

THE ROLE OF THE CISG AND INTERNATIONAL LEGAL
EDUCATION: A MODEL FOR FUTURE PROMOTION OF THE CISG

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I. INTRODUCTION

The UN Convention on Contracts for the International Sale of Goods (the “CISG” or “Convention”) is one of the world’s most successful international conventions, with 89 parties joining since it was opened in 1980.¹ The CISG was the product of years of dedicated drafting, negotiation, and cooperation between parties from divergent legal systems around the world and today it is widely viewed as a neutral set of rules governing international sales. In 2015 at the High-Level Panel held at during the Forty-Eighth Session of the of the United Nations Commission on International Trade Law (“UNCITRAL”), the CISG was described as:

[A] bridge between the top-down and bottom-up approach to the unification of the law of transnational contracts combining treaty made law with party autonomy and commercial practice. It is a bridge between common law and civil law. It is also a bridge between disparate legal notions, terms and meanings aiming to create a common language, a lingua franca, a language nobody can identify as its own, but everybody can understand, use and benefit from.²

During that same High-Level Panel, Professor Eric Bergsten went on to note that, “[w]hat goes far beyond the expectations of the drafters of CISG is the influence it has had on the law of sales in a number of countries, or even

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¹ *United Nations Treaty Collection*, TREATIES.UN.ORG, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=X-10&chapter=10&lang=en (last visited Oct. 30, 2019) [hereinafter *Status of CISG*].

² János Martonyi, *Thirty-five Years of Uniform Sales Law: Trends and Perspectives* 1–6, UNCITRAL.ORG, https://www.uncitral.org/pdf/english/texts/sales/cisg/35_Years_of_Uniform_Sales_Law-E.pdf (July 6, 2015).

of the law of contracts in general.”³ And indeed, it is apparent that the influence of the CISG, far from being limited to governing the transactions of private parties in transnational sales, has extended to a broader sphere of influencing the law of contracts around the world.

Much attention has been paid to the role that judges, arbitrators, practitioners, and international organizations such as UNCITRAL have played in advancing the CISG to the cusp of “those transnational general principles and usages,” which “[reflect] the fundamental requirements of justice in international trade and the concept of good faith in business.”⁴ But, less notice has been paid to the critical role that academics—and more specifically, educators—play in advancing the CISG as a model for contract law. This Article seeks to fill some of that gap by examining several contemporary educational means of promoting the CISG, and their effectiveness. In the first part, I will briefly discuss the “top-down” and “bottom-up” approaches traditionally emphasized in unification efforts, and outline some of the limitations of those methods. In the second part, I will explore the relative benefits of leveraging educational strategies to promote unification of contract and commercial law and emphasize the importance of education as a pillar of engagement equal to other unification approaches in impact. I will also describe some specific current educational efforts in the Middle East and North Africa region. Finally, I will conclude the article with a nod to the rising global economic and political imperatives that make an emphasis on legal education all the more critical for the CISG’s continued success in the future.

II. TOP-DOWN APPROACHES TO PROMOTION

Top-down approaches to advancing the uniformity and harmonization of international sales law by promoting the CISG include the act of drafting the Convention text and related legal instruments, the work done by UNCITRAL and contracting states to bring signatories on board, and the role

³ Eric E. Bergsten, *Thirty-five Years of the United Nations Convention on Contracts for the International Sale of Goods: Expectations and Deliveries*, in *THIRTY-FIVE YEARS OF UNIFORM SALES LAW: TRENDS AND PERSPECTIVES* 7, 12 (United Nations 2015).

⁴ *Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs of the Gov’t of Pak.* [2010] UKSC 46, [33].

of national courts and international tribunals in interpreting the Convention's provisions.

A. Convention Drafting and Adoption

If the work of promoting international legal instruments can be understood as existing along a spectrum, with varying levels of stakeholder engagement and resulting impact, then standing at the top of this spectrum would be the drafting and execution of conventions and treaty promulgation by international organizations such as UNCITRAL.⁵ This stands to reason: without a central body to coordinate drafting, facilitate multilateral dialogue, and produce a final document, unification and harmonization of global or transnational law would hardly be possible. Through its Working Groups, UNCITRAL undertakes an extensive process of instrument negotiation and drafting. Once finalized by the Working Group, instruments are submitted for consideration by UNCITRAL at its annual session. Convention texts must then go on to the UN General Assembly for adoption, while other instruments or texts may become effective after approval by UNCITRAL.⁶

The CISG's origins represent a high-water mark in international cooperation and negotiation during the height of the Cold War. The Convention was negotiated within Working Group II between 1968 and 1978, by 14 states from every region of the world.⁷ Sixty-two nations participated in the conference at which the text was adopted.⁸ It enjoyed 18 signatures between its opening for signature on April 11, 1980 and its closing on September 30, 1981.⁹ Since then, party states have been added to the

⁵ Sundaresh Menon, *The Somewhat Uncommon Law of Commerce*, 26 SING. ACAD. L.J. 23, 43–47 (2014).

⁶ United Nations Commission on International Trade Law, *A Guide to UNCITRAL: Basic Facts about the UN Commission on International Trade Law* 18 (United Nations) (2013).

⁷ The 14 states were: Brazil, France, Ghana, Hungary, India, Iran, Japan, Kenya, Mexico, Norway, Tunisia, Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. See Report of the Working Group on the International Sale of Goods, UNCITRAL Working Group on the International Sale of Goods, 1st Sess., para. 1, U.N. Doc. A/CN.9/35 (1970), reprinted in [1968–1970] 1 Y.B. Comm'n Int'l Trade L. 177, U.N. Doc. A/CN.9/SER.A/1970.

⁸ Gyula Eörsi, *A Propos the 1980 Vienna Convention on Contracts for the International Sale of Goods*, 31 AM. J. COMP. L. 333 (1983) (including 22 western nations, 11 socialist nations, and 29 "third world" nations).

⁹ See *Status of CISG*.

Convention at an average rate of over two new members each year. It can be understood from a glance at the numbers that 89 countries or jurisdictions have, therefore, taken it upon themselves to agree to a measure of unification regarding the law of sales at the international agreement level, even if outcomes remain disparate.¹⁰

Near this top level of convention drafting and adoption, but just below it in terms of legal effect, is the drafting and publication of model laws, legislative guides, and model provisions, which represent UNCITRAL's contribution to efforts at harmonization.¹¹ These instruments do not require wholesale adoption but can serve as useful templates for countries that wish to harmonize or modernize their laws, and for any variety of reasons face domestic constraints or require more flexibility than conventions provide.¹²

Therefore, the negotiation and drafting of international instruments can be considered the level at which multi-lateral negotiations and international cooperation culminates and from which international legal norms then proceed.

B. UNCITRAL Engagement

Harmonization and unification, of course, does not begin and end with drafting and adoption by the General Assembly. For these effects to unfold, the Convention must be promoted through a number of means, both informal and formal, that encourage party states to sign on and for others to do the same.¹³ This is accomplished to varying degrees of success by ratification, acceptance or approval, which naturally include some domestic mechanism for interpretation and enforcement.¹⁴ UNCITRAL undertakes significant technical assistance and capacity, building work to promote its instruments

¹⁰ Quentin Loh, *Perspectives on Harmonizing Transnational Commercial Law, in* THIRTY-FIVE YEARS OF UNIFORM SALES LAW: TRENDS AND PERSPECTIVES 13, 17 (United Nations 2015).

¹¹ A GUIDE TO UNCITRAL: BASIC FACTS ABOUT THE UN COMMISSION ON INTERNATIONAL TRADE LAW at 14.

¹² *Id.*

¹³ See generally Luca G. Castellani, *Promoting the Adoption of the United Nations Convention on Contracts for the International Sale of Goods*, 13 VINDOBONA J. INT'L COM. L. & ARB. 240 (2009).

¹⁴ United Nations Treaty Collection, *Glossary*, TREATIES.UN.ORG, https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml#acceptance (last visited Oct. 30, 2019).

around the world directly to member states and potential member states.¹⁵ It provides its legal officers as technical experts to workshops, conferences, and seminars, and assists with legal reform efforts including assessment and legislative drafting, among other activities aimed at encouraging the adoption and implementation of UNCITRAL texts.¹⁶

C. State and Region Engagement

In many parts of the world, the promotion of UNCITRAL texts receives an assist from countries who are signatories and wish to pursue regional integration and unification with their trading partners. The Association of Southeast Asian Nations (“ASEAN”) community’s effort at regional integration is an example of high-level, multilateral dialogue with an aim to arrive at a harmonized system of commercial laws, in which the CISG figures prominently.¹⁷ Vietnam has most recently joined the Convention with effect in 2017 after assistance efforts by UNCITRAL’s Regional Center for Asia and the Pacific (“RCAP”)¹⁸, and despite a few false starts, signs point to Indonesia’s ultimate accession as well.¹⁹ Currently, the CISG in Asia is led prominently by China, which has not only adopted it but has also based its

¹⁵ Castellani, *supra* note 13, at 240–41. *See also* United Nations Commission on International Trade Law, *Technical Assistance and Coordination*, UNCITRAL.UN.ORG, <https://uncitral.un.org/en/content/technical-assistance-and-coordination> (last visited Oct. 30, 2019).

¹⁶ Castellani, *supra* note 13, at 242–43.

¹⁷ *See* Gary F. Bell, *Harmonisation of Contract Law in Asia—Harmonising Regionally or Adopting Global Harmonisations—The Example of the CISG*, SING. J. LEGAL STUD. 362, 366–70 (2005). *See also* Castellani, *supra* note 13, at 242. *See generally* C.J. Sundaresh Menon, Speech at the 35th Anniversary of the Convention on Contracts for the International Sale of Goods “Roadmaps for the Transnational Convergence of Commercial Law: Lessons Learnt from the CISG” (Apr. 23, 2015).

¹⁸ Singapore is the only other ASEAN party to the Convention.

¹⁹ *See* Suria Oktaviandra, *Indonesia and Its Reluctance to Ratify the United Nations Convention on Contracts for the International Sale of Goods*, 3 INDONESIA L. REV. 243–55 (2018).

domestic contract law on the Convention.²⁰ South Korea and Japan are also parties.²¹

D. Domestic Courts, International Courts, and Tribunals

Separate from convention drafting, international diplomacy, and multilateral dialogue, but still constituting a top-down approach to promotion and harmonization, is the critical role of courts and arbitrators in interpreting and enforcing contracts governed by the CISG.²² One key feature of the CISG is that it does not create a centralized court body to hear and determine cases. Rather, the Convention leaves the work of interpretation to member states in line with Article 7 of Convention,²³ which requires that the Convention be interpreted with regard to its “international character and the need to promote uniformity in its application and the observance of good faith in international trade.”²⁴ Scholars have researched and published extensively on the role of national courts and arbitration bodies in interpreting various articles and provisions of the CISG,²⁵ and it is from this resulting body of jurisprudence and scholarship that flows much of our understanding of the CISG’s

²⁰ Bell, *supra* note 17, at 364–65. Shiyuan Han, *The CISG and Modernization of Chinese Contract Law* (Hors Serie Volume XVII) INTERNATIONAL TRADE/ADR IN THE SOUTH PACIFIC 67, 70–71, 79 (2014), https://www.victoria.ac.nz/data/assets/pdf_file/0019/920107/Han.pdf; Liming Wang, *The United Nations Convention on Contracts for the International Sale of Goods and China’s Contract Law* 39–43 (Proceedings of the High Level Panel held during the Forty-Eighth Session of the United Nations Commission on International Trade Law), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/35_years_of_uniform_sales_law-e.pdf.

²¹ See United Nations Treaty Collection, *Status of Treaties* (2019), TREATIES.UN.ORG, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en.

²² See Loh, *supra* note 10, at 17.

²³ See Menon, *supra* note 17, at 21 (Justice Menon highlights the impact of this delegation of interpretive power, which is to say that “[t]he elaboration and expansion of the Convention is therefore performed at the level of dispute resolution. . . . [T]he CISG does not contemplate a centralized forum which is competent to finally determine disputed issues of law. Instead it has been designed to vest critical interpretive and jurisprudential responsibilities with judges and arbitrators, who must acknowledge the integral role they play in sustaining and advancing the transnational harmonization of commercial law”).

²⁴ United Nations Convention on Contracts for the International Sale of Goods, art. 7, Apr. 11, 1980, 1489 U.N.T.S. 3. [hereinafter *CISG Text*].

²⁵ See Annotated Text of CISG, *Article 7*, CISG.LAW.PACE.EDU, <http://www.cisg.law.pace.edu/cisg/text/e-text-07.html#schol>.

functions today (also thanks in large part to the publication of the CISG Digest in 2008 and its updates in 2012 and 2016).²⁶

In addition to the role of domestic courts in interpreting the CISG, there is a growing movement to establish international commercial courts which are perceived as particularly competent to adjudicate disputes under the CISG.²⁷ These work in tandem with domestic courts and therefore retain important coercive powers such as compelling production of evidence, issuing orders or injunctions, and enforcing judgments.²⁸ The Singapore International Commercial Court, established in 2015, is one such example of a specialized international commercial court.²⁹ More have been established or are under development such as in Dubai,³⁰ the English Commercial Court,³¹ and the recently announced Chinese International Commercial Court.³² One of the distinct advantages that these courts offer compared to other forms of international dispute resolution is the promise of a body of jurisprudence interpreting the CISG and other international business norms, which is sure to promote uniformity and contribute to harmonization of commercial laws.³³

III. TOP-DOWN LIMITATIONS

The top-down approach to promotion of the CISG is critical to the success of the Convention around the world. Without the leadership of UNCITRAL in promoting its own Convention and offering the expertise and assistance of its legal officers in legal reform efforts, it is not clear how far

²⁶ *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods*, UNCITRAL.ORG, https://www.uncitral.org/pdf/english/clout/CISG_Digest_2016.pdf.

²⁷ This emerging system of international commercial courts has received a boost by the recent promulgation of the Hague Convention Choice of Court Agreements 44 I.L.M 1294 (2005).

²⁸ Loh, *supra* note 10, at 16–17.

²⁹ See Singapore International Commercial Court, <https://www.sicc.gov.sg/>.

³⁰ See About the DIFC Courts, <https://www.difccourts.ae/about-courts/>.

³¹ See Commercial Court, <https://www.gov.uk/courts-tribunals/commercial-court>.

³² See China International Commercial Court, <http://cicc.court.gov.cn/html/1/219/193/195/index.html>. China's entrance into the international commercial court arena should be viewed in the context of its highly ambitious Belt and Road Initiative, through which it seeks to revive and expand the ancient Silk Road trading routes which connected China to African and European markets during the Han Dynasty (see <https://www.worldbank.org/en/topic/regional-integration/brief/belt-and-road-initiative> for an overview of the initiative).

³³ Loh, *supra* note 10, at 17.

the text would have progressed in its 39 years. Perhaps even more important has been the high-level diplomacy and engagement by member states who wish to influence their trading partners and create a harmonized commercial legal framework for their merchants.

However, there are limitations to the effectiveness of this form of promotion. In the first place, UNCITRAL, as a specialized body of the UN, faces budget constraints which can and do limit its ability to work meaningfully in some regions of the world.³⁴ There are some cultural constraints in this aspect as well; the CISG is published in several official languages, including English, French, Russian, Mandarin, Arabic, and Spanish.³⁵ But, vast numbers of practitioners and judges who may be left to interpret the Convention's provisions in domestic courts do not necessarily practice in these languages.³⁶ Regarding direct outreach, UNCITRAL officers and experts are understandably concentrated in or near UNCITRAL's Secretariat and satellite office locations, which geographically limits the reach of the organization to some extent and perhaps its influence as well.³⁷

In the second place, international and regional diplomatic efforts to arrive at a harmonized system of commercial laws which would include the CISG is a time-consuming process, which may be subject to geopolitical realities making harmonization more challenging in some regions than in others.³⁸ Consider, for example, the economic, social, and political

³⁴ Castellani, *supra* note 13, at 244.

³⁵ See CISG Database at Pace Law School, *Text of the CISG*, CISG.LAW.PACE.EDU, <https://www.cisg.law.pace.edu/cisg/text/text.html>.

³⁶ See *id.*, unofficial translations of the CISG are available in most European languages, as are unofficial translations in Japanese and Farsi. Bahasa, Urdu, and Kiswahili are notably absent from the unofficial translations available on the CISG Database, despite their prevalence among significant international trading blocs. This may be due in part to the only recent economic emergence of southeast Asian, south Asian, and African regions.

³⁷ See UNCITRAL, *Regional Centre for Asia and Pacific*, UNCITRALRCAP.ORG, <http://uncitralrcap.org/en/about/> (based in the Republic of Korea. It is also time-consuming and in some cases difficult to arrive at the necessary terms of agreement for countries to play host to UNCITRAL institutions, in which certain requirements must be met including diplomatic residency arrangements for UNCITRAL staff, security, suitable office space, and financial contributions to fund operations.).

³⁸ See Castellani, *supra* note 13, at 241 (referring to former Yugoslavia) ("One pattern referred to the desirability of adopting uniform trade law texts in certain regions where legal uniformity had recently been disrupted by state fragmentation.").

heterogeneity of ASEAN compared to the EU.³⁹ There are unique barriers present to arriving at a harmonized system of commercial laws in a region in which the richest country has a per capita gross national income (“GNI”) of \$52,600 USD⁴⁰ and the poorest a per capita GNI of \$1,455 USD,⁴¹ and where the concept of rule of law is nebulous, if present at all.⁴² In this context, achieving a regionally harmonized system of commercial law with uniform interpretation of the CISG would take perhaps decades of dedicated legal reform efforts, capacity building, technical assistance, and ASEAN-level engagement before the goal would be realized.

Finally, while the delegation of interpretive power to domestic courts is where the CISG may lay its claim to be a truly international convention, the shortcomings of domestic courts in interpreting the CISG’s provisions in line with Article 7 are well-documented.⁴³ Achieving uniformity, therefore, requires efforts that reach beyond those represented at the top of the promotional spectrum.

IV. BOTTOM-UP APPROACHES TO PROMOTION

At the opposite end from convention drafting and promulgation on the promotional spectrum, we find the user experience: contract drafting and dispute resolution. Parties do not need to select the CISG to govern their contract; under Article 1 of the Convention, the CISG applies to contracts for the sale of goods when the parties’ places of business are in different contracting states, or when the rules of private international law would lead to the application of the law of a contracting state.⁴⁴ Nonetheless, parties also can and do opt in to the CISG when they select the law of a contracting state to govern their contract for sale; or, if they wish the Convention to apply and are uncertain that the applicable rules of private international law would lead

³⁹ Loh, *supra* note 10, at 13–14.

⁴⁰ The World Bank, *Singapore*, [WORLD BANK.ORG](https://www.worldbank.org/en/country/singapore/overview), <https://www.worldbank.org/en/country/singapore/overview> (last visited Oct. 23, 2019).

⁴¹ The World Bank, *Myanmar*, [WORLD BANK.ORG](https://www.worldbank.org/en/country/myanmar/overview), <https://www.worldbank.org/en/country/myanmar/overview> (last visited Oct. 23, 2019).

⁴² Myanmar ranks 110 out of 126 on the World Justice Project Rule of Law Index, [WORLD JUSTICE PROJECT](http://data.worldjusticeproject.org/#/groups/MMR), <http://data.worldjusticeproject.org/#/groups/MMR> (last visited Oct. 30, 2019).

⁴³ Petra Butler, *The Use of the CISG in Domestic Law*, 15 *VINDOBONA J. INT’L COM. L. ARB.* 275–80.

⁴⁴ *CISG Text*, *supra* note 24.

to its application.⁴⁵ Also, courts and tribunals will apply the CISG to a contract in which it has not been selected by the parties if the relevant private international law rules lead to its application.⁴⁶ Therefore, both contract drafting practices and the dispute resolution process represent a form of promotion of the CISG, which constitutes the “bottom-up,” market-driven approach to advancing uniformity and harmonization of international sales law.

Parties undertaking transnational or cross-border business will consider several important factors when they negotiate the contract governing the relationship, including which law will govern their transaction.⁴⁷ Contract negotiators usually strive to arrive at a choice of law which is favorable to their client, familiar to their lawyers, and easy to understand.⁴⁸ Failing favorability or familiarity, negotiators often seek to compromise with a neutral law or rules of law to govern the contract.⁴⁹

It is thought that the CISG satisfies most if not all of these considerations in international business transactions,⁵⁰ and is therefore an optimal choice of governing law.⁵¹ Contracts for sale containing a choice of law clause which opts in to the CISG suggest an endorsement of the instrument’s value to international trade,⁵² and one could ostensibly infer a preference for the Convention’s selection in future contracts among those users as well. Thus, contract drafting which positively opts in to the CISG by explicit selection or by selection of the law of a contracting state, serves as a market-driven

⁴⁵ See generally Harry M. Flechtner & Ronald A. Brand, *Opting in to the CISG: Avoiding the Redline Products Problem* 95–128 (Mads Bryde Andersen & René Franz Henschel eds., Djøf Publishing, Copenhagen 2016).

⁴⁶ *Id.*

⁴⁷ See, e.g., Tom Price et al., *The Basics: What to Consider When Negotiating Governing Law and Jurisdiction Clauses*, GOWLING WLG (May 1, 2018), <https://gowlingwlg.com/en/insights-resources/articles/2018/negotiating-governing-law-and-jurisdiction-clauses/>.

⁴⁸ *Id.*

⁴⁹ John Coyle, *The Role of the CISG in US Contract Practice: An Empirical Study*, 38 U. PA. J. INT’L. L. 195, 228 (2016).

⁵⁰ See Joseph M. Lookofsky, *Loose Ends and Contorts in International Sales: Problems in the Harmonization of Private Law Rules*, 39 AM. J. COMP. L. 403, 404 (1991). Though, there is some criticism of the CISG being a “buyer-friendly” regime.

⁵¹ Coyle, *supra* note 49, at 198. See also Franco Ferrari, *PIL and CISG: Friends or Foes?*, 31 J.L. & COM. 45, 46–48 (2013).

⁵² See Paul Schiff Berman, *The Inevitable Legal Pluralism Within Universal Harmonization Regimes: The Case of the CISG*, 21 UNIF. L. REV. 1, 2 (2016).

form of promotion: a truly bottom-up approach to uniform international sales law.⁵³

Even where parties have not made a positive choice of law selecting the CISG, or have not made any choice of law at all, the CISG can apply automatically to contracts in which parties' places of business are in different contracting states, or where the rules of private international law would lead to the application of the law of a contracting state.⁵⁴ To a certain extent this feature of the CISG makes the Convention "self-promoting" at the dispute resolution level.⁵⁵

Here, it is important to differentiate between the work of the courts and tribunals in interpreting the CISG, which is discussed in Section II.D. above, and in applying the CISG as a choice of law. The latter reflects party choice and the user experience: from the bottom up, the role of the courts and tribunals is to correctly conduct a private international law or applicable law analysis, and determine which national law governs the contract as the outcome.⁵⁶ In this analysis, courts and tribunals must apply the applicable choice of law rules⁵⁷ and examine party intent, past practices, previous dealings, explicit or implicit choice, or which national law is most closely connected to the contract.⁵⁸ When this analysis leads to a national law which has adopted the CISG, the CISG governs the contract between the parties even if they did not proactively select its application in the text of their agreement.⁵⁹ Thanks to this self-promoting aspect of the CISG during dispute resolution proceedings, it is thought that up to 80% or more of contracts for the international sale of goods are potentially subject to the Convention's provisions.⁶⁰

⁵³ See Loh, *supra* note 10, at 17.

⁵⁴ *CISG Text*, *supra* note 24, at 1 ("This Convention applies to contracts of the sale of goods between parties whose place of business are in different states: (a) when the states are Contracting states; or (b) when the rules of private international law lead to the application of the law of a Contracting state.").

⁵⁵ Loh, *supra* note 10, at 16–17.

⁵⁶ See Henry Mather, *Choice of Law for International Sales Issues Not Resolved by the CISG*, 20 J.L. & COM. 155, 155 (2001).

⁵⁷ See, e.g., *Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the Law Applicable to Contractual Obligations (Rome I)*, 177 OFFICIAL J. OF THE EUR. COMMUNITIES 1 (2008); see also *Principles on Choice of Law in International Commercial Contracts*, 2015 HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW 1.

⁵⁸ Flechtner & Brand, *supra* note 45, at 99.

⁵⁹ *Id.* at 113.

⁶⁰ Ingeborg Schwenzer & Lina Ali, *The Emergence of Global Standards in Private Law*, VINDOBONA J. INT'L COMM. L. ARB. 93, 94–95 (2014).

V. LIMITATIONS TO BOTTOM-UP PROMOTION

The bottom-up approaches to promoting the CISG, which represent the user experience and privately-undertaken initiatives, are an excellent demonstration of the CISG's prominence at the contracting and dispute resolution level. These user experiences, along with leadership initiatives amongst CISG advocates, serve as a valuable promotional tool for uniformity and harmonization of contract law in international sales. Nonetheless, there are significant shortcomings to bottom-up, market-driven promotion of the CISG.

In the first place, there are elements of the CISG which serve to check the Convention's self-promoting capabilities and limit its application at the dispute resolution level. Under Article 95 of the Convention, states may exclude application of Article 1(1)(b).⁶¹ This reservation restricts the CISG's application to cases where the other party is also from a member state to the Convention. Several important jurisdictions have made this reservation, including the United States and China—the world's two commercial superpowers.⁶²

Moreover, in order to preserve party autonomy the Convention permits parties to “opt out” of its application altogether, or to derogate from selected provisions under Article 6.⁶³ This opt-out regime is thought to have contributed substantially to the success of the Convention at the ratification level.⁶⁴ At the same time, it is also this feature that is thought to make the CISG less successful at the contracting level.⁶⁵ For example, the CISG has limited uptake in common law jurisdictions, and recent research demonstrates that companies in the United States “reflexively” opt out of the CISG.⁶⁶ By way of comparison, the CISG provides a very popular doctrine

⁶¹ *CISG Text*, *supra* note 24, art. 95 (“Any state may declare at the time of its deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1)(b) of Article 1 of this Convention.”).

⁶² Ulrich G. Schroeter, *Reservations and the CISG: The Borderland of Uniform International Sales Law and Treaty Law After Thirty-Five Years*, 41 *BROOK. J. INT'L. L.* 201, 247–48 (2015).

⁶³ *CISG Text*, *supra* note 24, art. 6 (“The parties may exclude application of this Convention, or subject to Article 12, derogate from or vary the effect of any of its provisions.”).

⁶⁴ Yeo Tiong Min, Dean, Sing. Mgmt. Univ. Sch. of Law, Address at the 35th Anniversary of the *Convention on the International Sale of Goods* (Apr. 2015).

⁶⁵ See also Coyle, *supra* note 49, at 205.

⁶⁶ *Id.* at 200.

in countries like China, where research shows that companies there routinely select the CISG to govern their international sales contracts.⁶⁷

There are a few possible reasons for why the CISG has not fared well in contracting practices in common law countries. The first is that while it is true that the Convention is the product of compromise between common law and civil law doctrines,⁶⁸ the CISG more closely resembles a civil law approach to commercial law regimes, making it less familiar to lawyers trained under the common law.⁶⁹ The second reason may be that in common law jurisdictions, the CISG faces stiff competition from long-established commercial law doctrines, such as English law or the UCC.⁷⁰ Both of these reasons point to a contributing underlying factor, which is that law students in common law jurisdictions such as the United States and Singapore⁷¹ are unlikely to encounter the CISG during their studies unless they elect to study international business transactions or a similar course.⁷² The CISG is generally not introduced in first-year contracts courses.⁷³

Thus, at the contracting level the CISG appears to be less successful than it is at the ratification level. It seems that parties remain hesitant to opt in to the Convention's provisions thereby precluding application of their own national laws, and this may be due to a number of contributing factors.⁷⁴ And, while the CISG's success at the dispute resolution level is notable, the balance struck between Article 1(1)(b) and Articles 6 and 95 limits the Convention's self-promotional potential.⁷⁵ Along with the array of other choices available in the applicable law marketplace, the inherent shortcomings in the market-driven approach to promotion noted here demonstrate that something more is needed to promote a uniform culture of contract through the CISG.

⁶⁷ *Id.* at 206.

⁶⁸ Ulrich Magnus, *The Vienna Sales Convention (CISG) between Civil and Common Law—Best of all Worlds?*, J. CIV. L. STUD. 69 (2010).

⁶⁹ Tiong Min, *supra* note 64.

⁷⁰ *Id.*

⁷¹ E-mail from Gary F. Bell, Associate Professor, Nat'l U. of Sing., to Janet C. Checkley (on file with author) (pointing out that his faculty was resistant to adopting a contract law curriculum which would include the CISG as part of a mandatory course).

⁷² See *infra* Section VI.B.

⁷³ William S. Dodge, *Teaching CISG in Contracts*, 50 J. LEGAL EDUC. 72 (2000).

⁷⁴ Coyle, *supra* note 49, at 205–08.

⁷⁵ See generally Brand & Flechtner, *supra* note 45.

VI. THE MIDDLE GROUND: INTERNATIONAL LEGAL EDUCATION

From the preceding analysis, it may be apparent that between the top-down and the bottom-up approaches to promotion of the CISG lies a delta. Each approach is limited in efficacy to a large extent absent a critical element to assist it: quality legal education about the CISG and its provisions. This third and final pillar of promotion provides the requisite information and knowledge needed for all the other levels of engagement with the CISG already discussed: from contract drafting, to advocacy in international fora, interpreting provisions, issuing orders and awards, and implementing legislation. Without the underlying foundation of education, the delta between practice and policy cannot be properly bridged, and the resulting gaps could prevent the other promotional approaches from achieving their desired impact.

Yet, scholarship on legal education as an essential tool for promotion of the CISG is underdeveloped. A few authors have published articles about how to teach contract law using the CISG,⁷⁶ but there has not been an extensive review of the impact of international legal education on the CISG's proliferation around the world, or its uniform interpretation. At the same time, there has never been a period in history when legal education was more international in nature or had more of a direct influence on the development of international law and policy.⁷⁷ Therefore, a look at how international legal education advances the promotion of the CISG around the world is now appropriate.

It should be noted that there are as many approaches to international legal education as there are international law educators, and within the scope of this article there is far too much ground to cover for a truly comprehensive review. The following section will briefly explore three distinct contributions for the purpose of CISG promotion that typically flow out of universities, law faculties, or centers of learning: scholarly research, classroom teaching, and practical legal education. It will evaluate their merits in turn.

⁷⁶ See *infra* Section VI.B.

⁷⁷ Simon Chesterman, *The Globalization of Legal Education*, 35 SING. J. LEGAL STUD. 58, 60 (2008).

A. Scholarly Research

There is perhaps no international body of law on which there is more scholarship widely available to the public than that of the CISG and its provisions.⁷⁸ Thanks (once again)⁷⁹ to the Albert H. Kritzer CISG Database, the collection of scholarly articles available is in the thousands.⁸⁰ CISG scholars seem to be a particularly prolific group as well. The body of academic articles and writing available grows every year, spurred by new developments in the law emerging out of national courts and practice solutions implemented by tribunals around the world. One international journal, the *Vindobona Journal of International Commercial Law and Arbitration*, grew out of an association of Vis Moot Alumni⁸¹ who wished to create a forum for themselves, their colleagues, and future alumni of the moot to publish research on international commercial law and arbitration.⁸² Therefore, not only are long-established and widely published scholars contributing to the ongoing development of CISG material; the newest generation of lawyers are researching, publishing, and contributing as well.

The value of widely available CISG scholarship for promoting uniform interpretation of the Convention cannot be overstated. This is often not the case with the majority of legal scholarship. Publishers keep a tight corner on most scholarship, which is collected into printed volumes and sold at potentially prohibitive prices by publishers concentrated in the United Kingdom, Europe, and the United States. These materials are not available to online researchers unless they can afford a paid subscription to one of the major legal databases.⁸³ The collection of articles on the CISG Database goes to great lengths to expand access to critical analysis of the CISG by the world's leading scholars and equalize the playing field for practitioners in jurisdictions where access to printed resources is limited or constrained.

⁷⁸ Bergsten, *supra* note 3.

⁷⁹ See *infra* Section VI.B.

⁸⁰ Pace Law School Institute of International Commercial Law, ALBERT H. KRITZER CISG DATABASE, <http://www.cisg.law.pace.edu/cisg/biblio/bib2.html> (last updated Nov. 11, 2015).

⁸¹ For an extensive discussion of the Vis Moot, see *infra* Section VI.D.

⁸² See Moot Alumni Association, <https://www.maamembers.net/journals>.

⁸³ Subscriptions to Westlaw and LexisNexis, for example, can cost as much as USD \$5,000 per year for a single user.

But even the CISG Database cannot make up for the language gap in leading scholarly materials, which continues to be a barrier to dissemination of knowledge.⁸⁴ Nearly all of the articles available on the CISG database are in their original language of publication, most often English, though some translated documents are available.⁸⁵ Some key texts enjoy wider translation, while other books and articles remain obscured due to their limited distribution in other languages.⁸⁶ This leads to another limitation: the location of origin of CISG legal scholarship, much of which has been concentrated in civil law jurisdictions with less scholarly uptake in common law jurisdictions or regions outside of western Europe.⁸⁷ The lack of regional, comparative, and national diversity among scholars may also contribute to a homogenous approach to CISG analysis and interpretation, which may be reflected in how arbitrators render awards and potentially how awards are enforced by the courts.

This is starting to change, however, in large part thanks to renewed demand as fresh markets open to commerce, and the creation of a new class of scholars originating in parts of the world such as the Asian continent and the Middle East. Some potential reasons for this shift will be explored in the sections immediately below.

B. Classroom Teaching

International legal education has never been more diverse, more accessible, or more globalized in history than it is at this moment in time.⁸⁸ Law students today are more mobile than ever before, and, increasingly, classroom teaching is moving online, which has enormous practical implications for global education. A law student in Kampala could enroll in

⁸⁴ And, this limitation works in both ways. Scholars who research and publish on the CISG in English or German are unlikely to have access to scholarship that is published in Arabic or Chinese.

⁸⁵ See *supra* note 80.

⁸⁶ Schlechtriem and Schwenger's treatise, *Commentary on the UN Convention on Contracts for the International Sale of Goods*, has been published in German, English, Spanish, and Portuguese.

⁸⁷ The contemporary leading scholars on the CISG (i.e., those with the most authoritative publications including Flechtner, Schwenger, Ferrari, Kroell, Graves, Mistelis, Gabriel, and Butler) are predominantly from civil law backgrounds (German, Austrian, Italian) and western in origin (American, German, Italian, Australian). Leading Asian CISG scholars (Hiroo Sono and Han Shiyuan, for example) are not as widely published by the prominent international journals or publishers.

⁸⁸ Chesterman, *supra* note 77.

online courses at Bond University in New Zealand and complete an LLM degree without needing to relocate her life, family, and responsibilities or pause her legal practice while she pursues her education.⁸⁹ The growth of the LLM degree has led to greater cross-border movement of lawyers and students who decide to pursue their legal education overseas.⁹⁰ These factors track with the impact of globalization: it makes more sense in 2019, in terms of investment of time, money, energy, and resources, to pursue comparative legal knowledge and an international legal education than it did 30 years ago, or even 20 years ago.⁹¹ The same factors also make the classroom a natural vehicle through which to promote the CISG to lawyers most likely to use it later in their practices.

Within core curricula it is still rare to encounter the CISG in an American first-year contracts course.⁹² It is more likely that American law students will selectively encounter the CISG later in their education, during upper-level studies of international business transactions or the law of sales.⁹³ Nonetheless, some educators do promote teaching the CISG in first-year contracts courses as a means of introducing a comparative law component.⁹⁴ Others see its inclusion in contract law curricula as a means of teaching sound contracting principles and encouraging critical analysis about legal rules.⁹⁵ American contracts casebooks do not make extensive mention of the CISG or major cases decided under the CISG, which can make its integration challenging, but there is some evidence that casebook authors are slowly beginning to include CISG references into casebooks.⁹⁶

The potential for promoting the CISG through classroom education is not limited to first-year contracts courses. A more dynamic and responsive approach would be to capitalize on the increased availability of international

⁸⁹ *Online Master of Laws (International Commercial Law and Dispute Resolution Specialisation)*, BOND UNIVERSITY, <https://bond.edu.au/intl/program/programs/master-laws/online-master-laws-international-commercial-law-and-dispute-resolution> (last visited Nov. 1, 2019).

⁹⁰ While LLM enrollment in the United States has slowed in recent years, other regions continue to see LLM programs grow.

⁹¹ Chesterman, *supra* note 77.

⁹² Dodge, *supra* note 73.

⁹³ *Id.* at 77.

⁹⁴ See generally Edgar Munoz, *Teaching Comparative Law Through the CISG*, 4 *INDON. J. INT'L & COMP. L.* 725 (2017).

⁹⁵ Dodge, *supra* note 73.

⁹⁶ *Id.* at 73.

law degrees.⁹⁷ In recent decades, legal education has seen the innovation of dual degrees, or double-degrees.⁹⁸ These are arrangements under which law schools in different jurisdictions agree to recognize transferred credits in order for students to earn dual qualifications.⁹⁹ Some law schools have gone even further and partnered to co-develop and implement international law curricula, resulting in degrees from both universities.¹⁰⁰ And thanks to reduced costs of travel, increased access to technology, and an ever-more mobile student generation, lawyers in droves are pursuing LLM degrees in foreign jurisdictions.¹⁰¹ This suite of options for internationally-minded lawyers means that there can be as many international, foreign exchange, expatriate, or dual-degree students in a law classroom as there are national students.¹⁰² A reasonable model for promotion of the CISG through legal education, therefore, might be for CISG scholars and international law educators to invest in making their universities centers of excellence for the study of international contract and commercial law, marketed directly to international law students.

A few downsides to this approach to legal education are apparent. First, much rests on the nature of the education and the support of the academic institution. It should not be considered a good stopping point that the CISG is simply introduced into core curricula or emphasized by international law educators; the *quality* of the education matters just as much as the presence and availability of the education. Second, it is challenging to introduce the CISG into core curricula in countries where the CISG has not been adopted, as it would probably not be considered necessary knowledge for practicing law in that jurisdiction. Moreover, even in countries where the CISG has been adopted and is present in the national commercial law framework, as noted above the resources necessary for teaching the CISG are not as widely available through traditional casebooks or textbooks which can make it a challenging subject to teach through traditional methods. Despite these limitations, however, classroom education is probably the most sustainable and long-term oriented method for promoting the CISG in the future, given

⁹⁷ Chesterman, *supra* note 77, at 67.

⁹⁸ *Id.* at 63.

⁹⁹ *Id.* at 64.

¹⁰⁰ *Id.* at 67.

¹⁰¹ Adam Palin, *LLM courses 2011: Growth area*, FINANCIAL TIMES (Nov. 25, 2011), <https://www.ft.com/content/7bdf70fe-1641-11e1-a691-00144feabdc0>.

¹⁰² Chesterman, *supra* note 77, at 60.

the considerations outlined above. It would, nonetheless, benefit from an effort to enhance faculty and administrative capacity for teaching it in the classroom context. Such an assist could come from an element of practical legal education, one example of which is described below.

C. Practical Legal Education—Vis Moot Case Study: Middle East

Practical legal education that takes place outside the four walls of a classroom must be considered as an essential aspect of international legal education that is driving the promotion of the CISG in many parts of the world today. Specifically, this can be attributed to the Willem C. Vis International Commercial Arbitration Moot Court. Founded in 1994 by Professor Eric Bergsten, the Vis Moot was conceived for the very purpose of teaching law students about the CISG as a way to promote awareness of the instrument.¹⁰³ In its first year the Vis Moot consisted of eleven law schools representing nine countries.¹⁰⁴ Today the Vis Moot consists of over 360 teams representing more than 80 countries, with students numbering over 2,500 and joined by over 1,000 lawyers and practitioners who gather to observe, network, and arbitrate during the competition.¹⁰⁵

Information on the Vis Moot is widely available and can be read about in much more detail than I will provide here,¹⁰⁶ but a brief overview is warranted nonetheless. Each year, teams competing in the Vis Moot undertake to represent two fictional clients engaged in a commercial dispute governed by the CISG, and to be settled through international arbitration proceedings. Teams write and submit legal memoranda on behalf of both the claimant and the respondent in the fictional dispute, and ultimately proceed to Vienna or Hong Kong where they engage in oral arguments on behalf of their clients before panels of distinguished arbitrators from around the world. The competition is conducted entirely in English. The mission of the Vis

¹⁰³ Bergsten, *supra* note 3, at 480.

¹⁰⁴ See *Inaugural Willem C. Vis International Commercial Arbitration Moot Registered Teams 1993-94*, <http://www.cisg.law.pace.edu/cisg/moot/participants1.html>.

¹⁰⁵ See 25th Annual Willem C. Vis International Commercial Arbitration Moot Court Programme, <https://vismoot.pace.edu/media/site/previous-moots/25th-vis-moot/programme.pdf>.

¹⁰⁶ See Bergsten, *supra* note 3; see also Jeffrey Waincymer, *International and Comparative Legal Education Through the Willem C. Vis Moot Program: A Personal Reflection*, 5 *VINDOBONA J. INT'L COM. L. & ARB.* 251 (2001).

Moot competition is to “foster the study of international commercial law and arbitration for resolution of international business disputes” and to “train law leaders of tomorrow in methods of alternative dispute resolution.”¹⁰⁷

The value of the Vis Moot in promoting the CISG is undeniable.¹⁰⁸ Over 10,000 law students have passed through the rigors of the program in the last 25 years, and the Vis Moot has proven itself to be not only a training ground but a recruiting pool for young lawyers interested in commercial law and arbitration as well.¹⁰⁹ Beyond promoting the CISG, the Vis Moot’s value as a training resource and as a means of promoting good contracting principles has attracted the attention of international development organizations interested in assisting countries to reform their commercial laws and improve their environments for international arbitration. The goal of this sort of assistance is not to promote the CISG *per se*, but rather to promote a conducive environment for international investment and increased transnational commerce. The CISG is regarded as a tool to assist that effort.

One prominent example of such engagement is the work done by the Commercial Law Development Program (CLDP), a specialized branch of the U.S. Department of Commerce.¹¹⁰ The CLDP has been sponsoring and organizing a regional training and annual Pre-Moot¹¹¹ Competition to assist teams and law schools from around the Middle East and North Africa region

¹⁰⁷ *About the Moot*, VISMOOT.PACE.EDU, <https://vismoot.pace.edu/site/about-the-moot> (last visited Apr. 22, 2020).

¹⁰⁸ See Menon, *supra* note 17, at 23 (“Among the most meaningful of all the initiatives to promote the CISG must surely be the Willem C. Vis International Commercial Arbitration Moot. The annual competitions held in Vienna or Hong Kong are amongst the most prestigious competitions on the moot calendar and has introduced generations of aspiring law students to the workings of the CISG.”).

¹⁰⁹ Bergsten, *supra* note 3, at 485.

¹¹⁰ Another similar effort not researched for this paper includes assistance from GIZ to the development of the Belgrade Pre-Moot. See *Open Regional Fund for South-East Europe—Legal Reform*, DEUTSCHE GESELLSCHAFT FÜR INTERNATIONALE ZUSAMMENARBEIT, <https://www.giz.de/en/worldwide/31780.html>.

¹¹¹ A Pre-Moot competition is a preliminary practice competition supplementary to the main Vis Moot competition. Pre-Moots can be organized by private sector sponsors or law schools, and may be open or by invitation only. An important feature of the Vis Moot is that it does not require qualifier rounds in order to compete in Vienna or Hong Kong; any team which completes the registration and submits the claimant and respondent memoranda may compete in the oral rounds. Therefore, pre-moots are optional practice opportunities for teams. It is thought that perhaps a hundred or more of these pre-moot competitions take place around the world before the oral rounds in Vienna and Hong Kong. Pre-moots range in size, formality, and complexity. For example, the ICC-sponsored pre-moot in Kuala Lumpur attracts upwards of 90 teams from around the world, whereas the CLDP sponsored pre-moot in Bosnia attracts between 6 and 7 teams from Bosnia and the region.

to participate in the Vis Moot since 2010. Now in its ninth year, in 2019 the Pre-Moot included 17 teams in its annual three-phase training cycle and competition, representing Bahrain, Kuwait, Saudi Arabia, Qatar, the UAE, Tunisia, Jordan, Egypt, Lebanon, Iraq, Afghanistan, and Sri Lanka. The CLDP provides financial assistance to a number of teams, paying for their travel to and from the trainings and Pre-Moot, and in some cases assisting with their expenses at the Vis Moot itself. The CLDP also supports a number of international expert trainers to provide substantive assistance to the teams and their coaches.¹¹²

From the founding of the Vis Moot in 1994 until 2008, there were no teams representing Arab or MENA-region countries participating in the Vis Moot.¹¹³ By 2018, a mere ten years later, twenty teams from the MENA region competed in Vienna. More than half of those teams in 2018 had received assistance from the CLDP and its program partners,¹¹⁴ and another several had received assistance or support in the past.¹¹⁵

The significance of the growth of Arab participation in the Vis Moot is notable due the CISG's status in that region. The CISG is not widely adopted in the MENA region,¹¹⁶ and the majority of teams competing from the MENA region are coming from non-member states. It is therefore unlikely that the future lawyers of these nations would encounter the CISG in their

¹¹² See Janet Checkley, *THE COMMERCIAL LAW DEVELOPMENT PROGRAM MIDDLE EAST PRE-MOOT 2011-2017: STATUS, UPDATE, IMPACT, AND RECOMMENDATIONS 1-43* (2017).

¹¹³ See *Moots*, CISG.LAW.PACE.EDU, <http://www.cisg.law.pace.edu/cisg/moot/mootlist.html> (outlining, in chronological order, the Arab countries that began participating in the Vis Moot Competitions. Bahrain was the first Arab country to participate in the Vis Moot in 2008. In 2009, Jordan joined as the second Arab country to send a team).

¹¹⁴ Program partners include the University of Pittsburgh School of Law Centre for International Legal Education (CILE), the Bahrain Chamber for Dispute Resolution (BCDR), the ICC, UNCITRAL, and the Mena Chambers.

¹¹⁵ The MENA teams in Vienna in 2018 included the University of Bahrain,* Royal University for Women* (Bahrain), Cairo University (Egypt), Institute for Studies in Public Law (Iran), Khatam University (Iran), Shahid Beheshti University (Iran), University of Tehran* (Iran), Al-Iraqiya University* (Iraq), College of Law and Business (Israel), Hebrew University of Jerusalem (Israel), Middle East University* (Jordan), University of Jordan,* Kuwait International Law School,* Holy Spirit University of Kaslik* (Lebanon), Universite Saint-Joseph de Beyrouth (Lebanon), Qatar University,* Dar Al-Hekma University* (Saudi Arabia), University of Carthage* (Tunisia), Middlesex University Dubai, and UAE University.* All schools marked with an asterisk received support and training assistance from the CLDP and its training partners, or has received such support in the past.

¹¹⁶ See UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en (describing Egypt, Israel, Iraq, Syria, and Bahrain as the only MENA countries that have acceded to the Convention).

studies but for their participation in the Vis Moot. Facilitated engagement in the Vis Moot is therefore more than merely helpful; in fact, it is a critical component for advancing promotion of the CISG in the MENA region.¹¹⁷

There are several other distinct advantages to the Vis Moot as an educational vehicle for promoting the Vis Moot. First, compared to implementing a new international contract law curriculum, participation in the Vis Moot is a relatively low-cost and low labor-intensive approach to international legal education for universities and law faculties with limited resources. While travel to and from the Competition can be expensive for students to fund on their own, many teams offset their expenses by fundraising directly from local law firms, which also helps to engage members of the local bar and practice community and instill an interest beyond the law school in contributing to the success of the team.

Second, the Vis Moot is a meeting ground for students, professors, and lawyers from every corner of the world, all of whom share a narrow set of common interests: the international law of sales and international commercial arbitration. The value of these interpersonal, intercultural interactions at the Vis Moot for the health and vibrancy of the global practice community cannot be overstated.

Third, and particularly relevant for the MENA region, the Vis Moot opens up doors for gender and cultural diversity in the development and practice of international commercial law and arbitration. As noted in Section VI.A. above, a good deal of legal scholarship on the CISG originates from civil law countries and is authored by western European, male authorities.¹¹⁸ But thanks to the MENA Pre-Moot and the growth of the program between 2010 and today, over 400 Arab law students have received intensive world-class training on the CISG and the international law of sales, and a full two-

¹¹⁷ See Luca Castellani, *Promoting Uniform Law in Countries Influenced by Islamic Law: The Example of the United Nations Convention on Contracts for the International Sale of Goods*, PROT. PROJECT J. HUM. RTS. & CIV. SOC'Y 1, 13 (2014); see generally Amin Dawwas & Yousef Shandi, *The Applicability of the CISG to the Arab World*, 16 UNIF. L. REV. 813–41 (2011).

¹¹⁸ The CISG Advisory Council is composed of 17 members, only three of whom are women and only three of whom can claim a non-western country of origin (Turkey, Japan, and China). A notable exception to the gender imbalance in the CISG canon is the leading work by Professor Ingeborg Schwenzer, who is the editor of the foundational text *Commentary on the UN Convention on the International Sale of Goods*, now in its 4th English edition. This is not to say that other prominent women scholars do not also write prolifically and lead in the field, but that they are still outnumbered and out-published by their male colleagues.

thirds of the MENA Pre-Moot program alumni are women.¹¹⁹ As future practitioners or academics, these students will be uniquely positioned to contribute to the growing body of CISG scholarship and address such important issues as the application of the CISG to Islamic law and transnational sales law in the Middle East region. As they matriculate into positions of leadership within their various countries and communities, it is from this cohort that a move towards harmonization or uniformity is likely to originate.

Finally, one of the most important qualities of the Vis Moot as a legal education tool for promoting the CISG is its practical nature and its real-world application. Participants in the Vis Moot competition are required to conduct critical analysis of legal theory, and apply it to real-world issues. Students in the Middle East who participated in the MENA Pre-Moot report that this was the most valuable aspect of their experience.¹²⁰ Legal education in the MENA region is mostly theory-based, with very little emphasis placed on preparing students for the *practice* of law.¹²¹ The Vis Moot requires students to explore the CISG's provisions from the point of view of a lawyer representing a client in a transnational commercial dispute, for whom the financial stakes are very high and on whose behalf the student must navigate the complex waters of private international law, contract law, sales law, and international dispute resolution proceedings. The imagination and advanced advocacy techniques required for success in the competition are built through months of dedicated research and hours upon hours of practicing and rehearsing, rather than absorbed through classroom lecturing. Singapore's Chief Justice His Honor Sundaresh Menon summarized the intangible quality of the Vis Moot as a pedagogical platform when he said,

there is no better way to become intimately acquainted with a body of law than through the cut and thrust of public advocacy, and this is so even when one is using wooden swords. If we are to make the gradual transition towards a more

¹¹⁹ See Checkley, *supra* note 112. The report finds that enormous potential exists to treat international commercial arbitration as a doorway through which to introduce women in the MENA region into the legal profession, develop their capacity, and influence the professional culture to be more inclusive of women in the process.

¹²⁰ *Id.*

¹²¹ See EXPERIMENTAL LEGAL EDUCATION IN A GLOBAL WORLD: THE MIDDLE EAST AND BEYOND XI (Matuz Qafisheh & Stephen Rosenbaum et al. eds., 2016).

harmonized commercial law, then our students must be exposed to international instruments like the CISG.¹²²

Moreover, legal education about the CISG through the Vis Moot culminates in a positively formative experience for young lawyers, which is the act of competition in itself. A growing body of research suggests that competition in education serves to enhance the quality and impact of that education.¹²³ Much like sport competition helps athletes improve their performance, educational competition helps students develop cooperative and team-building skills, emotional and social intelligence, resilience and ability to handle loss and setbacks, intrinsic motivation to achieve, and risk analysis.¹²⁴ While the Vis Moot founders and organizers go to some lengths to emphasize the educational aspect of the Moot over the competition aspect of it,¹²⁵ this perhaps unintentionally glosses over the inherent value in competition for student learning and development.

On its own, the Vis Moot is probably not capable of ensuring continued promotion of the CISG to lawyers around the world. But, in conjunction with curriculum development and classroom teaching, it is perhaps the most powerful tool for the advancement and promotion of uniform commercial law and a culture of contract.

VII. CONCLUSION: THE IMPERATIVE OF INTERNATIONAL LEGAL EDUCATION IN PROMOTING THE CISG

The future of harmonized commercial law depends on the success of instruments like the CISG to provide merchants with a reliable, transparent, and simple way of transacting across borders in an increasingly uncertain and challenging environment for transnational trade. Proponents and advocates of the Convention should capitalize on the current accessibility of legal education and higher mobility of law students than in previous decades in order to spread awareness of the CISG. To do this most effectively, educators

¹²² See Menon, *supra* note 5, at 23.

¹²³ See generally Helen F. Ladd & Edward B. Fiske, *Does Competition Improve Teaching and Learning? Evidence from New Zealand*, 25 EDUC. EVALUATION & POL'Y ANALYSIS 97 (2003).

¹²⁴ See generally Josh Neubert, *10 Ways Competitions Enhance Learning*, INST. COMPETITION SCI. (July 4, 2016), <https://www.competitionosciences.org/2016/07/04/10-ways-competitions-enhance-learning/>.

¹²⁵ The Annual Willem C. Vis International Commercial Arbitration Moot, *Vis Moot Rules 2018/2019*, <https://vismoot.pace.edu/media/site/previous-moots/27th-vis-moot/rules.pdf>.

should combine traditional methods of classroom education on the CISG with practical legal education programs like the Willem C. Vis International Commercial Arbitration Moot Court. Working in tandem, these two means of legal education provide the best vehicle for sustainable promotion of the Convention which will inform all other forms of promotion and advancement to follow, at all levels of engagement along the top-down and bottom-up spectrum.

