# UPICC AND CISG

# Different in kind and scope

- UPICC: Rules for adoption with wide scope

- CISG: International convention with scope limited to international contracts of sale ( with exceptions in arts. 2, 3 (2), 4 and 5 )

# Same objective to achieve unification

- CISG: Unification in form but perhaps not always in fact
- UPICC: No unification in form but perhaps in fact

# Rule-maker's perspective

- Aim of UPICC to conform with CISG but with further guidance within and outside the ambit of CISG

- In UPICC Chapter 5 on contents, third party rights and conditions and Chapter 6 on performance only a few matters correspond to articles in CISG ( e.g. art. 5.1.7 corresponds to art. 55 CISG on open price and art. 6.1.1. on time of performance corresponds to art. 33 CISG ).

- Yet, many of the matters dealt with in UPICC will become relevant in disputes involving international contracts of sale

# UPICC Chapters 1 and 7

## UPICC

- Good faith general application in art. 1.7
- Reasonable usages in art. 1.9
- Extension of additional period for performance , art. 7.1.5(3)
- Right to specific performance arts. 7.2.2 and 7.2.3
- Risk allocation when object destroyed, art. 7.3.6(3)

## CISG

- ”In the interpretation of this Convention” in art. 7
- No test of reasonableness in art. 9
- Right to extend according to arts. 47 & 63?
- Art. 46 modified by art. 28
- Loss of right to avoid the contract, art. 82

# FORSEEABILITY OF HARM

## UPICC

- ”reasonably have foreseen …as being likely to result …”, art. 7.4.4

## CISG

- ”ought to have foreseen …as a possible consequence…”, art. 74

# FORMATION

## UPICC

- ”intention… to be bound in case of acceptance”, art. 2.1.2
- Modified acceptance as acceptance if no timely objection, art. 2.1.11 (2)
- Modification of ”in writing”-requirement if ”reasonable” action in reliance, art. 2.1.18

## CISG

- If addressed to public at large, presumtion of no valid offer, art. 14.2
- Definition of materiality in art. 19(3)
- No addition of ”reasonable” in art. 29 (2)

# INTERPRETATION

- Conforming rules  with CISG arts. 8-9-in UPICC Chapter 4, but with important additions
- Art. 4.4 contract interpreted as a whole
- Art. 4.5 all terms to be given effect
- Art. 4.6 contra proferentem
- Art. 4.7 linguistic discrepancies
- Art. 4.8  supplying an omitted term

# DECISION-MAKER's PERSPECTIVE

- Use of UPICC when agreed or indirectly agreed by reference to general principles (lex mercatoria),
- as appropriate rules when no choice of law has been made by the parties ( ICC and SCC 2010 Rules art. 17(1) and § 22(1) respectively),
- as gap-filler
- Should the missing interest rate in art. 78 CISG be found (i) in the applicable domestic law,(ii) by using art. 7(2) CISG and the general principle of full compensation or (iii) by using art. 7.4.9 UPICC?

# DECISION-MAKER, CONTINUED

Should the matter of hardship be decided

a) within the confines of CISG (art. 79)

b) by using national law or

c) by UPICC art. 6.2.2.-6.6.3?

Opinion 7 by CISG Advisory Council suggesting a) largely conforming with c). For an interesting discussion, see European Review of Private Law I 2011 pp. 101-154)