

# Gone With The Wind— As CISG Supercedes The UCC for International Sales of Goods, What Your Clients Need to Know

By Peter L. Vestal

## I. Introduction

Rhett Butler, the chief protagonist of the classic American civil war novel, Gone With The Wind, was adept at getting his goods to market during the Civil War. As a successful blockade runner – or cross-border merchant depending on your point of view – he must have possessed a mariner's understanding of currents and the ability to dodge the occasional Yankee cruiser. Your clients do not face quite the same challenges as Rhett did, but they still need your help to navigate international transactions with maximum predictability. Charting the course of deals was never completely cut and dried; laws varied from country to country, but U.S. attorneys could rely on the Uniform Commercial Code ("UCC") to act as a kind of polestar in structuring the sale of goods. That changed when the United States ratified the United Nations Convention on Contracts for the International Sale of Goods ("CISG" or the "Convention") in 1988. Today, more than sixty countries have ratified CISG, and the sales of goods covered by CISG exceed two-thirds of all world trade. In the international arena, CISG has become the functional equivalent of Article 2 of the UCC in the US.

CISG's architects intended to promote the unification and harmonization of international trade law. The purpose was to reduce legal obstacles to international business by creating a consistent legal framework among signatory nations for the resolution of disputes arising from cross-border transactions. CISG establishes a fairly comprehensive code of legal rules governing the formation of contracts for the sale of most goods that cross the borders of signatory nations, the obligations of the buyer and seller, remedies for breach of contract and other aspects of the contract.

A new CISG-based regime is steadily superseding the UCC-centric world that U.S. parties have been accustomed to. The change is not as physically convulsive as the destruction

of Rhett Butler's ante-bellum South, but it can disrupt those parties who do not adequately factor CISG into their international transactions. In this respect, an awareness of some threshold CISG issues is important to properly advise clients on cross-border transactions.

First, CISG ostensibly supplants Article 2 of the UCC and – as discussed in greater detail below – arguably preempts certain state laws. Unfortunately, few landmarks exist in the CISG jurisprudential landscape to guide U.S. practitioners and clients alike. Decisional law in this country is exceedingly sparse with no more than a few dozen decisions treating a Convention that is comprised of over one hundred articles. Like sailors from an earlier age, domestic practitioners are in poorly charted territory when relying on CISG to inform the structure of their clients' cross-border transactions. Consequently, after some

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seventeen years as the law of the land, CISG remains disfavored by domestic parties, because the Convention's promise of providing greater certainty in the conduct of cross-border trade is undercut by a lack of domestic decisional law. It is no wonder that the typical advice of most California practitioners is to have their clients opt out of CISG whenever possible. A second issue is that parties must explicitly and properly opt out of the Convention in order to escape its application. Many businesses whose transactions are subject to CISG remain unaware of the true extent of this far-reaching regime. An astonishing number of cross-border transaction disputes are subject to interpretation and resolution under CISG by default simply because the parties failed to adequately opt out or otherwise expressly preclude its application.

This article explains the key implications of CISG's growing importance in cross-border transactions, and provides some general guidance for U.S. practitioners to better advise their clients as they adapt to this fundamental and still-evolving shift in the law governing cross-border transactions.

## II. Sources of Law in Interpreting CISG

CISG and the UCC do overlap in a number of areas, and where a particular issue is treated in a comparable fashion under both regimes, U.S. courts can and do turn to domestic UCC cases for guidance. Problems occur when the UCC is silent or there is a conflict between the CISG and applicable domestic law. CISG directs that its interpretation be informed by its international character and the goal of promoting uniformity in its application. Foreign law is not binding on U.S. courts, although judges may look to it in deciding CISG issues. Theoretically, domestic courts are supposed to give considerable weight to judicial decisions from other countries when they interpret CISG treaty terms. The reality differs in that U.S. courts have only tentatively embraced foreign jurisprudence. Numerous decisions have either finessed CISG altogether or revealed a reluctance to go beyond the bounds of domestic law when interpreting the Convention even where the UCC-based domestic law is at odds with it.

The fact remains that there is no uniform position in U.S. courts about the degree to which CISG should be enforceable, even in cases where it is relatively clear that UCC case law is not per se applicable. Thus, where some courts have proceeded with caution, others have stepped forth more boldly. The Ninth Circuit, for example, held that CISG governed its evaluation regarding the enforceability of a forum selection clause after first acknowledging that the UCC and CISG would produce different outcomes. *Chateau des Charmes Wines Ltd. v. Sabaté USA Inc.*, 328 F.3d 528 (9th Cir. 2003). A few other recent decisions have actually incorporated foreign case law. In determining how much time a buyer has to examine goods for defects or give notice of nonconformity under CISG, one federal judge in the Northern District of Illinois looked to cases from Germany, Italy and the Netherlands for guidance. *Chicago Prime Packer, Inc. v. Northam Food Trading Co.*, 320 F.Supp.2d 702 (N.D. Ill. 2004), *affd.* 408 F.3d 894 (7th Cir. 2005). Interestingly, the court relied on English-language abstracts of foreign cases provided by a third-party online database called UNILEX (found at <http://www.unilex.info>) because the texts of those decisions were not available in English. In giving weight to its foreign counterparts, the court undoubtedly advanced the goals of the Convention's framers of achieving uniformity and consistency in the resolution of cross-border disputes. However, given the overall unevenness of the approaches in jurisdictions around the U.S., it would be premature to say these recent decisions signify a trend.

### A. Transactions Covered By CISG

According to Article 1 of the Convention, CISG generally applies to "contracts for the sale of goods between parties whose places of business are in different States." The term "States" refers to internationally recognized nation-states that have ratified CISG. The Convention does not define "goods," but the consensus is that, by virtue of the way CISG is structured, the kinds of goods governed by the Convention must be tangible, corporeal things as opposed to intangible rights. Numerous CISG provisions focus on issues that are particular to the sale of tangible moveable items, such as quality and packaging, replacement or repair of defective parts, shipment and damage during transit, delivery by

installments, and preservation and warehousing to prevent loss or deterioration.

## **B. Transactions Excluded From CISG**

CISG excludes specific types of transactions for goods including most sales to consumers and goods bought by auction. It likewise does not cover sales of ships, aircraft, electricity or of stocks, shares, investment securities, negotiable instruments or money. The Convention also expressly excludes contracts in which the preponderant part of a party's obligations consists of labor or services. Franchising and marketing agreements would be regarded as contracts for services. A distribution contract would also fall outside the purview of CISG unless it contained definite terms for the delivery of specific goods. CISG additionally excludes so-called "Maquiladora" transactions, in which a domestic party sends components of a product to a foreign party for assembly with the intention of returning the finished product to the United States. This is due to a provision that carves out transactions where the buyer provides a substantial part of the materials necessary for the manufacture of the goods in question. It remains unclear whether CISG applies to the sale of computer software. The UCC suggests that such sales do not involve "goods." On the other hand it appears that other items bearing similarities to software, like music on compact discs and phonograph records, are governed by CISG.

## **C. Issues excluded from CISG**

CISG governs the formation of the contract and the rights and obligations of the parties arising from the contract. However, it excludes contract validity issues not expressly resolved in the Convention, as well as property rights in the goods and liability for death or personal injury. Validity issues are undefined, but at a minimum encompass fraud, capacity and certain types of duress. Whether restrictions on disclaimers of warranty in the UCC create a validity issue is unknown. Other non-sale issues have been excluded from analysis under CISG, including agency issues, estoppel and unjust enrichment claims. Controversy exists over whether CISG controls the rights and obligations of persons who were not immediate parties to the transaction as in the case of a retail consumer's rights against the

manufacturer who sold the product through a chain of distribution. Where CISG is inapplicable, practitioners must turn to local domestic or other applicable law, also known as "gap filling" law. For example, disputes concerning title to goods lie outside the scope of CISG. Parties in this situation would find it necessary to seek guidance from applicable domestic law even though CISG would apply to the remainder of the contract at issue.

## **D. Place Of Business**

In the United States, CISG applies only to transactions between parties who are from different countries that are signatories to the Convention. A party's contractual rights are subject to CISG only if its place of business is located in a signatory country. Complications arise when a party has more than one place of business or where more than two parties participate in the transaction, in which event the court must determine the places of business that possess the closest nexus to the transaction. For example, the seller's presence in the same country as the buyer will defeat the applicability of CISG, regardless of whether the seller is an independent seller/distributor who in turn orders goods from a foreign manufacturer.

A dilemma occurs when one entity or office location is responsible for the formation of the contract and another entity or office is responsible for performance. If the distributor in the above example is a wholly owned and operated arm of the manufacturer, it might be deemed an alter ego of the manufacturer for purposes of the nexus analysis. A court in this position would then have to analyze which place of business (the foreign manufacturing center or the domestic distribution office) had a closer nexus to the transaction in order to decide whether CISG applied. In one case, a Northern District of California court evaluated the transactional nexus based on such things as the location of the sales and marketing, research and development, and manufacturing departments of the defendant. Other potential factors include whether the products are sent directly from the foreign country to the buyer or will pass through the domestic distributor; whether the buyer knows the foreign origin of the products and whether the buyer makes payment to the domestic distributor or to the foreign manufacturer.

## E. Choice Of Law

The parties to a transaction may expressly opt out in whole or in part from the Convention. With the exception of Article 12 (which provides that member states cannot require a writing for a contract to be enforceable), the parties are free to contract around almost any CISG provision. Contracting parties who choose to opt out must exercise care in drafting the exclusionary language by both stating that CISG is not applicable and expressly choosing a different law. Simply stating that the contract shall be “governed under the laws of the State of California” might unintentionally subject the contracting parties to CISG by virtue of the application of federal pre-emption doctrine to state law. In a typical case, the court found that a choice-of-law provision selecting British Columbia law did not by itself evince a clear intent to opt out of CISG, because Canada had ratified the Convention and thus CISG was the law of British Columbia. Conversely, parties who affirmatively opt in to CISG should also designate the law of a particular jurisdiction to supply gap-filling law since CISG does not establish a complete system for the interpretation of agreements. Faced with the many uncertainties surrounding CISG, most U.S. attorneys will likely continue to opt out of CISG in favor of the more familiar terrain of the UCC. In that event, they should take care to structure a valid choice of law mechanism such as the following: “This contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods (1980), but shall instead be governed by the California Uniform Commercial Code and other California laws that are applicable to the domestic sales of goods.”

## F. Federal Subject Matter Jurisdiction

CISG confers federal subject matter jurisdiction over what might otherwise be a traditional state law contract claim. It does not by itself expand personal jurisdiction of the parties. Accordingly, for a state or federal court to assert jurisdiction over a party, the action must pass a traditional minimum contacts analysis.

## G. Preemption

A significant issue concerns the degree to which CISG preempts contrary state laws. The very few U.S. courts that have addressed this issue have generally erred on the side of caution. Few decisions have expressly addressed to what extent CISG preempts claims arising from state-based common or statutory law (e.g., product defect law, California Business & Professions Code Section 17200, etc.) Those that found against preemption were limited to their facts or conceded that preemption might occur under certain conditions. One published Northern District court case in California concluded that CISG preempted the pleaded state law claims for breach of contract and breach of warranty. *Asante Technologies, Inc. v. PMC-Sierra, Inc.*, 164 F.Supp.2d 1142 (N.D. Cal. 2001). Another unpublished opinion from the same district concurred in finding that a cause of action for negligence is supplanted by CISG when it arises from a transaction that is subject to the Convention. *B.R. Cohn v. Sabaté USA, Inc.*, No. C 03-03478 SI (N.D. Ca. Feb. 27, 2004) (order denying motion for partial summary judgment). The extent to which CISG may preempt state law causes of action is unknown and sure to be the topic of much debate for some time to come. This is largely due to the differences in applicable statutes of limitations, elements of proof and remedies available among the various causes of action that may be relevant in a disputed transaction. Aggrieved parties – particularly buyers – will probably conclude that state causes of action confer substantial advantages over the rights and remedies afforded by CISG.

## H. Offer & Acceptance

Resolving conflicts between the standard forms that parties exchange with one another in commercial sales transactions is often devilishly confusing. In the view of many commentators, the UCC’s approach to the issue of offer and acceptance is a kind of abyss, although the CISG model seems no better given the nascent state of its decisional law. The traditional common law model is the mirror image rule where no contract is formed unless the terms expressed in the offer and the acceptance are virtually identical. Both the UCC and CISG attempt to overcome the admitted rigidity of the mirror image rule, but via dissimilar schemes that are apt to produce different outcomes.

The UCC substantially relaxes the mirror image rule. Parties may conclude a contract in any manner sufficient to show agreement, so long as they have intended to make a contract and a reasonably certain basis exists for granting a remedy. Contract formation generally requires only that the offeree make an adequate expression of acceptance on the essential terms (i.e., goods and quantity) within a reasonable time, even though it might state terms additional to or different from those offered or agreed upon. The exception is if the offeree expressly makes its acceptance conditional on the offeror's assent to the additional or different terms. The contract is concluded when an agreement on the essential terms exists. Where there is a material difference in other terms on the standard forms, the UCC will not enforce either version. The UCC will "knockout" and replace the contradictory terms with default terms supplied by the applicable governing law.

CISG, in contrast, adopts a more formal analysis akin to the mirror image rule. A reply to an offer that purports to be an acceptance but contains any changes in material terms is treated as a rejection of the offer and a counter offer. Examples of material terms include the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes. CISG departs from the traditional mirror image rule in that inconsistent terms added by the offeree may become part of the contract if they are immaterial, and the offeror (aka counter-offeree) does not timely object to their inclusion in the contract. Even material terms may be deemed adopted by statements or "other conduct" of the counter-offeree indicating assent to the counter offer, although the counter-offeree's silence or inactivity alone will not suffice. The net effect is to apparently create a last shot rule where the final counter offer – or last shot fired in the battle of the forms – can become the contract through the performance of the parties. A major caveat is that American case law has not confirmed the validity of the last shot rule, and U.S. courts could well adopt the UCC's knockout rule in its place.

In the battle of the forms where there are material differences between an offer and reply, CISG's intent is to enforce one version of the terms at the expense of the other, while the UCC will simply strike the additional or

contradictory material provisions and replace them with applicable governing law. The outcome of the battle will often vary depending on whether the UCC or CISG is the governing law. Consider the following examples: In the first, a buyer's unconditional reply to the seller's unconditional offer includes an additional term that calls for resolution of disputes by arbitration. The UCC would find that the buyer accepted the offer, but would knock out the arbitration clause because it is an additional material term. If the buyer and seller had offeree expressly made acceptance conditional, then both forms would be knocked out and the UCC would comprise the agreement. In contrast, without a mirror image acceptance CISG would instead construe the buyer's reply as a rejection and counter offer, and a contract would not result unless Seller's performance followed. Seller's subsequent performance would be deemed an assent to the buyer's terms, according to the last shot rule.

In a second example, a buyer's conditional offer to purchase goods is silent about the resolution of disputes, and the seller's order acknowledgment contains an additional term stating that its acceptance is conditioned on the inclusion of an arbitration clause. The parties then perform the transaction. The UCC would find that the seller accepted the offer, but would knock out the arbitration clause because it is an additional material term. As in the prior example, CISG would view the seller's reply as a rejection and counter offer. The buyer's acceptance of the goods would likewise constitute acceptance of the counter offer under the last shot rule thereby making the arbitration clause enforceable.

## I. Modification

CISG provides that the parties to a contract may modify or terminate it by mere agreement, although written contracts may require the parties to evidence any modification or termination in writing. An exception is that a party's conduct may preclude it from asserting the writing requirement to the extent the other party has relied on the conduct. The Ninth Circuit Court of Appeals considered the modification issue in the context of deciding under CISG whether the forum selection clauses in a seller's invoices were part of the original oral agreements between the parties.

The Court rejected the seller's contention that the clauses in the invoices became part of a binding agreement reasoning that the buyer never indicated its acceptance of their incorporation into the agreement. *Chateau des Charmes Wines Ltd. v. Sabaté USA Inc.*, 328 F.3d 528 (9th Cir. 2003). The Court concluded that the buyer's silence and performance of the purchase terms were inadequate to show it had accepted the seller's unilateral modification of the forum selection clause. In response to the Ninth Circuit's approach, sellers should consider placing their pre-printed invoice terms on an order confirmation or acknowledgment form that the buyer must execute prior to delivery of the goods.

#### **J. No Writing Required**

The parties to a contract for the international sale of goods need not put the agreement in writing to enforce it, and the Convention provides they may prove the contract by any means. There is no equivalent to the Statute of Frauds in the Convention as that concept is construed in the United States, and the Statute of Frauds provisions in the UCC are not applicable to contracts under the Convention.

#### **K. Parole Evidence Rule Inapplicable**

Establishing the intent of the parties to a contract tends to breed controversy and is subject to restrictions under a traditional UCC analysis. CISG adopts a broader view stating that the parties' intentions are relevant to the interpretation of the transaction. According to Article 8 of the Convention, a court is supposed to determine intent by performing an objective analysis of what a reasonable person would have intended, given the relevant circumstances, the course of dealing, trade usage and the subsequent conduct of the party. This often leads to an evaluation of the negotiating history of the contract in addition to the course of performance by the parties. A few U.S. courts have decided CISG requires consideration of the subjective intent of the parties when interpreting their statements and conduct.

#### **L. Seller's Obligations - Delivery, Quality & Title Issues**

The seller is obligated under CISG to deliver

goods of the quantity, description and packaging called for under the contract. The goods must be fit for ordinary use as well as for any use made known to the seller, and they must conform to any goods that the seller has held out as a sample or model. The Convention steers clear of common law doctrines like warranty and strict product liability as well as civil law concepts such as fault or negligence. The results are functionally comparable to the warranty structure articulated under the UCC, but without any distinction between express and implied warranties. Since the seller's obligations spring from the contract, the parties may deviate from the CISG regime to limit the seller's quality obligations. However, it is unclear whether "ordinary use" is defined by the location of the buyer or the seller. At least one U.S. court has found that – subject to limited exceptions – a seller is generally not obligated to supply goods that conform to the public laws and regulations in effect in the buyer's location. *Medical Marketing Int'l, Inc v. Internazionale Medico Scientifica, S.R.L.*, 1999 WL 311945 (E.D. La. May 17, 1999). CISG additionally obligates sellers to deliver goods that are free of any claims concerning title or infringement of intellectual property rights, but the exact scope and meaning of this duty remains unknown.

#### **M. Buyer's Obligations - Inspection And Notice Of Defects**

A buyer's CISG obligations are similar in many respects to those of the buyer under the UCC, such as paying for and taking delivery of the goods. The buyer additionally has a right to inspect the goods, but has a corresponding duty to undertake the inspection as soon as practicable and to notify the seller of any non-conformity. The buyer must also give notice to the seller within a reasonable time of discovering a lack of conformity. The notice period is not to exceed two years after delivery, unless the period of guarantee specified in the contract is longer. The buyer must also specify the nature of the lack of conformity.

The object is to avoid controversies where the lapse of time precludes the parties from establishing the condition of the goods at the time of transfer. When that happens, CISG provides that the burden will fall on the buyer who failed to timely inspect the goods. How much time is reasonable is subject to dis-

agreement. In one case, a federal district court found that a buyer of frozen pork ribs who did not inspect them until ten days after delivery had not performed the inspection in as short a period of time as practicable and consequently failed to give notice of nonconformity within a reasonable time after it should have discovered the alleged defect. *Chicago Prime Packers, Inc. v. Northam Food Trading Co.*, 320 F.Supp.2d 702 (N.D. Ill. 2004). The adequacy of a notice of nonconformity is also the subject of debate. There are no published cases on this issue in the United States. In a case from Germany where the buyer of shoes notified the Italian seller that the goods suffered from “poor workmanship and improper fitting,” the court concluded the notice of nonconformity was not specific enough. *CLOUT Case 3 Germany: Landgericht München I; 17 HKO 3726/89* (July 3, 1989).

CISG further varies from the UCC in that it does not include an explicit perfect tender rule permitting the buyer to reject the goods for lack of conformity. A CISG buyer may reject the goods only if their nonconformity amounts to a fundamental breach of contract. In contrast, under the UCC, the buyer may elect to reject the goods if they or the tender of delivery fails in any respect to conform to the contract. Thus, a seller operating within the CISG framework is less likely to find its goods rejected over a minor nonconformity. The Convention narrows the grounds for rejection of goods in recognition of the comparatively stark choices presented under the perfect tender rule when a problem arises between parties who are separated by great distances.

#### **N. Cure**

Sellers have the right to cure nonconformities before the date for delivery, and the buyer is obligated to permit the seller to cure. The nature and extent of the right diminishes if the defect is discovered after the contract date for delivery. In the latter case, the right is subject to additional conditions, such as not causing the buyer unreasonable inconvenience or expense and effecting the cure without unreasonable delay. CISG and some foreign case law suggest that the seller’s right to cure after the delivery date is also dependent on the consent of the buyer. Buyers who wish to avoid the contract must comply with the

requirements laid out in the Convention.

#### **O. Risk of loss**

Like domestic law, CISG provides that the buyer bears the risk of loss during transportation of the goods by a carrier unless the contract provides otherwise. Risk of loss passes when the goods are handed over by the seller to the first independent carrier or to the buyer whichever occurs first. Contract terms that expressly allocate risk of loss (e.g., Incoterms like FOB and CIF) will supersede the applicable CISG provision.

Title and risk of loss are typically treated separately. Therefore, changes in title through title retention clauses and the like will have no effect on the transfer of risk of loss. The situation is different if the goods are already in transit at the time of sale, in which case the risk of loss passes when the contract is concluded. From a practical standpoint, it may be impossible in such cases to determine if damage to goods that were already in transit at the time of contract formation occurred before or after formation.

#### **P. Excused Performance**

A party’s performance of an obligation under CISG will be excused only if the failure was due to an “impediment” that was beyond the party’s control and which the party could not reasonably have been expected to take into account at the time of formation. The nonperforming party must also prove that it could neither avoid nor overcome the impediment; the exemption lasts only so long as the impediment continues; and the party seeking excuse must notify the other party to the contract both of the impediment and of its effect on performance. The framers of the Convention intentionally chose the word “impediment” because it is not connotative of any domestic regime. Its interpretation and application is supposed to be a process of evolution. It is unclear, for example, whether “impediment” applies only to a complete failure to perform or whether a party may also use it to excuse merely defective performance (e.g., delivery of non-conforming goods).

#### **Q. Remedies**

The remedies available under the UCC and

CISG are very similar. Both attempt to put the non-breaching party in as good of a position had there been no breach. Buyers may avail themselves of four types of remedies: avoidance of the contract, adjustment of the price, specific performance, and an action for damages. Sellers in turn may elect among the following remedies: suspension of performance, avoidance of the contract, reclamation of the goods, an action for the price of the goods, and an action for damages.

Under CISG, damages for breach of contract by one party are generally equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. The damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which it then knew or ought to have known, as a possible consequence of the breach of contract. The UCC generally follows the same theory articulated by the Convention. The main difference between the two is that the Convention includes a subjective as well as an objective test of foreseeability, while the language of the analogous UCC section is cast only in objective terms.

## **R. Statute of Limitations**

CISG does not contain a statute of limitations, though a buyer does lose the right to rely on a lack of conformity of the goods if it does not notify the seller of the nonconformity within a reasonable time or within two years after the seller handed the goods over to the buyer, whichever comes first. Instead, the 1974 Convention on the Limitation Period in the International Sale of Goods, ratified by the United States, establishes a four-year limitation period more or less in accord with the analogous UCC provision.

## **III. Conclusion**

Those engaged in cross-border transactions today find themselves operating in a transitional legal environment as courts around the world struggle to determine the applicability of CISG to particular disputes. Factors influencing that struggle in the U.S. include the courts' relative familiarity with the UCC and a

general aversion to reliance on foreign decisional law. As a result, with respect to U.S. clients, CISG has a substantial level of unpredictability that will persist until domestic courts reach consensus on how to interpret it. In this respect, two things must happen. The first is that members of the judiciary need to resolve whether and to what degree they will consider the decisional law of other signatory nations. A second and closely related issue is the level of influence that the UCC and its attendant case law will continue to exercise in the interpretation of CISG's articles. To date the courts have generally striven to harmonize their interpretation of CISG with the UCC. Nevertheless, irreconcilable differences exist between the two regimes, and there is a point beyond which consideration of disputes arising within the purview CISG must become untethered from the UCC.

CISG's growing influence over cross-border trade represents a wind of change that U.S. practitioners must adjust to in order to provide optimal advice to clients. The evolving international trend towards CISG brings uncertainty, but it also carries the seeds of opportunity. If you find yourself in a transaction under CISG, be aware that CISG contains features that may be advantageous to your clients relative to the UCC. These include barriers to unilateral modification of contract terms, broader rights to cure defects in performance, the likely preemption of certain state law causes of action, and limitations on remedies. Other benefits will no doubt become more apparent with time as domestic courts continue to chart this emerging area of law.