

# Implementation of the United Nations Convention on the International Sale of Goods and of the system of International Commercial Arbitration in Southeast Europe

A report on a GTZ Project, undertaken with the support of  
United Nations Commission on International Trade Law (UNCITRAL)

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"Prepared in cooperation with the United Nations Commission on International Trade Law".

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## Disclaimer

*This report is based on the information provided in the country reports prepared for the Project “Regional Implementation of the Convention on International Sales of Goods and International Commercial Arbitration” and the lessons learned during the Project implementation. Reference to names of private firms does not imply their endorsement by the Deutsche Gesellschaft für Technische Zusammenarbeit GmbH (GTZ) and the United Nations. The views and opinions expressed by the author do not necessarily reflect those of the Deutsche Gesellschaft für Technische Zusammenarbeit GmbH (GTZ) and the United Nations.*

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A uniform legal environment is thus a key contribution to improving international commerce and hence economic growth. Uniform commercial laws, once adopted by States, become part of domestic legal systems and are readily accessible to the judiciary, the legal community and trading parties. They offer a set of rules that is similar in all adopting countries and can be better suited to international transactions than domestic law, since uniform laws are negotiated in a neutral forum and with the contribution of experts from many different legal systems. The CISG, for instance, does not use legal concepts typical of any given legal tradition, but it has established its own neutral terminology and approach. When the Convention is applied, reference is to be had to its provisions, its international character, the general principles on which it is based and the need to promote the observance of good faith in international transactions. The use of concepts derived from a domestic legal framework should not be necessary in the application of the Convention. This approach creates a safer environment where traders from different countries and with different degrees of bargaining power can establish a more balanced business relation.

The CISGICA Project has provided an invaluable opportunity for UNCITRAL to work with many stakeholders in the Balkan Region to promote such a safe environment for cross-border trade. Thanks to GTZ, the Project has brought together existing regional expertise and enthusiasm, and the international experience and perspective of experts from outside the Project countries. This has proved to be a successful combination to reach the Project objectives. Now that the Project is completed, it is important that the regional expertise and enthusiasm continue to provide support at country level to sustain and institutionalize the knowledge of the texts promoted by the Project. UNCITRAL will gladly contribute to these sustained efforts.

**Renaud Sorieul**  
**The Secretary**  
**United Nations Commission**  
**on International Trade Law**

## **Implementation of CISG and ICA in South East Europe: a joint project carried out by the institutions of the region, UNCITRAL and GTZ**

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The Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) has, for a long time, been engaged in the legal and judicial reform of countries in South East Europe. Funding has been provided by the German Federal Ministry of Economic Cooperation and Development (BMZ). Since 1st January, 2007, the bilateral portfolios in several of these countries have been supplemented by Open Regional Funds (ORF) for South East Europe. A total of four ORFs were set up, one of which was for legal reform.

The ORF-legal reform is open to initiatives put forward by interested members of the public, or by civil or private partners who make proposals for projects. Any such proposal should serve to provide better regional integration, to contribute to EU harmonization and to improve the legal economic framework.

One project that was conducted within the framework of ORF-legal reform focused on the regional implementation of the Convention on Contracts for the International Sale of Goods (CISG) and International Arbitration (ICA) – a project carried out jointly by GTZ and the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL).

After two years of common efforts by institutional partners UNCITRAL and GTZ, along with the efforts of many local, regional and international experts, the picture regarding the implementation of CISG and ICA changed in some ways. The main change was that Albania had become a member of CISG. But there were also obvious and quantifiable changes regarding the implementation of the project. Indeed, even though Yugoslavia was one of the 11 signatory states before CISG came into force in 1988, not a single case had been included in the CLOUT database before the project started. Today, a total of 13 cases from the region have been reported. And last but not least, the Premoot was built up under the name of the 'Belgrade Open'. In 2008, it was attended by 12 law faculties from 10 different countries, in 2009 by 17 teams from

15 countries, and in 2010 the 'Belgrade Open' gathered 22 teams from 16 countries (Albania, Austria, Brazil, Croatia, Germany, India, Italy, Macedonia, Mexico, Poland, Serbia, South Korea, Spain, Switzerland, Turkey and the USA).

The main activities have been carried out with the aim of raising public awareness and in order to disseminate information throughout the different countries. Thus, the project was intended to reach current practitioners (judges and lawyers), future practitioners (students, candidate judges and assistant professors), and the business community.

The following text from Fabian von Schlabrendorff provides us with a solid analysis of the legal and actual status of the situation regarding CISG and ICA in South East Europe. It can be regarded as the summary of two years of efforts carried out by many sound experts, and without whom its implementation would not have been possible. In the name of GTZ, we would like to take this opportunity to express our gratitude to UNCITRAL and to express our hope for continued and successful future cooperation.

**Dr. Judith Knieper**

**Legal expert**

**ORF-legal reform**

# **Implementation of the United Nations Convention on the International Sale of Goods and of the system of International Commercial Arbitration in Southeast Europe**

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***A report on a GTZ Project, undertaken with the support of UNCITRAL, by  
Fabian von Schlabrendorff***

Since January 2007, the Deutsche Gesellschaft für Technische Zusammenarbeit GmbH (GTZ) has employed a new instrument of technical cooperation on behalf of the German Federal Ministry for Economic Cooperation and Development. The Open Regional Funds for Southeast Europe are intended to enhance regional cooperation and integration among the countries which have emerged as separate states as a consequence of the disintegration of Yugoslavia and the ending of its socialist planned economy. The Open Regional Funds supplement the classic bilateral instruments of technical cooperation such as advice, network building, knowledge management and training. They offer project partners in the region the possibility of developing and implementing their own project proposals.

Within the framework of the GTZ Open Regional Fund for Southeast Europe - Legal Reform, which focuses on the application of selected laws and regulations in business and trade in the region and their conformity with international legal instruments, the GTZ has launched a project on the implementation of the Convention on the International Sale of Goods (CISG) and the system of international commercial arbitration (ICA). The CISG and international instruments in the field of ICA have been adopted and are promoted by the United Nations Commission on International Trade Law (UNCITRAL). The countries which have been involved in this project include Albania, Bosnia-Herzegovina, Croatia, Macedonia, Montenegro and Serbia.

In the following, these countries will be jointly termed the "Project Countries".



## I. The GTZ Project's objectives

The global arena of trade and commerce is characterised by the absence of a coherent supranational system of laws and regulations. There is, for example, no code of international contract law, nor is there any international system of public courts for applying such law and resolving disputes. Even within the European Union, which aims at developing and perfecting its Common Market, a supranational system of contract law and a corresponding judicial system has not yet developed. There are, however, two well-established and tested instruments of transnational law of general application for cross-border sales contracts. These are the United Nations Convention on the International Sale of Goods (CISG, 1980)<sup>1</sup> and the prevalent system of international commercial arbitration (ICA) which allows the enforcement of rights under any international commercial contracts.

The GTZ Project presented in this report has focused on the implementation of these two transnational legal instruments in Southeast Europe. The Project's immediate aim is to increase the knowledge of legal professionals and of the business community about CISG and ICA with the expectation that this will result in a more regular use of these instruments in cross-border commercial transactions in Southeast Europe.

The CISG, adopted by a Diplomatic Conference held in Vienna on 11 April 1980, provides for a set of uniform rules applicable to international sales contracts. In the event that its rules are applicable in accordance with its substantive, international and territorial standards of applicability, these rules prevail over any recourse to a forum's private international law. Thus, the CISG contains directly applicable uniform rules for international sales transactions. Membership of the Convention continues to grow; at the time of the writing of this report it has come into force in 76 states worldwide, including major trading countries (such as the USA, Russia, China and most of the member states of the European Union); by now, after Albania has joined in 2009 as well, it is also on the law books of all the Project Countries<sup>2</sup>.

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<sup>1</sup> More information on the CISG and the travaux préparatoires are available at [http://www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html)

<sup>2</sup> The CISG can therefore rightly be termed a world sales law. See Jernej Sekolec, Digest of case law on the UN Sales Convention: The combined wisdom of judges and arbitrators promoting uniform interpretation of the Convention, in: Ferrari/Flechtner/Brand (ed.), *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention*, 2004, p. 1

The resolution of disputes in international trade by way of international commercial arbitration does rely on domestic legislation being in existence practically everywhere which recognises the autonomous power of contracting parties to agree to have their disputes decided by an arbitral tribunal, and also on a number of international conventions assuring the recognition and enforcement of arbitral awards across national borders. ICA is also a recognised and available method of dispute resolution in all of the Project Countries<sup>3</sup>. In a number of cases, their arbitration legislation is based on the UNCITRAL Model Law and is therefore quite similar in its approach and regulatory content. At the level of international conventions, by far the most significant legal instrument is the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (or the New York Convention) of 1958 which provides for the recognition of arbitration agreements and the recognition and enforcement of foreign arbitral awards in its member countries. At the time of this report, the Convention has been adopted by 145 states, including all the Project Countries.

Typically, in efforts towards law reform, issues of substantive and procedural law are treated as discrete matters. The GTZ Project, however, has been conceptualised to take a holistic approach and has viewed the CISG and ICA as two functionally interrelated parts of a coherent system of law for international commercial contracts.

The GTZ Project, looking at the available transnational legal framework for cross-border sales contracts, has identified CISG and ICA as its essential and symbiotic components. While CISG provides substantive rules regulating the entering into and performance of international sales contracts and possible consequences in the case of non-performance, the ICA system offers a recognised, if nowadays not the predominant, means for resolving international commercial disputes, including disputes concerning sales transactions.

A second, equally important aspect of the GTZ Project has been its focus on the implementation of existing transnational legal instruments. With the exception of Albania, which had not yet adopted the CISG at the beginning of the project, all of the countries concerned have been members of the CISG, meaning that their national rules applica-

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<sup>3</sup> Mediation as distinct from arbitration, can be combined with arbitration as a dispute resolution mechanism or even, if leading to a settlement agreement, replace it. The GTZ Project has also recognised this but its main thrust has been to promote the implementation of arbitration as a mechanism of dispute resolution which fully replaces court decisions.

ble to international sales are those of the CISG, if and to the extent that the Convention applies. Likewise, all countries concerned recognize arbitration as a method of settling business disputes and, in accordance with the New York Convention, have legislation in place which provides for the recognition and enforcement of foreign arbitral awards.

The above has allowed the GTZ Project to direct its focus entirely towards measures aimed at the implementation of the existing structures of transnational law for international sales contracts in the Project Countries. No new rules needed to be formulated or existing ones redrafted in a potentially lengthy law reform process. Instead, the focus was on the application and use made of CISG and ICA in their existing form. This focus on implementation promises to have an immediate beneficial effect on the functioning of cross-border transactions in Southeast Europe. The CISG, by allowing its users to rely on a uniform set of substantive rules, instead of having to deal with differences between national contract laws, reduces transactional costs and legal uncertainties, particularly for small and medium-sized enterprises with limited resources. Similarly, the possibility of referring any disputes concerning the performance of international sales contracts to arbitral tribunals empowered to settle disputes in its respective international setting<sup>4</sup>, while easing the burden of the state courts in business cases, promises to encourage trading partners to engage in cross-border transactions, thereby strengthening competition across borders in favour of both businesses and consumers.

By assisting the development of international trade amongst the Project Countries themselves, as well as between countries from the region and other countries, the implementation of CISG and ICA therefore ultimately serves the objective of improving economic and social welfare in Southeast Europe.

The GTZ Project's objective of strengthening the legal framework for international sales contracts in the Southeast Europe region is reminiscent of the efforts undertaken in the European Union to further develop the Common Market by creating a framework for a European Contract Law, coupled with the development of national judiciary systems which mutually recognise and enforce the decisions made by their courts in all member states of the Union<sup>5</sup>.

The GTZ Project has undoubtedly been far more modest in its purpose, concen-

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<sup>4</sup> This ability concerns both the issue of the language used in the proceedings as well as the issue of understanding the "internationality" of the contract and its related aspects.

<sup>5</sup> These efforts have most recently been summarized in the Commission's Green Paper of 1 July 2010 for the purpose of launching a public consultation regarding possible policy options.

trating exclusively on what can be achieved in the short term in the limited area of an improved implementation of the existing legal instruments of CISG and ICA in the Project Countries. The comparison of the GTZ Project with the European strategies, gives a good idea of the functionally integrated character of the GTZ Project, however.

## **II. The approach taken**

In order to achieve its objective of an improved implementation of the CISG and of ICA in the Project Countries, the GTZ Project has taken the approach of actively involving regional organisations, academics, decision-makers and other persons with possible multiplier effects in the Project from its outset. The need for a true implementation of the uniform rules on sales contracts and the system of international arbitration in Southeast Europe was discussed in various regional fora. A detailed analysis of the implementation situation found in the individual Project Countries was prepared to serve as a basis for further debate and to better develop and widen the regional understanding of the issues involved. Information materials were prepared and education and training measures undertaken to spread the message of the need for a better implementation of CISG and ICA. A regional network of contacts was established between organisations and individuals which were all given the opportunity to define the issues, share their experiences with each other and formulate measures to be taken for a better implementation of the legal instruments of CISG and ICA.

Individual measures undertaken include:

In early 2008, GTZ identified national legal experts in the Project Countries and entrusted them with assessing the then current state of affairs concerning CISG and ICA. The following reports, all structured in a way to deal with the same issues, were produced:

- Report on the implementation of the convention on international sales of goods (CISG) and international arbitration in Albania, by Alban Caushi, Kalo & Associates, Attorneys at Law, Tirana, Albania
- Bosnia-Herzegovina Country Report on CISG and International Arbitration, by Professor Miloš Trifković, Faculty of Law, Sarajevo, Bosnia-Herzegovina

- Report on the 1980 Convention on the International Sale of Goods – Croatia, by Doc. dr. sc. Davor Babić, University of Zagreb, Faculty of Law, Zagreb, Croatia
- Report on Arbitration Law – Croatia, by Doc. dr. sc. Davor Babić, University of Zagreb, Faculty of Law, Zagreb, Croatia
- Report on the UN Convention on Contracts for the International Sale of Goods, by Dr. Arsen Janevski, Faculty of Law “Justinian I” Skopje, Macedonia
- Report on International Arbitration in the Republic of Macedonia, by Dr. Arsen Janevski, Faculty of Law “Justinian I”, Skopje, Macedonia
- United Nations Convention on the International Sale of Goods – CISG, by Dr. Snežana Miladinović, Faculty of Law, Podgorica, Montenegro
- International Arbitration in Montenegro, by Prof. Dr. Maja Kostic-Mandic, Member of Parliament, Podgorica, Montenegro
- Country Report Serbia – Convention on International Sale of Goods (CISG); Application of the CISG in Serbia – UNCITRAL - GTZ, by Prof. Dr. Jelena Perovic, Faculty of Economics, University of Belgrade, Belgrade, Serbia
- Country Report Serbia – Legal Framework for International Arbitration, by Milena Djordjević, Lecturer, University of Belgrade Faculty of Law, Belgrade, Serbia

From June 16 to 19, 2008, a roundtable was organised in Běcići, Montenegro, attended by a GTZ expert and a representative of the UNCITRAL Secretariat, at which the regional reporters discussed the results of their findings with the aim of developing strategies for promoting the use of CISG and ICA in the region.

On the basis of the country reports received and the discussions and conclusions reached at the Běcići roundtable, the GTZ expert produced a report in fall 2008 entitled “GTZ Project, CISGICA, Presentation of the Country Reports”, which summarised the individual country reports and listed general recommendations for further action. This report, printed in the form of a brochure, was distributed to academics and legal practitioners in the Project Countries with an interest in the issues raised.

In December of 2008, GTZ organised a roundtable presentation on CISG and ICA at the annual conference of the Mt. Kopaonik School of Natural Law in Serbia, which was attended by over a thousand jurists, university professors, judges, lawyers and law students from Serbia and other countries in Southeast Europe. The event, in which some of the legal experts attending the Běcići meeting participated as speakers, was well-

attended and included a presentation of the GTZ Project and the distribution of the printed GTZ summary report. UNCITRAL 2008 edition of the Digest on CISG<sup>6</sup> was represented at this roundtable by a representative of the UNCITRAL Secretariat.

In 2009, targeted policy discussions between the ministries in Albania were held in order to accelerate the process of adopting the CISG. A governmental memorandum was circulated within the various Albanian ministries at that time to obtain their views on the subject. Further talks with key players in the business community took place in order to gain their support for the CISG.

In March 2009, in connection with the annual Willem Vis Arbitration Pre-Moot, an event to which GTZ provides financial backing, the University of Belgrade Law Faculty organised a conference on issues of international arbitration law at which 16 experts from the region, as well as from other parts of the world, gave presentations on various issues relating to international arbitration law. The conference was well-attended by university professors, judges, lawyers and law students from the region, as well as by international legal experts specialising in international arbitration and trade. The results of this conference have been published in the University of Belgrade Law Faculty Review.

As agreed at the GTZ roundtable in Běcići in 2008, a set of UNCITRAL texts concerning the UNCITRAL Model Law on International Commercial Arbitration (1985), the UNCITRAL Arbitration Rules<sup>7</sup> (1976) and the work of UNCITRAL as regards CISG and ICA were distributed to law faculties and other institutions.

In March 2010, again with the support of the GTZ, another University of Belgrade Conference was organised in connection with the annual Willem Vis Arbitration Pre-Moot, this time dealing specifically with the topic of “Combining Mediation and Arbitration in International Business Practice”. The format of this conference was similar to the one from the previous year, again relying on presentations of international scope delivered by legal experts from the region and elsewhere. The Belgrade PreArbitration

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<sup>6</sup> UNCITRAL Digest of Case Law on the United Nations Convention on the International Sale of Goods, available at [http://www.uncitral.org/uncitral/en/case\\_law/digests.html](http://www.uncitral.org/uncitral/en/case_law/digests.html)

<sup>7</sup> Adopted by UNCITRAL on 28 April 1976, the UNCITRAL Arbitration Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship and are widely used in ad hoc arbitrations as well as administered arbitrations. In 2010 UNCITRAL has adopted a revised set of the Rules.

Moot of 2010 attracted a record number of teams participating, with students coming from 22 universities in 16 different countries.

In the context of this conference, GTZ organised a regional roundtable dealing with the results achieved so far and the further implementation of the GTZ Project in the region. This roundtable was attended by a number of the regional GTZ-appointed experts, by a representative of the UNCITRAL Secretariat, and by Dr. Jernej Sekolec, former Secretary of UNCITRAL.

### **III. A brief overview of CISG and ICA**

#### **1. CISG**

As set forth in the preamble to the CISG, its purpose is to provide a uniform set of rules, so that parties from different countries can be certain about the sales law to which their transaction will be subject, thereby reducing an important barrier to cross-border trade which has traditionally existed. The relevant passage in the preamble reads:

*“adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems which would contribute to the removal of legal barriers in international trade and promote the development of international trade.”*

The CISG is an international treaty but, by way of enacting statute or by way of a rule of law providing for treaties automatically becoming law, it has also become domestic law in the countries which have adopted it. To the extent the CISG applies, it introduces the same uniform rules into the CISG’s member states’ legal systems, with the result that parties from these states, when engaging in sales transactions, therefore do so under the same rules, thereby eliminating or minimising the need to consider different legal systems that might become relevant in any given transaction. The CISG does this by offering a set of rules which provide for a recognised balanced approach of regulating the interests of the seller and the buyer in such transactions, an approach which has proven to be long-lasting and solid.<sup>8</sup> As many writers have pointed out, CISG

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<sup>8</sup> See Rolf Knieper, Celebrating Success by Accession to CISG, in: Journal of Law and Commerce (2005-06) 477-481



represents solutions in sales law which provide a bridge between many legal systems, be they rooted in the civil law or in the common law tradition.<sup>9</sup>

### **a) CISG's sphere of application**

The CISG, as has been noted above, is now law on the books of all the countries covered by the GTZ Project, although its adoption was still under consideration in Albania at the time the GTZ Project was started,. But how do courts or arbitral tribunals come to apply CISG and what conditions have to be fulfilled to make the rules of CISG applicable to a particular sales contract?

The first thing to note is that CISG is generally viewed as representing the law for international sales as such directly, without any recourse to the private international law rules applicable as the *lex fori* in a particular country. In other words, a court or arbitral tribunal dealing with the issue is asked to look into whether CISG is applicable by directly applying the CISG's own rules of application, since the uniform substantive law of the CISG is understood to prevail over any rules of private international law that might apply.

The CISG only applies to international sales contracts. The approach taken by the Convention to define internationality is simple. The sole criterion is whether or not the parties to the contract have their places of business (or habitual residences) in different states, regardless of their citizenship. The Convention also provides for a rule in the event that a party has multiple places of business (according to Art. 10 (a) the place of business having the closest relationship to the contract and its performance).

If an international sales is deemed to exist, the CISG is applicable if either the requirements of Art. 1(1)(a) or those of Art. 1(1)(b) are met. According to the criteria set out in Art. 1(1)(a), the CISG is applicable to the parties to a contract for the sale of goods if the parties have their places of business in different Contracting States. According to Art. 1 (1) (b), even when both parties do not have their places of business in any of the Contracting States, the CISG is also applicable, provided that the rules of private international law lead to the application of the law of a Contracting State. In this case, the CISG will be applicable when the law chosen by the parties or, in the absence of a choice of law, the law having the closest connection to the contract, is the law of a Contracting State.

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<sup>9</sup> Cook, CISG: From the Perspective of the Practitioner, at: <http://www.cisg.law.pace.edu/cisg/biblio/cook.html>



In relation to arbitral tribunals it can be stated that, provided that the place of arbitration is based in a Contracting State, the provisions of the CISG also apply according to Art. 1 (1)(a) or Art. 1 (1)(b)<sup>10</sup>.

According to its name, as well as its Art. 1, the CISG is applicable to contracts “for the sale of goods”. According to Art. 3(1) CISG, however, it is also applicable to contracts for the supply of goods to be manufactured or produced, unless the party ordering the goods undertakes to supply a substantial part of the materials necessary for the manufacture or production. According to Art. 3(2) CISG, contracts for the provision of services are only included, “where the provision of services does not make up the preponderant part of the contract”. Article 2 CISG defines certain types of sales transactions which are excluded from the sphere of application of CISG, i.e. sales for personal use, sales by auction, sales on execution or otherwise by authority of law, sales of stocks, shares, investment securities, negotiable instruments and money, sales of ships, vessels, hovercraft or aircraft and sales of electricity.

There is no definition in the CISG as to what constitutes a sales contract. In practice, however, this hardly poses a problem as, independently of the civil or commercial character of the parties or the contract itself, it is recognised by legal doctrine under the Convention that a sales contract is to be defined as “a contract pursuant to which one party – the seller – is bound to deliver the goods and transfer the property in the goods sold and the other party – the buyer – is obliged to pay the price and accept the goods.”

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In legal writings and case law it is also recognised that contracts modifying an international sales contract, and contracts for the delivery of goods by instalments fall under the CISG’s sphere of application. There are, however, other types of contracts, e.g. distribution agreements or consignment agreements where no common view as to the applicability of the CISG has yet developed.<sup>12</sup>

As the above shows, the Convention, in an effort to take account of the growing focus of modern trade not only on ready-made goods, but also on goods to be manufactured and related services, extends the sphere of the CISG’s application beyond the

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<sup>10</sup>See *Brunner*, UN-Kaufrecht – CISG, Art. 1 No. 1.; *Ferrari, Flechtner, Brand*, (eds.) *The Draft UNCITRAL Digest*, page 55, 56.

<sup>11</sup>See *Ferrari*, op. cit, p. 59, 60

<sup>12</sup>See *Ferrari*, op. cit, p. 63 seq.

classical sales contract to hybrid contracts involving the “sale” of both labour and services. The Convention thereby shows that it is a law which is actually capable of dealing with the commercial realities of the evolving world of international trade. The price to be paid for this is a certain degree of uncertainty as to the applicability of the CISG to “mixed” sales-services contracts. This uncertainty, however, typically also exists in domestic legislation on sales contracts. At the level of the Convention, as on that of any specific law, any such uncertainty has to be overcome by case law which, in the case of the CISG, now being applicable in 76 countries, is growing and being made accessible with impressive frequency.

Art. 6 of the CISG provides the parties with the possibility of “opting out” of the Convention and excluding its applicability. In such instances, therefore, even though all requirements for its applicability are otherwise met, the CISG does not apply. This rule is generally interpreted as an expression of the principle of party autonomy. The lack of an agreement to exclude is a – negative – applicability requirement.

For international sales transactions this rule implies that, with regard to large and complex deals, the parties retain the possibility of making their contract subject to an agreed municipal law, or of choosing whatever other solution they deem appropriate without necessarily being bound to the rules of the CISG. The opt-out approach, on the other hand, ensures that the rules under which the transaction takes place are clear from the outset and do not imply any surprises for the one or the other side, particularly in the case of small and medium-sized transactions where the parties may have neither the money nor the time to obtain professional legal advice.

There is some debate as to what extent the applicability of the CISG can be excluded by implication. This is not an issue of mere theoretical significance, as evidenced by a variety of potential means of implicit exclusion. How is this issue to be seen if, for example, the parties have made a choice in favour of the law of a Contracting State in their sales contract? The case law on this question is contradictory.<sup>13</sup> The prevailing opinion as expressed in many court decisions and arbitral awards is, however, that the mere reference to the domestic law of a Contracting State does not exclude the Convention’s application per se as the intention of the parties of implicitly excluding the Convention must be real and not just hypothetical.<sup>14</sup>

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<sup>13</sup>Ferrari, *op. cit.* p. 124

<sup>14</sup>Rovelli, as quoted in Ferrari, *op. cit.*, p. 122

## **b) CISG's scope of application**

The CISG, like many substantive uniform law conventions, is not an exhaustive body of rules. It deals only with a limited, though important, set of matters concerning international sales contracts. For a determination of its scope of application, Art. 4 is the most relevant provision as this article enumerates the matters with which the CISG is concerned and lists some of the matters which are excluded. But there are other articles, such as Art. 8 and 29, which are also relevant in determining the issues covered by the rules of the CISG.

According to Art. 4, the Convention governs the formation of a sales contract and the rights and obligations of the seller and the buyer arising from such a contract. Formation of the contract comprises the objective requirements for the conclusion of a sales contract. Also covered is the question of the required form of the contract (no need of written form, Art. 11). Whether a contract is validly formed, however, in terms of any subjective requirements concerning the intentions of the parties<sup>15</sup> or the solvency of the other party is not covered by the Convention, but remains subject to applicable national rules.

According to Art. 4, the Convention also covers and is concerned with the rights and obligations of the seller and the buyer arising from the contract. Obviously, for the purposes of the uniform regulation of the contracting relationship, these are the most important aspects of the contractual relationship to be regulated. This main body of the rules covers the seller's obligations in Art. 30 through 52, the buyer's obligations regulated in Art. 53 through 65, the provisions on the passing of risk in Art. 66 through 70 and the remedies for breach of contract as established in Art. 71 through 88. As it is expressly stated in Art. 4, however, the CISG does not govern the transfer of property in the goods sold. This exclusion was inserted in the Convention at the time because the drafters considered it impossible to arrive at uniform rules on this point.

According to Art. 5, issues of liability for death or personal injury to a person caused by the goods are also expressly excluded from the scope of the Convention. In addition, in practical application potentially important areas of regulation such as the conclusion of contracts through an authorised agent, standard terms, and certain effects flowing

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<sup>15</sup> Mistakes made by a party concerning the characteristics of the goods sold are, however, covered by the Convention.

from state intervention at various stages of the life cycle of a contract remain also uncovered.

It is generally recognised that the fact that the CISG does not cover each and every aspect of an international sales transaction can raise problems in individual cases with regard to determining the exact scope of the Convention and the subsidiary applicability of the otherwise applicable national law. On the whole, however, these difficulties cannot detract from the fact that the CISG offers a full set of uniform rules on the formation and implementation of international sales contracts which provides a solid basis the parties can rely on and which covers all the performance issues under a sales contract in an even-handed and generally acceptable way.

### **c) Autonomous interpretation**

What has certainly helped the CISG to gain wide acceptance<sup>16</sup> is the principle of interpretation as contained in its Art. 7. It requires that “in the interpretation of the Convention, regard is to be given to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade”. This provision has been designed to secure the uniformity of law which the drafters of the CISG aimed for. Generally, it is viewed by legal commentators and in case law to mean that the CISG is to be interpreted autonomously and not in the light of domestic law. The national courts in each Contracting State are expected not to have recourse to any domestic concepts in order to resolve problems of interpretation arising under the CISG.

Art. 7 also deals with the issue of gap-filling, again with the aim of achieving uniformity in the CISG’s application. According to Art. 7 (2), “questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law”. It is to be noted that the gaps to which Art. 7 (2) refers are not those issues

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<sup>16</sup> Cook, CISG: From the Perspective of the Practitioner, at: <http://www.cisg.law.pace.edu/cisg/biblio/cook.html>  
For an analysis of the significance of the CISG in contract practise and the regulatory relationship between this contract and the UNIDROIT Principles of International Commercial Contracts see Herbert Kronke, The UN Sales Convention, the UNIDROIT Contract Principles and the Way Beyond, 26 Journal of Law and Commerce 451 seq. (2005/06).

not falling under the scope of the CISG but those to which the Convention applies but does not provide an express answer.

Application of the principle of autonomous interpretation assists of course in achieving uniformity as much as possible. On the other hand, however, it also represents a challenge for courts and arbitral tribunals in gaining access to the case law and legal writings on CISG in the Contracting States. It is only possible to hope for a reasonable degree of uniformity if access can be provided to these.

In order to meet this challenge, however, many steps have been taken since the initial adoption of the CISG. There are a number of websites on CISG with bibliographies and case law from all over the world. The most comprehensive of those appears to be that of Pace University Institute of International Commercial Law. The Centre for Comparative and Foreign Law Studies in Rome has set up UNILEX. But most important are the efforts of UNCITRAL. In its CLOUT information system (Case Law on UNCITRAL Texts) UNCITRAL collects decisions on CISG and makes them available "to any interested party" in abstracts translated into the six official languages of the United Nations (Arabic, Chinese, English, French, Russian, Spanish) . More recently, in 2008, UNCITRAL published a revised UNCITRAL Digest (published for the first time in 2004), which provides for an analytical digest of court and arbitration cases, identifying trends in interpretation based on the case law collected by national correspondents. Although the Digest does not provide critical comments on the case material it reports about, it certainly constitutes a work providing broad access to the case law in Contracting States from different geographical regions.

## **2. ICA**

The function of ICA as a procedural mechanism applicable to international sales contracts can be summarily described as follows: By opting for arbitration, parties to a sales contract effectively waive their right to have any dispute arising out of their contractual relationship heard by a national court. Instead they agree on an internationally accepted private system of dispute settlement not tied to any system of municipal courts as far as the decision on the merits is concerned, a system which, as a matter of principle, requires the intervention of state courts only at the level of the enforcement of the award issued by the arbitral tribunal.

If the CISG can be viewed as representing a world sales law, the existing worldwide system of international commercial arbitration, as practiced and supported by an interplay of national arbitration laws and international conventions such as the New York Convention, may also be regarded as a global system of dispute resolution which, in combination with CISG, is perfectly suitable to form a uniform legal framework for international sales transactions.

#### **a) The regional significance of international commercial arbitration**

International commercial arbitration is, as is universally recognised, a contract creature as it presupposes an agreement of the parties to subject their disputes to arbitration. At the same time, however, arbitration needs to somehow fit into a system of state justice in so far as parties agreeing on arbitration obviously expect that the state courts will provide the necessary support to the arbitral tribunal and that the award rendered by the arbitral tribunal is a title comparable to the judgment of a state court.

Parties to international sales contracts, including parties with their place of business in the Project Countries, have the freedom to agree on any type of arbitration, whether non-administered arbitration or arbitration administered by any kind of institution and conducted by whomever the parties chose as arbitrators at any location in the world deemed suitable for this purpose. As the country reports show, this basic foundation of the freedom to arbitrate, as a matter of principle, is now being provided in all countries concerned, with the result that there is full access to the system of international commercial arbitration. No limitations exist; commercial arbitration with parties from the Project Countries can take place wherever the parties deem it appropriate.

Secondly, with the exception of Albania, which still needs to adopt its law on international arbitration, there is in all legal systems considered specific legislation on arbitration in place, sometimes even very recently formulated reform legislation inspired by the UNCITRAL Model Law, which allows parties to engage in domestic as well as international arbitration proceedings. In particular, all the states concerned are members of the New York Convention which opens the doors to parties from the Project Countries to worldwide recognition of arbitration agreements and of enforceability of foreign arbitral awards. The significance of the New York Convention in providing for this recognition and enforceability can hardly be overestimated. Now celebrating 50 years of existence, this Convention is no doubt the magna charta and foundation of to-

day's international commercial arbitration practice to which the Project Countries have full access<sup>17</sup>.

Thirdly, institutional arbitration has evolved in similar ways around the world, and international arbitration practice is developing towards the adoption of “best practices” and a number of standardised approaches. Again, there is no reason why arbitration practice in the Project Countries should refrain from taking part in these developments.

### **b) Prevalent trends of arbitration law reform in the region**

Due to the fact that the nature of international commercial arbitration means that it is not tied to any pre-determined jurisdiction, it allows parties to locate their arbitral tribunal in places where they can find the necessary legislative and court support for the conduct of their arbitration. However, despite this considerable flexibility in the arbitration system, when it comes to building an international legal framework for cross-border trade, parties to such transactions also need to be able to rely on a functioning system of commercial arbitration within the region itself. From the perspective of trading partners from outside the region, this is obviously necessary, in particular regarding the enforcement of arbitral awards rendered in other countries. And as far as cross-border trade within the region itself is concerned, partners should be ensured that, if arbitration is chosen as a neutral forum, the national legislation supports such choice and allows arbitration proceedings to be conducted in the way expected by the parties.

Details as to the current status of arbitration law reform can be gathered from the country reports produced in the framework of the GTZ Project. As to the general picture, the importance of providing the business community with a functioning arbitration system, in particular international arbitration, has been recognised by lawmakers, even though it can be observed that, in view of other seemingly more directly pressing priorities, the process of reforming legislation on arbitration is generally slow.

The most significant influence in this process within the entire region comes from the work of UNCITRAL and its Model Law on Arbitration. The Model Law has played a very important and recognised role in the modernisation of arbitration laws worldwide,

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<sup>17</sup> It is this status of the New York Convention which, at the same time, also makes it appear difficult to make and implement reform proposals which would require the consent of its more than 140 members.



in both industrialized and developing countries, and it performs this role of a “model law” for the Project Countries as well, as demonstrated by the 2001 Law on Arbitration of Croatia, the 2006 Law on Arbitration of Serbia, the 2006 Law on International Commercial Arbitration of Macedonia and the intentions for law reform undertaken in the other Project Countries (Bosnia-Herzegovina, Montenegro).

This continuous triumphal march of the UNCITRAL Model Law<sup>18</sup>, now also in the Project Countries, is mainly explained by two factors. Firstly, the Model Law has been formulated as a law for international arbitration, thereby allowing countries, particularly if their existing arbitration law is based on the distinction between national and international arbitration, to only deal with the latter aspect and avoid the often much more onerous task of reforming the law of domestic arbitration, which tends to be more closely tied to local concepts. And secondly, although by today’s standards certain provisions of the Model Law have deserved to be modernised and supplemented since its creation in 1985<sup>19</sup>, it continues to be a most widely accepted unified regulatory model which plays an undisputedly significant role in the unification and internationalisation of the system of commercial arbitration. In the given context, it is of interest to note, though, that both the new Croatian and the new Serbian Law on Arbitration follow the more ambitious monistic approach, which covers both domestic and international arbitration procedures in one single act. This currently appears to be the regulatory trend worldwide. The reform project being implemented by Albania, on the other hand, seems to follow the dualistic approach by covering only international arbitration<sup>20</sup>.

An overview of the status of arbitration law reform in the region would be incomplete without considering the practice with regard to ad hoc arbitration and the developments concerning institutions providing arbitral services. Due to the limitations imposed on private arbitration in the socialist system, a tradition of ad hoc arbitration

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<sup>18</sup> By now there are already over 60 countries listed by UNCITRAL as following the Model Law.

<sup>19</sup> In 2006, the Model Law has been amended by adding Art. 2 A (interpretation in consideration of the need to promote uniformity), by remodelling Art. 7 (form of agreement) and by extensively revising Art. 17 (interim measures). In connection with these measures, UNCITRAL also adopted a recommendation regarding the interpretation of Art. II (2) and VII (1) of the New York Convention, the former regarding a less strict application of the writing requirement for arbitration agreements, the latter regarding the application of this Article to allow a party to avail itself of rights it may have under the laws of the country where enforcement of the award is being sought.

<sup>20</sup> The Model Law on International Commercial Arbitration is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. It covers all stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal and the extent of court intervention through to the recognition and enforcement of the arbitral award. It reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal or economic systems of the world.



practice cannot be expected in the Project Countries. In spite of this, with regional arbitral institutions having lost their former status as the exclusive form of arbitration to be used, non-institutional arbitrations subject to UNCITRAL Arbitration Rules seem to have gained some interest, at least for some larger cases. The UNCITRAL Arbitration Rules have been used for the settlement of a broad range of disputes, including disputes between private commercial parties where no arbitral institution is involved, investor-State disputes, State-to-State disputes and commercial disputes administered by arbitral institutions. They are recognized as one of the most successful international instruments of a contractual nature in the field of arbitration. In 2006, UNCITRAL decided that the Rules should be revised, to meet changes in arbitral practice over the last thirty years. The revision is aimed at enhancing the efficiency of arbitration under the Rules and does not alter the original structure of the text, its spirit or drafting style. The UNCITRAL Arbitration Rules, as revised (they are effective as of 15 August 2010), include more provisions dealing with, amongst others, multiple parties arbitration and joinder, liability, and a procedure to object to experts appointed by the arbitral tribunal. A number of innovative features contained in the Rules aim to enhance procedural efficiency, including revised procedures for the replacement of an arbitrator, the requirement for reasonableness of costs and a review mechanism regarding the costs of arbitration. They also include more detailed provisions on interim measures.

The system of international commercial arbitration offers parties the option of agreeing on an arbitration procedure administered by arbitral institutions. In a review like the present one, aimed at providing a sense for “the bigger picture”, it appears important to emphasise that, from an international point of view, there is no lack of well-organised reputable arbitration institutions to which the parties of sales contracts relating to the Project Countries can turn. There is the ICC International Court of Arbitration which administers arbitrations taking place anywhere in the world, but there are also a number of highly regarded regional arbitration centres, some of them located not far from the region of the Project Countries (e.g. Vienna, Zurich, Milan), which are perfectly capable of providing the international arbitration services required.

Not to be underestimated is of course the potentially very important role of regional arbitral institutions. In terms of interregional trade, knowledge of regional customs and languages, and also simple geographical proximity, which are factors likely to be appreciated by trading partners from outside of Southeast Europe as well, it is very important for the development of the region that there also exist reputable

regional institutions offering to administer international arbitrations. At the time of the writing of this report there are established centres of this profile in at least three locations. It appears that there are intentions in more or less all of the Project Countries to establish their own arbitral institutions. While this is understandable, and also reflects positively as concerns the interest in arbitration in each country concerned, it remains questionable whether the creation of a multitude of arbitral centres constitutes a desirable development for arbitration in the Project Countries. Experience has shown that it takes a long time and many arbitrations to build up a strong and reputable arbitral institution. Efforts towards a joint, cooperative approach should not be abandoned, even though the current conditions may not look promising for it.

### **c) Arbitration as a true alternative to state court jurisprudence**

When considering whether to agree on arbitration, parties frequently ask about its advantages and disadvantages in comparison to state court proceedings. In the present context, it is proposed that this question might not be the decisive one. Parties to international sales contracts require a neutral forum for the settlement of any disputes that might arise and the system of international commercial arbitration provides for this required neutrality. This basic proposition is valid in the Project Countries as it is elsewhere.

International commercial arbitration is frequently referred to as a system which does not provide the parties with decisions rendered in strict accordance with the applicable law and in line with established jurisprudence, but which is rather aimed at resolving disputes on a case-by-case basis only, often involving some type of compromise solution. There is some truth in this view. Indeed, an arbitral tribunal composed of arbitrators from various jurisdictions who are not professional judges cannot be expected to deliver decisions which are strictly oriented by the concern that their decision is in line with prior pronouncements of other courts. Not only can it not be expected for arbitral tribunals to develop a line of doctrinal jurisprudence like the courts, but it is also in most instances not what the parties want from an arbitral tribunal. They are typically simply interested in obtaining a fair and reasonable solution, not so much in creating a precedent on which they might wish to be able to rely in other circumstances.

However, while it is true that arbitral tribunals do not produce jurisprudence, it is generally not true to say that arbitral tribunals render decisions that are not based on the law. Individual awards, like court decisions, may of course be occasionally *praeter legem*. However, when looking at published awards, at least at the level of ICC awards, for example, it becomes apparent that they generally contain elaborated and sophisticated reasoning on issues of fact and law. For the reader of the present paper it would be particularly instructive to study the arbitral awards concerning legal issues of the CISG, as referred to in the UNCITRAL Digest.<sup>21</sup> They are treated in the Digest as being completely on a par with any of the court decisions cited.

It should also be noted that, in the current situation, parties to international sales transactions might be expected to find it attractive to arbitrate their disputes rather than resort to the courts, not only because arbitration offers a neutral forum, but also for reasons of procedural efficiency. Arbitration offers the possibility for the parties to appoint experts in international trade matters or in the particular trade sector as arbitrators, a possibility which does not exist in the case of recurrence to the state courts. And, in view of the overload of cases in the state courts observed in all Project Countries according to the country reports of the GTZ Project, it seems that the average length of typical one-instance arbitration proceedings compares favourably with the length of proceedings before state courts.

#### **IV. Use of ICA and CISG in the Project Countries**

The following considerations aim to provide a perspective on the main issues observed in the framework of the GTZ Project with regard to the implementation of CISG and ICA in the Project Countries. The purpose here is to summarise these issues as perceived in the reports drawn up by the experts from the region and to provide an overview of the progress achieved since then.

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<sup>21</sup> Jernej Sekoleč, Digest of case law on the UN Sales Convention: The combined wisdom of judges and arbitrators promoting uniform interpretation of the Convention, in: Ferrari/Flechtner/Brand (eds.), *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the U.N. Sales Convention*, 2004, p. 1

## 1. History of membership in the CISG

It has already been noted above that all successor states to the former Socialist Republic of Yugoslavia, and most recently also Albania, have acceded to the CISG.

The SFR Yugoslavia itself ratified the Convention on 27 March 1985, which did not become effective in Yugoslavia until 1 January 1988, due to the previously insufficient number of ratifications. The subsequent history of accession by the successor states reflects the history of their road to independent statehood. Croatia, by retroactive declaration of 8 June 1998, joined the CISG on 8 October 1991, the day of its gaining independence. Bosnia-Herzegovina took the step to implement the CISG by domestic legislation passed on 6 June 1992, but subsequently also filed a notice of succession with the United Nations on 12 January 1994. For Serbia as member state of the FR of Yugoslavia, the CISG became effective on 27 April 1992. Montenegro, gaining independence on 3 June 2006, assumed responsibility for existing treaty obligations by declaration of the same date. And Macedonia, although it had become independent already in 1993, filed its notice of succession to the CISG on 13 November 2006.<sup>22</sup> Albania, finally, decided to join the CISG by unanimous parliamentary vote of 9 March 2009. The CISG came into force in Albania on 1 June 2010.

When looking at this somewhat complex history of successions, two interesting conclusions may be made:

Firstly, if the question is for how much time the CISG has been a law on the books of the countries concerned, the answer for most countries is since 1 January 1988. In other words, in a legal sense, the Project Countries, with the exception of Albania, look back at a comparatively long period of applicability of the CISG, comparable to that of other European states such as France, Germany or Spain. At the same time, however, due regard must be given to the fact that the courts in the former Socialist Federal Republic of Yugoslavia probably only rarely came across cases involving international sales transactions, due to the fact that, in the socialist period, disputes on international sales contracts were typically referred to the arbitration system existing at the time.

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<sup>22</sup> This 15-year gap between the date of state of independence and the filing of succession is reported to have caused uncertainties in legal doctrine and jurisprudence and to the CISG's application to contractual relationships following in this period of "legal vacuum".

Secondly, the fact that all successor states to the former SFR Yugoslavia adopted the CISG as part of their domestic legal system means that the CISG has now taken the place of the former Yugoslav Obligations Code with regard to regulating the trade between these countries, which used to be regulated as internal trade. That Code was inspired, inter alia, by the two Hague Conventions on Uniform Law for the Formation of International Sales Contracts (ULFIS) and on the Uniform Law for Contracts of International Sales (ULCIS). In comparison, CISG can therefore be considered a modernised set of rules on international sales contracts which, to the extent the former Obligation Code has not been changed in the countries concerned after the disintegration of the SFR Yugoslavia, differs from the applicable domestic law in each country. Since June 2010 this is also true with regard to Albania, although it is understood that its Civil Code, based on the Italian Civil Code, shows less significant differences to the rules of the CISG.

## **2. The CISG in judicial and legal practice**

The implementation of a law can be looked at in various ways – with regard to its frequency of application, the correct understanding of its provisions, as well as the amount and quality of information about the law accessible to its users.

### **a) Frequency of application**

As concerns the issue of frequency of application, it has become clear in the course of the GTZ Project that, in spite of the fact that the CISG has been in force since 1988 in most states concerned, the CISG has appeared only comparatively rarely in court decisions and in contractual practice. However, as far as the inclusion of the CISG in contracts drafted by lawyers is concerned, it seems to be that the use of CISG is increasing; even with regard to Albania where the CISG only recently came into force, it is apparent that the big law firms now insert the CISG as the applicable law into contracts they advise on, although some differences are still to be noted.

Thus, with reference to Croatia it is confirmed that many judges and attorneys have had little awareness of the CISG but that now, due to the fact that the Supreme Court and the High Commercial Court have quashed or reversed a number of lower court de-

cisions, the trend has changed and judges have increasingly begun to apply the CISG. Similarly, it is reported on Serbia that the judges at the High Commercial Court now actively apply CISG and have issued a number of decisions resulting in the reversal of lower court judgments. It appears, therefore, that, at the higher levels of the judiciary, there is a higher degree of awareness that CISG is part of the applicable domestic law. The conclusion is therefore permitted that a situation appears to exist, at least in some Project Countries, where some change with regard to the implementation of CISG by the courts has begun to take place, resulting in a growing awareness of the possible relevance of this Convention also at the level of lower courts.

As to the reasons explaining the generally low degree of awareness of the CISG within the state judiciary in the Southeast European region, it is difficult to get a very clear picture. What is clear, however, is that any element of non-acceptance of the rules of the CISG on the grounds that they might be considered inadequate or incompatible with domestic concepts of the laws on sales contracts does not play any significant role.

Instead, it becomes obvious that there is a true lack of information and therefore also understanding of the Convention and its implications, sometimes perhaps also with a certain sense that, in view of the general overload of cases on the court docket, it is not necessarily desirable “to complicate one’s life” with the not well-known and unexplained aspects of the applicability of the CISG.

It is also of interest in this context to refer to the findings of the GTZ Project concerning the status of the CISG in the curriculum of the countries’ law faculties. While international sales contracts seem to be a subject taught everywhere, courses specifically covering the CISG do not seem to have been offered so far anywhere as part of a regular course program. In some countries (Macedonia and Croatia, for example), though, the study of the Convention is included in the training of judges and prosecutors. And, as a more recent development in Croatia, there is now a summer program on CISG and international arbitration, jointly organised by the Universities of Zagreb and Pittsburgh, which was held in 2010 for the first time. These developments may again be taken as an indicator that matters have begun to change and that awareness of the CISG at the level of both academia and the judiciary will increase in the future.

Speaking of lack of awareness, it is also important to note that the majority of the country reports produced as part of the GTZ Project refer to a general lack of informa-

tion, not only at the level of the judiciary and the attorneys dealing with the judiciary, but also at the level of the business people concerned (e.g. report on Bosnia-Herzegovina). Why do businessmen for whom the CISG has been created not know about it? This also confirms that the general lack of implementation of the CISG in the region seems to be mostly due to a lack of information about this uniform law.

One interesting finding with regard to Serbia is to be mentioned in the present context. The practice of the International Trade Arbitration Court attached to the Chamber of Commerce of Serbia shows that, in contrast to the court practice in that country, the CISG is well-known and widely implemented by arbitrators (more than 100 cases in the last decade applied CISG according to research conducted). The report on Macedonia also reports of two arbitration cases before the Permanent Arbitration Court attached to the Economic Chamber of the Republic of Macedonia in which the CISG was applied. It is believed that these findings are not simply coincidental. Rather, they seem to confirm that the application of the CISG in the Project Countries is foremost a function of making the administrators of justice aware of its existence and knowledgeable about its contents.

## **b) Judicial interpretation of the CISG**

As far as the judicial practice of the CISG is concerned, it is obvious that the provisions of the CISG dealing with its applicability seem to occupy the courts and arbitral tribunals in the region mostly. It is of interest to note in this context that it is reported about Croatia that it seems to be increasingly common to find sales contracts, mostly those originating from English or US practice, which contain choice of law clauses excluding the application of the CISG.

The question arises here as to whether that practice, which is perfectly acceptable under Art. 6 of the Convention, is to be interpreted as a sign of a certain discomfort on the part of parties from these areas of the world as regards the rules to be found in the CISG. In Germany, for example under the Civil Code before the law reform, such discomfort existed, but is now generally considered to no longer be justified and is regarded as a matter of the past.<sup>23</sup> With regard to the practice reported about Croatia, no reliable

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<sup>23</sup> See the most recent comparison of the rules of the CISG with Swiss and German contract law by Voser/Boog, *Die Wahl des Schweizer Rechts, was man wissen sollte*, in *Recht der Internationalen Wirtschaft*, 2009, 129 seq.



conclusions can be formulated at this time as long as it is not known which law had been chosen by the parties in place of the CISG.

If the English and US parties have been able to negotiate the applicability of their respective laws in the cases described, such cases cannot simply be interpreted as showing any particular discomfort with CISG, as the agreement on a particular domestic law may actually be the result of the fact that one of the parties to the deal had sufficient leverage during negotiations to make its law the applicable law. At any rate, if the parties can agree on a (neutral) domestic law for their sales contract, and at the same time “opt out” of the CISG, they thereby also apply the rules of the Convention.

As far as the applicability of the CISG in individual cases is concerned, the courts seem mostly to have to grapple with the issue of private international law and its relationship to the CISG. Thus, it is reported about Serbia that its courts of first instance have often come to the questionable conclusion, subsequently criticised by the High Commercial Court, that the CISG does not apply. As reported, the judges determined the applicable law by virtue of the rules of private international law, thereby arriving at the Serbian Code of Obligations, and therefore ignored the direct applicability of the CISG. Similarly, it is reported with regard to Croatia that the courts there frequently hold that an express choice of the law of a Contracting State constitutes an implicit exclusion of the CISG. Likewise, a Serbian High Commercial Court decision in 2004 argued that, in the absence of a choice of law clause, the choice of the courts of Serbia and Montenegro taken by the parties is to be interpreted as an expression of the parties’ intention for the laws of Serbia and Montenegro to apply (excluding any considerations as to the applicability of the CISG).

In the present overview, it is not possible to analyze the persuasiveness of these decisions. But it is necessary to mention these cases here as they seem to counter the prevailing view in comparative case law and scholarly writings that the express or implicit choice of law of a Contracting State is not tantamount to an exclusion of the applicability of the CISG if all the other conditions for its applicability are given. Cases like the ones reported underline the need to support the autonomous interpretation of the CISG by the courts of all Contracting

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Discomfort with the CISG leading to its exclusion may of course not only exist with regard to its substantive rules as such, but with regard to its incompleteness, resulting in possibly split regimes with regard to issues arising. It is not to be denied that this shortcoming of the CISG is likely to motivate sophisticated business practice relying on professional legal advice to continue to opt out of the CISG regime and seek tailor-made solutions instead, based on some chosen national law.



States by systems which allow the judges to access court decisions and legal writings from other countries. While at the start of the GTZ Project no court cases from the Project Countries on the CISG were to be found in CLOUT and in the UNCITRAL Digest, the situation has now changed considerably. It is to be noted that 9 new cases from Croatian courts dealing with CISG have now been translated and published on the CLOUT database; one CISG case from Montenegro is in the process of being published.

Other issues which are reported to have the greatest importance in decisions of courts and arbitral tribunals are issues related to Art. 7 (interpretation), Art. 25 (fundamental breach of contract), Art. 38 (duty of the buyer to examine the goods), Art. 35 (non-conformity of the goods) and Art. 26 (declaration of avoidance). It is questionable whether this list of issues is representative, due to the somewhat limited application of the CISG by the courts in the Project Countries thus far. However, even this limited list reflects the fact that the CISG also works in the Project Countries “normally” and that, apart from the issue of its applicability, it does not appear to present the courts of the region with any particular issues or difficulties.

### **c) Amount and quality of information about the CISG**

It is apparent from all of the country reports that the level of information obtainable on the CISG in the form of court decisions and scholarly writing is generally very low.

The problems start with the information on legal matters generally obtainable in the countries themselves. Systems of publishing court decisions, either in paper or electronic form, are still in development in most of the Project Countries.<sup>24</sup> As a consequence, court decisions on the CISG, or at least abstracts of them, are not published. As it is the idea of the drafters of the CISG that a mutual system of knowledge transfer operating on a worldwide basis should be established in order to improve the uniform application of the Convention, this raises a fundamental problem if, even in the country of origin of the decision, such decision is not made accessible to assist other judges and lawyers in resolving other disputes involving the CISG.

The result is that access of the local judiciary, certainly at the level of the lower courts, to sources of information from abroad is thus far quite limited. Consideration of

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<sup>24</sup> Such databases exist, according to the reports, in Croatia and in Serbia.

foreign jurisprudence appears to be non-existent, even with regard to jurisprudence in neighbouring countries of the region.<sup>25</sup> This is obviously primarily an economic issue as the resources for building up information support services are lacking, but it is also a language issue since much of the internationally available material is in English or in the languages of the country concerned, but not translated into any of the regional languages spoken in the Project Countries. This is a very unsatisfactory situation and, presumably, the only valid long-term approach to this can be language training of judges in order to enable them to read foreign language, in particular English language, legal material.

A review of the number of scholarly publications gives a somewhat different impression of the spread of CISG. Four of the six relevant states, which include Bosnia-Herzegovina, Croatia, Montenegro and Serbia, have publications relating to CISG, including a book on international commercial law with extensive coverage of CISG issues published recently in Bosnia-Herzegovina. The two remaining states, Albania and Macedonia, do not appear to have any publications relating to CISG.

Though the sheer number of publications does not appear to reflect a high degree of involvement with the issues of the CISG, it can be stated that the general existence or the amount of publications does not seem to be a major bottleneck for the relevance of CISG in the four states.

However the importance of adequate literature concerning CISG should not be underestimated. It is a significant basis for the acceptance and the usage of CISG not only for university education, but also as a source of information for professionals (lawyers, judges and contracting parties).

The UNCITRAL Secretariat has established a system for collecting and disseminating information on court decisions and arbitral awards relating to the Conventions and Model Laws that have emanated from the work of the Commission. The purpose of the system is to promote international awareness of the legal texts formulated by the Commission and to facilitate uniform interpretation and application of those texts.<sup>26</sup> While at the start of the GTZ Project not a single decision of a court in the relevant states could be found in UNCITRAL's CLOUT database, the situation has now changed significantly. Nine cases

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<sup>25</sup> See e.g. country report on Serbia, p. 19

<sup>26</sup> See website of UNCITRAL at [http://www.uncitral.org/uncitral/en/case\\_law.html](http://www.uncitral.org/uncitral/en/case_law.html).

from Croatia are now listed, and more CISG decisions from Serbia, Montenegro and Croatia are in the pipeline to be translated and published in CLOUT. As mentioned above, the uniform application and interpretation of the provisions of CISG is an important issue to gain acceptance and reliance for CISG and this may therefore be called a significant development. The system for collecting and disseminating information on court decisions and arbitral awards relies on a network of national correspondents designated by those States that are parties to a Convention or have enacted legislation based on the Model Law<sup>27</sup>. There has been appointed so far only one national correspondent for Croatia, the recent material provided for CLOUT was obtained through voluntary contribution. If the reporting to CLOUT is to continue to grow, more such appointments will obviously be necessary.

### **3. Status of legislative framework on arbitration**

In recent years, in practically all of the Project Countries, considerable efforts have been made to establish a comprehensive and modern legal regime for allowing private parties to settle their commercial disputes by way of arbitration.

The successor states to the former Socialist Federal Republic of Yugoslavia have “inherited” membership in the New York Convention of 1958 by way of succession declaration, resulting in a situation in which each of these states continues to adhere to this Convention, which provides for the recognition of foreign arbitration agreements and the recognition and enforcement of foreign arbitral awards. As can be gathered from the UNCITRAL Status Report, each of these countries, following the former Yugoslavia, has maintained three reservations admissible under the Convention. They will apply the Convention only to awards made in the territory of another Contracting State, only to differences arising out of commercial relationships and only to those awards rendered after the Convention comes into force. Albania joined the New York Convention in 2001, without declaring any reservations.

In all countries concerned there is legislation in place providing for the implementation of the requirements of the New York Convention. It is reported with regard to Albania, however, that in the judicial practice of this country there is some divergence between what documents judges ask applicants to produce for the recognition and enforcement of foreign awards on the one hand and the requirements of the New York

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<sup>27</sup> See website of UNCITRAL at: [http://www.uncitral.org/uncitral/en/case\\_law/national\\_correspondents.html](http://www.uncitral.org/uncitral/en/case_law/national_correspondents.html)

Convention on the other hand. It is nevertheless emphasised that the courts in Albania do accept requests for the enforcement of foreign arbitral awards. Interestingly, lawyers in Albania tend to rely on the provisions of the Albanian Civil Code for the recognition and enforcement of foreign arbitral awards instead of on the provisions of the New York Convention, since they view the national provisions as more favourable.<sup>28</sup> In addition it is to be noted that Albania finds itself currently still in the somewhat incongruous situation of the relevant part in the Code of Civil Procedures which regulated international arbitration having been abrogated in 2001, while the new law on arbitration, drafted along the lines of the UNCITRAL Model Law, with the assistance of the World Bank, continues to be under study with the Ministry of Justice of Albania.

The successor states to the former Yugoslavia also become, in a number of instances, members of other international conventions on the recognition and enforcement of foreign arbitral awards, such as the European Convention on International Commercial Arbitration of 1961 (of lesser importance) and the ICSID Convention (relevant for investment arbitration).

All in all, the reports confirm that, at the level of conventions, the Project Countries are all linked into the existing system of international commercial arbitration.

The reports also show that all the countries concerned have legislation in place which provides for the freedom of private parties to agree on settling their disputes by way of arbitration<sup>29</sup>, to select whether the arbitration is to be administered by an institution, or ad hoc by a single arbitrator or by a panel of arbitrators. The only restriction has been found in Croatian law which provides that the place of arbitration must be in Croatia when the parties are domestic parties or when the subject matter falls under the (otherwise) exclusive jurisdiction of the Croatian courts.<sup>30</sup> No special legislation on international arbitration is in place in either Montenegro or Albania. While in Albania efforts are underway to create such legislation, the relevant provisions on which parties have to rely are still the relevant provisions in the Code of Civil Procedure.

It should be emphasized that most Project Countries have obviously taken inspiration from the UNCITRAL Model Law in modernizing their statutes on arbitration, some-

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<sup>28</sup> Which is accepted as a way of proceeding under Art. 7 of the New York Convention.

<sup>29</sup> Although Albania has no specific law on arbitration yet.

<sup>30</sup> Report on Croatia, p. 2

times following the monistic approach by creating a new law for domestic and international arbitration (Bosnia-Herzegovina 2001, Croatia 2001, Montenegro 2004, Serbia), sometimes maintaining a dualist structure and focusing their reform efforts on a law for international arbitration (Albania, Macedonia 2006). The GTZ Project's findings are that some countries seem to have followed the UNCITRAL Model law very closely (e.g. Macedonia), others its principles and others its structure, but also adding new elements into it which can be found in the modern legislation of other European countries (Croatia, Serbia). While, at the level of national legislation, the countries have achieved the status of "arbitration-friendly" jurisdictions, it should also be noted that UNCITRAL has so far listed Croatia, Macedonia and Serbia as "Model Law Countries".

#### **4. Institutional arbitration activities**

It appears obvious that the existing practice of arbitration in the region revolves mainly around institutional arbitration. Figures for ad hoc arbitration are not available and, having regard to the observed low degree of awareness of the possibility of arbitration among business people and lawyers, it is reasonably surmised that ad hoc arbitration, with the exception of a few large matters according to the UNCITRAL Arbitration Rules, has thus far taken place very rarely. In view of the only recent reforms of arbitration legislation and the fact that the former socialist times did not provide fertile ground for the establishment of an active practice of ad hoc arbitration, such findings come as no surprise.

The findings of the reports with regard to institutional arbitration are as follows. With the exception of Croatia, the comparatively low degree of the use of arbitration institutions by domestic and international parties is noteworthy. Institutional arbitration centres with pre-formulated rules which administer (national and) international arbitration continue to exist or have been newly established in most of the Project Countries. Typically, they are established as permanent courts attached to the International Chamber of Commerce as its parent organisation (Macedonia, Croatia, Montenegro). In Serbia the former arbitration institution of the socialist Yugoslavia competent for disputes involving foreign parties continues to exist under the name of the Foreign Trade Arbitration Court (attached to the Serbian Chamber of Commerce), while in Albania a new organization under the name of MEDART, the Albania Commercial Mediation and Arbitration Centre, was set up in 2004<sup>31</sup> with the assistance of the World Bank.

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<sup>31</sup> Email: medart@sanx.net.

Reliable statistics about the number of cases dealt with in regional arbitration institutions are not currently available. Bosnia-Herzegovina's arbitration court attached to the Chamber of Commerce does not seem to have become operative yet. According to unofficial information, Albania's MEDART Centre, for example, is said to have dealt with up to now 15 to 30 cases of arbitration in total. The Serbian Court of Arbitration is said to administer approximately 25 to 30 new cases annually, all of them international in nature. In 2009, around 100 new cases were brought before the Croatian Arbitral Centre, of which about 40 were international cases. It is also reported that many new mediation cases have been initiated and completed in Croatia (no figures are made available).

In the overview given here, it is submitted that in a world of competing arbitral institutions, some of them having been in existence for many years and enjoying a very high reputation, with others at an early stage of their development, it comes as no surprise that it will take time for the recently established arbitral institutions in the Project Countries to gain the confidence of the parties concerned. To the extent that foreign parties are involved in the transactions, it seems likely that for reasons of confidence they will continue to insist on having their disputes hosted by long-established institutions for the settlement of any disputes. The relatively low number of cases observed to have been handled so far by the arbitral institutions in the region could therefore be much more a measure of their international competitive position in the world of arbitral centres, rather than being the consequence of a lack of knowledge and a lack of promotion of the new possibilities of arbitration, as some of the reports suggest.

One more detailed observation to illustrate this point is to be made here. Both the Permanent Arbitration Court of the Croatian Chamber of Commerce and the Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce maintain, as seems to be the general approach of arbitral institutions in the region, lists of arbitrators (domestic and foreign) from which the parties can select their arbitrator(s) to be appointed for their individual dispute. With regard to the Croatian institution, the report explains that "in both international and domestic cases, parties may appoint arbitrators who do not appear on the list". With regard to the institution in Serbia, on other hand, the respective report explains that the proposal to appoint an arbitrator not included in the list requires the approval of the Board of the Foreign Trade Court of Arbitration and that only an arbitrator included in the List of Arbitrators may act as chairman or sole arbitrator anyway.

There is a difference in the rules of arbitration, in this case on the important issue of which arbitrator to choose, which may very well make the difference for a party, domestic or foreign, to decide for or against the use of a certain arbitral institution. In practice, of course, many more considerations than just the wording of one particular type of rules come into play. Obviously, many factors explain the success of an arbitral institution. The low number of arbitration cases handled by local institutions as reported in the country survey are therefore not a reliable element to measure the attractiveness of arbitration generally for parties (domestic and foreign) which engage in commercial transactions, including sales contracts, in the region.

While the numbers of international disputes handled by arbitral institutions in the region as indicated in the country reports do not allow for a negative conclusion with regard to the acceptability of arbitration for international business, but may actually be considered rather encouraging, at least when looking at the example of Croatia, the question of the attitude of local business to arbitration remains open. Most, if not all, reports state that they have found local business people to be hesitant towards, and in some cases ignorant of, arbitration in the belief that arbitration is a mechanism of dispute resolution which is only suitable for high-value international disputes. At its core, there is some truth in this view. Not all cross-border transactions, if they are small and simple, necessarily justify calling on an institution and appointing a highly qualified arbitrator, often from another country, to resolve the dispute in a “neutral” location. But there is no reason to believe why, in particular, arbitral institutions in the region which are geographically close to the parties and can work on a low-cost basis should not be able to administer cases involving relatively low values. There are many arbitral institutions which have developed such a capability and even institutions known for handling the most complex and high value matters, such as the ICC, also deal with a surprisingly high number of smaller matters.<sup>32</sup>

In so far as the development of trade within the region is concerned, therefore, increased consideration should be given to promoting arbitration as a means of dispute settlement for small and medium-sized matters and to focusing the regional arbitral institutions’ market orientations and services accordingly.

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<sup>32</sup> According to the 2007 Statistical Report, 3% of the cases involved less than 50,000 US dollars while 11,3% of the cases involved up to 200,000 US dollars at stake.



With the exception of Albania, there do not seem to be any particular lack of legal practitioners with experience in arbitration in Southeast Europe. The lists of arbitrators maintained with the arbitral institutions indicate that academics, practicing attorneys and in-house counsels engage in the practice of arbitration. It is known that a number of them appear in international arbitrations abroad, for example in ICC proceedings, proceedings at the Vienna International Arbitration Centre, ICSID, etc. In 2007, the ICC appointed 4 arbitrators from the area. While this number is low, and perhaps an indication that ICC proceedings are not often used in the region, it nevertheless shows that the “arbitration community” within the Project Countries stays connected with the world’s international arbitration practice. If the issue becomes to “popularize” arbitration in the region, it is obvious that many more arbitration practitioners will be required.

## **5. Arbitration in judicial and legal practice**

Judges tend to be seized with the typical issues of arbitration law, concerning issues such as the validity of the arbitration agreement, referral of parties to arbitration in case of a party objecting to court proceedings, actions for setting aside domestic awards and actions for the recognition and enforcement of foreign awards.

Two findings with regard to judges dealing with these issues seem to be pertinent. In a number of instances (Croatia, Serbia), it is clear that the courts generally pay due attention to the requirements of the New York Convention regarding the recognition and enforcement of foreign awards; reassuringly, it is also apparent that the courts, in contrast to courts in some other countries, refrain from unduly widening the concept of public policy in order to find additional and unjustified grounds for rejecting the enforcement of foreign awards.

It is of interest to note in this context that the countries concerned seem to have taken rather different approaches with regard to the issue of the concentration of court competence for arbitration matters. While in Croatia, for example, proceedings for the annulment of an award can go through several instances, from the Commercial Court to the High Commercial Court and to the Supreme Court, in Macedonia, on the other hand, only one court, the Court of First Instance Skopje II, is competent to hear matters relating to arbitration proceedings.



There is no reliable data available on the use of arbitration clauses by legal practitioners in the contracts on which they advise. Generally speaking, however, the thesis can be maintained that, since the beginning of the GTZ Project, according to information provided by practicing attorneys, commercial contracts in the region tend to include arbitration clauses more frequently than before. This can be concluded on the basis of the reports of the regional legal experts as well as by GTZ's own survey of legal practitioners dealing with contract drafting in Southeast Europe.

## **6. Relevance of ICA at universities/judges training courses**

Although the country reports produced in the framework of the GTZ Project deal only generally with the role of international commercial arbitration in university teaching, it becomes clear that the law of arbitration forms part of the curriculum practically everywhere, including in Albania. As a regularly required subject, however, it appears to be taught only as part of courses on civil procedure, private international law or international commercial law. More recently, it also seems to be offered in most cases as a separate optional subject for advanced students.

The Vienna Willem Vis Moot Court Competition, which has played a significant role in promoting the topic of international commercial arbitration at universities worldwide is an event at which student teams from Croatia and Serbia now participate regularly. In 2010, student teams from Macedonia and Montenegro also participated. One of the conclusions of the GTZ Project's Regional Roundtable of March 2010 in Belgrade was to encourage experts on arbitration law from other countries in the region to undertake efforts to have students from their universities to take part in this competition. The reports of this roundtable also give information on the availability of textbooks in local languages (e.g. in the Serbian language) which likewise demonstrates that academic teaching in the region is increasingly covering the subject nowadays. This can be expected to significantly increase the arbitration knowledge of future judges and practicing attorneys.

Somewhat in contrast to the intensity and breadth of the teaching of arbitration at university level seems to be the treatment of the subject in terms of judges' training. Most of the training of judges in the area of arbitration law, with perhaps some exceptions such as Albania, does not seem to take place regularly.

## **V. Results achieved and lessons learned**

The GTZ Project, as the above account demonstrates, encountered a situation in the Project Countries which was generally characterized by shortcomings in the implementation of both CISG and ICA. Lack of material resources, weak structures at the level of the judiciary and teaching institutions, and limited information of entrepreneurs, lawyers and a significant shortfall of cooperation between public and private institutions across the Southeast European region are all factors which explain this situation. At the same time, the GTZ Project has achieved some progress with its measures and a number of developments have become apparent which justify the expectation that the CISG and ICA will indeed play a beneficial role in the region in the future. The most significant of these developments are as follows:

All Project Countries have become members of the CISG. The last missing country was Albania, which joined by parliamentary decision of 9 March 2009, meaning that CISG has also become the law for international sales contracts there with effect of 1 June 2010. It should be noted in this regard that the parliamentary vote was unanimous, indicating that, at the political level, the importance of adopting the CISG has been fully recognised.

While the courts in the Project Countries generally do not often deal with the CISG in their decisions, which reflects a rare use of this law and a limited awareness of contracting parties and their lawyers of the existence and benefits of this law, there are a number of developments indicating that this situation has begun to change, at least in a number of the countries concerned. In the meantime, and as of now 9 court cases from Croatia have been translated and published in the UNCITRAL's CLOUT database, which represents a significant step forward for a region which was not represented in the CLOUT system at all at the beginning of the GTZ Project. More CISG cases from the region have been prepared for publication. they are from Serbia and Montenegro and at the date of this report they are being integrated in the database. Furthermore, a few unpublished Croatian decisions related to the UNCITRAL MAL are expected to be available in December 2010/ January 2011. Information from Serbia and Croatia also indicates that the judges in these countries have become more aware of the CSIG. Thus, there is a case reported in Croatia where a lower court decision has been quashed for failure to apply the CSIG. Moreover, there is ample evidence that arbitral tribunals of the Serbian Arbitral Court and of the Croatian Arbitral Institution regularly apply the CSIG in international cases.

Figures on the number of cases handled by regional arbitration institutions, to the extent they are available, reflect a rather uneven development, with only some centres, in particular that of Croatia, apparently profiting from the general surge in legal disputes developing in the aftermath of the global financial crisis of 2008/2009. There are, however, some signs that the reservation, or perhaps rather lack of information, of lawyers and their parties regarding the use of arbitration in international commercial contracts is slowly waning. The country experts of the GTZ Project could in part confirm a possible increased use of arbitration clauses in contracts of significance and the GTZ staff itself conducted an inquiry among law firms which resulted in the confirmation of more than 10 contracts having been negotiated during the period of the GTZ Project which included an arbitration agreement. This is not an impressive figure and the figure as such has more of a representative value. A systematic scanning of contracts in the region, provided it were feasible, might unearth a far higher number of contracts containing arbitration clauses. But the results of this limited informal inquiry can nevertheless be taken as a sign of encouragement that, at the level of lawyers advising businesses in the region, the message as to the advantages of arbitration for international transactions has been taken on board.

Another indicator of a growing awareness in the region of the possible benefits of the CISG and of ICA is the rising frequency of conferences on these subjects in the region and the increased involvement of lawyers, judges and students in such events. While any significant increase in regular courses at universities or judges training academies has not yet become apparent, it cannot be overlooked that the number of events in the region relating to arbitration/mediation and/or the CISG has risen significantly. Prominent in this regard is the yearly international conference and the Willem Vis Pre-Moot organized by the Belgrade Law Faculty, both academic events which are attended by a growing number of lawyers and students from the region. The 2010 summer course organized by the Universities of Zagreb and Pittsburgh is another case in point. It is rightfully to be expected that the students from the region who participate in such events will go on to be the legal practitioners who will be familiar with the instrument of international arbitration and who will not hesitate to plead cases on the basis of the CISG.

A start in the right direction has been made by the GTZ Project, and it has been made with some tangible results, but it is also clear that more work for the fully developed implementation of CISG and ICA in Southeast Europe needs to be done. What can be observed, and this is perhaps the most important achievement of the GTZ Project,

is that it has assisted in setting in motion a process in the region by which the regional players themselves have become increasingly active in promoting the implementation of CISG and ICA and in improving that regional cooperation. In November 2010, the CISG Advisory Council will meet and an accompanying conference will be held in Belgrade. Contacts between the law faculties of the Universities of Belgrade, Skopje, Banja Luke Tirana, Zagreb and Podgonica have been established and intensified, and, together with the arbitration centres, chambers of commerce and universities of some countries acting as supporting institutions, plans are now being discussed for launching a more general initiative for the improved implementation of instruments of ADR, including of the UNCITRAL Model Law on International Commercial Arbitration, the UNCITRAL Arbitration Rules, the UNCITRAL Model Law on International Commercial Conciliation (2002), the UNCITRAL Conciliation Rules and other ADR instruments.

Thus, as can be seen, activities at various levels have been initiated and have begun to develop their own dynamics.

It is not realistic to expect rapid changes. To make legal professionals and business people in the region familiar with international commercial arbitration and the effects of the application of CISG in contractual relations is an educational and therefore extended process which can bear fruit only after a considerable amount of time has elapsed, in which these themes have been promoted and information has been adequately dispensed in the region. Obviously, more and better cooperation between the arbitral institutions and the Chambers of Commerce in the region needs to be achieved. And judges in the region need to be offered more training on CISG and ICA. If all these efforts continue, it can be confidently expected that political decision-makers, judges, lawyers and entrepreneurs in Southeast Europe will all see the benefits to be derived from the use of CISG and ICA as a direct consequence.

## VI. References for further information

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