I. Introduction

UNIDROIT and UNCITRAL are model laws, drafted with the idea to being adopted by national legislators such as the UNCITRAL Arbitration model law.

There are legal guides, intended for use by private or public organizations in the field of international trade, such as the General Principles of Commercial Contract of UNIDROIT. These types of international instruments represent a contribution to the harmonization of international commercial rules and regulations to facilitate cross borders transactions of goods and services.

This essay will examine the process of development and harmonization of lex mercatoria and will provide a brief review of the history of European contract law principles and unification practice.

In Part II, I will present the U.S. involvement in the course of the creation and acceptance of these "codified" model concepts, and Part IV will be devoted to the application of the UNIDROIT principles by international arbitral tribunals.

II. History and Practice of European Contract Law Principles

The reasons for and against a unification of European contract law are valid for Europe and for the world, as a whole. The desire to harmonize legal regimes in order to make trade easier is not new. The medieval *lex mercatoria* is an example of a supra national attempt by merchants to bridge the legal and cultural differences across nations.

The European Union (EU) is an economic community with a common purpose to free the flow of

goods, persons, services and capital. Consequently, European law should be made easier to conclude contracts and to foresee contract risks. In this respect the unfamiliar laws of foreign countries can become a potential risk. This is a barrier not only to the European business climate but to world trade in general.

In the last decades there have been significant changes of what may be called the European contract law; the Directives on Unfair Terms in Consumer Contracts and on Certain Aspects of the Sale of Consumer Goods and Associated Guarantees, [1] etc.

The Union legislation mentioned above has provided some “Europeanisation” [2] of the contract law. Still, according to some researchers and comparatists this is only a fragmentary harmonization.

The Commission of European Contract Law (thereafter European principles) is an independent body of experts from each of the member states of the EU. The Commission, known as the Lando Commission, was formed under the auspices of professor Ole Lando, following two resolutions of the European Parliament dedicated to the development of a European codification of private law.

European Principles promises to play a significant role in the process of harmonizing the contract law of the EU. Part I of European Principles deals with issues of performance, non-performance, and remedies. Part II and III cover the nucleus of contract law – formation, validity, interpretation, performance, remedies, and authority of agents. Part III is dedicated on issues of illegality, assignment, assumption, statutes of limitations, conditions, procedural issues related to plurality of parties and capitalization of interest.

There are no areas of law where to internationalize legal regimes is more pronounced and expected, than in the area of contract law.

In order to remove legal obstacles to international trade and investment, the international community adopted in 1980 the Convention for the International Sale of Goods (CISG) and the UNIDROIT Principles of Commercial Contracts. Unlike either CISG or UNIDROIT Principles, European Principles has the potential to provide a workable international contract regime because of its level of comprehensiveness. It covers legal institutions that would be more

attractive for legal practitioners, legislators and businesspersons, in comparison with the UNIDROIT Principles and the CISG.

The CISG is the default law for most international sale of goods transactions unless the parties have expressly agreed otherwise. In contrast, UNIDROIT Principles and European Principles are generally referred to as soft law: they have no defined grounds of jurisdiction and are similar to the U.S. model laws (like the Restatement (Second) of Contracts). Nevertheless, courts and arbitral panels voluntarily have used soft law rules as evidence of international customary law to compliment national contract laws. In fact, European Principles developed some areas of law that are left out of the U.S. Uniform Commercial Code (UCC). [3] For example, the issues of validity, authorities of agents, transfer of contract rights and duties, illegality, set off, and procedural matters of plurality of parties are regulated by common law or statutory law.

For the Complete Monograph, Contact: Viara Zaprianova-Marshall

---

[1] See 93/13 of 5 April 1993, OJEC No L 95/29 and 1999/44 of 25 May 1999, OJEC No L 171/12 respectively.

[2] Lando, Ole, Some Features of the Law of Contract in the Third Millennium. Online source

[3] DiMatteo, Larry A., *Contract Talk: Reviewing the Historical and Practical Significance of the Principles of European Contract Law* , International Law Journal, Harvard, 2002