

BOOK REVIEWS

International Sales Law: A Guide to the CISG BY INGEBORG SCHWENZER, CHRISTIANA FOUNTOULAKIS & MARIEL DIMSEY [Oxford and Portland: Hart Publishing, 2012. xliii + 842 pp. Paperback: £37.00]

I have been teaching the *United Nations Convention on Contracts for the International Sale of Goods* (11 April 1980, 1489 U.N.T.S. 31, 19 I.L.M. 668 (entered into force 1 January 1988, ratification by Singapore 16 Feb 1995) [*CISG*]) for 20 years, first at McGill and then at the National University of Singapore. At first there was no short textbook I could recommend to students. There were of course full treatises on the *CISG* (see *e.g.*, in English: Ingeborg Schwenzer, ed., *Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)* (2010); John O. Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (2009); Stefan Kröll, Loukas Mistelis & Maria del Pilar Perales Viscasillas, eds., *UN Convention on Contracts for the International Sale of Goods (CISG)* (2011), and in French: Vincent Heuzé, *Traité des contrats: La vente internationale des marchandises, droit uniforme* (2000)), but these were very detailed article-by-article commentaries; in fact, too detailed for students and in any event these books were far too expensive for the students to buy. Then came a textbook written and priced for students (Peter Huber & Alastair Mullis, *The CISG: A New Textbook for Students and Practitioners* (2007)), but still no casebook where the students would be quickly introduced to the *CISG* and given edited cases on which questions would be asked. Given the importance of cases in promoting an international interpretation of the *CISG*, for all these years I have cobbled together materials on the fly, reproducing cases, translating a French case once in a while for my students, and making lists of publicly available cases for them to read. I have discussed in the past with colleagues the possibility of working together toward a casebook on the *CISG*, but we never did it. Finally someone has done it and we are all very grateful to the authors of *International Sales Law: A Guide to the CISG*.

The book gives a clear description of its purpose and content (at p. i):

Written for international trade lawyers, practitioners and students from common and civil law countries, this casebook is an excellent starting point for learning about the *CISG*, providing an article-by-article analysis of the Convention. The commentary on each article is accompanied by extracts from cases and associated comparative materials, as well as references to important trade usages such as the INCOTERMS® 2010. The book features a selection of the most significant cases, each of which has been abridged to enable the reader to focus on its

essential features and the relevant questions arising from it. The case extracts are accompanied by a comprehensive overview of parallel provisions in other international instruments, uniform projects and domestic laws.

As the preface mentions, “casebooks have a long tradition as a teaching instrument in law school classes in common law countries and provide cases and other materials on specific topics, which are used by students to guide them through the course in question.” (at p. v) This book is a fine example of that tradition: it is a very good guide for the study of the *CISG* by students, at a price they can afford (in softcover or as an e-book).

The outline of the book is rather simple: after a (too) short two-page introduction to the *CISG*, the book takes the form of a commentary on the articles of the *CISG* and therefore is as organised as the *CISG* is—article by article—from articles 1 to 88. For reasons that are not entirely clear, the authors have left out Part IV of the *CISG* (the final provisions, arts. 89 to 101) which indeed is not concerned with private law issues but rather with public international law issues: the important reservations which some States may make and indeed have made (arts. 92 to 96) and details on the entry into force of the *CISG*, especially relevant for countries which recently became parties to the convention (arts. 99 and 100). The authors do discuss the reservations in the context of art. 1 on the application of the *CISG*, but in my view more discussion could be helpful especially since the United States and China have made an important reservation to the application of the *CISG* (art. 95 reservation, at p. 10). The authors also exclude from their commentary the Preamble to the *CISG*, which could be used as an introduction, and the final disposition, which reminds us that the *CISG* is official not only in English but in all of the six official languages of the UN, raising potential issues as to its interpretation.

For each article studied in the book, the English version of the article is first quoted, followed by a short introduction and commentary by the authors on the article which may include, where relevant, its drafting history and other documents such as an advisory opinion of the CISG Advisory Council, extracts of domestic laws or extracts from other international instruments. Then, (and this is the *pièce de résistance*) the readers are given relevant cases interpreting the article under study. Within the study of each article, after comments, extracts of legislation or cases—in the best tradition of common law casebooks—detailed questions are asked to help the students reflect on the materials.

The authors have done a wonderful job in selecting the cases. In some instances, the cases are very well-known “must-read” cases (e.g., *MCC-Marble Ceramic Center v. Ceramica Nuova D’Agostino*, 144 F.3d 1384 (11 Cir., 1998) at p. 64, which makes it clear that the *CISG* excludes the parol evidence rule of the common law), but in other instances, the authors have brought to our attention lesser known judgments and arbitral awards that illustrate very well the difficulties that arise in interpreting the *CISG* and the international trends in its interpretation.

All of the cases are available online for free (most of the cases are available at <http://CISG-online.ch/>, a site maintained by Prof. Dr. Ingeborg Schwenzer, one of the co-authors of the book; they are also usually available at the CISG database maintained by Pace University (<http://www.cisg.law.pace.edu>); in fact, most translations are attributed to that website; most cases are also available at UNILEX: <http://www.unilex.info>), so some students may wonder whether the book

is worth buying. It is—the cases are heavily edited so that only the relevant parts are reproduced. This will save students a lot of time and allow them to focus on the relevant points. In fact, since the cases that make up the bulk of this book are all available online, the great contribution of the authors has been the careful selection of the best cases for pedagogical purposes and the editing of these cases so as to reduce the amount of reading the students must do. In that respect, this book is a real success.

There may, however, be a slight disadvantage to having all of the cases heavily edited. For most of my students, who are trained only in the common law, the course on the *CISG* is the first course where they will get to read cases from civil law jurisdictions, and I like to give them a few full cases so that they see the methods and cultures of some civil law judiciaries in rendering decisions. Common law cases would similarly be as unfamiliar to most civil law students taking a course on the *CISG*. It would not be fair, however, to expect a general introduction to comparative legal methods from a book which rightly focuses on the substance of the *CISG*. An easy way around this limitation is for the teacher, early on in the course, to require that the students read a few cases in full at one of the websites where they are available and thus make the students more familiar with the style or styles of judgments in other legal traditions.

The authors have indicated that they “invite, and indeed welcome, any comments, criticism, and questions.” (at p. vii) In that spirit, may I make a few suggestions (in addition to the ones made above) that the authors may wish to consider—bearing in mind, of course, that every teacher has his or her own preferences as to what should be in a casebook and I realise that it will be impossible to please everyone fully.

My most radical proposal for a next edition would be to abandon the article-by-article approach. That approach works relatively well for parts I and II of the *CISG* (arts. 1 to 24) but it does not work well for Part III (arts. 25 to 88). For example, a good understanding of the remedy of avoidance under the *CISG* would require the students to look at many articles from all over Part III (arts. 26-27, 49(1), 64(1), 72-73, 81-84). Looking at these articles in the order in which they are found in the *CISG* makes no sense. It would therefore be better in my view to organise the book by topic rather than by article number. That would allow the students to better understand the different remedies of the *CISG*, for example. This format would also allow more easily for a proper introduction to the *CISG* and avoid the repetitions and the numerous cross-references that the authors must presently make. Nevertheless, even in the present format the book is extremely useful as the teacher may provide his or her students with a more detailed outline organised by topic rather than by article number and ask the students to read the relevant articles and parts of the book for each and every topic.

The questions addressed to students throughout the book are very helpful. In particular they help the student identify and focus on the important points in the readings. However, from a pedagogical point of view, I wonder whether it is a good idea to include all the answers at the end of the book. For the purpose of fostering discussion in class it would be better in my view if the students did not have the answers to the questions before coming to class. I also suggest that in order to foster discussion and debate, more open questions should be asked (“which solution do you think is the best and why?”) rather than factual questions (“according to this

case what situations are excluded from the scope of Article 31 CISG?” (Q 31-1, at p. 213)) to which there are right or wrong answers.

But these are details which should not make us forget that this book makes a tremendous contribution to the teaching of the *CISG* and will be extremely helpful to both students and teachers. The authors should be commended for their contribution.

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