BOOK REVIEW

Brödermann Eckart J., UNIDROIT Principles of International Commercial Contracts, An Article-by-Article Commentary, Baden-Baden (Germany): Nomos, 2018. XCVIII, 433 pp.

> I came across the UNIDROIT Principles for the first time in 2001 as counsel in an international arbitration comprehending five jurisdictions. After an inconclusive fight about the applicable law and the interpretation of conflicting choice of law clauses, the parties agreed to adopt the UNIDROIT Principles. Ever since, I have been attracted by the brilliance with which the UNIDROIT Principles bridge diverse legal cultures: often between common and civil law, on occasion between the Germanic and the French approach to civil law, or between different approaches within the common law world. Coming from a traditional public and private international law as well as a comparative (national) legal law background with training in French, U.S. and German law, I saw the charm and the chance to work with transnational soft law on contract which is compatible with just about all civil and common laws in the world.

This quote from the author's foreword (p. XI) is the leitmotif in this book: to bring the UNIDROIT Principles of International Commercial Contracts closer to those who do not know them yet, to persuade those who know them but hesitate to apply them to revise their opinion, and to share experience and knowledge in the application of the Principles in arbitration practice with a broader audience. The book does more than justice to those claims.

On more than 400 pages, the book comments in a compact and concise way the articles of the UNIDROIT Principles. Those Principles exist by now in their fourth edition. First published in 1994 by a group of independent experts representing the major legal systems in the world, under the auspices of the International Institute for the Unification of Private Law (UNIDROIT) in Rome, Italy, they have been complemented step by step in 2004, in 2010 and, most recently, in 2016. Be reminded that the UNIDROIT Principles are known to be the first 'international codification' of the general part of contract law, covering subjects such as contract formation, interpretation, validity, performance, non-performance and remedies, agency, limitation periods, set-off, and assignment.

The author of this book had himself the opportunity to participate in the Working Group responsible for the 2010 amendment of the Principles. His role in the third revision underscores his profound knowledge of the Principles, but also his strong interest in their application by parties and arbitral tribunals.

The author presents each of the by now 211 articles of the UNIDROIT Principles, discusses the major issues that have arisen, or that may arise, in applying the relevant provision in practice and gives important guidance from an experienced practitioner's point of view.

doi: 10.5553/EJLR/138723702019021004009

The presentation of the UNIDROIT Principles is governed by a sense of proportion. Key provisions are discussed in the necessary detail; less important rules, or self-explanatory ones, are presented but briefly. Major weight is given to the introductory articles of the Principles, which deal with the nature of the Principles as non-mandatory rules of law ('soft law') of a truly 'a-national' or 'transnational' nature. The chapter is important because it situates the UNIDROIT Principles within the existing legal landscape consisting of civil procedure law, arbitration laws and rules, unified contract law (such as the UN Convention on the International Sale of Goods), domestic substantive law and yet other rules.

It is also in these first chapters that the author shows the various ways of including the UNIDROIT Principles when drafting a contract. He rightly emphasizes that the Principles unfold their full effect in combination with an arbitration clause. In fact, whereas many choice-of-law rules to which state courts are bound do not allow for the choice of mere rules of law (such as the UNIDROIT Principles), arbitration laws often do. Parties subject to an arbitration clause with such a permissive choice-of-law regime may thus choose the UNIDROIT Principles as an equivalent alternative to any domestic law. Furthermore, a combination of an arbitration clause with the UNIDROIT Principles largely avoids the application of mandatory domestic law that would have to be respected if international private law rules to which state courts are bound were applicable: Unlike *international* mandatory law, to which arguably most arbitration laws feel bound, legislation on international commercial arbitration does not impose on the arbitral tribunal to apply *domestic* mandatory law of that legislation that would apply if the parties had not opted into the UNIDROIT Principles.

As regards the Principles' substantive law provisions, the book often explains the idea underlying a certain rule. It further points out its civil law or common law provenance, or the extent to which a rule is a compromise between those two major traditions of law – a compromise to which the drafters of the UNIDROIT Principles acquiesced either by combining elements from different domestic approaches or by adopting a perfectly 'new', a-national rule. These explanations are helpful not only from a theoretical, comparatistic point of view, but also from the practitioner's angle. In fact, they allow for a rapid assessment of the advantages or risks in the adoption of a rule under the UNIDROIT Principles: the parties may quickly orient themselves, see potential differences or similarities with their own law and make a choice in favour of or against that specific rule of the Principles. The author's comparative law classification of an approach adopted under the Principles also enables one to understand whether it has been borrowed from a specific domestic law, such as, for example, the concept of anticipatory breach or the one on the fixing of an additional period of time in case of non-performance, which may have a reassuring effect on the user because of the long and 'field-proven' existence of that rule (even though, of course, the interpretation of such a rule under the UNIDROIT Principles will be an autonomous one, Art. 1.6, para. 1).

One of the strongest points of the book consists in the practical advice and guidance offered by the author throughout his commentary. Apart from the 'arbitration clause/UNIDROIT Principles package' that was previously mentioned,

European Journal of Law Reform 2019 (21) 4
doi: 10.5553/EJLR/138723702019021004009

many chapters contain remarks on 'contractual options', showing the parties' possibilities for tailor-made solutions (*e.g.*, on pp. 263, 365, 372, 375). Other parts provide for 'tactical considerations', for example in relation to judicial penalties that, as the case may be, could be considered as being incompatible with domestic mandatory law (Art. 7.2.4, para. 2, on p. 215).

The very special charm of this commentary lies in the fact that it bears a personal handwriting. It radiates an enthusiasm, a power of persuasion in favour of the UNIDROIT Principles, which is contagious. It is not packed with every thinkable scholarly analysis, does not go into every slightest detail and does not reproduce every countervailing opinion. Brödermann, as a widely acknowledged arbitrator and contract lawyer, provides the reader with a smart, well-structured and practice-oriented guide that fills the text of the Principles with life. He has an excellent overview of the complete set of the UNIDROIT Principles and manoeuvres the reader elegantly through it, by cross-referencing, systematizing, thematic regrouping. The numerous illustrations and practical hints – also drawn from own arbitration cases – contribute to making this commentary an invaluable guide for any international contract lawyer.

Christiana Fountoulakis
University of Fribourg, Switzerland