposes of CESL hamper the attainment of the main purpose that would be aligned with the object - the creation of a purpose made law for cross border sales, a *lex specialis*. The purposes of the creators of CESL include staying within the limits of the TFEU,⁴¹ to preserve the *status quo* of EU PIL (no non-state law to govern the contract, no modification of Art 6 of the Rome I Regulation), to require no involvement of PIL at all. They go as far as redefining the object from a generally understood concept of cross border contract which necessarily contains an international element to an EU specific concept with its international element subdued by way of a definition⁴² and explanations in the CESL regulations, the preamble and its Explanatory Memorandum.⁴³ Similarly, it can be noted, even though less clearly stated, that states prefer to foster resistance and suspicion against cross border tax matters and migration (the objects carrying the international element) rather than providing the infrastructure to facilitate such migration by way of the DTCs. The driving force for this attitude is of course fear of a loss of income and assets. To a degree this partly justified and partly irrational attitude will also apply to the provision of international contract law and its free use at the international level where the actual transactions take place. It is therefore preferred to transform this tailor made law into domestic law and treat it as such. This is effected by implementation and the current prevailing views in the conflict of laws that no non-state law, and that includes law made at international level, ie outside the actual state, can 'govern' the contract, only domestic (municipal) law can do that. The states who create international law respond simultaneously to two countervailing impulses, that of providing infrastructure for international civil and commercial activity (because it is seen as a benefit) and that of restricting it (because it is seen as a threat). The drawback of this mechanism is that the law which is specifically made for the international object cannot function in the corresponding way, internationally. The argument to respond to the prevailing view is the *lex specialis* rule which says that the more specific rule always prevails over the more general. The creators of CESL have included this in their draft because it is a commonly practiced doctrine in the application of codified law. With only the internal relationship between rules within CESL in mind this general doctrine can support an argument in favour of the direct application of uniform international law to the exclusion of national laws.

A second pillar of the prevailing doctrine in PIL is the doctrine of mandatory laws as incorporated in EU legislation.⁴⁴ So called mandatory laws overrule the rules of uniform law if they contradict each other. When and how this is the case is to be decided by the courts in each individual case and

40 I do not mean this in the sense published in the EU Green Paper which aimed at removing obstacles to the internal market in the form of differences among MS contract laws which represents the translation of the need for a cross border sales law into the possibilities conveyed onto the creators of CESL by the TFEU.

41 Treaty on the Functioning of the European Union, the current legal framework for the EU.

42 Art. 4 CESL Regulation – Article 4 Cross-border contracts

1. The Common European Sales Law may be used for cross-border contracts. 2. For the purposes of this Regulation, a contract between traders is a cross-border contract if the parties have their habitual residence in different countries of which at least one is a Member State. 3. For the purposes of this Regulation, a contract between a trader and a consumer is a cross-border contract if: (a) either the address indicated by the consumer, the delivery address for goods or the billing address are located in a country other than the country of the trader's habitual residence; and (b) at least one of these countries is a Member State....

43 According to CESL's Explanatory Memorandum, sections 1 and 3.

44 It was first codified in the Rome Convention and is now included in the Rome I Regulation, eg in Art. 3 (3) and (4) and 6 (2).

there are virtually no examples in commercial contract law⁴⁵ so that the doctrine is purely academic and therefore ought to be reviewed.

Thirdly, the theory of gaps as it is formulated within the above described uniform instruments disallows a horizontal cross referencing between uniform laws at international level. On encountering an internal gap, there is either no instruction of how to proceed or there is the instruction to apply conflict law rules subsequently leading to a domestic system of law. This may be the method of choice given that there may not be a suitable uniform law to complement the question in hand.⁴⁶ Another reason for this method is that ‘soft law’ – and this will include treaties that are in force but not in the country from whose viewpoint the matter is viewed – is neither recognised as domestic nor as international law suitable to govern the contract, a reinforcement of the prevailing positivist doctrine of the unity of law and state in the conflict of laws.

A desirable interpretation standard should also be the same across all uniform instruments with no distinction as to the object’s nature as public or private. It should also include all the three elements as discussed above. The rationale behind this is not purely academic but it is the only appropriate way of giving effect to the purpose of uniform international law which is to provide rules to govern its international object. Domestic law is ill suited to govern these objects due to the inherent territorial limitations of jurisdiction and to problems typically arising from international situations which are the reason for the uniform law to be created in the first place.⁴⁷

The way forward

It has to be acknowledged that political compromise is an inherent element of treaty negotiations. This should not deter law makers from the quest for the best law. The controversial issues identified above ought to be reviewed and suggestions of a draft universal interpretation standard offered. These should not try to evoke the resistance of the prevailing views maintained by the state parties. Suggestions should rather be supported by legal arguments taken from accepted standards. These come from two sources above all, the VCLT and the *lex specialis* doctrine. Applying the VCLT may even make an interpretation standard enforceable before the courts. The *lex specialis* doctrine can also help to identify the object of the uniform law to be created correctly and this object should provide guidance as to the purposes to be pursued with any one instrument and its contents should remain aligned with these purposes. If the three components of object, purpose and content cannot be aligned the instrument may have to be abandoned rather than contribute to the cementation of double standards in international law which cannot be of help in an international community based on the rule of law.

Conclusion

⁴⁵ The doctrine seems to be predominantly the concern of consumer and labour law.

⁴⁶ See above.

⁴⁷ Examples are evidenced by the work of trade associations, international chambers of commerce and arbitration centers around the world providing infrastructure effectively for international trade. In the sphere of non-state dispute settlement uniform law has already received a more elaborate treatment than in state adjudication and prevailing doctrine.

At present, *de lege lata*, we can only create the comprehensive method of interpreting and applying uniform international law by way of the comparison of the fragments of method and interpretation across uniform laws of different legal nature.

This situation is the result of almost a century of continuous work in order to provide a functional infrastructure at supra- or transnational level to the same degree as international trade and political accord was pursued and achieved. Building on these fragments of achievement now scholars, practitioners and law makers can make a step forward by gathering and evaluating the pieces and redraft them into a universal transnational interpretation standard according to the above discussed format.

This should be pursued and supported by a more progressive legal doctrine in the conflict of laws in the interest of a successful integration of a global civil society.