

## Book Review

Roy Goode, Herbert Kronke, Ewan McHendrick, Jeffrey Wool, *Transnational Commercial Law, International Instruments and Commentary*, Oxford University Press Inc., New York 2004, ISBN 0-19-925167-3, approx. 1120 pages

---

Labelled as an “effort to synthesize [international and regional commercial law instruments and] identifying their key feature” (*cf.* the preface), this voluminous publication turned out to be much more than that. It is, indeed, a comprehensive, annotated collection of diverse legal instruments on an international level that affect domestic and cross-border commercial transactions. The work compiles more than 60 legal instruments, such as international and regional conventions, model laws, EC directives and regulations, uniform rules produced by international organizations such as the ICC, and international and European restatements of contract law by scholars.

The publication stands out from similar collections because of at least four characteristics: not only does it reproduce the complete text of each legal text, including the preamble, the final clauses, and a list of states signing and/or ratifying the convention, with dates of signature, ratification and entry into force for each state; a short, precise commentary also accompanies each convention, regulation, *etc.*, which emphasizes the major provisions of the instrument concerned and alludes to the general development of the law in the relevant field. Furthermore, the book offers a very broad range of legal texts regarding international commercial sales. And finally, it constitutes a felicitous combination of different legal sources covering substantive, procedural, and conflict of laws provisions.

“Transnational Commercial Law” is understood in a narrow sense, thereby excluding, *e.g.*, Agreements of the World Trade Organization, laws of unfair competition such as the Paris Convention for the Protection of Industrial Property 1958, or criminal law instruments such as the OECD Convention of 1997 against bribery in international business transactions or the UN Convention against Corruption 2003. The book’s focus is on actual international sales contract law, including its trade-related legal entourage. In fact, a particular advantage of this volume is that the authors attach high importance to the legal environment of commercial sales contracts. Whilst the mention of the UN Convention on Contracts for the International Sale of Goods 1980 (CISG) and of several other instruments which are reproduced in this book, such as the Hague Convention on the Law Applicable to Contracts for the International Sale of Goods 1986, the Rome Convention on the Law Applicable to Contractual Obligations 1980, the UNCITRAL Model Law on Electronic Commerce 1996 or laws dealing with arbitration law (*inter alia* the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958), was foreseeable, the inclusion of many other legal texts in this context is not self-understood. Securities, insolvency, agency, credit transfers and bank payment undertakings are only some of the

substantive law areas in which the authors reproduce and portray the respective international legal texts.

Beyond sales law-related *substantive* law, a complete understanding of the international sales law environment also requires knowledge of the relevant *procedural* and *conflict of laws* regulations and conventions. The authors provide a broad range of the respective legal texts, such as the Hague Conventions on the Service Abroad of Judicial Documents and on the Taking of Evidence Abroad in Civil and Commercial Matters, respectively, but also regional instruments such as the EC Regulation on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters (so-called “Brussels I”) and the Las Leñas and Buenos Aires Protocols to the MERCOSUR Treaty. A short, clarifying annotation is attached to each of the texts.

The materials are organized into groups of instruments distributed over twelve chapters, each chapter dealing with a particular issue relevant to transnational commercial transactions. The book shows a clear structure, commencing with instruments that are general in their scope and successively addressing more specific issues. It starts with the principal authoritative source of treaty law, the Vienna Convention on the Law of Treaties of 1969 (chapter 1). Reading the commentary to this first convention, the advantage of such an annotation becomes palpable: the explanations preceding each legal source restrict themselves to a short though precise overview of the legal rules. The authors wisely refrain from undertaking an in-depth analysis of each legal instrument, but rather point out its purpose and its main features. Still, the information contained in those few pages is immense. One learns not only of the history behind the legal text in question; the authors also attempt to portray the particular legal source in the context of its relationship with other international instruments addressing the same or a similar topic. By also referring to law or sets of rules which are not necessarily reproduced in the volume, the reader gains a thorough overview of the materials in the specific legal area.

Chapter 2 covers the UNIDROIT Principles of International Commercial Contracts 2004 and the Principles of European Contract Law 1999/2002 (PECL). Although neither set of principles is a legally operative instrument, both instruments deserve their place in this volume; they constitute sets of rules which, in their unifying and comparative approach, develop and enhance international commercial contract law. This chapter is followed by an overview on legal texts concerning e-commerce (chapter 3), which deals not only with rather “unspecific” instruments such as the UNCITRAL Model Law on Electronic Commerce 1996 and the EC Directive on Electronic Signature 1999, but also with the CMI Rules for Electronic Bills of Lading 1990. The other chapters are all rather specific in their scope: international sales (chapter 4), portraying the CISG and important INCOTERM clauses, is followed by agency and distribution (chapter 5), international credit transfers and bank payment undertakings (chapter 6), international secured transactions (chapter 7), cross-border insolvency (chapter 8), securities settlement and securities collateral (chapter 9), conflict of laws (chapter 10), international civil procedure (chapter 11) and, finally, by international commercial arbitration (chapter 12).

The commentary at the beginning of every chapter is informative; as a particularly valuable example, the annotations in chapter 6 (international credit transfers and bank payment undertakings) explain in plain language a rather complicated legal area and indicate the practical importance and the forms of credit transfers. What one will not find in this book is clearly stated criticism or sparring with other authors' or judicial views. Cautiously formulated hints at delicate points are the lone subjective input which the authors allow themselves. A mere insinuation of criticism may be found, *e.g.*, with regard to the EEC Directive on Commercial Agents, which provides, "most strikingly for many domestic legal systems" (p. 291), for an indemnity to be paid by the principal to the agent if the agent's activities have brought the principal new customers or have otherwise increased the business volume of which the principal continues to derive benefit. Similarly, only a whiff of criticism affects Art. 23 of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, which allows a Contracting State to make a reservation to the effect that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in common law countries, by stating "[i]t has been said that this provision created more problems than it solved" (p. 804). Controversies are not fought out in the text of the commentary itself, but rather, if at all, in a footnote. For example, the dispute of whether the Rome Convention on the Law Applicable to Contractual Obligations 1980 permits the choice of non-state rules of law such as the UNIDROIT Principles of International Commercial Contracts or the PECL is mentioned in the text as having "been the subject of some debate" (p. 727), without taking a clear position in favour or against such a choice. The accompanying footnote, however, cautiously supports the view that a choice of non-state rules of law is possible ("[i]t should, however, be noted that Art 3(1) does not refer – as Art 4(1) does – to the 'law of a country'." n. 88).

The neutral, rather descriptive approach taken by the authors might, sometimes, appear to be too bland. For the purposes of this edition, however, it is perfectly appropriate; the book aims at simplifying the search for international commercial law instruments and identifying their quintessence. In view of the high number of conventions, regulations, and restatements, and with regard to the size of the book already, an in-depth discussion of open questions would clearly go beyond its scope.

Essential for compilations such as the present one is an outstanding index. This has been realised in full. The index is comprehensive and often provides for double key words: looking up "evidence" will refer you to "taking evidence abroad", "debts" to "insolvency" and "defaults" to "remedies". Thereby, time-consuming guessing of the right keyword is reduced to a minimum. Exemplary are also the four tables of legal texts, divided into a) national legislation, b) international treaties, conventions and model laws, c) European Conventions and legislation, and d) other instruments, such as the UNIDROIT Principles and various Arbitration Rules. With this book, orientation in the thicket of international commercial law becomes easier than ever.

Dr. iur. Christiana Fountoulakis  
Assistant Professor in Private Law  
University of Basel