

In my opinion, it does not seem to be an anticipated solution and, in this sense, it represents one of the most innovative and fascinating voices in the international debate.

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André Janssen & Olaf Meyer (Eds.), *CISG Methodology*, Sellier. European law publishers GmbH, Munich (2009), ISBN 978-3-86653-070-6

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“A choir made up of more than seventy different legal systems may never sing in harmony but at least it will be singing together, albeit a little off key.” This is the conclusion *Larry A. Dimatteo* draws in relation to a uniform interpretation of the CISG (p. 132), and it is the Leitmotiv of this book edited by *André Janssen* and *Olaf Meyer*. *CISG Methodology* is a compilation of 15 articles examining methodological issues in relation to the UN Convention on the International Sale of Goods (‘Vienna Convention’, CISG), which has now been adopted by 73 Contracting States.<sup>1</sup> As is pointed out in the preface of the book, written by no one less than *Ole Lando*, the CISG has established a world law of international sales and has influenced many domestic sales laws.

The book focuses on questions such as how the Vienna Convention is applied in daily practice; how more uniformity in its interpretation can be achieved; which other uniform instruments can be used as an aid of interpretation; what the different approaches of interpretation are (or should be); and what the possibilities are to interpret the Convention in a contemporary way. Most of the authors are well-known CISG experts.

From the broad range of appealing issues, only a selection of articles shall be addressed in this brief review. The article by *Eric Bergsten* provides a comprehensive overview of the history of the unification process in sales law. The motives guiding the drafters of the Vienna Convention and its predecessors are expounded, and the reasons for excluding certain topics from the scope of the Convention are explained. As it is written by the former Secretary of the United Nations Commission on International Trade Law (UNCITRAL), the article provides many details and insights which make the contribution invaluable. Bergsten’s synopsis lays the ground for the article by *Urs Peter Gruber*, who shows how the legislative history of the Convention is referred to when interpreting the CISG. Gruber convincingly argues that the documentation of the Convention’s drafting process can be the only starting point for the interpretation of the CISG.

A variety of methodological synopses are then provided. *Ulrich Magnus* makes it clear that the Convention “formulates aims rather than a precise method of

<sup>1</sup> See [http://www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html) (visited on 24 April 2009).

interpretation” (p. 40). He discusses several methods of interpretation and shows the role the Vienna Treaty Convention can play when interpreting the CISG. *Sieg Eisele* warns against too literal an interpretation of the Convention which would entail the danger of an unnecessarily narrow and static application of the CISG. *Larry Dimatteo* and *Franco Ferrari* both address the ‘homeward trend’ that can still be observed when state courts apply the Convention. Dimatteo points out that Italian, German, and Austrian state courts “have done admirable work in fending off the temptation of homeward trend analysis” (p. 118) – in a parenthesis, it should be noted that it would have been appropriate to add Swiss courts to this list – but that other domestic courts, especially American courts, have been notably more reluctant to consider CISG case law from foreign courts. Particularly interesting is the observation that the style of reporting decisions may be an obstacle to an autonomous interpretation of the Convention. For instance, as the French Cour de Cassation does not provide rationales for its decisions, it remains inscrutable to what extent foreign authority is taken into account (p. 123). Ferrari emphasises the necessity to educate young generations of lawyers in international commercial law, including the CISG (p. 206), and he finds support from *lando* (p. 4), Bergsten (p. 31), Magnus (p. 59), Dimatteo (p. 132), and El-Saghir (p. 360).

In a book of this kind, the evergreen discussion of whether ‘good faith’ (Article 7(1) CISG) applies to the interpretation of the Convention only or whether it also governs the rights and duties of the parties could not be excluded. The question is addressed in particular by *Bruno Zeller*, who draws a careful analysis of respective CISG case law. A refreshingly new dimension is added to the discussion about ‘good faith’ by the inclusion of representatives from Arab countries. As the article by *Hossam El-Saghir* reveals, ‘good faith’ in the Egyptian legal system is broader than in the Convention and expresses a duty to act altruistically. This is explained by the fact that Islamic law (which, together with codified civil law rules, forms the Egyptian legal framework) does not clearly distinguish between law, morality and religion. Traders should pay due regard to the public interest and should thus not restrict their goals to gaining profit. From this angle, the dispute about whether ‘good faith’ under the Convention is merely a means of interpreting the provisions of the CISG or whether a duty is imposed on the parties to act in ‘good faith’ gains a new and revived importance.

Well-trodden paths are followed by *André Janssen* and *Sörren Claas Kiene*, who discuss various general principles under the Convention, such as whether a right of set-off or of revoking statements can be derived from the CISG or whether the applicable interest rate or questions of representation can be derived from it. These are doubtlessly important points, though many of them are extensively dealt with in standard commentaries on the CISG. It is clear that the authors had to make a selection out of the variety of possible general principles. In a second step, it might well be considered to expand the discussion to less common questions, such as whether there is a general right of withholding performance or whether every right provided under the Convention expires after a certain period of time.

The important, though not new question of whether and to what extent the UNIDROIT Principles of International Commercial Contracts, the Principles

of European Contract Law, and the Draft Common Frame of Reference should be relied upon for interpreting and gap-filling the Convention is addressed by *Pilar Perales Viscasillas*. The author welcomes those sets of rules as an aid of interpretation of the CISG and thereby joins the majority of scholars. In this context, it would have been interesting to be given a concrete example of the interplay between the CISG and the UNIDROIT Principles, the Principles of European Contract Law, respectively.

Very informative, though not exactly methodological are the last three articles included in this volume. They are devoted to the influence and use of the Convention in China (*Wei Li*), in the Arab countries (*Hossam El-Saghir*) and in international commercial arbitration (*Loukas Mistelis*). Li's analysis of cases decided under the auspices of CIETAC reveals that an ever-growing number of cases are governed by the CISG, though the history of its application has not always been trouble-free. Errors and mistakes have occasionally been made when applying the Convention, and often it was even completely ignored. But Li is optimistic about the future success of the Convention in China. El-Saghir bemoans the lack of Arab scholarly writing and case law on the CISG. At the same time, he points out that, for instance, in Egypt only decisions from the Cour de Cassation and the Constitutional Court are published, which leaves space for hope that lower courts may have applied the Convention in the past. The delay in publishing the CISG in the Official Gazette in Egypt was not conducive to make the Convention popular, nor are the terminological errors which apparently exist in the official Arab version of the Convention. Indirectly, however, the CISG seems to have a considerable influence in Egypt: large parts of the New Commercial Code have been modelled on the Convention, and legal practice in Egypt seems receptive to interpretive input brought about by respective developments in relation to the CISG. Mistelis emphasises that arbitration is the "main forum for the resolution of disputes arising out of international sales contracts under the CISG" (p 387). According to his survey, in almost 60% of the cases where the Convention was applied the application was not based on a respective choice of law by the parties but had been chosen as the applicable law by the arbitral tribunal.

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The tenor of this volume is clear: the CISG is an agile, flexible and highly successful Convention which, if interpreted correctly, will survive quite many a generation of lawyers. What is important is to allow for a pluralism of interpretation methods and not to restrict oneself to a rigid textualism. Interpretive approaches which take into account, amongst other things, the purpose and the context of a provision lead to manifold advantages: they fill seemingly outdated provisions with new life, they enable the Convention to capture new developments in technology and business practice, and they adapt 'open provisions', such as those relating to a 'reasonable time', a 'fundamental' breach etc., to a continuously changing environment. A second want is uniformity in the application and interpretation

of the CISG. In general, the grade of uniformity is considered as satisfactory, although an even more intensified consideration of foreign authorities would be desirable. It would be difficult for anyone to disagree.

Given the broad general theme (methodology of the CISG), it was arguably unavoidable that the book contains certain parallelisms, such as repeated references to the drafting history of the Convention, to the fact that there is excellent access to CISG material, or to the necessity of adapting law school curricula as to encompass International Commercial Sales Law. It is also noticeable that, in order to illustrate a gap or the need for a modern and coherent interpretation of the Convention, 'classic problem zones' such as the lack of provisions on standard terms, or the Convention's silence on electronic communication, are referred to in many of the contributions, which may cause the reader a certain fatigue. Instead, one could have thought of addressing methodological issues in relation to specific provisions or to specific questions arising under the Convention in order to avoid a recycling of the same old examples. On an editorial note, errata such as '*établissement*' instead of '*établissement*' as the French word of 'place of business' (p. 362) should not appear in the print version, especially if the misspelt word is used to make an important argument.

These are details. Of course, the advantages of the book surpass its little weaknesses by far. All in all, the combination of contributions reviewing the status quo and contributions exploring new trails render reading enjoyable and the volume very recommendable for any CISG library.

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Mads Andenas, Sylvia Diaz Alabart, Sir Basil Markesinis, Hans Micklitz & Nello Pasquini (Eds.), *Liber Amicorum Guido Alpa – Private Law Beyond the National Systems*, British Institute of International and Comparative Law (2007), xii+1112 pp. (ISBN: 978-1-905221-28-8).

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This volume, honoring the scholarship of Guido Alpa, Professor of Civil Law at the University of Rome 'La Sapienza' and a leading scholar of private and commercial law, contains 54 contributions made by distinguished scholars. The contributions, arranged in alphabetical order, address a wide variety of subjects of national, European and comparative law, which can be divided into the following categories: 1) Harmonization and unification of European private law; 2) European conflict of laws; 3) European and national company law; 4) national and international economic law; 5) reform and drafting projects of national civil codes; 6) national and comparative family law and succession; 7) comparative aspects of contract law; 8) comparative aspects of consumer protection; 9) products liability; 10) tort and insurance; 11) lawyers' ethics; 12) arbitration; 13) legal theory.