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# Achieving Optimal Use of Harmonization Techniques In an Increasingly Interrelated Twenty-First Century World of Consumer Sales: Moving the EU Harmonization Process to a Global Plane\*

Louis F. Del Duca, Albert H. Kritzer & Daniel Nagel\*\*

## *Synopsis*

*Robust and interesting scholarship generated in the last decade on the need, feasibility and content of a harmonized European Civil Code, the Common Frame of Reference “tool box” approach, the harmonization of European Contract law or the European Law of Obligations, and the decision of the Commission of the European Community to focus on harmonizing the existing Acquis Communautaire of the already promulgated consumer protection directives has been well documented.<sup>1</sup>*

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1. See Michael Joachim Bonell, *The CISG, European Contract Law and the Development of a World Contract Law*, 56 AM. J. COMP. L. 1, 9-15 (2008), available at <http://cisgw3.law.pace.edu/cisg/biblio/bonell4.html>; STUDY GROUP ON EUROPEAN CIVIL CODE AND THE RESEARCH GROUP ON EC PRIVATE LAW, PRINCIPLES, DEFINITIONS AND MODEL RULES OF EUROPEAN PRIVATE LAW: DRAFT COMMON FRAME OF REFERENCE (DCFR), 1-40 (Study Group on European Civil Code and the Research Group on EC Private Law, eds., Sellier 2008); Jan M. Smits, *The Draft-Common Frame of Reference (CFR) for a European Private Law: Fit for Its Purpose?*, 15 MASST. J. EUR. & COMP. L.

*The paper entitled “Developing Global Transnational Harmonization Procedures for the Twenty First Century—The Accelerating Pace of Common Law and Civil Law Convergence”<sup>2</sup> presented at the 13<sup>th</sup> Biennial Conference of the International Academy of Commercial and Consumer Law, reviewed the procedural options for addressing the new harmonization challenges and opportunities which the Twenty First century presents.<sup>3</sup>*

*Noting the wide variation in consumer law in the domestic law of states around the world and the anticipated difficulties and probable inability to achieve broad based acceptance and enactment of any proposed harmonization of consumer law, organizations like UNCITRAL and UNIDROIT explicitly exclude consumer transactions from the International Sale of Goods Convention and the Principles of International Commercial Contracts.*

*Utilization of hard law harmonization techniques (i.e., conventions, model laws, regulations or directives by the European Community) would therefore not be broadly accepted for enactment or implementation. Exploration of procedures and methods for utilizing soft law techniques to be voluntarily incorporated by parties to consumer contracts is an alternative method for offering a harmonized approach to interested parties. The comments that follow provide initial observations regarding use of this approach to achieve benefits for consumer and business parties to consumer agreements.*

#### I. INTRODUCTION—THE STATUS OF E-COMMERCE AND CONSUMER SALES AT THE OUTSET OF THE TWENTY-FIRST CENTURY

Just as the UNIDROIT Principles of International Commercial Contracts<sup>4</sup> is a valued aid to the global harmonization of commercial contract law, a comparable aid to the global harmonization of consumer contract law is beneficial.

The elevation of the European Union (EU) harmonization process to the global arena takes advantage of the enriched frame of reference offered by the EU harmonization process and related work underway elsewhere. Further, the EU harmonization process affords consumers

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145 (2008); see also Norbert Reich, *Transnational Consumer Law—Reality or Fiction?*, 41 UCC L.J. 67 (2008).

2. Louis F. Del Duca, *Developing Global Transnational Harmonization Procedures for the Twenty First Century—The Accelerating Pace of Common Law and Civil Law Convergence*, 42 TEX. INT’L L.J. 625 (2007), available at [http://tilj.org/docs/J42-625\\_Del\\_Duca.pdf](http://tilj.org/docs/J42-625_Del_Duca.pdf).

3. See *id.*

4. UNIDROIT Principles of International Commercial Contracts, <http://www.unidroit.org/english/principles/contracts/principles2004/blackletter2004.pdf>.

and business groups in the world trade community the opportunity to interact to develop a fair, rational set of principles that parties are free to incorporate into their consumer agreements. The emergence of the Internet provides a special incentive for such work. Yet although the emphasis of this article is on the Internet and on international sales, it should be understood that the Global Principles of Consumer Contracts to be developed under this initiative are not to be limited to either Internet sales or international sales of consumer goods or services. It should also be understood that the principles under this initiative are to be fair and balanced and not one-sided in either direction: they are to be balanced principles, reflecting the needs of both businesses and consumers.

Five hundred years ago, Erasmus wrote "*Immortal God! What a century do I see beginning!*"<sup>5</sup> We who live at the dawn of the Information Age can also say, "*What a century do we see beginning!*"

The 21<sup>st</sup> century is the "Age of the Internet." The Internet has evolved from a medium only for scientists and scattered experts to a resource for all of us. In recent years, globalization and the growth of electronic networking have advanced at an incredibly fast pace. New companies are continually emerging and are already gaining prominence throughout the world. E-commerce has now arrived in the homes of families all over the globe.

As laptop users with Internet connections, we can replace tiresome shopping trips with enhanced experiences. A few clicks on a screen enable us to see more items than we'd ever dreamed of, from clothing and iPods to tropical fruit and exceptional design. The Internet has brought these items only a mouse-click away from our cozy armchair. It is no wonder that this "burgeoning area of commerce . . . promises to be the most rapidly growing type of retail distribution for years to come."<sup>6</sup>

Although e-commerce has a wide-ranging influence on our lives, it has been accompanied by drawbacks. Several stems are still lacking petals when it comes to cross-border consumer sales. Several factors explain this phenomenon. The first is that many consumers still consider the Internet a lawless frontier. Haunted by doubts, consumers can never be absolutely sure of the actual consequences of agreeing to online "terms and conditions." The price sounds good, but what happens if:

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5. Erasmus to Guillaume Budé (1517), *quoted in* JACQUES BARZUN, FROM DAWN TO DECADENCE: 1500 TO THE PRESENT; 500 YEARS OF WESTERN CULTURAL LIFE 8 (Harper Collins Publishers) (2000).

6. Ronald J. Mann & Travis Siebeneicher, *Just One Click: The Reality of Internet Retail Contracting*, 108 COLUM. L. REV. 984, 1010-1011 (2008).

- The arrangement of wine bottles I ordered arrives in pieces; or
- The trousers do not match the color that I saw on the computer screen; or
- The label on the goods is a counterfeit; or
- No goods were sent at all even though I paid for them?

Were any of these circumstances to arise, the next question consumers ask is, where do I go for relief? Considerations include:

- Which court will provide justice?
- What law applies?
- Would I be subject to any limitations of service, although I did not explicitly agree to them?
- Would I have to spend more money on attorney fees than the actual value of my transaction to receive what I hoped to buy?

A second factor when considering e-commerce is whether there is a sufficient level of protection for the legitimate interests of businesses when conducting sales over the Internet. Arguably, different legal systems have made great achievements in consumer and business protection. However, the benefits of these achievements are only guaranteed so long as the jurisdictional sphere covers the contract. The Internet does not stop at national borders; legislation, unfortunately, does. For this reason, an international consumer legal regime is desirable.

A third and final factor to consider with e-commerce is that some truly great harmonization steps have been taken in the field of international contracting, such as the CISG<sup>7</sup> and the UNIDROIT Principles<sup>8</sup>. Nevertheless, these regulations either do not apply to consumer contracts or apply only to a certain region or to certain transactions.<sup>9</sup>

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7. U.N. Convention on Contracts for the International Sale of Goods (CISG), April 11, 1980, 19 I.L.M. 668, <http://www.uncitral.org/pdf/english/texts/sales/cisg/CISG.pdf>.

8. UNIDROIT Principles of International Commercial Contracts, <http://www.unidroit.org/english/principles/contracts/principles2004/blackletter2004.pdf>.

9. See, e.g., Commission on European Contract Law, *The Principles of European Contract Law* (1999), available at [http://frontpage.cbs.dk/law/commission\\_on\\_european\\_contract\\_law/index.html](http://frontpage.cbs.dk/law/commission_on_european_contract_law/index.html) (setting forth the Principles of European Contract law that were drafted for consideration by the European Community. Although these principles have not been designed to apply globally, they have a broader scope than the CISG or UNIDROIT Principles. Like the U.S. UCC, they apply to consumer sales as well as commercial sales).

There is a clear need for a regulatory scheme that can overcome these difficulties, help shield consumers from e-commerce predators,<sup>10</sup> and simultaneously help businesses boost e-commerce by enhancing consumer trust.<sup>11</sup>

## II. A SOFT LAW PROPOSAL FOR OPTIONAL GLOBAL USE

For commercial sales, two global aids serve the international community: the United Nations Convention on Contracts for the International Sale of Goods (CISG);<sup>12</sup> and the UNIDROIT Principles of International Commercial Contracts.<sup>13</sup>

The CISG is a treaty (*hard law*) that has been adopted by countries accounting for more than three-quarters of all world trade. The UNIDROIT work product is a set of principles (*soft law*), a “Restatement” or model law that has proven to be of immense benefit.<sup>14</sup>

At the moment, global aid to Internet consumer sales does not exist. Although it would be helpful if an acceptable global Convention on Contracts for the International Sale of Goods to Consumers could be

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10. See Craigslist – About Scams, <http://www.craigslist.org/about/scams.html> (last visited Nov. 5, 2008) (providing examples of guidance on avoiding Internet scam and fraud attempts).

11. See Press Release IP/08/980, Brussels European Council, Gap Between Domestic and Cross-Border E-Commerce Grows Wider, Says EU Report (June 20, 2008), [http://ec.europa.eu/consumers/strategy/docs/i08\\_980\\_en.pdf](http://ec.europa.eu/consumers/strategy/docs/i08_980_en.pdf). This European Council Press Release indicates that:

EU Consumer Commissioner Meglena Kuneva today announced the results of a new EU wide survey on e-commerce and cross border trade. The figures show that even though e-commerce is taking off at national level, cross-border e-commerce is failing to keep pace. From 2006 to 2008, the share of all EU consumers that have bought at least one item over the internet has increased significantly (from 27% to 33%) whilst cross border e-commerce is stable (6% to 7%). The pattern is similar for those with internet access at home—56% of consumers with internet at home have made a purchase (in any country including their own) by e-commerce compared to 50% in 2006, while only 13% (of those with internet access at home) made a cross-border e-commerce purchase compared to 12% in 2006.

“These figures underline how much work we still have to do to boost confidence in the online internet market” said European Consumer Affairs Commissioner Meglena Kuneva. “Consumers and retailers are beginning to embrace e-commerce at a national level but internal market barriers still persist online. The potential of the online internal market to deliver greater choice and lower price to consumers and new markets for retailers is considerable. We need to redouble our efforts to tackle the remaining borders.”

...

Data gathering was carried out in February-March 2008 amongst more than 26,000 consumers and 7,200 businesses in the 27 EU-countries and Norway.

*Id.*

12. *Supra* note 7.

13. *Supra* note 8.

14. See Bonell, *supra* note 1.

devised, that is not realistic at the present time.<sup>15</sup> However, a global soft law or set of Principles *is* realistic and we should aim to set one in place. It would be a consumer counterpart to the UNIDROIT Principles of International Commercial Contracts.<sup>16</sup>

Comparable to the case today under the UNIDROIT Principles,<sup>17</sup> an appropriate set of Consumer Principles could serve the world trade community as follows:

- The Global Consumer Principles as a model for national and international legislators;
- 
- The Choice of the Global Consumer Principles as the law governing the contract; and
- 
- The Global Consumer Principles applied in dispute resolution.<sup>18</sup>

A shield can be a symbol of these Consumer Principles; for example, “consumershield.org” is a website domain name that has been registered on the Internet for this purpose.<sup>19</sup> The set of Consumer Principles, with its own website, could be presented as a voluntary code<sup>20</sup> for consumer contracts for cross-border Internet sales. Such a set of soft law principles would contain provisions relevant to concluding contracts for the sale of goods and services from e-merchants to consumers. The Consumer Principles very well could be a global tool to avoid and resolve disputes between contracting parties.

The applicability of these soft law principles would depend solely on the intent of the parties. Participation would be completely voluntary

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15. See Hans Schulte-Nölke, Christian Twigg-Flesner & Martin Ebers, EC Consumer Law Compendium: Comparative Analysis (April 2007), available at [http://ec.europa.eu/consumers/cons\\_int/safe\\_shop/acquis/comp\\_analysis\\_en.pdf](http://ec.europa.eu/consumers/cons_int/safe_shop/acquis/comp_analysis_en.pdf) (setting forth an 845 page report on challenges associated with efforts to devise a single, simple set of consumer contract laws for the European Community). See also EUROPEAN COMMISSION, DIRECTORATE—GENERAL FOR HEALTH AND CONSUMERS, EC CONSUMER LAW COMPENDIUM: THE CONSUMER ACQUIS AND ITS TRANSPOSITION IN THE MEMBER STATES 570 (Schulte-Nölke, Twigg-Flesner & Ebers eds., Sellier 2008).

16. See *supra* note 8.

17. See *id.*

18. See *supra* note 14 (referencing these applications of the UNIDROIT Principles of International Commercial Contracts).

19. See [www.consumershield.org](http://www.consumershield.org) (last visited Nov. 7, 2008).

20. An example of the positive influence that voluntarism can exert can be found in the Sullivan Principles, the firms that have subscribed to them, and the impact they have had. See Global Sullivan Principles of Social Responsibility, <http://www.thesullivanfoundation.org/gsp/about/governance/default.asp> (last visited Nov. 7, 2008).

and would be effected via an explicit opt-in. E-merchants interested in participating could apply for a registration, which could be awarded to e-merchants subject to requirements, such as posting a bond, or providing a letter of credit from a reputable bank or a statement from a national registering authority. The register would be compiled, maintained and updated by “consumershield.org.” Upon successful registration, the program would award a seal to e-merchants which they could present on their homepages with a link to “consumershield.org” thereby documenting their adherence to the relevant soft law principles of responsible e-commerce.

Consumers wishing to buy goods from registered e-merchants and to participate in complying with the Consumer Principles would be able to choose the applicability of the soft-law code by opting-in during their Internet purchase.

There could be a grievance procedure to enable consumers to comment on e-merchants and transactions.<sup>21</sup> This feedback would be reviewed by “consumershield.org,” translated into statistics, and made readily accessible on the Internet to any consumer interested in doing business with a registered e-merchant.<sup>22</sup>

### III. BENEFITS

The general benefits of such a program are obvious.

(1) The global soft-law code would be easily accessible since it would be available to e-merchants and consumers on a public website.

(2) The legal provisions applicable to e-commerce through the Consumer Principles would be available in different languages so users of many countries could access and understand them. The intent is to draft them carefully so the Consumer Principles would be easily understood.

(3) Consumer participation in the program would be free of charge and thus affordable for consumers around the world.

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21. See RocketLawyer.com, <http://www.rocketlawyer.com/documents/legal-form-Complaint+Letter+to+a+BBB+or+attorney+General.aspx?partner=111&HelpTopic=BBB+Info> (last visited Nov. 7, 2008) (displaying an effective complaint mechanism involving the Better Business Bureau used in the United States and Canada). For other recommended approaches to grievance procedures, see also EBay.com—What steps can I take to protect when purchasing items on EBay, <http://pages.ebay.com/help/tp/questions/avoid-fraud.html> (last visited Nov. 7, 2008) (providing available approaches to grievance procedures); EBay.com—About Our Buyer Protection Programs, <http://pages.ebay.com/help/tp/isgw-buyer-protection-steps.html> (last visited Nov. 7, 2008) (providing information on buyer protection through PayPal transactions).

22. See the procedure along these lines offered by EBay, *id.*

(4) The approach is simple and quick because no lengthy discussions or ratification processes is necessary since the Consumer Principles would be soft law.

(5) The program would encourage mediation, which represents a potential way to resolve disputes usually recognized to be cheaper and more efficient than court proceedings.

(6) The approach mirrors the idea of contractual freedom because the parties voluntarily agree to have the Consumer Principles govern their contractual relationship.

Furthermore, there are several specific advantages to both the consumer and the e-merchant.

**For the e-merchant:** The added demonstration of credibility attained through registering for participation in the program should help e-merchants attract consumers from all over the world.<sup>23</sup> The e-merchant would also benefit from protective features applicable to its goods, services and transactions.

**For consumers:**

(1) Consumers, on the other hand, would not face legal insecurity with respect to hidden terms that contradict the principles recited in the program because they would be shielded from such terms.

(2) The shield would provide a powerful additional resource for consumers, namely, the complaint mechanism.<sup>24</sup>

(3) Consumers would have more confidence in purchasing goods that meet their special needs but that are not regularly sold without having to pay for intermediaries.<sup>25</sup>

(4) Finally, transactions would be conducted on a more level playing field because purchases would be subject to more evenly balanced contract terms rather than pre-drafted, one-sided terms.

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23. To be noted is the fact that the program may not be as important to the large firm with an established world-wide reputation. However, for other firms—businesses that can offer much value to consumers—a suitable program can be of considerable interest. Moreover, larger firms would benefit from added protections offered against counterfeits of their products.

24. See *supra* note 21 for description of such a complaint mechanism.

25. An added step to bolster consumer confidence in the integrity of businesses displaying the Consumershield could be to require a satisfactory independent evaluation report prior to granting the business the authorization to display the shield. For examples of such evaluations, see the reports provided pursuant to the International Company Profile service of the U.S. Department of Commerce. The U.S. Commerce Department profile reports provide considerable data on the business and include an assessment of the business' reputation. For a fee, the Consumershield Program could obtain profile reports of this nature from independent evaluation firms retained for this purpose. A global contract would reduce the costs of the reports. Businesses that wish to include the Consumershield logo in their advertisements would pay a fee for this privilege. The fees would defray the costs of the evaluation reports.

#### IV. ANTICIPATING DIFFICULTIES

The Consumershield approach will, of course, face some criticism. Its first deficiency is that it is *only* soft law. The main point here is that it is simply impossible to regulate every matter with hard law.<sup>26</sup> A prominent example is the Internet: no state or legal entity has succeeded so far in effectively regulating Internet activities. In addition, the approach is applicable internationally, whereas the political borders of a particular state that passes hard law also restrict it.

Additionally, people may question the authority of the program because it lacks the official approval of state authorities. Nevertheless, a uniform global law of consumer sales is not realistic at the present time. The Principles approach is much more flexible and universal so long as the interests of the parties, rather than national interests, give it life.<sup>27</sup>

Furthermore, doubt may be cast upon the necessity of such an approach because international choice-of-law rules or conflict-of-law rules already exist. Such rules, however, do not guarantee a result that is foreseeable, as a court might have to interpret an unfamiliar foreign provision, or, as Cardozo said, these rules are “more remorseless, more blind to the final cause than in other fields.”

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26. Soft law offers the following advantages over hard law. Comparing a soft law such as Incoterms or the UNIDROIT Principles with a hard law such as the CISG:

- After a hard law has been enacted, if one sees a cavity, how can it be filled? How do you rectify errors you may detect? How do you implement improvements that you want to make? How do you implement improvements that you did not previously consider or that could not have been considered.
- As of July 2008, the CISG has been enacted by seventy-one separate national legislatures. Needs such as the above can be satisfied by hard law either by national re-enactments or by accommodating interpretations (or re-interpretations) of the hard law terms, neither of which provides a simple solution. It is much easier to devise soft law solutions. Take, for example, the realization some years ago of the growing importance of containerization. It was much easier for the ICC to implement an appropriate soft law accommodation. The ICC simply issued a new set of Incoterms that took proper cognizance of this development.

For related comments, see Kenneth W. Abbot & Duncan Snidal, *Hard Law and Soft Law in International Governance*, 54 INT'L ORG. 421 (2000), and Sandeep Gopalan, *A Demaneur-Centric Approach to Regime Design in Transnational Commercial Law*, 39 GEO. J. INT'L L. 327 (2008).

Devising the proper Consumer Sales Code for global use presents many challenges. Commencing on a soft law basis is the primary recommendation of this presentation. This permits us to take advantage of current wisdom in the field (wisdom coming out of Europe and elsewhere) and gives us the opportunity to readily adjust the principles we set forth to take advantage of future wisdom as it emerges.

27. Moreover, where contracting parties adopt the Consumer Principles, state-backed enforcement mechanisms *are* available—to the extent that the principle of freedom of contract is an integral part of the applicable governing law.

Finally, the approach's opponents might see it as a blunt tool because enforcing one's legal remedies might result in difficulties. Arguably, an approach that is based on the voluntary opt-in of parties depends to a large extent on their integrity and honesty. Trusting someone who is across the ocean from you is less promising. Cross-border enforcement always presents difficulties irrespective of the legal background on which it is based. In addition, a soft-law scheme has the characteristic feature of firing rifle shots and not shotgun blasts, simply because in the latter case nobody would opt-in.

In conclusion, even though the Consumershield approach would not offer perfect solutions, in many cases it can surely provide better ones.<sup>28</sup> As we saw with the UNIDROIT Principles, the global soft law for international commercial sales transactions whose future some doubted at the outset, has become a universally acclaimed success.<sup>29</sup>

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28. See, e.g., Doreen Carvajal, *EBay Ordered to Pay 61 Million in Sale of Counterfeit Goods*, N.Y. TIMES, July 1, 2008, at 1, available at [http://www.nytimes.com/2008/07/01/technology/01ebay.html?\\_r=1&sq=ebay&st=nyt&oref=slogin](http://www.nytimes.com/2008/07/01/technology/01ebay.html?_r=1&sq=ebay&st=nyt&oref=slogin) (highlighting a scam that led to a huge judgment against EBay. The scam was the sale of counterfeit Luis Vuitton bags and Dior perfumes by businesses utilizing EBay.com). The Consumershield program could not prevent scams such as this; however, it could shorten their duration. As currently visualized, e-commerce purchasers who click the Consumershield emblem presented on the homepage of participating businesses would obtain the following types of information:

- The consumershield.org Consumer contract provisions to which each participating business has agreed to abide;
- Information on how long the business has been a consumershield.org participant; and
- A report on unresolved complaints. See *supra* note 21 for data on a manner in which complaint mechanisms have been applied. Use of the Internet would help assure timely and current information on this subject.

Where there is a procedure such as this and a scam of the type reported in the *The New York Times*, consumers aware of the misrepresentation would have an opportunity to report it immediately to the program administrator. The business would be requested to respond. If the consumer's report is determined to be valid, notice to that effect could be posted; the business could be de-registered from the program, and, if a bond had been required to participate in the program, the bond could be forfeited.

The amount that owners of brands lose due to counterfeit goods is enormous. It may be that, because a properly devised Consumershield program can be a helpful response to such scams, owners of vulnerable brand names could be looked to for donations of funds to cover expenses associated with the meetings of the Working Groups referred to in Phase Three of the Action Plan described below. To achieve balance business representatives as well as consumer representatives will participate on the Working Groups formulating the specifics of the Consumershield program.

29. See *supra* note 14 for comments on the benefits being derived from these Consumer Principles.

## V. A CAVEAT

Subject to one exception, none of the Consumersshield proposals presented in this paper should be regarded as final-final. The one exception in which the proposals should be final is in the recognition of the desirability of a global set of Principles for Consumer Sales Contracts, a counterpart to the UNIDROIT Principles of International Commercial Contracts. Development of such a set of Principles should be resolved as a move-forward objective. All other observations and proposals presented in this paper should be regarded as tentative and subject to further refinement.<sup>30</sup>

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30. A possible Action Plan follows. It is patterned after the development of the CISG. The Working Groups that helped develop that Convention on Contracts for the International Sale of Goods commenced with texts that were primarily European accomplishments: the 1964 Hague Formation and Sales Conventions. After much deliberation over the course of many meetings, the Working Groups devised refinements that, in their judgment, were best suited to the global audience they served. The Consumersshield Working Groups will have an opportunity to proceed in a similar manner. The Consumersshield Working Groups can build upon the harmonization work underway in the European Community.

There are many aspects to the harmonization work underway in the European Community. In addition to the Principles of European Contract Law (PECL), whose Chapter 2 on Obligations of the Seller is very relevant, Viola Heutger classifies some of the related European approaches to harmonizing private law into three channels: the Accademia dei Giusprivatisti Europei, the Acquis Group, and the Study Group on a European Civil Code. She introduces her helpful elaboration on these activities with the statement that:

[The Academia] concentrates on an already existing codification and aims to create a whole civil code. [The Acquis Group] deduces some principles for European use from the already existing *acquis communautaire*. [The Study Group] is drafting principles on various fields of law on the basis of national legislation, the *acquis communautaire* and international instruments and will later combine these principles in a Civil Code. All three groups consist of international scholars and are all busy drafting principles on European Sales Law, as well as other parts of contract and patrimonial law.

All of these academic groups have specific ideas on how their own results will later be used on a European level. The principles seek to serve different purposes. On the one hand, they will be an academic answer to the ongoing process relating to the EU-wide harmonization of contract law and will therefore offer their own dogmatic system. On the other hand, they could also be a model law for further comparative and legislative activities within European contract law. The principles may offer a solid basis for a common frame of reference as requested in the Commission's Action Plan on a more coherent European Contract Law. The Principles may serve as an optional instrument in cross-border transactions, allowing the parties simply to refer to this instrument as the applicable law. In addition, the principles may provide a solution when it proves impossible to establish the relevant rules of the applicable law. Like the PECL and the UNIDROIT Principles, the principles may be used to interpret or supplement international or European uniform law instruments and customs. (citations omitted).

## VI. AN ACTION PLAN

Speaking in the context of the European Union, EU Consumer Commissioner Meglena Kuneva said:

In the world we live in, we are not obliged to shop in the supermarkets and stores of our postal codes. We are not constrained to buy in our municipalities. We should also not be forced to shop within our national borders. . . . [T]here is no place . . . for artificial geographical restrictions which hold consumers back within national borders.<sup>31</sup>

While these comments are on target, they have a broader application than the European Union. We need a *global* set of Principles that takes cognizance of the fine work underway in Europe and also underway elsewhere.<sup>32</sup> The global set of Principles would be designed to benefit consumers and businesses of all countries.

The following is a four-phase Action Plan for the development and oversight of the requisite Consumer Principles and aid to consumers and businesses engaged in e-commerce.

### *Phase One: A Preliminary Articulation of Goals and Objectives*

This paper has been prepared as a Phase One response.

### *Phase Two: The Refinement of these Goals and Objectives*

A Dialogue Planning Group has been set in place to refine the goals and objectives of this endeavor and to review the Business Plan requisite to accomplishing them. The dialogues will be online and in print. The

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Viola Heutger, *Do We Need a European Sales Law?*, 4 GLOBAL JURIST Art. 1, 5-6 (2004), available at <http://viola.heutger.de/artikelen/saleslaw.pdf>.

All of this is relevant to and should be considered by those who wish to look at the subject on a broader global plane. The subjects Europe is focusing on merit consideration not only for that region, but also for markets of Asia, the Americas, Africa, the Middle East and Oceania. That is the primary thesis of this paper: these subjects merit examination on a global plane.

31. See *supra* note 11.

32. See, e.g., AMERICAN LAW INSTITUTE - PRINCIPLES OF THE LAW OF SOFTWARE CONTRACTS, [http://www.ali.org/index.cfm?fuseaction=projects.proj\\_ip&projectid=9](http://www.ali.org/index.cfm?fuseaction=projects.proj_ip&projectid=9) (last visited Nov. 7, 2008) (providing an overview of the Principles submitted for discussion at the Eighty-fifth Annual Meeting of the American Law Institute on May 19, 20 and 21, 2008). See also International Consumer Protection and Enforcement Network—homepage, <http://www.icpen.org> (last visited Nov. 7, 2008) (providing information about the Network, aimed at sharing information about cross-border commercial activities that may affect consumer activities, and to encourage cooperation amongst international law enforcement agencies); International Consumer Protection and Enforcement Network—Related Sites, <http://www.icpen.org/related.htm> (last visited Nov. 7, 2008) (listing other organizations concerned with consumer issues or e-commerce).

current participants in the Dialogue Planning Group are the following members of the International Academy of Commercial and Consumer Law: Yesimar Atamer, Immaculada Barral Viñals, Michael Joachim Bonell, Neil Cohen, Ross Cranston, Louis F. Del Duca, Mary Hiscock, Eva-Maria Kieninger, Donald B. King, Albert H. Kritzer, Hans Micklitz, Norbert Reich, Alex Schuster, Takis Tridimas, Kazuaki Sono, and Jay Westbrook. They are being joined by Margaret F. Moses, Dean for Faculty Research and Development at Loyola University, Chicago. The Secretary pro tem of the Dialogue Planning Group is Daniel Nagel of Heidelberg University.

A Consumershield blog will be set in place to facilitate the further sharing of insights on a global basis. In addition, the Internet website on uniform and harmonized international law of the Pace University School of Law,<sup>33</sup> and the popular LexMercatoria site<sup>34</sup> can serve as “bully pulpits” for sharing information on the program. A promotion of this initiative on the Pace Law School site<sup>35</sup> and on the LexMercatoria<sup>36</sup> site can bring the Consumershield program to the attention of an enormous global audience.<sup>37</sup>

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33. See Pace Law School Institute of International Commercial Law, <http://cisgw3.law.pace.edu> (last visited Nov. 7, 2008).

34. See LexMercatoria—homepage, <http://lexmercatoria.net> (last visited Nov. 7, 2008). A July 13, 2008 entry of “International Commercial Law” into a Yahoo Internet search form lists the Pace Law School site *First*, the LexMercatoria site *Second* and the Pace Law School site *Third* out of 444 million sites listed under this subject heading. A similar entry on a Google Internet search form lists the Pace Law School site *First* and *Second* and the LexMercatoria site *Fourth* out of 17.8 million sites listed under this subject heading. The third most prominent source for Internet searches, Microsoft’s MSN, lists the Pace Law School site *Second*, *Third* and *Sixth* and the LexMercatoria site *Seventh* and *Eighth* out of 77.5 million sites listed there under this heading.

35. See *supra* note 33.

36. See *supra* note 34.

37. During the first six months of 2008, the Pace Law School site received 10 million Internet “hits,” an average of over 50,000 per day. The “hits” have come from the following jurisdictions: Albania, Algeria, Andorra, Angola, Antigua & Barbuda, Argentina, Armenia, Aruba, Australia, Austria, Azerbaidjan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Bermuda, Bhutan, Bolivia, Bosnia-Herzgovina, Brazil, Brunei, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Chile, China, Colombia, Cook Islands, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Faroe Islands, Finland, France, Fiji, Gabon, Gambia, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Guatemala, Guinea, Guinea Bissau, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Republic of Korea, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Libya, Liechtenstein, Lithuania, Luxembourg, Macau, Macedonia, Maldives, Malaysia, Mali, Malta, Mauritius, Mexico, Micronesia, Moldova, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, Netherlands Antilles, New Caledonia, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palestine Territories, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Polynesia, Portugal, Qatar, Romania, Russian Federation, Saint Kitts & Nevis Anuilla, Saint Lucia, San Tome

Phase Three can begin when the goals and objectives of the endeavor have been sufficiently developed.

*Phase Three: Formation of Working Groups to Promulgate the Principles and Methodology to be Followed in the Design of elated Aids to Consumers and Business*

We seek to develop global principles. Representation on the Working Groups should therefore be global. We also seek balanced principles. The Working Groups should therefore represent business interests as well as consumer interests.

The activities of the Working Groups could be sponsored by an academy, an institution accustomed to managing such work, or a consortium of universities dedicated to the advancement of world trade on a fair and equitable basis.

*Phase Four: Formation of an Oversight Committee*

Following approval of the Working Groups' recommendations, an Oversight Committee should be created. Incoterms work well—extremely well—and remain current, among other reasons, because they are revisited on a decennial basis. Once adopted, the Consumershield Principles should be revisited on an appropriate cycle.

## VII. CONCLUSION

Moving the EU Consumer Law harmonization process to a global plane makes sense. A suitable Consumershield program can safeguard consumers' and merchants' interests. Further, the dialogues associated with the process can enhance domestic and global relations. The time to begin working on the process is now.

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and Principe, Saudi Arabia, Senegal, Singapore, Slovak Republic, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Taiwan, Tanzania, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkomenistan, Turkey, Turks & Caicos Islands, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yugoslavia, Zambia and Zimbabwe.

An extremely high rate of usage can also be reported for the Lex Mercatoria site.