

EDITORIAL

Welcome to the first edition of Volume 7 of *The Vindobona Journal of International Commercial Law and Arbitration*.

This edition of the VJ includes:

- ‘Cases on CISG Decided in the Russian Federation’ by Mr Djakhongir Saidov. This paper is an invaluable resource for all with an interest in the CISG and international trade law generally, providing us with an abundance of information on the way in which a number of issues under CISG have been dealt with by Russian Arbitral Tribunals and Courts, in a considerable number of cases only previously available in Russian. Having as one its aims the promotion of uniformity in the application of the Convention, the work presents us with an overview of significant Russian cases dealing with various issues under the CISG – how it has been interpreted and applied in Russia, as well as some examples of how the Convention *should not* be applied. Case translations are also provided for three Russian Federation Arbitration proceedings which are discussed by Mr Saidov. Our thanks again extend to *Professor Albert Kritzer* for assisting us in the compilation of this collection and for generously sharing the fruits of his “Dragon Taming” project – outlined in (2001) 5 *VJ* 282 - by providing translations by *Djakhongir Saidov*, *Mykhaylo Danylko* and *Yelena Kalika*.
- In his article ‘Gap-Filling and Interpretation of the CISG: Overview of International Case Law’, Professor Franco Ferrari examines the role and application of Art. 7 of the CISG and the principles which govern its use. In particular, he considers the binding and persuasive value of foreign jurisprudence on national courts, the role of ‘good faith’ in interpretation, the several identifiable and recognized principles which govern gap-filling under the CISG and the circumstances in which domestic law may be called upon in the gap-filling process.
- An update on the special feature on the US District Court Decision of *Zapata Hermanos Sucesores v. Hearthside Baking Co* (2001) in Volume 6(1) of the VJ is included. ‘Viva Zapata! American Procedure and CISG Substance in a U.S. Circuit Court of Appeal’ is a commentary by Professor Harry Flechtner and Professor Joseph Lookofsky on the ensuing U.S. Circuit Court of Appeal decision, which held that the ‘American Rule’ on costs (whereby the losing party in litigation before U.S. courts is generally not required to reimburse the winning party for its lawyers’ fees)

is a procedural issue rather than one governed by the CISG regime. In analysing the decision in *Zapata*, Professors Flechtner and Lookofsky conclude that, despite background flaws in interpretative methodology and some analytical confusion regarding the application of Art. 7(2) CISG, Judge Posner's opinion in this case on appeal represents a well-reasoned and proper resolution of the question whether a successful party can recover its attorneys' fees as damages under Art. 74 CISG.

- 'Discrepant Documents and Letters of Credit – The Banks' Obligations Under UCP500' by Mr Roberto Bergami examines one of the most fundamental principles associated with Letter of Credit (L/C) transactions, being the banks' obligation to examine documents presented by the beneficiary (exporter). L/Cs are commonly used in international trade transactions and they rely on the exporter being able to satisfy the banks' requirements for documentation and data contents to receive payment. The International Chamber of Commerce reports that up to 70% of all documentary presentations do not comply with banks' requirements as called for under L/C transactions. This paper outlines the steps a bank may take in deciding whether to accept or refuse documents for payment by the exporter and what the likely business implications are for incorrect document presentation.

- Jacqueline Mowbray's article 'The Application of the United Nations' Convention on Contracts for the International Sale of Goods to E-commerce Transactions: The Implications for Asia' considers the application of the CISG to e-commerce from an Asian perspective. Very few countries in the Asian region are parties to the CISG. Against this background, the article assesses the value of ratification of the CISG to Asian countries, given the difficulties in applying the CISG to e-commerce. The first part of the article examines the application of the CISG to e-commerce transactions and argues that the CISG is not well suited to the regulation of electronic sales contracts. The article then examines the way in which this problem affects the significance of the CISG at an international level. The final section of the paper examines the Asian region's commitment to e-commerce, and concludes that in view of this commitment, ratification of the CISG should not be a priority for Asian countries.

- 'Commentary on whether and the extent to which the Principles of European Contract Law (PECL) may be used to help interpret Article 16 of the CISG' by N. Orkun Akseli. Having regard to wording of Art. 16 CISG and Art. 2:202 PECL – both dealing with the problem of whether an offer is binding and when it is irrevocable – Mr Akseli analyses these provisions in light of case law and academic

opinion, and concludes that the PECL may be of some help in interpreting the Convention. The commentary also highlights when the counterpart PECL provisions should not be relied upon as a source of interpreting Art. 16 CISG due to a different approach adopted in each of the texts.

- Case translations for Russian Federation Arbitration proceedings 166/1995 of 12 March 1996 (by Mykhaylo Danylko and Djakhongir Saidov), 229/1996 of 5 June 1997 (by Yelena Kalika and Mykhaylo Danylko) and 328/1994 of 10 February 1996 (also by Yelena Kalika and Mykhaylo Danylko).

We hope you enjoy this most interesting and thought-inspiring read!

Elisabeth Opie
Editor-in-Chief