

The CISG

The CISG

A new textbook for
students and practitioners

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european law
publishers

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ISBN 978-3-86653-020-1

Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

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Gestaltung: Sandra Sellier, München. Herstellung: Karina Hack, München.
Druck und Bindung: Friedrich Pustet KG, Regensburg. Gedruckt auf säurefreiem, alterungsbeständigem Papier. Printed in Germany.

Preface

The purpose of this book is a didactic one: The book is meant to help students and practitioners to get a quick and easy-to-understand access to the 1980 UN Convention on the International Sale of Goods (CISG). In order to explain how the Convention works and to analyse the problems that may arise we have of course made reference to case law and academic writing. We do however not intend to give a comprehensive picture of case law and academic writing as this would have interfered with our prime objective to introduce the readers to the Convention.

Peter Huber has written § 1 to § 3 and § 9 to § 20 of the book, Alastair Mullis has written § 4 to § 8. We have of course discussed each other's contributions, but each of us is the sole author of his chapters.

We are immensely grateful to a lot of people for helping us to finish this project. We owe our particular thanks to: Markus Altenkirch, Jennifer Antomo, Ivo Bach, Niels Dabelow, Sarah Ott, Simone Rechel, Christoph Stieber, Johanna Wald.

Mainz and Norwich, June 2007

*Peter Huber
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Preface by Professor Eric E. Bergsten

The United Nations Convention on Contracts for the International Sale of Goods, familiarly known as the CISG, has been an outstanding success. As of the time of writing, twenty seven years after the diplomatic conference, there are 70 States party. By way of comparison, 66 States had ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards by 1985, i.e. twenty seven years after its diplomatic conference. One wonders whether 142 States will also have ratified the CISG after fifty years.

The parties to CISG come from every corner of the world. I personally found it striking that the first State to ratify the CISG was Lesotho and the most recent was Paraguay. No less striking is that on 11 December 1986 China, Italy and the United States submitted their instruments of ratification in a joint ceremony, thereby becoming the ninth, tenth and eleventh States to ratify. The CISG entered into force on the first day of the month one year later, 1 January 1988.

The CISG has also been an outstanding success in the legal publishing world. The Pace CISG website, <http://cisgw3.law.pace.edu/>, lists 8,000 articles and books in 28 languages. The website also contains 1,900 references to decisions of courts and arbitral tribunals. Anyone researching a CISG problem in depth cannot complain about a shortage of material.

Nevertheless, there is a feeling in some quarters that the CISG was a utopian dream that has not lived up to its promise to provide a uniform law for international sales of goods. One problem that is inherent in the international unification of private law is that there is no supreme court to give a uniform interpretation of the text. Such a court would be desirable given the wide diversity in legal conceptions in the States party. The problem was foreseen at the time of drafting the CISG. Art. 7(1) provides that "In the interpretation of this Convention, regard is to be had to its international and to the need to promote uniformity in its application ...". UNCITRAL has endeavored to reduce the problem through its system of CLOUT abstracts of CISG cases. Furthermore, the extensive literature cited above permit lawyers, judges and arbitrators to be aware of the issues and how they have already been handled.

Another problem has been the desire of some lawyers to use the domestic law they have always known to govern their international sales rather than the

CISG. That is a perfectly understandable desire, but it is not feasible in an international transaction for the relevant law to be the domestic law of both parties. One argument sometimes raised, especially in the United States, is that the text is unfamiliar and there is not yet sufficient case law to clarify its meaning. Given the exceedingly large number of cases cited above, that can only mean that there have not been sufficient cases from that lawyer's jurisdiction.

Finally, the CISG is not taught in depth in the law faculties. That is a problem that will be difficult to overcome, given the pressure on the curriculum in all countries. One effort to overcome it is the Willem C. Vis International Commercial Arbitration Moot. More than 7,000 law students have taken part over the years. Almost all of them experienced the CISG for the first time in the Moot.

That brings us to the particular value of the book that Prof. Dr. Peter Huber and Prof. Alastair Mullis have written. In spite of all of the literature on the CISG cited above, there is a lack of a clear and simple exposition of the text for students and practitioners alike. That is the role of the current book, which it fills admirably. All of the issues that have been raised in the cases and the literature are considered, but without excessive detail. There are sufficient citations to sources for further research. This is a book that will do much to make the CISG an easily understandable text for all users, student and practitioner alike.

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