

Yearbook on International Arbitration

Volume IV

edited

by

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with the assistance of

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Edgardo MUÑOZ¹

The Swiss International Law School's LL.M. in International Commercial Law and Dispute Resolution – a fascinating journey towards the global lawyer²

It has been said that arguing against globalization is like arguing against the law of gravity. But that does not mean we should accept a law that allows only heavyweights to survive. On the contrary: we must make globalization an engine that lifts people ...³

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Abstract

Despite the everyday effect of globalisation in society and the exponential growth experienced in international trade, legal education continues to focus on the study of domestic law and on events occurring within one country's territorial borders. The author describes how the Swiss International Law School (SiLS), customizes legal education to the current globalised reality. The author introduces the four core areas of international commercial law covered by SiLS LL.M. program and its truly comparative and international learning method. The author finally explains why enrolling at SiLS LL.M program is a tremendously valuable and unique experience which allows graduates to make the most of globalisation and become fluent in "speaking international".

1 The author thanks Dr. Alissa Palumbo, a course leader in the Swiss International Law School LL.M. Program, for her valuable comments on this review.

2 For more information about the Swiss International Law School (SiLS) and its LL.M. Program please visit <http://www.swissintlawschool.org/> and the YouTube video channel <http://www.youtube.com/channel/UC-fkWcjp5fpy6TvwCKTFJlg> (20 October 2014).

3 UN Secretary-General Kofi Annan's opening address to the fifty-third annual DPI/NGO Conference, 28 August 2000.

Keywords

LL.M. program, Master of Laws, International Commercial Law, Dispute Resolution, Intellectual Property, Comparative Law, Corporate Law, Sales and Transport Law, On-line degree

I Introduction – the globalisation challenge for lawyers

For the last decades, globalisation has spread to the world continents on internet time. Developments in means of communication and technology have transformed people's lives. Internet and smart phones allow people to establish faster and stronger relationships with others despite distance and to react to queries with immediacy. In addition, companies and financial institutions increasingly have removed the boundaries of their markets to cross national borders. This recent change in life and commerce has had an extraordinary effect on the type of matters and mandates handled by lawyers. Everyday more lawyers are more often instructed to intervene in transactions involving one or various foreign elements. Either because such transaction was entered into with a foreign party, or abroad, or because it ought to be performed or had effects overseas, etc. Despite this everyday effect of globalisation in society and the exponential growth experienced in international trade, legal education continues to focus on the study of our own country's domestic law and on events occurring within our own country's territorial borders.

In spite of this, only a few law schools are fully aware of the inadequacies of traditional legal education. One of them, the Swiss International Law School (SiLS), customizes legal education to the current globalised reality. SiLS prepares students to meet the global challenges by helping them to obtain what has been called "the necessary ingredients for global literacy for lawyers"⁴, namely, language, cultural fluency, appreciation for the role of lawyers abroad and understanding of foreign and international law.⁵

SiLS is a charitable foundation registered in Basel, Switzerland. One of its funders and its Dean is Professor Dr. Ingeborg Schwenzer, LL.M. (Berkeley) of Basel University. She is an acclaimed international private law scholar and practitioner with more than 35 years of experience. Professor Schwenzer is mainly known as the editor and author of the leading commentary on the UN Sales Convention: a commentary that has been published in English⁶, Spanish,⁷ Ger-

4 "Global literacy for lawyers" is a term first used by Carole Silver, *Educating Lawyers for the Global Economy: National Challenges*, *Kyung Hee University Law Review*, (2009), p. 4, available at <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1029&context=facpub> (20 October 2014). It regards a state of knowledge and behavior developed by lawyers who deal international matters and are at the front line of globalization.

5 Ibid.

6 Peter Schlechtriem/Ingeborg Schwenzer (eds.), *Commentary on the UN Convention on the International Sale of Goods (CISG)*, Oxford 2010.

7 Ingeborg Schwenzer/Edgardo Muñoz (eds.), *Slechchtriem & Schwenzer: Comentario sobre la Convención de las Naciones Unidas sobre los Contratos de Compraventa Internacional de Mercaderías*, Aranzadi 2011.

man⁸ and Portuguese.⁹ Professor Schwenger is not only a prolific commentator of international private law. She is also a true field researcher and comparativist of domestic private laws. During four years, Professor Schwenger led the research work of a multicultural team of lawyers representing the world's legal families and cultures. The result of this ambitious and successful research project conducted at Basel University is the handbook *Global Sales and Contract Law* published by Oxford University Press in 2012. Professor Schwenger co-authored this landmark study with Dr. Christopher Kee and Dr. Pascal Hachem.¹⁰ In addition, Professor Schwenger has been a much solicited international arbitrator for the last decade. Her experience in arbitration proceedings has allowed her to stay in touch with the practical and real life issues arising out of international transactions.¹¹

In this brief review of the SiLS LL.M., I will first introduce the four prominent scholars involved in SiLS and the four core areas of international commercial law covered by the program (II). Next, I will present the SiLS' truly comparative and international learning method (III). Lastly, I will give my personal opinion about what makes the SiLS LL.M. program a fascinating journey towards the Global Lawyer (IV).

II The four core areas of international commercial law taught by four world leading experts

The SiLS LL.M. in International Commercial Law and Dispute Resolution is organized in four modules; Sales and Transport Law, Intellectual Property Law, Dispute Resolution and Corporate Law. Each of these modules is led by a prominent legal scholar in the respective field. The module Sales and Transport Law is designed and directed by Professor Schwenger, whose remarkable profile has been mentioned above. In this module, Professor Schwenger walks students through the core areas of contract, sales and transport law on a comparative basis.

Professor Dr. William Van Caenegem, LL.M. (Cambridge) leads the module Intellectual Property Law. A notable scholar in his field, Professor Van Caenegem is a dual civil law and common law educated and trained lawyer.¹² He

8 Ingeborg Schwenger (ed.), *Kommentar zum einheitlichen UN-Kaufrecht: das Übereinkommen der Vereinten Nationen über Verträge über den internationalen Warenkauf*, 5th ed., München 2008.

9 New language versions of the Schlechtriem & Schwenger Commentary on the CISG are currently been prepared in Chinese and Turkish.

10 For more information about the *Global Sales & Contract Law* handbook please visit <http://ukcatalogue.oup.com/product/9780199572984.do> or <http://www.globalsaleslaw.org/index.cfm?pageID=4> (20 October 2014).

11 Professor Schwenger arbitration profile may be consulted at the Swiss Arbitration Association data base of arbitrators available at <http://www.arbitration-ch.org/pages/en/find-counsel-arbitrator/member-profile/729.ingeborg.schwenger.html> or at the German Arbitration Institute available at <http://www.dis-arb.de/de/15/mitglieder/selbstdarstellung/ingeborg-schwenger-id851> (20 October 2014).

12 Professor Van Caenegem studied at Antwerp and Leuven in Belgium and obtained an LL.M. and PhD at Cambridge, UK.

is professor of law at the Faculty of Law of Bond University in Gold Coast/Australia. Professor Van Caenegem is the author of a number of books on intellectual property law and comparative law.¹³ He is currently involved in a research project concerning geographical indications of origin, and completing research on comparative trade secrets law. Professor Van Caenegem also has a foot in law practice as a listed arbitrator at WIPO Mediation and Arbitration Center. In his module, Professor Van Caenegem teaches students the way to develop a practical strategic focus for the protection of intellectual capital and goodwill, which goes beyond reliance on IP law alone. This module covers the international IP treaty system and analyses key issues of different domestic laws.

The module Dispute Resolution is directed by Professor Jeff Waincymer from the Faculty of Law of Monash University in Melbourne/Australia. One of his core areas of research and teaching is international arbitration and litigation. He is the author of multiple books and articles in this field. Professor Waincymer has a remarkable career as qualified legal practitioner, arbitrator and mediator, practicing exclusively in international trade and investment, arbitration and ADR matters. He is an Australian Government Nominee for ICSID and WTO panels and has acted as a panellist in WTO cases. He is a Fellow of ACICA and has acted as arbitrator in ICDR, SIAC, HKIAC and KLRC arbitration proceedings.¹⁴ The module Dispute Resolution designed by Professor Waincymer introduces students to the theory and the legal framework of international arbitration and enforcement proceedings of foreign arbitral awards in a comparative basis. In addition, the features of most popular institutional and ad hoc rules of international arbitration are analysed in this module.

Last but not least, Professor Dr. Katharina Pistor from the Law School of Columbia University in New York/US leads the module Corporate Law. Professor Pistor hardly needs a presentation. As accomplished scholar and comparatist of law, institutions and systems, Professor Pistor is widely known for her contributions to legal and economic science, namely, in the field of the transformation of legal systems and their capacity to adjust to new market or social conditions.¹⁵ Professor Pistor has been the receipt of multiple awards and research grants, including the Max Planck Research Award on International Financial Regulation in 2012. In her module, Professor Pistor teaches the characteristics of selected corporate law regimes and their effects on cross-border corporate activity. This module gets students to understand the legal challenges for companies that operate globally, list their shares in different countries' exchange markets and engage in cross-border mergers and acquisitions. Her teaching approach is a comparative one, since corporate law is domestic in substance and the examples of international standardised or harmonised corporate law are few.¹⁶

No other LL.M. program in the world places at its students' disposal the knowledge and expertise of these four authorities in the four core areas of modern international commercial law.

13 For more about Professor Van Caenegem publications and research projects please visit http://apps.bond.edu.au/staff/profile.asp?s_id=340 (20 October 2014).

14 See more about Professor Jeff Waincymer's arbitration career at <http://monash.edu/research/people/profiles/profile.html?sid=3842&pid=3510> (20 October 2014).

15 See more about Professor Pistor's professional achievements at http://www.law.columbia.edu/fac/Katharina_Pistor (20 October 2014).

16 European Law being a partial exception.

III Law learning on a truly comparative and intercultural level

The SiLS LL.M. program applies a unique teaching and learning method, which emulates the best flight training schools in the world. On the one hand, students learn the core principles of “piloting” in the international legal arena from the module leaders; the four top world experts above mentioned. On the other hand, students acquire the skills and cultural diversity of the Global Lawyer through the most sophisticated and effective “flight simulators” or mock cases. In particular, effective learning is achieved as follows.

All students are provided with a comprehensive and clear SiLS student handbook, which guides them through the SiLS learning platform and the different levels of the LL.M. program. Accessing the SiLS learning platform resembles entering into a virtual boutique: the spaces are spotless and carefully designed, attention to detail is the rule, the information posted is clear and free of ambiguity. Courtesy and politeness is the standard of treatment. There is always someone available to meet the students’ technical enquiries 24 hours / 7 days a week. The SiLS learning management system combines the flexibility of cutting-edge online technology with the intimacy of small classes and the personalised attention of a tutor. Perhaps the SiLS could rightly be described as a boutique law school and its LL.M. in international commercial law and dispute resolution as its flagship jewel.

In addition, students are provided with module handbooks, which introduce them to the specific module’s materials and activities. Each module is 20 weeks long and requires 20 hours of study per week, which equals 15 European Credit Transfer System Credits (ECTS). SiLS recognises that the learning of a foreign or international system of law can be challenging and stressful for some at the beginning. With that in mind, the SiLS team makes sure that students feel relaxed and happy with each course content and methods by anticipating and meeting their students’ needs. This is accomplished by means of constant monitoring of each and all student activities and progress.

Moreover, the SiLS LL.M. is designed to make the learning of foreign and international law an enjoyable experience, as the program is highly practical and takes a truly international and comparative approach. As part of SiLS’s unique concept, each LL.M. module brings together students from different legal systems and cultures to work in teams on mock cases. In the module Sales and Transport Law, for instance, students in one team are asked to adopt the role of sellers while students in another team adopt the role of buyers. These same teams meet on a weekly basis to discuss open questions and negotiate contract clauses. In order to stick to the rules of a real life contract negotiation among teams of lawyers representing their clients’ interests, results of team discussions are not communicated between sellers and buyers. Moreover, and for the same reason, some teams may receive additional information not included in the moot case and thus ignored by the opposing team.

The same learning method is applied in the other three modules. In the module Intellectual Property Law students are coupled in teams to develop IP strategies, structure collaborative IP-based projects in cross-border situations, and resolve contractual disputes through ADR, including arbitration against other students’ teams.

In the module Dispute Resolution, classes are problem based and often involve drafting arbitration agreements. Teams then are called to participate in various stages of the arbitral proceedings, giving each team member the opportunity to improve her or his advocacy skills and have a truthful inter-cultural experience.

In the module Corporate Law, students are also organised in teams to negotiate and draft a cross-border merger agreement. Intense teamwork with students from around the world enables a realistic inter-cultural experience and helps students to improve their ability to work in multicultural corporate transactions.

With this learning outcome in mind, SiLS makes a remarkable logistic and technological effort, which permits students and course leaders in different time zones to meet online throughout the year. At the end of the day, students are able to make true comparison of the legal solutions given by common law, civil law or international law to the same matter and to react correctly in any cross-border or inter-cultural collaboration or dispute.

In addition, the SiLS' LL.M. program offers students four extra-modular tutorials covering important aspects of legal work. The tutorial Legal Research and Writing is prepared by Dr. Benjamin Leisinger, LL.M. (Chicago) – a prominent lawyer in the Zurich based law firm Homburger AG. In this tutorial, students learn how to draft professional legal documents in a formally correct manner and correctly cite the sources used when drafting such documents. The tutorial Presentation Techniques is designed by Dr. Christopher Kee, Adjunct Professor at Aberdeen University Law School and author of many important works, *inter alia*, the book *the Art of Argument - A Guide to Mooting*, which has been sold worldwide. In this tutorial, Dr. Kee teaches students the various techniques and processes to properly structure an argument and to make the physical environment around them work to their advantage. The tutorial Legal Professionalism and Ethics is led by Dr. Mariel Dimsey, LL.M. (Cologne). A practitioner and scholar with a remarkable international background, she is based in the Cologne office of Cleary Gottlieb Steen & Hamilton LLP. In this tutorial, students explore the professional responsibility systems of both common law and civil law jurisdictions from a comparative perspective and identify the core features shared by most systems in terms of lawyers' obligations, ethical considerations, including conflicts of interest, compliance, billing practices, dealing with trust accounts and unqualified practice. The tutorial Features of Common Law and Civil Law Systems is prepared by Professor Dr. Thomas Lundmark, a dual civil law and common law educated and trained lawyer, who is the Chair in Common Law and Comparative Jurisprudence at the University of Münster, Germany. This tutorial provides a historical introduction to common law and civil law traditions and explains the differences and similarities in the approaches to statutory interpretation, and the use of judicial decisions (*stare decisis*).

Moreover, students receive personalized training and support from the course leaders. The cyber classrooms are small. There are 16 to 20 students per class, supervised by two course leaders, one from a common law the other from a civil law background. Sessions are highly interactive thanks to the guidance afforded by the course leaders.

The SiLS body of course leaders is also remarkable for its diversity and individual credentials. It is composed of young law professors and practitioners, all specialized in one of the four core areas of the program. Their dual civil law and

common law practice and education is their main feature. Among the current team of course leaders representing more than a dozen of nationalities from all continents are:

- Dr. Orkun Askeli, educated in Turkey and England, who currently works as Senior Lecturer at Durham University Law School in the United Kingdom;
- Dr. Camilla Baasch Andersen, who received her legal education in Denmark, started her teaching career in England and currently holds a position as Professor of Law at University of Western Australia;
- Dr. Petra Butler, who graduated in Germany and New Zealand, clerked at the South African Constitutional Court and is currently Associate Professor at the University of Wellington in New Zealand;
- Dr. Erika Sondahl Levin, who attended law school in the United States and currently works as senior associate at the firm Stone & Magnanini LLP and as Adjunct Professor at Rutgers University School of Law, in the United States;
- Dr. Dalma Demeter, who studied law in Romania, Hungary and Australia, and now holds the position of Assistant Professor at the University of Canberra, Australia;
- Arno L. Eisen, who received his graduate and post-graduate legal education in Germany, the United States and Singapore and is now a Partner at NEEF LEGAL in Berlin;
- Gustavo Meira Moser, who studied law in Brazil and Switzerland and is an Associate Legal Officer at the World Intellectual Property Organization in Switzerland;
- Dr. Alissa Palumbo, who studied law in the United States and Switzerland and is an attorney licensed to practice law in New York;
- Dr. Paulo Nalin, who received his legal education in Brazil and is founding name partner of Popp & Nalin Associates and Professor at the Federal University of Paraná;
- Dr. Rajesh Sharma, who is Assistant Professor at City University of Hong Kong and received his graduate education in India and holds postgraduate degrees in China, Australia and Hong Kong;
- Dr. Cesar Pereira, who studied in Brazil and was visitor scholar in the United States and is a Fellow of the Chartered Institute of Arbitrators (FCIArb), the president of CAM-FIEP an Arbitration Center in Curitiba, Brazil, and partner at the firm Justen, Pereira, Oliveira & Talamini;
- Dr. Lisa Spagnolo, who was educated and trained in Australia and is Senior Law Lecturer at Monash University in Australia, a published author in law international journals and an expert advisor for overseas legislative bodies;
- Glenys Spence, who is Assistant Professor at Arizona Summit Law School in the United States. As a native of the island nation of St. Vincent and the Grenadines, she studied law in the United States and is licensed to practice law in Pennsylvania and New Jersey;
- Therese Wilson, who is a senior lecturer at the Griffith University and an admitted solicitor to the Supreme Court of Queensland in Australia.
- Finally, Dr. Edgardo Muñoz, who received his legal education in Mexico, France, England, Switzerland and the United States and is currently Professor of Law at Panamericana University in Guadalajara, Mexico.¹⁷

¹⁷ The author of this review.

IV Why do I find the SiLS LL.M. program fascinating?

In a recent publication, American Law Professor Carole Silver analysed the profiles of a number of American lawyers at the frontline of globalisation. The lawyers under scrutiny were selected based on their daily interaction with business executives and professionals educated in different countries. Professor Silver concludes that many of these lawyers had obtained through their legal education and careers the ingredients for the global literacy that lawyers need to meet the globalisation challenge. Accordingly, Professor Silver recommends a legal education and training, which supports law students in acquiring the following key elements of global literacy: language, cultural fluency, an appreciation for the role of lawyers, and the law itself.¹⁸

After reading Professor Silver's analysis and conclusions, I confirmed my view that studying at SiLS is indeed a tremendously valuable and unique experience because it effectively allows graduates to make the most of globalisation and become fluent in "speaking international".

In terms of language, the SiLS LL.M.'s videos and materials are in English and have been prepared by native English speakers or lawyers with full professional proficiency in English. All tutors and course leaders are also either native English speakers or fluent in English. Weekly discussions and negotiations against other teams are always held in English. Thus, the SiLS LL.M. gives students the tools and opportunity to develop strong professional English language skills, which are a key component for lawyers working in international matters.

With regard to cultural fluency and the appreciation for the role of lawyers in other countries, this is achieved through the setup of teams composed by members from diverse legal backgrounds. Course leaders guide students through the intricacies of negotiating a contract or litigating a dispute against opposing lawyers from different legal cultures. Students admitted into the SiLS LL.M. program come from various legal traditions, systems and all continents. They are selected after a rigorous review of applications and on the basis of their intellectual and leadership abilities, as well as their capacity to participate effectively in a global community of legal practitioners. The interaction among these individual talents guarantees a truly cultural cross-penetration. Students in a regular LL.M. do not often have the opportunity to learn by simulating the work of real multicultural teams of lawyers. SiLS gives students the opportunity to meet this challenge. A challenge, which is comparable to that faced by students participating in international moot court competitions such as the Willem C. Vis Moot, but amplified by the wider scope of the SiLS LL.M. program.

In terms of understanding and effectively applying the law, students in the SiLS LL.M. are taught by the four top world experts in their respective fields, i.e. the module leaders. Students are also guided by experienced and always available course leaders. SiLS has the required level of sophistication in its online technology and human capital to accomplish effective law learning by all students. In conclusion, the LL.M. is a unique opportunity for young lawyers who are, or will be soon in their careers, asked to handle legal issues with foreign or

18 Carole Silver, *Educating Lawyers for the Global Economy: National Challenges*, *Kyung Hee University Law Review*, (2009), p. 4, available at <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1029&context=facpub> (20 October 2014).

international elements. In a globalised society like ours, it makes sense that students should not necessarily leave their countries in order to learn from the top experts or specialists in a given field of law. At SiLS this is possible. Moreover, what makes the SiLS LL.M. specifically attractive is the possibility to study it part time and thus accommodate it with the student's other professional or private obligations. Students are able to enrol in one of the best LL.M. programs focused on international commercial law under the state of the art technology according to their own needs and possibilities.