

Boekbesprekings

U VERWEYEN, V FOERSTER AND O TOUFAR

TOOL-BOX DES INTERNATIONALEN WARENKAUFS UN-KAUFRECHT (CISG)

Unter Berücksichtigung der subsidiären Geltung • deutschen materiellen Rechts
• schweizerischen materiellen Rechts

Richard Boorberg Verlag; Stuttgart; 2008; Audiobook: 5 Audio-CDs; MP3-Version; Pocketbook 314 pages CISG_Tools (CD-ROM); ISBN 978-3-415-03950-6; price €198

In 2007 TSAR 839-840 the book *Handbuch des Internationalen Warenkaufs UN-Kaufrecht* by the same authors were announced. The review of this *Tool-Box*, especially where it applies to the Pocketbook and the CISG_Tools (CD-Rom) also applies to that book since the Pocketbook is merely a smaller (*much* smaller, the size of a CD) print version of the same and the only addition to the Pocketbook and CISG_Tools not included in the *Handbuch*, is the part dealing with the subsidiary application of Swiss law. The rest of the contents are exactly the same. Due to physical damage to the CISG_Tools CD-Rom received with the *Handbuch* at the time the announcement was written, no comments could be given regarding its content or usefulness. A replacement CD-Rom was however received and the comments under point 3 below also apply to the CD-Rom that accompanies the *Handbuch*.

1 Audiobook

Audiobooks are, especially with reference to non-fiction in South Africa, not all that well-known and not often used. It may be due to the fact that we do not use public transport all that often and are usually behind steering wheels trying to avoid the inadvertent road rage during peak traffic especially between Johannesburg and Pretoria. Continental Europe, Japan and other developed countries on the other hand, have a culture of travelling by train with businessmen taking out laptops and working and other commuters taking out portable devices listening to music or to audiobooks, making the homeward or work-bound journey a productive one. For this purpose, the Audiobook is a wonderful asset. The contents of the Pocketbook (reviewed below) is contained on five CDs (or one if you want to use the MP3-version, both of which are included). The Audiobook is not merely a verbal reading of the Pocketbook; the text has been adapted to make it more listener friendly and to assist with auditive learning (and obviously it is opening up a legal field to the vision-impaired lawyer which one do not often find). More than one reader is used and by frequently swapping between male and female voices, it never becomes a strain to listen to.

The Audiobook is not a duplication of the Pocketbook which is understandable due to the nature of the contents. One will have to complement your listening with reading the book and using the CD-Rom.

Navigating your way through the audio CDs is not an easy task since the tracks have not been named and if you want to listen to a particular section of the work, you cannot find it easily: only the CDs themselves give an indication as to the chapters they cover, but the tracks are not individually identified.

The MP3-version is in this respect a better option since all the tracks are reasonably clearly identified and one can easily find your way around.

The Audiobook contains an interesting section not included in the Pocketbook that deals with issues where German law and the CISG (the Convention for the International Sale of Goods) do not coincide. Obviously the Audiobook is in German and a good comprehension of legal German is required.

2 Pocketbook

Due to the small print size of the Pocketbook, it is really a strain to read – it is printed in a smaller typeface than that normally used in footnotes.

The book contains a very clear exposition of the Convention for the International Sale of Goods, but it is not an academic commentary. It is set out in a clear and concise way, aimed particularly at practitioners and young new-comers to this field of law, pointing out the advantages and disadvantages in making use of the convention as the governing law in an international contract of sale.

Apart from discussing the Convention for the International Sale of Goods, the book also contains a

section on the influence of standard form contracts on the application of the Convention and the use of the INCOTERMS 2000 in conjunction with the Convention. The duties and remedies of the buyer and the seller are discussed in detail and in the last chapter, a detailed discussion is found on the way in which contracts can be structured. The *CISG_Tools (CD-ROM)* contains a lot more detailed information regarding this aspect than the Pocketbook.

3 *CISG_Tools (CD-ROM)*

3.1 Contents

The *CISG_Tools* CD-Rom contains the Pocketbook in digital format (which helps a lot taking into account the fact that you cannot easily read the very small print of the Pocketbook itself) and due to the digital format on the CD-Rom, it was possible for the authors and developers to include a whole range of very useful additional sources.

The digital Pocketbook includes hyperlinks to the references and legislative materials in full text. It also has a very useful search engine which allows you to search for words and phrases.

For purposes of designing contracts, the CD-Rom has a section which assists in determining whether the Convention for the International Sale of Goods can apply to the particular contract; checklists to help with the structuring of complicated contracts of sale and to adapt standard form contracts to comply with the Convention; assistance with risk analyses for contracts with parties from 215 countries and also for the application of German and Swiss material law (the *Handbuch* announced in 2007 *TSAR* 839 does not contain the part on Swiss law) in those instances where the Convention does not contain all the answers (or as the authors call it “where loopholes exist”). This last section provides clauses in German as well as in English to be used in the relevant instances.

The last section included, is a so-called E-Learning-Tool. This tool assists the lay attorney to get to know the subject area at his own pace and it provides you with multiple choice questions so that you can test your progress. If you provide a wrong answer, you are taken to the relevant part of the Pocketbook where you can find the correct answer. (The E-Learning-Tool, although it gives you the option to choose either German or English, does NOT provide you with English questions and answers. The only English to be found is “Question” and “Answers”. By providing you with a language choice, the developers are misrepresenting the possibility that you may be expecting questions and answers and assistance in English.)

3.2 Using the CD-Rom

3.2.1 The digital format used is accessible via *Adobe Acrobat* which provides you with clear and readable text. Navigation, however, is a bit cumbersome: everytime you link to a new section, a new document window in *Acrobat* is opened and it does not close automatically when you return to the original page or when you navigate to another page.

3.2.2 The table of contents is not user-friendly. It only contains the main headings and the user has to click on a main heading which will then open up a new window with a new document which contains a table of contents with the different subsections. It also does not contain a list of the legislative materials and cases which appear on the disk and which one can access via hyperlinks. It would have been very useful had this contents been included in the table of contents, this refers *inter alia* to the text of the CISG, the *BGB* (in the latest updated version) and other sources in full text.

3.2.3 The so-called “boilerplates”, even though the concept could be a bit foreign to a South African lawyer, amounts to a kind of template. The boilerplates contain the wording of clauses that could be used in the formulation of a contract both in German and in English. The user just needs to be very careful when using the English version because the formulation of those clauses seems to be very cumbersome and lengthy, much in contrast with the German counterpart that is mostly an example of crisp and clear formulation. It can be assumed that the English forms and precedents are more aimed at common law-English than merely a translated version of the German formulation. When German authority is listed for a particular formulation used in a clause, a hyperlink is supplied to the relevant case law or legislation underlying the formulation suggested – and this in full text. This is a very useful additional resource especially for foreign lawyers who do not have ready access to the original case law or legislation concerned in their own personal library. However, when a discussion is given regarding the clause as formulated in English, no authority is cited and no hyperlink is supplied to relevant English authority. This makes the suggested clauses as formulated in English less useful for someone from a different jurisdiction. The references to the common law are also very vague and do not assist the potential user to the same extent as in the case of the German version.

3.2.4 The navigation buttons are clearly explained, but I did not find them very useful – the “previous document” button which, it is assumed, would take you back to the previous document opened, does not take you there – very often it even refuses to function at all. The only buttons that always worked, were “previous view” and “previous page” although you could just as well have used the “page up” key on the keyboard to achieve the same result.

Some of the other navigation buttons also did not always function: for example when you are in *fr_loopholes_cisg_ch*, the button to the *glossary*, *help*, *copyright* etc when chosen respectively, gives an error message: “There was an error opening this document. This file cannot be found.” The user is also unable to navigate back to the table of contents (“Inhaltsverzeichnis”); the hyperlink to the Convention for the International Sale of Goods also did not function, whereas the link to the *BGE 123 III 35* did function.

As a rule, the navigation buttons appear at the bottom of the screen, but sometimes they do not and you have to page down to the end of the page before the buttons appear: this is the case when you look at the sample contracts, for instance. In the formatting or programming of some of these documents, the page length was not taken into account and it should not be too difficult for the developers to rectify these small aspects of mild irritation to an experienced computer user.

3.2.5 What was really annoying, is the fact that every new document is opened in a new window and eventually there may be eleven to fifteen open windows. This clutters your work space, monopolises capacity and the developers of the software could really look into finding ways in which the document closes automatically when you navigate away from it. The navigation button to move to the previous document (“Vorheriges dokument”) should take you to the previous document and then close the one that you have been working with and it does not do that.

3.2.6 The Loophole tool: This is a very interesting tool indicating those areas of the law where the CISG does not provide any answers and where the lawyer will have to rely on the general principles of the applicable domestic law in order to assist his client with a reliable legal opinion. The user of the “tool” can search either in German or English for a relevant concept and it then provides the researcher with an exposition of the relevant solutions according to domestic law. There is such a “tool” for German as well as Swiss law – providing an interesting opportunity for the comparison of these neighbouring legal systems that do differ in some material aspects notwithstanding their apparent affinity.

3.2.7 In general, working with the CD-Rom was annoying. It is appreciated that it contains wonderful additional information resources which the authors cannot include in a printed book, but accessing the information is cumbersome and not very user-friendly. It is however also appreciated that a person with less experience in the use of a computer and other electronic resources may not experience the same type of frustration.

4 In conclusion

Due to the fact that the Convention for the International Sale of Goods forms part of German national law, every German lawyer must know how it functions and can be used. South Africa is not a contracting state yet, but that does not mean that South African lawyers can afford to ignore the existence of the convention. It is possible that an international contract of sale concluded between a South African company and a German company (or any other company with its place of business outside South Africa) can be subjected to the Convention for the International Sale of Goods or if it is subjected to German law, it is possible that elements of the CISG can also apply to the contract. It is thus of the utmost importance that South African lawyers not only take note of this convention, but also get acquainted with it since quite a number of our main trading partners are members of the convention.

Unfortunately this book is not accessible to local practitioners who do not have a good working knowledge of German. As is so often the case, modern lawyers who suffer from a language handicap with regard to modern European languages will find that their services to their clients will not compare favourably with that of their European counterparts, the truly international lawyers who are fluent in a number of European languages and thus do not have to depend on English translations that are not always accurate. It is quite clear that this may be part of the reason why so many international law firms and the professional bodies of other jurisdictions so desperately want access to the South African legal services market.

For those who do have the necessary language skills, this publication will provide a useful tool in dealing with this very important convention. The typical advantages of E-learning tools with graphical self-evaluation will be to the benefit of all users who are still busy acquiring the necessary skills in this complex material.

The authors should be congratulated for their idea that culminated in the development of this Tool-

box. I am fairly certain that they have set the pace for more publications of this nature, providing the more “conservative” lawyer with a textbook that can be taken from the shelf in the library and the wonderful benefits of having the textbook in digital format on your computer enabling you to work (or study) while you are in transit in a lounge at an airport; in a train (the Gautrain?) on your way to work or back home; or listening to the audiobook changing unproductive time spent in your car into productive time and time for personal enrichment.

EC SCHLEMMER
University of South Africa

BOOYSEN H

AN ACADEMIC LIFE OVER CONTINENTS

Interlegal; Pretoria; 2007, (xxii en 494 bl); ISBN 9780958418140; prys R200 plus R39 posgeld (sagte band)

Professor Hercules Booysen is ’n bekende volkeregtelike akademikus. Hy was voorheen verbonde aan die regs fakulteite van Port Elizabeth en UNISA (laasgenoemde van 1976 tot 2000) en het oor meerdere dekades sedert sy toetreding tot die akademie in die tagtigerjare gereeld in Duitsland en elders in Europa navorsing vir sy vakkundige werk onderneem. Hoewel hy beken in murg en been Afrikaner te wees, is die werk op Engels geskryf ten einde volgens hom ’n breër leserspubliek te kan bedien. Die potensiele lesers wat die skrywer luidens sy voorwoord voor oë gehad het, sluit sy eie gesinslede in wat uiteraard ’n deel van dit wat in die werk verhaal word méé beleef het, maar ook (hopelik) hul nageslag. Omdat laasgenoemde met die ter perse gaan nog slegs in *spes* vermeld kon word, is die meerderheid te wagte lesers sy kennis oor die verskillende vastelande versprei en dit verklaar amptelik die benutting van ’n ander taal as sy moedertaal as medium (vii). Die leser ontkom egter nie aan die gevoel van ongemak dat die skrywer eintlik daarmee blyk gee van sy wanhoop en pessimisme oor die voortbestaan van sy moedertaal en vrees dat ’n “bydrae” in Afrikaans onbelangrik of vergete sal raak – die lot van sy moeder se dagboeke (420). Só ’n houding sou nie vreemd wees vir ’n verloopte emigrant nie. Dit val egter op dat in sy ingeslote lys van vakkundige publikasies reeds lank voor die politieke omwenteling in sy vaderland die outeur vir verre die meeste van sy publikasies op Engels geskryf het – waarskynlik (net) weens die internasionale aard van sy vakgebied. Vir ’n akademikus wat te kenne gee dat die ontwikkeling van sy moedertaal as akademiese vaktaal van wesenlike belang is, is dié kloutjie moeilik by die oor te bring. Dit is tog jammer dat ook dié outeur swig voor die drogargument dat ’n mens maar kan nalaat om op Afrikaans te publiseer want die Afrikaanssprekendes kan mos Engels (viii).

Die werk is geen akademiese werk met enige vakkundige pretensies nie en kan eerder as ’n (té) vroeë outobiografie bestempel word van en deur ’n vergrysende akademikus wat met kwalik bedekte heimwee terughunker na die omstandighede waaronder hy opgegroeï het en met sy akademiese werksaamhede begin het. Dié outeur is egter nog in kontinentale terme in die fleur van sy lewe en kon moontlik ietsie gewag het met die outobiografie – daar is nog hopelik heelwat ruimte vir aanvulling, maar outobiografie is nie vir tweede uitgawes bekend nie.

As ’n persoonlike venster op ’n bepaalde tydgleuf in die geskiedenis van die Afrikanervolk, stel dit interessante leesstof daar mits die leser vir lief neem met die feit dat die skrywer geen pretensie van objektiwiteit het nie. Hy bied die stof aan soos geïnterpreteer deur sy persoonlike bril en vra geen verskoning daarvoor nie. Die werk word toegelig met persoonlike foto’s en afdrukke van sertifikate, oorkondes en wapenskilde verkry uit hoofsaaklik sewentiende-eeuse klassieke werke en enkele kaarte wat meestal bloot as bladvulling dien. Van die persoonlike foto’s is ongelukkig dermate gesny in die afdrukproses dat sommige besonderhede wegval, soos op bladsy 29 waar die outeur se vader nie herkenbaar is nie.

Benewens die skrywer se persoonlike inleiding met die te wagte opheldering oor sy wortels (wat hy in alle gevalle na die noorde van Duitsland terugspoor) bevat die werk ook ’n voorwoord deur Döhning, voormalige direkteur van die Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht te Heidelberg, Duitsland waar die outeur dikwels vir sy gevorderde navorsing verblyf het en wat ’n beduidende stempel op die outeur gelaat het. In die verband is die opmerking van die skrywer juis dat minstens die Suid-Afrikaanse regsakademie wesenlik gebaat het by die toepassing van die kulturele boikotte van die laat tagtigerjare waardeur die deure na menige Engelse en Nederlandse universiteitsbiblioteek vir Suid-Afrikaanse navorsers gesluit was. Uit die gerapporteerde hofverslae blyk dat danksy daardie gedwonge kennismaking met die Duitstalige vakliteratuur die Suid-Afrikaanse reg wesenlik verryk is met die vloed aan nuut ontdekte verwysings na die sistematiese regsdenke van die