Book Reviews

Bruno Zeller, CISG and the Unification of International Trade Law, Routledge-Cavendish, New York (2007)

Bruno Zeller's book *CISG and the Unification of International Trade Law* is held out to " 'push the boundaries' of unification of international sales laws at the expense of domestic laws." The author further wishes the book to be controversial and to provoke debate on this matter. Both goals are achieved and it can therefore be said already at the outset that this author does not agree with all views taken in this book.

In particular, Zeller addresses the unification of laws itself, Article 7 CISG, conflict of laws issues relating to the applicability of the CISG, the remedy of specific performance, gap filling and finally the transplantation of laws. In all cases examined Zeller strongly advocates to solve legal problems within the 'four corners of the CISG' with Article 7 CISG being the 'cornerstone' of his reasoning.

With respect to the unification of laws itself Zeller convincingly answers to the criticism of – especially – English jurists towards the CISG. He states *inter alia* that the Convention provided viable rules for all kinds of markets, including commodity trade and points out that English law today already has lost its predominant position.

Concerning the uniform interpretation of the CISG Zeller specifically addresses the problem of gap-filling under Article 7(2) CISG. He believes that, e.g., the term 'reasonable period of time' in Article 39(1) CISG is a gap which needed to be filled in accordance with Article 7(2) CISG and thus by the general principles of the Convention. Zeller identifies 'reasonableness' as such principle and also relies on Article 7(1) CISG for 'good faith' to determine the 'reasonable period of time'. This author does not agree with this approach but follows a more narrow understanding of gap-filling. The problem of the 'reasonable period of time' can be solved without resorting to gap-filling namely by respecting the concept of uniform interpretation and using comparative research to develop a solution acceptable for countries with traditionally short periods of notice and more buyer-friendly countries.

In the context of conflict of laws Zeller rightly argues that in the interest of uniformity the reservation under Article 95 CISG applied only to the state which declared the reservation but not to courts in other states in cases where their conflict of laws rules point to a state that has made the reservation under Article 95 CISG.

Another point raised concerns the determination of the law applicable to aspects of a dispute that are not covered by the CISG or to the supplementation of an incomplete contract. Zeller submits that Articles 31 and 57(1) CISG contained a general principle favouring the law of the seller. This general principle was to be understood as a conflict of laws rule preempting domestic conflict of laws rules. The default rule therefore would be to apply the law of the seller via Articles 31

European Journal of Law Reform, Vol. XI, no. 1, pp 123-136.

and 57(1) CISG. Going one step further, Zeller argues that these provisions could also be used to determine the relevant forum of dispute resolution. He puts forward that because most conventions on jurisdiction had incorporated the general rule that the relevant forum is at the place of the seller and that these rules and conventions were superseded by the CISG.

In this author's view both approaches are doubtful. First, the CISG does not contain conflict of laws rules and as favourable as a – worldwide – uniform set of conflict of laws rules may be, the CISG does not aim to be such body of rules. Second, the question which forum is relevant for disputes governed by the Convention is one that falls outside the sphere of the Convention. Article 31 and in particular Article 57(1) CISG may become relevant where the applicable rules of civil procedure point to the CISG to determine the place of performance, yet, both provisions do not take the first step in determining the relevant forum. At the Vienna conference the delegation of the Federal Republic of Germany suggested to include a specific provision in the CISG stating that the Convention was in no way to be understood as determining the relevant forum. The majority, however, considered this to be so obvious that an express statement was unnecessary and rejected the German proposition.

With respect to the remedy of specific performance Zeller puts forward that specific performance is generally available subject to the principle of good faith which he derives from Article 7(1) CISG. In his opinion Article 28 CISG is declaratory in nature giving courts the option to invoke domestic rules. He further argues that specific performance cannot be claimed where the price has dramatically changed in the market place, as this constituted a breach of good faith. Zeller's first argument seems to reveal an understanding of the term 'good faith' as to this principle not only being applicable to the interpretation of the Convention but also imposing obligations on the parties to the respective contract. This author, however, believes that the term "good faith" in Article 7(1) CISG only covers the first point.

Under the broad heading of gap-filling and the unification of law Zeller addresses the incompleteness of the CISG and certain cases in which the question what issues are excluded from the Convention poses difficulties. Particularly, Articles 4 and 5 CISG are examined. Starting with the latter provision Zeller rightly supports the view that a buyer that has been sued for personal injury by a third party should be able to claim reimbursment from the seller under the CISG. The reason for this was to be found in Article 7(2) CISG and the general principle that all pecuniary losses should be treated equally irrespective of their natures, therefore Article 5 was not to be applied. Whether there is in fact a difference in nature to other consequential damages is of course doubtful. The decisive point, however, is that the term 'any' in Article 5 CISG should not lead to the exclusion of cases as described by Zeller from the Convention.

In regard to the exclusion of validity questions under Article 4 lit. a) CISG Zeller suggests a two-tiered approach in determining if a question is really excluded from the CISG. First, it had to be asked if the CISG was concerned with the legal issue at hand, and if not, whether the issue is really one of validity. The interpretation of disclaimers for implied warranties is used as example. Zeller

submits that one cannot simply apply domestic law to determine the validity of such clauses but that regard is to be had to Articles 7(1) and 8 CISG as these provisions gave effect to the objective and subjective intent of the parties which then should lead to the result that where the parties have agreed on a disclaimer that disclaimer is to be considered valid.

Further points addressed in connection with Article 4 CISG are Set-Off, illegality and mistake. In regard to the first point, Zeller believes Set-Off to be possible under the CISG. With respect to illegality Zeller suggests to apply his proposed default rule derived from Articles 31 and 57(1) CISG in order to determine the law applicable to the question which then is usually the law of the seller. Concerning mistake, Zeller argues that mistakes in expression were only to be treated by domestic law. In the context of mistake in motive Zeller specifically refers to circumstances where the goods have perished at the time of the conclusion of the contract. He rightly argues against the approach followed by certain domestic laws, being that initial impossibility leads to the invalidity of the contract.

The last specific chapter in Zeller's book addresses the transplantation of uniform law into domestic legal systems. The main argument is that the introduction of a novel law does not create legal uncertainty. For purposes of illustration he refers to the reform of the German Civil Code (BGB) and the revision of the Uniform Commercial Code (UCC). Whereas the German legislator had specifically used the CISG as model for the modernisation of the law of obligations, the institutions concerned with the revision of Article 2 UCC were much more reluctant in conforming domestic sales law to the provisions of the CISG. He argues that today the CISG had developed rich case law around it. Therefore, the feared legal uncertainty was no longer – if it ever had been – a problem. The reluctance to apply the CISG was therefore in conclusion not a problem of its drafting but rather the reluctance of legal counsel to explain the advantages to their clients.

In conclusion, the book achieves its two goals set out at the beginning: Pushing the boundaries of unified law at the expense of domestic law and provoking debate on how uniformity can not only be preserved but rather fostered in international trade by putting forward new arguments and giving rise to reconsider arguments that may have been discarded in the past as not yet tenable. Therefore, in total, Zeller's work is to be considered a useful contribution to a necessary debate.

Pascal Hachem, ACIArb
Referendar (Freiburg im Breisgau, Deutschland),
Research and Teaching Assistant, Senior Assistant Global Sales Law,
Chair of Private Law (Prof. Dr. Ingeborg Schwenzer, LL.M.),
Faculty of Law, University of Basel, Switzerland

A. Pizzorusso, La produzione normativa in tempi di globalizzazione, Giappichelli, Torino (2008)

This book represents the intermediate version of a broader work that the author is going to complete in the next years. In order to write the second edition of his very famous (at least in Italy and Spain) *Commentario al Codice Civile. Le fonti del diritto (art. 1-9)*,[1] Pizzorusso decided to write this short volume, giving lectures and receiving comments on this first collection of ideas. Keeping in mind this essential feature of the volume, the reader can conceive this book as a sum of notes, rather than a final work.

Pizzorusso's starting point is that in the last twenty years the role of the State has changed a lot, and this has obviously influenced the law-making process' idea and dynamics. Against this background, the drafting of a second edition of his commentary implies the creation of a very different work from the original one.

The interplay between levels renders the idea of the non-simple distinction between the territorial actors' legislative domains. As a matter of fact, one of the difficulties in the multilevel legal system is represented by the existence of shared legal sources, which make the attempt of defining legal orders as *self contained regimes* very difficult. This scenario does not permit scholars to overlook supranational and international forces, when writing about the national system of legal sources.

As Bobbio wrote in his work,[2] the history of law largely coincides with that of the State, especially after the birth of the modern State (soon after the end of the Middle Ages). From a legal point of view, in fact, the birth of the modern State can be seen as a reaction to the legal pluralism prevailing in the Middle Ages, which was caused by the existence of several centres of power (traditionally, the classic notion of sovereignty is not deemed suitable to this era) and the existence of a variety of laws (local customs, privileges granted to the landlords). In order to react to such pluralism, the modern State's Sovereign centralized the power by imposing his law on the State territory and progressively eliminating all the local privileges and customs (although the privileges would be abolished completely only during the French revolution). The law thus became the voice of the Sovereign, his will made enforceable thanks to the monopoly of the strength later described by Max Weber.[3]

In this era, the Law-State binomial reaches its apogee as the only applicable law is the positive law of the State. There was no room for a real system of legal sources, because the Sovereign's acts or facts were not classifiable or distinguishable. This would be partially overcome as a result of the French revolution, where the law *par excellence* would be found in the statute of the Parliament (the body expressing the general will): this implied a distinction

[1] A. Pizzorusso, Commentario al Codice civile. Le fonti del diritto (artt. 1-9 del Cod. Civ.) [Commentary to the Civil Code. The Sources of Law (art. 1-9)] (1977).

[2] For example N. Bobbio, *Diritto*, *in* R. Guastini (Ed.), Contributi ad un dizionario giuridico 63 *et seq.* (1994).

[3] M. Weber, Wirtschaft und Gesellschaft (1922). Italian trans. Economia e società 53 (1980).

between the statute of the Parliament and the other legal sources. The final step of the current hierarchy of legal sources is represented by the advent of the Constitutional State, in which the almightiness of the legislator is limited by the Constitutions, understood as the highest laws in the national legal order. On account of the special procedure usually provided for their amendment, in fact, the Constitutions may not be touched by the ordinary laws of the Parliament. This created a core of untouchable principles for the legislators – at least with regard to the rigid constitutions – guaranteed by the constitutional review of legislation (diffused, i.e. entrusted to the ordinary judges, or centralized, i.e. entrusted to a special Constitutional Court, depending on each legal order's decision).

After describing the evolution of the concept of law in the national legal orders (with exclusive regard to the European and for certain aspects American experiences), Pizzorusso speculates in the second part of the volume whether the traditional approach to the study of the legal sources is still valid. The idea of globalization, in fact, placed the State domain of the legislative process under stress, by showing that State policy is inadequate to deal with the economic market's global dimension. Moreover, many Constitutions which were promulgated after the Second World War have accepted to conceive their own as non-complete legal orders, requiring to be complemented by international legal sources (this is the case, for instance, of the Spanish Constitution in Art. 10). This phenomenon of constitutional openness, as defined by Saiz Arnaiz,[4] put in doubt the previously described lucky binomial between law and state. Hence, in the contemporary Constitutional State, the State legal sources are not exclusive, and the State itself no longer enjoys complete control on the genesis of the law applicable on its territory (the example of the EC law is also illustrative from this point of view).

Pizzorusso briefly describes the two possible approaches to this matter. The first one is founded on the principle of relativity of sources (every law has its own legal sources),[5] according to which the studies on these issues should be limited to the varieties of norm-producing acts or facts in the legal order, assumed as a reference mark. The second approach is the comparative one and can be exemplified by David's work, contained in the International Encyclopedia of Comparative Law.[6]

Pizzorusso seems to accept a third way: only a systematic approach (which requires much attention to the comparison) can be of some help to capture the dynamics of the law-making process in the contemporary age but, at the same time, it is necessary to pay deference to the role still played by the State in such dynamics. To put it in different words and quoting Beck,[7] globalization is not the end of politics but just the projection of politics beyond the State nation; something similar can be said with regard to law. Globalization does not mean the end of Law, just its projection beyond the State-Nation. Furthermore, this does

---

[4] A. Saiz Arnaiz, La apertura constitucional al derecho internacional y europeo de los derechos humanos. El articulo 10.2 de la Constitucion española (1999).

[5] L. Paladin, Le fonti del diritto italiano 20-25 (1996); V. Crisafulli, *Voce: "Fonti del diritto (dir. cost.)", in* Enc. del dir. XVII 925 *et seq* (1968).

[6] R. David, *Sources of Law, in* International Encyclopedia of Comparative Law (1984).

[7] U. Beck, What is Globalization? (1999).

not mean that the influence still exercised by States should be neglected: its role has changed, becoming one of the multi-layered constitutionalism's 'levels'.[8] By adapting the Weberian metaphor, we could say that we moved from monopoly to oligopoly in the law-making power. According to Häberle,[9] in fact, the current era is characterized by the coexistence of two legal orders, characterized by partial sovereignty and partial constitution.

The scission between rules and political institutions that characterizes the contemporary era represents a new form of 'separation' in constitutional law, and it is well described by Alessandro Pizzorusso[10] by virtue of the distinction between cultural and political sources of law, which testifies the impact of these events on the ambit of the sources of law.

The political sources of law are the conclusive result of a debate where opposing political forces clashed in order to influence the State will's manifestation, represented by the law and its content; the cultural sources are inferred from the experience of the past (customs, judicial precedent) or from the rational analysis of legal phenomena (the role of the scholars for example). Cultural sources are not the result of an activity purposely aimed at the creation of law, and their acceptance is based on the idea that the law is not only the pursuance of the sovereign's will (the king, the people or the parliament) "but responds to the need for rationally determined justice."[11]

Globalization favoured the expansion of the cultural sources of law. This can be explained by the absence of a clear political power at supranational level, and it also involves problems of legitimacy in the supranational law-making process (partially connected to this issue is the very famous question of the democratic gap of the European Union). These considerations allow us to understand Pizzorusso's proposed schematization of the legal sources in the age of legal pluralism.

According to him one can classify the law-making processes as follows:

1) firstly, the law-making phenomenon carried out through the connection between domestic, and international and supranational legal orders (i.e. EC Law for example);
2) secondly, "the law-making carried out through the connection between the State legal order and the legal orders of autonomous bodies or social groups" (i.e. regional law);
3) thirdly, "the law-making carried out through other forms of connection between different states' legal orders?" (the circulation of legal patterns, international private law; attempts of legislative unification);
4) finally, "the law-making carried out through those legal orders not connected

---

[8] I. Pernice, *Multilevel constitutionalism and the Treaty of Amsterdam: European Constitution making-revisited?*, 36 Common Market Law Review 703 (1999).

[9] P. Häberle, *Dallo Stato nazionale all'Unione europea: evoluzioni dello Stato costituzionale. Il Grundgesetz come Costituzione parziale nel contesto della Unione europea: aspetti di un problema*, 2002 Diritto pubblico comparato ed europeo 455.

[10] A.Pizzorusso, *Fonti politiche e fonti culturali del diritto, in* Studi in onore di T.Liebman, I 32 *et seq.* (1979) and Sistemi giuridici comparati (1998), at 263-164.

[11] Pizzorusso (1998), *supra* note 10, at 263-264. *See also* Pizzorusso (1979), *supra* note 10.

with the State" (i.e. trasnational law), or through "illicit orders according to the domestic and international law" (Pizzorusso suggests the example of the rules of conduct internal to criminal organizations, such as the mafia).

It is clearly a schematization focused on the role still played by the State in the legal dynamics. At a first glance this seems to be the weakest and maybe Pizzorusso's most outdated point of view. However, if one looks closer and pays attention to the proposed argumentation, it is the result of a clear and precise methodological choice: according to Pizzorusso, in fact, the so called 'Westphalia system'[12] is currently in decline, but still present.

Stepping back to the suggested schematization, the category of transnational law (by this formula Pizzorusso means the whole of the practises developed by the economic actors and characterized by a certain grade of effectiveness, irrespective of the fact that these norms may be accepted by the State) represent the most obvious proof of the weakening of the Westphalia system (Pizzorusso does not talk about the end of the Westphalia system) and the closest 'thing' to a real universal law.

It is interesting how Pizzorusso seems to see two possible routes for a future universal law (albeit quite far away in the future): a universalization of law coming from the top and maybe fostered by the action of supra-states organization (but he does not currently believe in the UN Charter as a prospective UN Constitution) and a universalization from the bottom coming from the activity of these transnational actors.

Under the umbrella of transnational law – beside the *lex mercatoria* – Pizzorusso also includes the *lex sportiva* and *lex informatica* (Morand[13] would call these two *'leges' droit anational*, to describe the lack of State control in their development). The author also specifies that it is impossible to describe such a transnational law as a real legal order, since it lacks a proper 'organization' (following the idea by Santi Romano[14] – as developed in Italy by Massimo Severo Giannini[15] – the author conceives a legal order as characterized by organization, pluri-subjectivity and norms).

In conclusion, the book by Pizzorusso presents many interesting points and offers several hints for a general reflection on the current state of the law-making process. Moreover, although the work may be far from having a complete and definitive form, the idea of the author is crystal clear: even if the Westphalia system is in crisis, the State is still the reference mark of the law-making process in the globalization era.

---

[12] The Peace of Wesphalia (1648) concluded the end of 'Thirty Years War' and created a system where the States recognized each other's independence and sovereignty renouncing the idea of the unity of law beyond the Nation-State.

[13] C. Morand, *Le droit saisi par la mondialisation: définitions, enjeux et transformations*, *in* C. Morand (Ed.), Le droit saisi par la mondialisation 81 *et seq.* and 97 *et seq.* (2001).

[14] S. Romano, L'ordinamento giuridico 25 *et seq.* (1946).

[15] M. S. Giannini, *Gli elementi degli ordinamenti giuridici*, 1958 Riv. trim. dir. pubbl 219, at 226-239.

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.

Giuseppe Martinico
Lecturer in Law, University of Pisa, Center for Peace Studies
STALS Senior Assistant Editor (www.stals.sssup.it)
Visiting Research Fellow, King's College London, Centre of European Law

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

"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.[1] 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

[1] *See* 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 Eiselen* 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.

* * *

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 '*éstablishment*' 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.

Dr. Christiana Fountoulakis,
Assistant Professor at the Faculty of Law, University of Basel

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).

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.

The subjects range from "Two Kinds of Justice: Human and Divine" (Sir Basil Markesinis) to "Arbitration in Denmark: The Parties' Influence on a Danish Arbitration Case" (Eric Werlauff), and from "Competition Law, Contracts and Fairness (David Gerber) to "Horizontal Liability in Secondary EC Law: Also a Critique of ECJ Case Law on remedies for Compensation in Product Liability, Non-Discrimination, and Intellectual Property Law" (Norbert Reich). The contributions are mostly in English, but there are also some in French, German, Italian and Spanish. The legal systems discussed in the contributions are not only those of the Member States of the European Union but also those of Argentine, Brazil, Canada, Israel and South Africa.

The sheer number of contributions makes it impossible to do justice to all in this context. This review focuses on some contributions, of special interest to European law scholars, in that they address the major legal developments that have taken place in Europe in recent years.

The EC Commission's "Common Frame of Reference" (CFR) project, undertaken by the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group),[1] and, in particular, the harmonization of European contract law, have been addressed by several authors (Jürgen Basedow, Hugh Beale, Hugh Collins, Bénédicte Fauvarque-Cosson, Martijn W. Hesselink, Ole Lando, Hector MacQueen, Hans-W. Micklitz, J. Michael Rainer, Jerzy Rajski and Stephen Weatherill). Their contributions shed much light on the development of the concept of the CFR and its underlying principles. Thus, for example, they provide an explanation for the choice of the authors of the Draft CFR to take the fragmentary rules of the EC Directives in the field of consumer protection, which are limited to specific situations, and turn them into rules of much more general applicability.[2] By discussing the rules prevailing in the legal systems of the EC Member States, the authors provide an overview of the choice of terms and concepts adopted by the Draft CFR authors, as well as the meaning and intended application of the concept of "good faith" (cf. especially Lando and MacQueen).

Jürgen Basedow's "Conflict of Laws and the Harmonization of Substantive Private Law in the European Union" identifies the different types of Community conflict rules. Basedow emphasizes that, unlike national conflict of law rules which are always linked to the substantive policies pursued by national private law, Community conflict rules may also be adopted in areas where no substantive Community law exists, as is the case, e.g., with the Rome I and Rome II Regulations. In the latter case the Community sets rules without pursuing any interest of its own. Furthermore, the approximation of the private law of

---

[1] *See* Ch. v. Bar, E. Clive, H. Schulte-Nölke (Eds.) and H. Beale, J. Herre, J. Huet, M. Storme, S. Swann, P. Varul, A. Veneziano and F. Zoll, Principles, Definitions and Model Rules of European Private Law – Draft Common Frame of Reference (DCFR) – Outline Edition (2009).

[2] For a criticism of this choice for its far-reaching restriction of party autonomy also in situations and under conditions which do not warrant such restrictions, *cf.* H. Eidenmüller, F. Faust, H. C. Grigoleit, N. Jansen, G. Wagner & R. Zimmermann, *The Common Frame of Reference for European Private Law – Policy Choices and Codification Problems*, 28 Oxford Journal of Legal Studies 659, at 693ff. (2008).

the Member States by Directives has created more, rather than less, need for conflict rules, especially where Member States have been allowed to choose between different options regarding the implementation, or where the Directive only provides for minimum harmonization. Since the Directives only harmonize specific matters, recourse to national laws of the Member States becomes inevitable as soon as general principles are needed to decide the many questions not addressed by the Directives. The "Common Frame of Reference", addressed in more detail in other contributions, may be expected to provide the missing general principles of Community law, which will provide the basis for future interpretation of Community secondary legislation. Finally, although goods and services may be offered in the internal market on the basis of the country of origin principle, none the less, since private international law has been excluded from the operation of this principle, it remains to be decided in any case whether the ordinary choice of law rules apply or whether those are superseded by the country of origin principle.

Mads Andenas and Klaus J. Hopt address major issues of business organization in the European Union. Andenas analyzes the process of harmonization of European company law along the lines of the requirements imposed by the free movement of goods and of capital within the Internal Market. Arguably, the American model whereby each US State maintains its own company law may not serve so well the needs of persons carrying out business in the European Union. At the same time, the harmonization efforts encounter serious difficulties as well as criticism, due in part to the 'salami' process which involves the harmonization of limited topics, leaving closely related ones unaffected, as well as to the fundamental differences among the legal systems of the Members States and the concepts of subsidiarity and proportionality which have an inhibiting effect on this process.

Hopt's contribution addresses the all important issue of modernizing the board of directors. The author considers the different measures which such a reform may adopt. A good reform cannot be achieved by a one-size-fits-all measure. Also, the risk of politicians acting in the wake of scandals should be avoided. It is pertinently emphasized that, although a principle-based approach and ex post judicial review are, in theory, capable of providing businesses with flexibility while targeting the problems which arise in an optimal manner. In practice, however, such control presupposes the existence of a highly qualified judiciary, the establishment of which may require many years of legal and system reform. The contribution further emphasizes the important role of the independent directors (including the problems encountered in Member States in implementing the EC Commission recommendation in this matter) and considers three acute board reform problems: directors' remuneration, responsibility of board members for financial statements and the option of allowing companies to choose between one-tier and two-tier boards.

The strength of this volume lies in the high quality of the contributions and in the very topical and interesting matters with which the authors have chosen to engage. Very few Libri Amicorum are dedicated to a specific subject-matter. Mostly, they include an assortment of subjects over which the editors have little control. None the less, depending upon the quality of the contributions, these

books may provide a very enriching source of scholarly insights. This book is a very fine representative of this genre, an asset to any library that wishes to expand its comparative and European law collection.

Talia Einhorn
Visiting Professor of Law
Indiana University School of Law – Indianapolis