

## INTRODUCTION

When in 1969 the Governing Council of UNIDROIT, on a proposal made by one of its members, professor Tudor Popescu, adopted a resolution in which it decide to undertake “un essai d’unification portant sur la partie générale des contrats... en vue d’une codification progressive du droit des obligations *ex contractu*”, none of its members could have imagined the consequences of the publication in 1994 of the UNIDROIT *Principles of International Commercial Contracts* and, in subsequent years, the reactions those Principles would provoke all over the world, the effects of which are still *in fieri*.

For those who do not know it, UNIDROIT is the French acronym of the International Institute for the Unification of Private Law, an international governmental organisation established in 1926 with its seat in Rome as an auxiliary organ of the League of Nations for the purpose of assiting the League of Nations in its fundamntl goal of ensuring peace among its member States. Subsequent to Italy’s withdrawal from the League of Nations, UNIDROIT was re-established in 1940 on the basis of an international agreement, the UNIDROIT Statute, to which 57 States from all continents have adhered.

On the basis of the Statute and years of practice, UNIDROIT has always prepared studies and drafts with the view to the preparation of international conventions or uniform model laws.

It was therefore hard to think of the proposed work as falling within the category of above-mentioned traditional instruments responding to a positivist concept of law.

From this cautious beginning, work was undertaken on the basis of a decision of the Governing Council, the scientific organ of the Institute presently composed of 25 experts elected by the Assembly of member States of UNIDROIT, to establis a Steering Committee composed of professors René David, who was elected Chairman, Clive M. Schmitthoff and Tudor Popescu as representatives of the three principal legal systems existing at that time: the civil law system, the common law

system and the system of planned economy countries which no longer exist today at least in Central and Eastern Europe.

This Committee produced a series of studies and reports which were submitted to the Governing Council of UNIDROIT which was at that time engaged in the examination and approval of other draft international uniform law conventions which had previously been accorded priority status.

It was only in 1980 that real Working Group was established, composed of the most eminent experts in the field of contract law and international trade law, representative of all the continents and all legal systems. This Working Group was coordinated by Professor Michael Joachim Bonell, who had been involved right from the outset in the Steering Committee's works. This work began on the preparation of the body of rules which later were to take the form of an organic set of rules governing international commercial contracts accompanied by comments and illustrations which make them more comprehensible and more suitable to the various legal aspects of international commerce.

The reasons for the preparation of the *Principles* by UNIDROIT, the working method adopted, the aims of the *Principles*, their formal and substantial contents have been set out in the Introduction, approved by the Governing Council of UNIDROIT in may 1994, to the official editions of the *Principles* published by UNIDROIT and to the many other editions in other languages.

Here I intend to quote the concluding part of the above-mentioned Introductions as it will provide me a chance to refer briefly to what happened after publication and circulation of the *Principles*.

The Council, in approving publication of the *Principles*, stated: "In offering the UNIDROIT Principles to the international legal and business communities... the Governing Council is fully conscious of the fact that the Principles, which do not involve the endorsement of Governments, are not a binding instrument and that in consequence their acceptance will depend on their persuasive authority. There are a number of significant ways in which the UNIDROIT Principles may find practical application, the most important of which are amply explained in the Preamble".

Never has a forecast been more accurate and, I dare to say, cautious in predicting the impact of the work of such an important group of eminent jurists who had adopted a method based on continuous comparisons

amongst themselves and with other groups in order to elicit reactions, receive other ideas, adjust the contents of the rules proposed, formulate more precisely the concepts it wanted to express in the different languages in which the official editions were to be published, monitor international trade usages and practices incorporated in the *Principles* with a view to ascertaining whether they were indeed generally accepted.

The publication of the complete version of the UNIDROIT *Principles of International Commercial Contracts* was an immediate publishing success: thousands of copies were distributed by UNIDROIT even though at almost the same time numerous other editions appeared or the provisions alone were published, on the authorisation of UNIDROIT, in numerous periodicals, collections of documents and books on the *Principles* or, more in general, on international commercial contracts.

The complete version of the *Principles*, comprising individual provisions and the relative comments, was published by UNIDROIT in four of its official languages: French, English, Italian and Spanish. The official German language version is expected to appear in a few month's time. Moreover the complete version of the *Principles* has been published in the Chinese, Czech, Dutch, Russian and Slovak languages. The text of the provisions alone has been published in Arabic, Bulgarian, Croatian, Flemish, German, Hungarian, Japanese and Portuguese.

I shall not list here the numerous seminars, congresses and round tables devoted to the *Principles* which have been held on the different continents, but I would like to underline that, apart from their impact on legal practitioners who are experts on international commercial contracts and international commercial arbitration, the *Principles* have been the subject of courses or have been used as course material in about 100 Law Schools and Law Faculties of Universities in many countries representative of the most important legal systems.

The *Principles* have also been used as a model for national and international legislation, as guidelines in international contract negotiations, in support of particular solutions adopted in hundreds of cases brought before State courts or arbitral tribunals.\*

\* For more detailed informations see M. J. Bonell, *An International Restatement of Contract Law. The UNIDROIT Principles of International Commercial Contracts*. 2<sup>a</sup> enlarged edition, Irvington, N. Y., Transnational Publishers, 1997.

In the light of the foregoing and order to satisfy the increasing number of requests for information addressed to UNIDROIT from various countries and different categories of international business operators, UNIDROIT, in response to several requests for permission to publish the *Principles* on the Internet, gave its consent and created its own official Internet Web site.\*

This Commentary, which I have the pleasure to introduce, represents one of the most significant results brought about by the publication of the *Principles*. Not only has it almost become obligatory to compare national legislation and the international legislation in force in each country with the rules governing contracts contained in the *Principles*, but interested circles have been induced to assess national legislation with reference to the needs of international trade law in a period of globalisation of the economies.

The various contributions, all of which have been prepared by experts operating in NAFTA member States confer on this volume on international commercial contracts not only the value of a commentary on the UNIDROIT Principles but also open the discussion on a common legislation in NAFTA countries as concerns their respective international commercial relations. Only if one considers that such a message could be determined by the *Principles* can the impact that their publication and circulation has had on the international community be assessed.

I wish every success to this Commentary and, in particular, to professors Jorge Adame Goddard and Hernany Veytia who have promoted this initiative and collected contributions which, on account of their contents, their systematic nature and the quality of their authors, are of such importance. I hope that it will serve also to continue to develop the civil law/common law dialogue in a field such as that of international trade law in which the divisions caused by the nationalisation of legal systems and by the different doctrinal approaches are increasingly restrictive expressions of the freedom of contract whose importance has been considered such to be defined in the broadest and most significant way in Article 1.1 of the *Principles*.

\* The complete text of the UNIDROIT *Principles*, an up to date bibliography of books and articles on the *Principles* are accessible on the Internet at <http://www.agora.stm.it/unidroit/english/principles/pr-main.htm>.

UNIDROIT will continue to focus its attention on the *Principles*. Indeed the *Principles* have been reinstated on the Institute's Works Programme after having been temporarily set aside while the Institute awaited the outcome of the results of their circulation. This commentary, inserting itself in a rapidly evolving geopolitical context, could certainly contribute to providing fresh inspiration for those who have been called on by UNIDROIT to enlarge the contents of the *Principles* and to continue to develop the international unification of law movement which can be achieved not only the preparation of binding rules but also by the reciprocal recognition of principles of law which, in areas such as that of international trade law, will continue to be drafted.

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