

CISG and Latin America: Regional and Global Perspectives



CISG AND LATIN AMERICA:  
REGIONAL AND GLOBAL  
PERSPECTIVES

INGEBORG SCHWENZER, CESAR PEREIRA AND LEANDRO TRIPODI  
(Eds.)

eləven  
international publishing

*Published, sold and distributed by Eleven International Publishing*

P.O. Box 85576

2508 CG The Hague

The Netherlands

Tel.: +31 70 33 070 33

Fax: +31 70 33 070 30

e-mail: [sales@elevenpub.nl](mailto:sales@elevenpub.nl)

[www.elevenpub.com](http://www.elevenpub.com)

*Sold and distributed in USA and Canada*

International Specialized Book Services

920 NE 58th Avenue, Suite 300

Portland, OR 97213-3786, USA

Tel.: 1-800-944-6190 (toll-free)

Fax: +1 503 280-8832

[orders@isbs.com](mailto:orders@isbs.com)

[www.isbs.com](http://www.isbs.com)

Eleven International Publishing is an imprint of Boom uitgevers Den Haag.

ISBN 978-94-6236-653-4

ISBN 978-94-6274-487-5 (E-book)

© 2016 The authors | Eleven International Publishing

This publication is protected by international copyright law.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

Printed in The Netherlands

# TABLE OF CONTENTS

|  |            |
|--|------------|
| <b>Foreword</b>  | <b>ix</b>  |
| <b>Part I General Aspects</b>  |            |
| <b>1 Another BRIC in the Wall: Brazil Joins the CISG</b>   | <b>3</b>   |
| <i>José Angelo Estrella Faria</i>  |            |
| <b>2 CISG and Latin America – A Key for Reducing Transaction Costs</b>                                 | <b>33</b>  |
| <i>Luciano Benetti Timm, Carolina Hess Almaleh and Sabrina Raabe de Sá</i>                             |            |
| <b>3 The First Glance of Brazilian Companies at the CISG – What Should Foreigners Expect?</b>          | <b>37</b>  |
| <i>Natália Villas Bôas Zanelatto and Tiago Beckert Isfer</i>   |            |
| <b>4 Aspects of the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG)</b> | <b>59</b>  |
| <i>Ruy Rosado de Aguiar Júnior</i>   |            |
| <b>5 The CISG – A Fair Balance of the Interests of the Seller and the Buyer</b>                        | <b>79</b>  |
| <i>Ingeborg Schwenzer</i>  |            |
| <b>6 Understanding the CISG System of Remedies from the Latin American Domestic Laws’ Standpoint</b>   | <b>93</b>  |
| <i>Edgardo Muñoz</i>   |            |
| <b>Part II Selected Topics of the CISG</b>   |            |
| <b>7 Interaction between the CISG and INCOTERMS</b>  | <b>119</b> |
| <i>Rafael Villar Gagliardi and Caio Pazinato Ramos</i>   |            |
| <b>8 Brazil’s Accession to the CISG and Transmission of Risk: Some Considerations</b>                  | <b>135</b> |
| <i>Patricia Galindo da Fonseca</i>   |            |

TABLE OF CONTENTS

|   |  |            |
|---|--|------------|
| <b>9</b>  | <b>The Exemption from Liability under the United Nations Convention on Contracts for the International Sales of Goods (CISG) – Analysis and Brief Comparison with the Brazilian Civil Code</b> | <b>149</b> |
|   | <i>Mariana Guita Campinho</i>  |            |
| <b>10</b>                                       | <b>The CISG and the Contractual Freedom of Form and Evidence: A Latin-American Perspective</b>   | <b>183</b> |
|   | <i>Frederico E.Z. Glitz</i>  |            |
| <b>11</b>                                       | <b>Commodities Trade in the Brazilian Experience: Reflections on the Application of the CISG</b>   | <b>191</b> |
|   | <i>Alberto do Amaral Júnior, Umberto Celli Júnior and Lígia Espolaor Veronese</i>  |            |
| <b>12</b>                                       | <b>Examination of the Goods and Notice of Non-Conformity</b>   | <b>209</b> |
|   | <i>Pedro Silveira Campos Soares</i>  |            |
| <b>13</b>                                       | <b>The Applicability of the CISG to the International Sales of Commodities</b>   | <b>227</b> |
|   | <i>Fabio Alonso Vieira and Fernanda Pires Merouço</i>  |            |
| <b>14</b>                                       | <b>Criteria for Application of a Fundamental Breach of Contract in the CISG</b>  | <b>243</b> |
|   | <i>Giovana Benetti</i>   |            |
| <b>15</b>                                       | <b>CISG and E-Commerce</b>   | <b>265</b> |
|   | <i>Cesar Pereira and Ana Julia Aragão</i>  |            |
| <b>16</b>                                       | <b>Seller’s Remedies</b>   | <b>289</b> |
|   | <i>Florian Mohs</i>  |            |
| <b>17</b>                                       | <b>Acceptance of an Offer under the CISG</b>   | <b>299</b> |
|   | <i>Petra Butler and Bianca Mueller</i>   |            |
| <b>Part III The CISG vis-à-vis National Law</b> |  |            |
| <b>18</b>                                       | <b>The Challenges of Applying the CISG Concept of Conformity in Latin America: The Ordinary and Particular Purpose Approaches</b>  | <b>319</b> |
|   | <i>Laura Gouvêa de França Pereira</i>  |            |

|   |  |            |
|---|--|------------|
| <b>19</b>   | <b>Party Autonomy in Brazilian International Private Law</b><br><i>Jorge Cesa Ferreira da Silva and Renata C. Steiner</i>  | <b>345</b> |
| <b>20</b>   | <b>The Social Function of the Contract and the International Sale of Goods (CISG): The Contribution of Brazilian Law to a Global Debate</b><br><i>Paulo Nalin</i>                                  | <b>359</b> |
| <b>21</b>   | <b>Article 1 CISG – The Gateway to the CISG</b><br><i>Petra Butler</i>   | <b>379</b> |
| <b>22</b>   | <b>Using the CISG and International Commercial Arbitration as a Best Practice in Brazil</b><br><i>Erika Sondahl Levin</i>  | <b>397</b> |
| <b>23</b>   | <b>CISG Articles 6, 7, 25 and 79 – Pacta Sunt Servanda, Rebus sic Stantibus, Force Majeure and Hardship Principles – Brazilian Civil Code Related Articles</b><br><i>José Maria Rossani Garcez</i> | <b>417</b> |
| <b>24</b>   | <b>Instalment Contracts and Fundamental Breach in the CISG: A Brazilian Perspective</b><br><i>Ana Gerdau de Borja</i>  | <b>433</b> |
| <b>25</b>   | <b>Written Requirements in Brazil and Argentina: A Comparison under the Applicability of the CISG</b><br><i>Rafael Branco Xavier</i>   | <b>451</b> |
| <b>Part IV Commercial Law and the Trend for Regional and Global Integration</b> |  |            |
| <b>26</b>   | <b>Uniform Sales Law – Brazil Joining the CISG Family</b><br><i>Ingeborg Schwenzer</i>   | <b>477</b> |
| <b>27</b>   | <b>The Lasting Consequences, in a Global Perspective, of the Brazilian Delay in Incorporating the CISG</b><br><i>Didier Boden</i>  | <b>493</b> |
| <b>28</b>   | <b>UNCITRAL Instruments and the Regional Harmonization of International Commercial Law</b><br><i>Sieg Eiselen</i>  | <b>507</b> |

TABLE OF CONTENTS

|           |   |            |
|-----------|---|------------|
| <b>29</b> | <b>The Applicability of Force Majeure and Hardship to CISG Contracts Due to Trade Restrictions and to Other Government Actions in Latin America</b> | <b>527</b> |
|           | <i>Caroline Cavassin Klamas and Sabrina Maria Fadel Becue</i>   |            |
| <b>30</b> | <b>Application of the CISG in Latin American Countries: An Overview – Reality and Theory</b>  | <b>547</b> |
|           | <i>Ana Teresa de Abreu Coutinho Boscolo</i>   |            |
| <b>31</b> | <b>Usury as a Cultural Divide and CISG Compromise Rules on Interest</b>   | <b>575</b> |
|           | <i>Leandro Tripodi</i>  |            |



# FOREWORD

Latin America is a CISG-friendly part of the world. The CISG is presently in force in fifteen of the twenty-one sovereign states of the region, with Venezuela also being a signatory to the Convention. The convergence of and compatibility between the rules of the CISG and those of most, if not all, Latin American legal systems has been a frequent topic of discussion in the scholarly literature. Indeed, when confronted with the application of the CISG to cases which were to be decided under their jurisdiction, courts in Latin America have at times demonstrated strong familiarity with the rules of the Convention.

The influence of the CISG in Latin American legal education is likewise firmly entrenched. Of the 290 teams which participated in the twenty-first Willem C. Vis Moot in Vienna, twenty-four came from Latin American Universities, representing six Latin American countries (out of sixty-four worldwide). This is consistent with the percentage of Latin America's share in the world population (right around 8%), meaning that the continent is proportionately represented in the Vis Moot, although some important countries are still absent from this international competition. Noteworthy conferences regarding the CISG have taken place in the region, including a meeting of the CISG Advisory Council (CISG-AC) in São Paulo in 2011, and the CISG conferences in Curitiba (Brazil) in 2014 (<[www.cisginbrazil2014.com](http://www.cisginbrazil2014.com)>) and 2015 (<[www.cisg2015curitiba.com](http://www.cisg2015curitiba.com)>). This book is a product of the latter in particular, made possible through the sponsorship and organization work of CAMFIEP.

This book aims at demonstrating that the CISG has a high potential for successful application in Latin America. With the accession of Brazil in 2013, approximately 90% of the continent's GDP now falls under the rules of the CISG for the international sale of goods. The contributions by several authors, which are embodied in this work, collectively show that the CISG undoubtedly has excellent prospects for use by present and future generations of lawyers, judges and arbitrators throughout Latin America.

This work is the result of the efforts of a large number of people. The editors thank each of the authors, all of them enthusiastic participants in this collective enterprise. The editors acknowledge also the great work done by Diane Camacho and Jacqueline Henry-Lucio in editing and proofreading the articles. Special thanks go to Ana Julia Aragão and her UFPR (Federal University of Paraná) colleagues Pedro Penz, Izabela Moriggi and Ana Luciani for their invaluable assistance in the organization and revision of the book, and to Luísa Quintão for her precise and efficient work in the final stages of production of the book. Finally, they thank Eleven International Publishing for having embraced this project.

The Editors

