The Lexical Initiative for International Commerce

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INTRODUCTION

In the field of international sales law, the term ‘global jurisconsultorium’ has been proposed to encapsulate the idea that courts should voluntarily analyze foreign jurisprudence and commentaries during their decision-making as a means toward the attainment of the uniform application of the law.¹ In particular, Professor Albert Kritzer,² Executive Secretary of the Institute of International Commercial Law, urged the creation of a global jurisconsultorium in the context of a discussion regarding the accessibility and retrieval of international sales law cases as well as secondary sources by judges, practitioners, and academics.

As one of the means to foster a global jurisconsultorium, it was suggested that a uniform terminology (controlled vocabulary) be created to index international sales law collections.³ The authors of the proposal concluded that a uniform terminology would not only ease the accessibility of necessary information on international sales law, but would, in and of itself, nurture the uniform substantive interpretation and application of this branch of law.⁴

² Executive Secretary, Institute of International Commercial Law, Pace Law School.
³ Rogers and Kritzer ‘A Uniform International Sales Law Terminology’ supra fn 1 at 240-1.
⁴ When persons access information in the same manner, they begin to conceptualize the information in the same way. In other words, the structure for the retrieval of legal information provides a paradigm for thinking about the law itself. See Rogers and Kritzer ‘A Uniform International Sales Law Terminology’ supra fn 1 at 233-5.
More specifically, a thesaurus was the proposed type of controlled vocabulary to be used as the basis for indexing international sales law collections. A thesaurus contains all the authorized terms (descriptors) for an index and charts the semantic relationships among terms. Given the subject's international scope, a structured controlled vocabulary, ie, a thesaurus, is desirable.

Without expounding further on why a global jurisconsultorium for international sales law is desirable or how a thesaurus can encourage a jurisconsultorium, the following serves (1) to announce the initiative launched by the Institute of International Commercial Law for the creation of controlled vocabularies for international commerce; and (2) to discuss the domain of a thesaurus on international sales law and the treatment of domestic sales law in the thesaurus.

ABOUT THE LEXICAL INITIATIVE FOR INTERNATIONAL COMMERCE

The Lexical Initiative for International Commerce (LIIC) was launched in 2006 under the leadership of Professor Kritzer. The LIIC is premised on the idea that one of the ways to create a stable and predictable international commercial environment is to develop further resources that foster the common understanding and application of language forming the basis of a bargain. One such category of resource is a thesaurus that would be used for the indexing and subsequent retrieval of information on international commerce. A thesaurus also provides a uniform framework for terms, consequently 'aiding in the general understanding of a subject area, providing "semantic maps" by showing inter-relations of concepts, and helping to provide definitions of terms.'

The LIIC was formed to develop thesauri for international com-

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5 Rogers and Kritzer 'A Uniform International Sales Law Terminology' supra fn 1 at 241-6.
6 For a more detailed discussion on these topics see Rogers and Kritzer 'A Uniform International Sales Law Terminology' supra fn 1.
7 See www.lexicalinitiative.com.
merce. The LIIC intentionally adopted a broad subject, i.e., international commerce, to maintain flexibility with regard to the scope of its future projects.

As international commerce is a broad topic, covering several subject fields, an Advisory Board was assembled for the purpose of guiding the LIIC's projects and to provide feedback and guidance during the development of such projects. The Advisory Board members reflect leading international expertise in both library science and international commerce. The members include:

- **Ralph Amissah**, Legal Consultant, International Commercial Law, London; Developer of SiSU;

- **Klaus Peter Berger**, Professor of Domestic and International Civil and Commercial Law, Comparative and Private International Law; Director, Institute for Banking Law and Center for Transnational Law (CENTRAL), University of Cologne, Germany;

- **Robert Berring Jr.**, Walter Perry Johnson Professor of Law, University of California, Berkeley School of Law, California, United States;

- **Michael Joachim Bonell**, Professor of Law, University of Rome; Legal consultant, UNIDROIT, Rome, Italy;

- **Daniel Dabney**, Senior Director and Chief of Classification, Thomson Global Resources, Zug, Switzerland;

- **Claire Germain**, Former President, American Association of Law Libraries, and Edward M. Cornell Professor of Law and Law Librarian, Cornell Law School, New York, United States;

- **Johnny Herre**, LL.D., M.Sc. (Economics and Business), Professor of Law, Stockholm School of Economics, Stockholm, Switzerland;

- **Albert H. Kritzer**, Executive Secretary, Institute of International Commercial Law, New York, United States;

- **Marie Stefanini Newman**, Director of Law Library and Associate Professor of Law, Pace University School of Law, New York, United States;

- **Jernej Sekolec**, Secretary of UNCITRAL, Vienna, Austria;

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• *Albert Jan van den Berg*, Partner, Hanotiau & van den Berg, and General Editor ICCA Yearbooks on Commercial Arbitration, Brussels, Belgium;


A Director of the LIIC, Vikki Rogers, has also been appointed to coordinate and manage its projects, and research assistants specializing either in linguistics or international commercial law participate in the development of the thesauri. International commercial law experts will also be consulted, where appropriate. Finally, Dr Bella Hass Weinberg\(^\text{10}\) has been retained as a special consultant to guide the LIIC in the technical aspects of thesaurus construction.

**INTERNATIONAL SALES LAW THESAURUS PROJECT**

Although the LIIC concerns international commerce generally, the LIIC does not intend to create one controlled vocabulary for the entire subject field. Rather, pieces of the subject will be chiseled from the larger topic. For example, international sales law is the first subject for which the LIIC will develop a thesaurus. Once the thesaurus is developed, the LIIC will decide whether it is appropriate to build another aspect of international commerce (e.g., carriage of goods, payment mechanisms, or arbitration) into the sales law vocabulary, or whether a separate vocabulary should be created that would borrow terms from the international sales law thesaurus, where appropriate.\(^\text{11}\) As the LIIC is tackling the entire subject field in sections, it is also best situated to con-

\(^{10}\) Professor in the Division of Library and Information Science, St. John's University, Queens, New York. Professor Weinberg chaired the committee of the National Information Standards Organization that developed the thesaurus standard that was issued in 1994 and reaffirmed in 1998. That document served as the basis of the latest edition of the standard (available at: www.niso.org).

\(^{11}\) Considering that the UN Convention on Contracts for the International Sale of Goods (CISG) is the primary language of the international sales law thesaurus, it will likely be considered more appropriate to create separate thesauri for related topics on international commerce and to borrow relevant CISG terms where appropriate.
sider issues of thesaurus integration (i.e., the compatibility and overlapping of independent thesauri) as it continues to expand the subject scope.\(^\text{12}\)

International sales law was chosen as the first project because (1) reference materials on that subject are readily available, given the efforts by various institutes and organizations to collect and disseminate materials on the subject;\(^\text{13}\) (2) the number of cases and commentaries currently available on the subject is manageable; and (3) there is anticipated growth in the subject area, justifying the creation of a thesaurus. The anticipated growth is based on the tracked activity of the CISG Database\(^\text{14}\) and anticipated increase in international trade. During the last two decades there has been sizable growth in the number of cases and commentaries that address international sales law as well as significant efforts to collect and digest the materials for judges, practitioners and academics.\(^\text{15}\) For example, in the Case Law Digest Professor Michael Will published in 2000, he reported 683 cases on the CISG.\(^\text{16}\) At the end of 2006, the CISG Database reported 1,835 case presentations.\(^\text{17}\) The bibliography currently boasts over 8,000 entries.

More compelling, however, is the increased demand for this information. For example, in 1999 the CISG Database received an average of 100,000 hits per month. By 2006, the CISG Database received an average of

\(^\text{12}\) For further information regarding thesaurus reconciliation and integration, see Aitchison, Gilchrist and Bawden *Thesaurus Construction* supra fn 8 at Section L, p. 173.


\(^\text{15}\) See supra fn 13.


\(^\text{17}\) These numbers do not include many arbitral awards related to the CISG that are otherwise kept confidential given the private nature of arbitration. The typical international sales law contract contains an arbitration clause. The number of presentations would be higher if the CISG Database had access to these awards.
over 1,000,000 hits per month. Whether the primary source for these hits be judges, practitioners, academics, or students, the numbers disclose that there is a demand for information on international sales law.

As it is reasonable to assume that international trade will continue to expand, it is prudent to plan options for the organization and retrieval of increased cases and commentaries on the subject. In addition, Professor Kritzer has led a related initiative to translate court decisions on the CISG into English, increasing the depth of information available for a global jurisconsultorium. The translation program was launched in 2001, and already includes over 1,000 cases.

Given the anticipated growth and demand for information on international sales law, as well as the desire to promote a global jurisconsultorium, there is a need to develop a thesaurus for improved information handling. As such, the International Sales Law Thesaurus Project has been designated as the first project of the LIIC. The thesaurus is intended to be the definitive vocabulary for international sales law that will be used to index materials on the subject.19

**International Sales Law Domain**

The first question for the creation of an international sales law thesaurus is 'what qualifies as the domain of the subject for creating a thesaurus?' For purposes of establishing terms and creating relationships among the terms for an international sales law thesaurus, the boundaries have been set around the legal information provided in the CISG Database. This Database, managed and updated by Albert Kritzer, is home to the largest online collection of legal information on international sales law. Although the LIIC is cognizant that there are other sources of information on international sales law, including additional commentaries and cases in other databases and collections, the CISG Database is nevertheless sufficiently broad and inclusive of

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19 The managers of the CISG Database will be applying the thesaurus to index their cases, as well as other databases that opt to index their collections applying the thesaurus. The thesaurus will be used for separate indexes of variable depth, eg, subunits within a book, a bibliography, cases, and scholarly commentaries.
enough materials to extract relevant terms for the construction of a controlled vocabulary for the subject. Specifically, the database includes the following legal materials:

- Full texts of the CISG (in seventeen languages);
- Annotated text pages for each Article of the CISG, including:
  1. Links to the relevant sections of the UNCITRAL Outline of the CISG [The UNCITRAL Thesaurus];\(^{20}\)
  2. Legislative history;
  3. Relevant sections of the Secretariat Commentary (on the 1978 Draft of the CISG);
  4. Relevant cases;
  5. Relevant commentaries and texts;
  6. Commentaries or comparisons matching relevant provisions of the UNIDROIT Principles of International Commercial Contracts\(^ {21}\) (UNIDROIT Principles) and the Principles of European Contract Law\(^ {22}\) (PECL) to the CISG;\(^ {23}\)
- CISG Advisory Council Opinions;\(^ {24}\)
- Articles related to the application of the CISG to sales contracts; and
- Related lex mercatoria material from the CENTRAL Transnational Law Database (TLDB).\(^ {25}\)

\(^{20}\) UNCITRAL Outline of the CISG [The UNCITRAL Thesaurus] (A/CN.9/SER.C/GUIDE/1 English 12 September 1995). This is not a thesaurus in the traditional library-science sense, but rather provides an outline of issues for each Article of the CISG. Available at: http://www.cisg.law.pace.edu/cisg/text/cisgthes.html.

\(^{21}\) See http://www.jus.uio.no/lm/unidroit.international.commercial.contracts.principles.2004.

\(^{22}\) See http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002.

\(^{23}\) See various comparisons and editorial remarks on the CISG Database, for example, http://www.cisg.law.pace.edu/cisg/text/peclcomp16.html#er.

\(^{24}\) For example, see http://cisgw3.law.pace.edu/cisg/CISG-AC.html.

If it is determined that the vocabulary created based on the CISG Database is not sufficient to index materials from other sources, the vocabulary can be modified, as a thesaurus is a 'living document' to be updated continually to reflect changes and additions to its subject scope.

In addition, it is noted that the UNIDROIT Principles, PECL, and related lex mercatoria materials are intended for all commercial contracts, not just for sales law contracts. These Principles and materials, however, will be included in the international sales law thesaurus nonetheless, as they are commonly used to further clarify or support provisions of the CISG. As appropriate, these terms can also be used in future vocabularies created for international commerce.

The CISG, reflecting the 'black letter law' for international sales, is the primary language for the thesaurus. As such, the thesaurus will be built in the following steps, pursuant to ISO standard 2788 (Documentation – Guidelines for the establishment and development of monolingual thesauri):

1. Terms are extracted from the CISG; relationships are established between the descriptors, creating "semantic maps," and each term is assigned a source (a specific CISG Article);

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26 For example, see comparisons between UNIDROIT Principles and PECL to the CISG on the CISG Database.
27 'Black letter law' is used in the same vein as 'commercial code'; contrast to 'principles,' 'commentaries' or 'cases.'
29 Proposed terms are weighed for their 'literary warrant' (there are actual documents in the international sales law collection for which the term would be useful) and 'user warrant' (users, usually based on past searches, search the term when they enter the thesaurus). In addition, the thesaurus will apply a minimal to standard level of pre-coordination, generally combining terms when necessary to reflect complex ideas or to alleviate ambiguity. Deep pre-coordination is avoided, considering the comparisons to be made to domestic law (see section infra on the inclusion of domestic law) as well as the eventual creation of a multilingual thesaurus on the topic.
(2) CISG terms are tested against the UNCITRAL Thesaurus, case law\textsuperscript{31} and commentaries\textsuperscript{32} on the subject, and the thesaurus is modified or expanded accordingly (the sources for these modifications and additions are also recorded under each term);

(3) terms are extracted from the UNIDROIT Principles, PECL and related lex mercatoria materials (collectively the ‘Principles’). These terms are compared to the CISG terms.\textsuperscript{33} At this stage of construction, one of two scenarios is possible:

a) A term that is extracted from one of the related Principles has the same ‘scope’\textsuperscript{34} as a CISG term already identified. In this scenario, the CISG term remains as is, and an additional term source is added. The term from the Principles is deleted, as it is no longer necessary.

b) A term that is extracted from one of the related Principles is identical to a term already identified, but has a different scope. In this scenario, the CISG term remains as is, and the terms is ‘related’\textsuperscript{35} to other international terms that have a comparable scope and meaning to the term that is extracted from the Principles.

\textsuperscript{31} Case law originating from English speaking jurisdictions on the CISG Database.


\textsuperscript{33} The CISG Database offers comparisons between the CISG, the Principles, and related lex mercatoria principles in its Annotated Text Pages.

\textsuperscript{34} A scope note is a note following a term explaining its coverage, specialized usage, or rules for assigning it. See ISO Standard 2788, Documentation – Guidelines for the Establishment and Development of Monolingual Thesauri (2nd ed) 1986-11-15, Ref. no. ISO 2788-1986 at 11-15.

To highlight an example for scenario 'A': the term 'seller' is used in a number of sections of the CISG. The descriptor 'seller' is created, and the source is marked to each section of the CISG in which the term 'seller' appears. The UNIDROIT Principles also refer to a 'seller.' The term 'seller' has the same scope in both the CISG and UNIDROIT Principles. Therefore, instead of creating 'seller (CISG)' and 'seller (UNIDROIT Principles),' one descriptor is created, ie, 'seller.' The source of the descriptor is marked to reflect its occurrences in the CISG and UNIDROIT Principles.

To highlight an example for scenario 'B': the term 'avoidance of contract' per Articles 49 and 64 CISG has a different scope from that of the term 'avoidance of contract' per Article 4:103 PECL (as well as other Articles of the PECL). In this scenario, the descriptor 'avoidance of contract' remains, and the source is marked to the appropriate CISG article as well as the appropriate sections of the Principles. A scope note is included to explain the various applications and terms with similar scopes or which are semantically linked are related, eg, 'termination of contract'.

By making distinctions between the scope of terms and relating them, the thesaurus educates the user to the nuances of meaning of terms between international texts and provides for the recall of more relevant documents by the researcher.

Inclusion of Domestic Laws in the Monolingual International Sales Law Thesaurus

Technically, the steps listed above are sufficient to create a monolingual thesaurus to index international sales law collections yet the thesaurus has the potential to fulfill an additional need for the international legal community.

36 Avoidance of contract related to failure of party to perform an obligation. See 49 and 64 CISG.
37 Avoidance of contract related to mistake when the contract is concluded. See Article 4:103 PECL.
38 'Relevance' is the relationship between a question and a document that makes the document important to the person researching the question. See Dabney, D (1986) 'A Reply to West Publishing Company and Mead Data Central on The Curse of Thamus' (78) Law Library Journal 5, at 16. Generally, as the number of relevant documents goes up, the number of documents recalled goes down. Id.
Arguably, one of the most useful qualities of a thesaurus for an international collection is that it allows users to access the database via their own domestic terminology and be led to the relevant international information. This can be done only if domestic terminology is entered into the thesaurus and relationships are established to lead the user to the appropriate ‘international term.’

Only domestic laws in English would be appropriate for coverage at present as the current project is for the creation of a monolingual thesaurus. According to the Uniform Commercial Code, Article 2, and the British Sales of Goods Act, as two primary domestic laws on the sales of goods, should be included. These two laws were not chosen in a hierarchical manner, suggesting that they have a higher value than other domestic laws. Rather, they were chosen as representative of laws from common law jurisdictions in which terms reflecting domestic law concepts can be drawn. Eventually additional terms will be added from other domestic laws for completeness.

The methodology for the inclusion of domestic laws is the next issue. There are two possibilities. First, the domestic laws could be analogized to a foreign language and, as such, the ISO Standard 5964 (Documentation – Guidelines for the Establishment and Development of Multilingual Thesauri) could be used as the guide for the creation of a ‘multilingual thesaurus.’ This method, however, is faulted for two reasons:

1. domestic laws are clearly not foreign languages, as some of the terms contained within them are identical to terms already in the international thesaurus; and

2. the monolingual thesaurus will eventually be used as the basis for the creation of a ‘traditional’ multilingual thesaurus. For purposes of construction, it is better if the concept of foreign language is therefore not confused, i.e., the starting point for the multilingual thesaurus will be the CISG in other languages and not domestic laws in English or other languages.

Alternatively, the second approach for the inclusion of domestic laws is based on the treatment of domestic laws metaphorically as dialects of the

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39 The multilingual thesaurus to be created can account for domestic laws from jurisdictions whose primary language is not English.
primary language. The domestic law terms are considered familiar, yet they have slightly different uses and meanings.

This is the preferred method and it can be applied in a similar manner to the inclusion of terms from the ‘Principles.’ Terms are first extracted from the domestic laws. If the ‘new’ domestic law terms are identical to the ‘existing’ international sales law term, then the international term remains as is, and the domestic law term is deleted. If the new domestic law term is not part of the international lexicon, then the term will be added as a descriptor with a parenthetical qualifier linking it to its source (domestic law) and creating relationships to the appropriate international terms. With regard to the creation of relationships among the terms, the multilingual thesaurus standard for the establishment of equivalencies is helpful as it offers guidance for determining (1) exact equivalences; (2) inexact equivalences; (3) partial equivalences; and (4) single-to-multiple term equivalence between terms.40

This latter approach serves a dual role by enabling users to obtain access to relevant international materials using their own domestic terminology, as well as educating them about the distinctions between their domestic sales law and international sales law.

CONCLUSION

The creation of the LIIC and development of the International Sales Law Project represent an exciting first step towards the creation of an international uniform system for the retrieval of information on international commerce. Additional challenges will no doubt arise during the creation of the thesaurus. These challenges will be addressed by the LIIC and will provide guidance for the further development of controlled vocabularies on international commerce.