Summer 1983


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BOOK REVIEW


In 1980, a Diplomatic Conference of sixty-two states unanimously approved the United Nations Convention on Contracts for the International Sale of Goods. This action concluded almost fifty years of effort to unify the law for the international sale of goods and, in the process, superseded the frequently criticized 1964 Hague Convention on the Uniform Law for the International Sale of Goods (ULIS) and the Uniform Law on the Formation of Contracts for the International Sale of Goods (ULF). Since that time, 21 states, including the United States, have signed the 1980 Convention and 2 states have ratified it.

Over the last twenty-five years John Honnold, Schnader Professor of Commercial Law at the University of Pennsylvania, has been deeply involved in the developments leading to the 1980 Convention. He has been a perceptive commentator on the process of unification and, from 1969 to 1974 served as Chief of the International Trade Branch of the United Nations. In addition, he represented the United States as a delegate to the 1964 Hague Convention, as a participant at various United Nations Commission on International Trade Law Working Groups leading up to the 1978 Draft Convention, and with Professor E. Allan Farnsworth as a delegate to the 1980 Diplomatic Conference. It will come as no surprise to learn, therefore, that he has written Uniform Law for International Sales Under the 1980 United Nations Convention an important book that should become an indispensable tool for working with the text of the 1980 Convention.


II

The 1980 Convention consists of 101 Articles and is divided into four parts. Part I, entitled "Sphere of Application and General Provisions," covers Articles 1-13. Part II, entitled "Formation of Contract," covers Articles 12-24. Part III which covers Articles 25-88, is entitled "Sale of Goods," and includes sections on "General Provisions," "Obligations of the Seller," "Obligations of the Buyer," "Passing of Risk" and "Provisions Common to the Obligations of the Seller and Buyer." Part IV, entitled "Final Provisions," covers Articles 89-101. In assaying this structure, Professor Honnold states that his objective is to assist, through "intensive analysis and factual examples," in the understanding and application of the Convention to "modern commercial transactions" and to "see this new law as an organic whole." The purpose of this review is to assess how well he has accomplished his objective.

As a predicate to his commentary, the author provides a detailed discussion of the legislative history and development of the 1980 Convention. He includes a guide on how to find the principal documents and reports, and a recap of the steps, procedures and participants in the development. The appendices contain the text of the 1980 Convention, the 1978 Draft United Nations Convention on the International Sale of Goods, and the 1964 Hague Conventions, along with a useful concordance to ease the transition. Finally, the commentary on each article contains, at a minimum, a footnote on its legislative history and, frequently, more extended discussion of the particular developments since the ULIS. Readers, therefore, can learn much between the covers of this book about the history of the 1980 Convention, and in addition are frequently directed in citations to diverse sources of legislative history and academic commentary. In this respect alone, the book is invaluable.

In an effort to "help the reader see this new law as an organic

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5] A good example is the commentary on Article 79 discussing "exemptions" from liability. UNIFORM LAW FOR INTERNATIONAL SALES at 426-43.
whole,” Professor Honnold next highlights some “salient features” of the 1980 Convention. These are features of “special significance, including issues that underlie the entire Convention.” Perhaps it is correct to say that he has identified basic principles and policies that should influence the scope and interpretation of the Convention and its application to particular disputes. The themes developed in this section recur throughout the commentary to follow, thus it is important to read and understand the “salient features” before reading the commentary.

Finally, Professor Honnold presents the Commentary, which occupies all but 34 of the 460 sections of the book. At this section he encounters a dilemma. Although he discusses each of the 101 Articles in chronological order, there is no obvious topical or “functional” analysis beyond that dictated by the organization and structure of the 1980 Convention. Must the reader, therefore, start from the beginning and read to the end, performing miracles of self-integration along the way? The answer is no. Honnold has developed a methodology, building upon the “salient features” he highlighted, to integrate the Convention and build a continuing narrative as each article is considered. He provides a comprehensive index, a detailed table of contents, a concise overview of the Convention, and in addition, typically provides the following assistance as the reader confronts the sections relevant to a particular article:

1. An introductory note crisply reminds us of what has been discussed before, tells us what will be considered in the forthcoming material, and may also comment on the nature of the problem or the relationship of the particular article under discussion to other articles.

2. The particular article is quoted verbatim and there is a short footnote highlighting its legislative history.

3. The article is analyzed and the discussion may include illustrative examples, legislative history, policy implications, comparisons with current domestic law, references to scholarly discussions, and less frequently, an indication of the legal tradition from which the core idea emerged.

4. There may be a brief summary or a transition to the next article, and points developed earlier may be reiterated.

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7 Uniform Law for International Sales at 57-71.
8 See Uniform Law for International Sales at §§ 36, 131, and 180.
9 For commentary on a relatively discrete problem where the model is effectively employed, see the treatment of “Passing of Risk,” Uniform Law for International Sales at 367-90. Professor Honnold describes his method as follows:
Simply stated, the analysis of each article is skillfully woven into a unified approach to the entire Convention that contrasts with domestic law, and considers fundamental policies, legislative history and practical applications. On balance, the approach is highly successful.

III

The true test of Professor Honnold’s method occurs when it is applied to a particular problem. Suppose that you represent a buyer of goods entering into international contracts for the sale of goods, and he has requested your advice upon the right of a buyer to “cancel” or “rescind” a contract where the seller has delivered goods that do not conform to the contract. This is a recurring and troublesome question in both international and domestic law. With Professor Honnold’s book in one hand and your yellow pad in the other, what answer emerges?

In this case, starting at the index yields immediate results. Whether you first look under “cancellation” or “rescission,” you are referred to “avoidance” and there you strike gold. There are cross references to “fundamental breach,” “cure,” “notice fixing final period,” “remedies,” and “restitution,” and direct references to fifteen separate topics, including “avoidance by the buyer.” In addition, the book contains a detailed table of contents which points to, among other things, Article 49 entitled “Buyer’s Right to Avoid the Contract.” Finally, Professor Honnold has provided brief introductions to various parts of the Convention that help in developing an overview. Thus, we are provided a functional overview for what follows.

Before tackling the Commentary, however, one must first read the material on “salient features,” because in section 27 Professor Honnold provides an introduction to “avoidance” and limitations upon avoidance. We are told that avoidance is one of the “thorniest problems” in the law of sales, that no domestic legal system has developed a satisfactory approach to it, and that the problem has special significance “be-

For each of the major divisions of the Convention, the analysis of specific provisions is preceded by an introduction that exposes the relationship between this and the other parts of the Convention. The examples . . . yield an unexpected dividend: Working out a solution for these specific cases often brings different parts of the Convention into play and illustrates the Convention’s structure.

Uniform Law for International Sales at 5-6.

10 For Professor Honnold’s analysis of the problem under American sales law, see Honnold, Buyer’s Right of Rejection—A Study in the Impact of Codification Upon a Commercial Problem, 97 U. Pa. L. Rev. 457 (1949). For the seller’s right to avoid the contract upon breach by the buyer, see Article 64 and Uniform Law for International Sales at 362-64.

11 Uniform Law for International Sales at 568.
cause of the cost of transporting goods to a distant buyer and the difficulty of disposing of rejected goods in a foreign country” are high. 12 These considerations prompted the Convention to adopt “rules that can save the contract from destruction on technical grounds.” 13

With this anti-avoidance policy established, we then are alerted that avoidance has two primary limitations: (1) the party in breach has power to “cure” the breach, and (2) the breach must be “fundamental.” We also are told that there is one important expansion of the right to avoid the contract; if there is a failure to perform that is not fundamental, the aggrieved party “may fix a final, additional period for performance” and a failure by the seller to deliver within that time is grounds for avoidance. 14 This is the “famous Nachfrist notice, adapted from German law,” upon which Professor Honnold lavishes great attention throughout the Commentary. 15

The contours have been established, now the reader has a choice: either read through the Commentary from start to finish, or jump right into the stream by starting with the commentary to Article 49, sections 301-308. If you have taken the steps recommended above, including reading the “salient features,” starting with Article 49 can be productive due to the discussion method employed by Professor Honnold. To illustrate, in the commentary to Article 49: (1) section 301 provides a brief study of the problem of avoidance in domestic law, including the United Kingdom, the United States, France and Germany; (2) section 302 includes a reminder of earlier comments upon “cure,” “fundamental breach” and the Nachfrist notice, as well as a verbatim reprint of Article 49 and a footnote on its legislative history; (3) sections 303 to 305 briefly summarize two grounds for avoidance, “fundamental breach” and “non-delivery within time fixed by the Nachfrist notice,” but there are no examples offered because these grounds are explored in the commentary on Articles 25 and 49; and (4) sections 306 to 308 discuss in some detail, but without illustrations, the limitations imposed by Article 49(2) on the time for avoidance. There is no concluding section looking forward to additional comments on avoidance, and the overall discussion is a bit sparse. 16 It is crucial, therefore, that the reader turn back to the commentary on (1) fundamental breach in Article 25, (2) how avoidance is declared in Article 26, (3) the seller’s right

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12 Uniform Law for International Sales at 65.
13 Uniform Law for International Sales at 65.
15 Uniform Law for International Sales at §§287-91, 305.
to cure defects in performance in Articles 37 and 48, and (4) the Nachfrist notice in Article 47.

"Fundamental" breach is defined in Article 25:

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

In his commentary on Article 25, Professor Honnold stresses that fundamental breach is a limitation on the "right" to avoid a contract, discusses the legislative history of Article 25 and provides two illustrations of how the fundamental breach concept does not depend solely upon the degree of deviation from expectations under the contract. The first illustration reveals that a breach, otherwise substantial, may not be fundamental if the seller offers to cure it under Articles 37 or 48, and the second shows that a breach, otherwise unsubstantial, may become fundamental if the seller refuses to grant a refund or a price adjustment to the extreme inconvenience of the buyer. In other words, the seller's conduct either at or after the breach may mitigate what would otherwise be a fundamental breach or exacerbate the effect of a relatively minor deviation. The commentary on Article 25 concludes with a listing of the articles where fundamental breach is an important concept, including the buyer's right to specific performance under Article 46(2).\(^\text{17}\)

Enough has been said to suggest what Professor Honnold's method generally will yield. With the groundwork on avoidance by the buyer laid in the commentaries on Articles 49 and 25, the reader can proceed to the discussions in Article 26 of the notice required to declare an avoidance, the scope of the seller's right to cure nonconformities before and after delivery in Articles 37 and 48, and the German Nachfrist notice in Article 49. In addition, there is useful commentary employing the same methodology on the buyer's remedies and duties after an avoidance is declared in Articles 75 and 76 and 81 through 84,\(^\text{17}\)

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\(^{17}\) Uniform Law for International Sales at 211-16. Article 45(1)(a) of the 1980 Convention provides that if the "seller fails to perform any of his obligations under the contract... the buyer may... exercise the rights provided in articles 46-52..." Uniform Law for International Sales at 483. If that breach is a tender of non-conforming goods, the buyer "may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract" and a proper notice is given under Article 39. Article 46(2) reprinted in Uniform Law for International Sales at 484. The 1980 Convention reflects a preference for specific relief over damages and, according to Professor Honnold, this is a case where the civil law prevailed over the common law; where damages are the rule and specific performance the exception. Uniform Law for International Sales at 300.
and the buyer's duties with regard to goods in his possession at the time of avoidance in Articles 85 through 88. The same clear, analytical style, with occasional illustrations and frequent attention to legislative history and domestic law, is revealed in the overall avoidance commentary, as well as in other articles of the 1980 Convention.

IV

Despite this effective methodology, the book has some definite limitations when applied to the buyer's right of avoidance. First, because of the choice of methodology, the reader must work hard to apply the commentary to the particular issue. Other than the index, there is no single place where the conditions for and consequences of avoidance are adequately spelled out. Nevertheless, the assistance offered by Professor Honnold stimulates inquiry and is far more enlightening than working with only the text of the 1980 Convention. Second, although Honnold stresses the primary role of contract and the importance of usages, practices, and flexibility in international sales, this is not a book about the realities of international commercial practice. There is no systematic attempt to develop these themes around the avoidance issue, and although some patterns and practices emerge in the illustrations, they are fragmentary. A continuing impression is that despite the promise offered by the "salient features," Professor Honnold is required to deal with a Convention produced more through compromise among competing legal traditions than one derived from or responsive to the needs and practices of international trade. Third, there is no critical assessment of the general policies and objectives underlying the Convention or how they are implemented or frustrated by particular articles. In his commentary on avoidance, Professor Honnold assumes that the policy against destruction of the contract on technical grounds is sound; and that this policy is implemented in the complex and often baffling articles on fundamental breach and cure.

18 See Uniform Law for International Sales at 217-18 (notice of avoidance); 270-73, 309-14 (cure); 315-16 (Nachfrist); 412-16, 446-55 (post-avoidance remedies and effect); 456-63 (preservation of goods).
19 See Uniform Law for International Sales at 47-48, 60-62, 105-35, 144-49.

Codification of the law of international sales must, if it is to be successful, grow out of custom and belief—and, in particular, out of the common experience and shared concepts of the international trading community . . . . [I]n the commercial field, at least, legislation must not only reflect usage and refer to it, but must also develop and refine it. Otherwise legislation is not needed; and in law, surely, what is not necessary to do is necessary not to do.
A final source of puzzlement, if not disappointment, is Professor Honnold’s treatment of fundamental breach in his commentary on Article 25. Fundamental breach is an important limitation upon the right of either the seller or buyer to avoid the contract; its definition and administrability are therefore relevant to how well the 1980 Convention’s anti-avoidance policy will be achieved.

Under Section 10 of the ULIS, the test of fundamental breach was whether the “party in breach knew, or ought to have known, at the time of the conclusion of the contract, that a reasonable person in the same situation as the other party would not have entered into the contract if he had foreseen the breach and its effects.” One readily can agree with Professor Honnold that this test is “complex and fanciful, for it asks a tribunal to make an estimate concerning a hypothetical prediction that one party would not have made about what the other party would have done if he had known facts that did not yet exist.” Thus, it was clear early in the UNCITRAL drafting process that fundamental breach “must be redefined in terms of the materiality of the breach.”

The result is Article 25 of the 1980 Convention which, as shown previously, provides that a breach is fundamental if it “results in such a detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.” According to Professor Honnold, the phrase before “unless” focuses upon the “performance that was promised at the time of the making of the contract” and the phrase after “unless” focuses upon the serious consequences that “become evident subsequent to the making of the contract.” Thus, according to Honnold, there may be a minor deviation in what the aggrieved party was “entitled to expect,” but a fundamental breach will occur when the breacher “willfully deviates from the contract . . . at a time when he should know that his deviation would cause serious detriment to the other party.” The overall effect of this interpretation is to tie the buyer's right to avoid more to the seller’s conduct at the time of the breach than to the materiality of his non-performance. Thus, the seller can (1) “cure” what otherwise is a fundamental breach, (2) promote a minor breach into a fundamental

21 Uniform Law for International Sales at 545.
22 Uniform Law for International Sales at 212.
23 Uniform Law for International Sales at 212.
25 Uniform Law for International Sales at 213.
26 Uniform Law for International Sales at 213.
breach by refusing to grant a price or quantity adjustment,\textsuperscript{27} and (3) commit a fundamental breach because a substantial detriment was reasonably foreseen at the time of breach although not at the time of contracting.

Before reading the following comments on this interpretation, it is important to recall the distinction between direct and consequential losses caused by a breach. From the buyer's standpoint, the distinction is between the loss suffered because the buyer did not receive what he was entitled to under the contract, measured by the difference between the contract price and, for example, the cost to obtain a substitute performance,\textsuperscript{28} and the loss suffered because the defective performance interfered with or prevented an intended use of the goods, such as a resale. In this latter case, the damages may include profits lost on the intended resale if, as Article 74 provides, the seller "foresaw or ought to have foreseen" them at the "time of the conclusion of the contract."\textsuperscript{29}

Unlike Article 25, as interpreted by Professor Honnold, there is nothing to suggest that if a seller did not reasonably foresee lost resale profits at the time of contracting but did foresee them at the time of a wilful or other breach, he would be liable for them under Article 74. From the juxtaposition of Articles 25 and 74, therefore, emerges the curious possibility that if a seller, who at the time of breach but not at the time of contracting, can foresee that breach would cause a serious loss in the buyer's planned use of the goods, the breach may be fundamental. Thus, avoidance would be justified, but the buyer may be unable to recover for any consequential losses.

Assuming that Professor Honnold's "time of breach" interpretation of Article 25 is sound, the interesting policy question is why the 1980 Convention imposes a fault concept at the time of the breach to expand the rights of avoidance but rejects that approach where the expansion of liability for consequential damages would result. A possible answer is that the assumed policy reasons for limiting avoidance are less persuasive where the seller, whose interest is protected by the policy, has, without offering to cure or to adjust, committed a breach with


\textsuperscript{28} As another example, suppose the buyer has contracted to buy factory equipment from the seller to expand the capacity of his plant. The seller fails to deliver and, even with reasonable efforts, it will take the buyer three months to purchase substitute goods from a third party. The buyer's "direct" damages will be the cost in excess of the contract price to purchase substitute goods, plus the reasonable expenses incurred, in effect the "cover," and the consequential damages will be any profits lost in the planned expansion because of the delay. \textit{See} U.C.C. §§ 2-712(1); 2-715(2)(a) (1977).

reason to know that the buyer will suffer a substantial detriment. This conduct strongly suggests bad faith, if not a tort. On the other hand, the seller’s fault at the time of breach may not undercut the usual reasons, lodged in contract theory, for excluding consequential losses not reasonably foreseeable at the time of contracting. However interesting these questions may be, the curious juxtaposition of Article 25 with its importance for the right of avoidance, and Article 74 with its limitation on consequential damages, is not discussed by Professor Honnold.

The more interesting question is whether Professor Honnold’s conclusion is sound that the phrase after “unless” in Article 25 applies to a detriment the seller could reasonably foresee at the time of breach. This conclusion is not easily supported by the language of Article 25. To be fundamental, the breach must result in substantial detriment, and substantiality is measured by what the buyer is “entitled to expect under the contract.” Put another way, the seller’s non-conforming performance must be compared to the buyer’s “entitled” expectations under the contract. In damage parlance, the detriment resulting would be direct, rather than consequential. The phrase after “unless,” although silent as to the time of foreseeability, refers explicitly to the detriment resulting from deprivations of what the buyer “is entitled to expect under the contract.” It is that detriment which the seller must foresee and because it is determined by the terms of the contract, the apparent reference point is to the time of contracting rather than the time of breach.

This reading of Article 25, plausible though it may be, undercuts the independent effect of the “unless” clause, for it will be hard for the seller to show that he could not reasonably foresee what direct and substantial detriment, measured by contract expectations, will result from a breach. This may argue for, but does not fully explain, Profes-

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30 Article 7(1) of the 1980 Convention directs that the “observance of good faith in international trade” be considered in the “interpretation” of the Convention. The scope and content of good faith, however, is far from clear. See Uniform Law for International Sales at 61-62, 123-25.

31 According to Comment (a) to Section 351 of the American Restatement (Second) of Contracts, a “contracting party is generally expected to take account of those risks that are foreseeable at the time he makes the contract” but that he is not “liable in the event of breach for loss that he did not at the time of contracting have reason to foresee as a probable result of such breach.” Restatement (Second) of Contracts § 351 comment a (1979). Cf. Hadley v. Baxendale, [1854] 156 Eng. Rep. 145, 151 (unjust to impose liability for consequences unknown at the time of contracting for “had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms . . .”). See Uniform Law for International Sales at 411, where Professor Honnold suggests that under French law a claim for damages not foreseeable at the time of contracting might lie if the breach was willful.

32 Article 25 reprinted in Uniform Law for International Sales at 477.
sor Honnold's conclusion that foreseeability is relevant to the time of breach. Except for a cryptic comment that the 1980 Convention's departure from the "time of contracting" test of foreseeability has been criticized as "unfair," nothing is said about the potentially conflicting interpretation derived from the final version of Article 25.

Some additional light can be shed by a more complete reading of the legislative history of Article 25. A 1976 draft definition of fundamental breach provided: "A breach committed by one of the parties to the contract is fundamental if it results in substantial detriment to the other party and the party in breach foresaw or had reason to foresee such a result." Article 23 of the 1978 Draft Convention defined Fundamental Breach as: "A breach committed by one of the parties to the contract is fundamental if it results in substantial detriment to the party unless the party in breach foresaw or had reason to foresee such a result." According to Professor Michida, the delegate from Japan, substitution of "unless" for "and" was intended to shift the burden of proving that the detriment was not foreseeable from the aggrieved party to the breacher. Those delegates who favored a broader right to avoid, urged that it was unfair to require the aggrieved party to prove both substantial detriment and that it could have been foreseen by the breaching party. These arguments carried the day and Michida's conclusion on the burden of proof is confirmed in the Commentary by the United Nations Secretariat on Article 23 of the 1978 Draft.

The Secretariat's Commentary on the 1978 version of Article 23 also offered two other interpretations: first, the concept of "substantial detriment" was to be made in the circumstances of each case, including the "extent to which the breach interferes with other activities of the injured party," and second, the phrase after "unless" does not specify

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33 See UNIFORM LAW FOR INTERNATIONAL SALES at 213 n.3. This is no suggestion as to why this might be unfair to the aggrieved party. But see infra note 29.
36 See Michida, Cancellation of Contract, 27 AM. J. OF COMP. LAW 279 (1979), where this drafting history is discussed. Professor Michida, an advocate of less rather than more avoidance, urged that even with the "unless" language, the definition of fundamental breach should be expressly conditioned upon the failure of the seller to cure. This proposal was rejected as unnecessary and superfluous. UNIFORM LAW FOR INTERNATIONAL SALES at 214 n.4.
38 Id.
at "what moment the party in breach should have foreseen the consequences of the breach, whether at the time the contract was concluded or at the time of the breach," and in case of dispute "that decision must be made by the tribunal." Thus, a persuasive interpretation of Article 23 prior to the 1980 Convention was that "substantial detriment" included both direct and consequential loss and the relevant time for foreseeability could be the time of breach.

When the Diplomatic Convention convened in March 1980, Articles 1 through 82 of the 1978 Draft Convention were referred to the First Committee for consideration, with the expectation that any approved amendments would be submitted to a Drafting Committee of the First Committee and then to the Plenary Session. The debate on Article 23 was extensive, covering more than eight pages in the Summary Records of the First Committee. The United Kingdom, pursuing an objection made to the 1978 Draft, proposed that the phrase "at the time when the contract was concluded" be inserted between the words "unless" and "the party in breach." This proposal was withdrawn upon consideration of the opposing view that information provided after the conclusion of the contract could "modify the situation as regards both substantial detriments and foresight" and that the wording of Article 23 "should therefore be flexible." Afterwards without apparent reference to the United Kingdom proposals, an ad hoc working group reported an amendment proposed by the Federal Republic of Germany that the breach is fundamental if it "results in such detriment to the other party as will substantially impair his expectations under the contract." This amendment, which the First Committee adopted by a 22 to 18 vote, along with a change in the content of

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39 Id.
40 For a brief discussion of this process, see Uniform Law for International Sales at 54-56.
the foreseeability test, was incorporated into Article 23 and submitted to the Drafting Committee in the following form:

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as will substantially impair his expectations under the contract, unless the party in breach did not foresee such a result and that a reasonable person of the same kind in the same circumstances would not have foreseen it.

A final version, with minor revisions, was submitted to the Plenary Session and adopted as Article 25 by a vote of 42 to 2, with two abstentions.

The conclusion to be derived from this brief excursion into the legislative history thicket is still far from clear. On the one hand, Professor Honnold's interpretation that foreseeability may be determined at the time of breach is supported by the comments of the United Nations' Secretariat on the 1978 Draft and the United Kingdom's decision in the face of strong opposition to withdraw its proposal which would limit foreseeability to the "time the contract was concluded." This interpretation, of course, favors avoidance for it holds the seller accountable for substantial detriment which should have been foreseen at the time of breach. On the other hand, the amendment proposed by the Federal Republic of Germany and adopted by the Plenary Session narrowed the definition of "detriment." Article 25, as a result of the narrower definition combined with the phrase after "unless," has the overall effect of tying foreseeability to the narrower detriment resulting from expectations created at the time of contracting. Professor Peter Schlectriem finds this reading of Article 25 persuasive, and suggests that the objective of the withdrawn United Kingdom proposal was achieved indirectly when the proposal of the Federal Republic of Germany was adopted by the Plenary Session. Regardless of the sound-

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47 See Report of the First Committee of the Plenary Conference, U.N. Doc. A/CONF.97/11 and Add.1&2, reprinted in Official Records, supra note 6, at 206. The interpretation problem raised here was not discussed in the explanations by States as to why they dissented or abstained.

48 A reading of the Summary Records of the First Committee's discussion of Article 23 of the 1978 Draft reveals a persistent sentiment in favor of flexibility in the timing of foreseeability. See supra note 33; Official Records, supra note 6, at 295-303.

49 See P. SCHLECTRIEM, EINHEIGLICHES UN-KAUFRECHT 46-49 (1981). Apparently Professors Schlectriem and Honnold failed to agree on this one in their "full day of animated critique discussion." UNIFORM LAW FOR INTERNATIONAL SALES at 9-10.
ness of this conclusion, the important difference from this review's standpoint is that Professor Schlectriem directly considered the effect of the German proposal while Professor Honnold did not.

V

The strengths of this impressive text are clear. Professor Honnold has succeeded in helping all of us to understand and to apply the 1980 Convention. The method employed in the commentary, the numerous research aids, the mix of history, comparative law and policy, and the consistently clear writing justify the conclusion that the book is an indispensable aid to working with the text of the 1980 Convention. Even for the "semi-initiated," the book provides a rich and sophisticated insight into the process of unification of international sales law—a process that will not stop with the 1980 Convention.

The limitations, which are implicit in the book's stated objectives, emerge when the reader explores the commentary for answers to particular questions. At some point in the analysis it becomes clear that not all the questions are answered, not all of the inter-relationships are explored, and not all of the underlying policies are developed and evaluated. Further, there is no systematic comparison between the 1980 Convention and any particular domestic law of sales. But these limitations are by design rather than omission. The first task after the completion of such a monumental international project is to provide clear analysis and basic understanding. Critical evaluation can come later. Even so, there is more depth here than one is accustomed to find in a

50 Under the Uniform Commercial Code, the buyer's right to avoid or "cancel" the contract for breach by the seller is defined in Section 2-711(1). U.C.C. § 2-711(1)(1977); see U.C.C. 2-106(4)(1977) (cancellation occurs when either party puts an end to the contract for breach). The scope of the right is determined by the nature of the breach and whether delivery is to be tendered and accepted in installments. In the latter case, a "non-conformity or default with respect to one or more installments" must substantially impair the value of the whole contract before cancellation is justified. U.C.C. § 2-612(3)(1977). If the contract is entire, a failure to deliver the goods must go to the "whole" contract, U.C.C. § 2-711(1)(1977), and a repudiation must be "with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other," U.C.C. § 2-610(1977), before cancellation is justified. Cancellation also may be justified where the buyer "rightfully rejects or justifiably revokes acceptance" where the goods or the tender of delivery fail to conform to the contract. Whether a rejection is rightful is determined by U.C.C. § 2-601 and a group of sections relevant to that question, and whether a revocation of acceptance is justifiable is determined by U.C.C. §§ 2-606. U.C.C. §§ 2-601, 2-608 (1977). For analysis of these problems, see e.g., Priest, Breach and Remedy for the Tender of Non-Conforming Goods under the UCC: An Economic Approach, 91 Harv. L. Rev. 960 (1978). See also, Minter, Buyer's Right of Rejection: A Quarter Century Under the U.C.C., and Recent International Developments, 13 Ga. L. Rev. 805 (1979).
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basic text and this suggests that the book also will serve as a foundation piece for the flow of critical scholarship that is bound to follow.

Nevertheless, I remain intrigued by why Professor Honnold, surely one of the initiated in these matters, glossed over a major change in the definition of fundamental breach between the 1978 Draft and the 1980 Convention. The interpretation issue is apparent to even the semi-initiated and the answer is important to the scope of the avoidance right because, if Professor Schlectriem's conclusion is sound, the change will further narrow the buyer's right to avoid. Even if the seller could foresee a substantial detriment at the time of breach, there is no fundamental breach if the seller would "not have foreseen" that detriment as "substantially to deprive . . . [the buyer] . . . of what he is entitled to expect under the contract."\textsuperscript{51} Surely the policy implications of that drafting change deserved some comment.

One possible explanation is that the amendment slipped through the First Committee and the Plenary Session without adequate discussion of its probable effect. In addition Professor Honnold, along with several other delegates favoring flexibility in the time for foreseeability, would probably be surprised by the alleged effect of the amendment. Clearly, Honnold's interpretation in the text is consistent with the Secretariat's view of Article 23 in the 1978 Draft, and with the United Kingdom's withdrawal of the amendment explicitly worded to tie foreseeability to the time of contracting. The surprise theory also is bolstered by Honnold's consistent position in the text that limitations on avoidance in international trade are sound. One might have expected an advocate of a particular position to seize upon an amendment apparently limiting the scope of avoidance as evidence supporting that policy. But, Professor Honnold does not discuss the amendment much less seize upon it.\textsuperscript{52}

\textsuperscript{51} Article 25 reprinted in Uniform Law for International Sales at 477.

\textsuperscript{52} In response to an inquiry from the author of this review, Professor Honnold conceded that his discussion was "too brief" and offered a post hoc response to Peter Schlectriem's interpretation. The essence of the argument is that the amendment proposed by the Federal German Republic went to the substantiality of the detriment incurred rather than to the foreseeability of loss at the time of contracting. He stressed that under Draft Article 23 of the 1978 Draft, foreseeability was not limited to the time of contracting and that the United Kingdom's amendment, which limited foreseeability for avoidance purposes to the time of contracting, was rejected. In light of the legislative history, the question was whether the language of Article 25 restricted foreseeability to the time of the making of the contract. He concludes that the answer is no.

In terms of syntax, this question . . . is left open, with the nearer reference made to 'breach' rather than making. On balance, the lack of support for the UK proposal and the failure of the Conference expressly to take a decision on this point would deny to the Drafting Committee the authority to inject this idea in the drafting process. And there is one point on which the leaders of the Conference and the Drafting Committee were insistent—the same idea was
One unexplained omission or gloss does not a bad book make. Rather, it simply warns that even the initiated have difficulty in analyzing and explaining a complex convention that has an even more tangled and inconclusive legislative history. In short, there also are traps for the wary in the Convention and, alerted to the risk, all of us can begin the work of assessing this contribution to international private law.

Richard E. Speidel*

* Professor of Law, Northwestern University School of Law.