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THE LAW GOVERNING INTERNATIONAL COMMERCIAL CONTRACTS AND THE ROLE OF THE UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

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SYLLABUS ©

I. LEGAL SOURCES

- UNIDROIT Principles of International Commercial Contracts 2016 (<http://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016>)
- Model Clauses for Use by Parties of the UNIDROIT Principles of International Commercial Contracts (<http://www.unidroit.org/instruments/commercial-contracts/upicc-model-clauses>)
- Hague Principles on Choice of Law in International Commercial Contracts of 19 March 2015 (<https://www.hcch.net/de/instruments/conventions/full-text/?cid=135>)
- The 1980 United Nations Convention on Contracts for International Sale of Goods (CISG) (<http://www.uncitral.org/pdf/english/texts/sales/cisg/CISG.pdf>)
- 1985 UNCITRAL Model Law on International Commercial Arbitration (http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf)

II. BASIC BIBLIOGRAPHY

- M.J. BONELL, An International Restatement of Contract Law, 3rd ed. (2005)
- S. VOGENAUER (ed.), Commentary on the UNIDROIT Principles of International Commercial Contracts, 2nd ed. 2015
- M.J. BONELL - E. FINAZZI-AGRO´, Does a Transnational Legal Order exist in International Arbitration? The Case of the UNIDROIT Principles of International Commercial Contracts, in Transnational Dispute Management at www.transnational-dispute-management.com (2022), p.1 et seq.
- P. SCHLECHTRIEM - I. SCHWENZER (eds.), Commentary on the UN Convention on the International Sale of Goods (CISG), 4th ed. Beck 2016

III. CASE LAW

- UNILEX - A freely accessible data base of international case law and bibliography on the UNIDROIT Principles of International Commercial Contracts and the CISG at www.unilex.info

IV. THE APPLICATION OF THE UNIDROIT PRINCIPLES IN PRACTICE

- As of now UNILEX contains 542 decisions – both court decisions and arbitral awards – rendered worldwide and referring in one way or another to the UNIDROIT Principles http://www.unilex.info/principles/cases/date/2021#case_2021

A.- THE APPLICATION OF THE UNIDROIT PRINCIPLES AS RULES OF LAW GOVERNING THE MERITS OF THE DISPUTE ARISING FROM A COMMERCIAL CONTRACT

(1) *because expressly chosen by the parties either in their contract or after the commencement of the proceedings*

- Arbitral Award of the Centro de Arbitraje de México (2006) <http://www.unilex.info/principles/case/1149>
(for other cases of this kind see at http://www.unilex.info/principles/cases/article/102/issue/1208#issue_1208 (under issues nos. 2.1.1.1 and 2.1.1.2))

(2) *because the parties agreed that their contract be governed by no further specified general principles and rules of supranational or transnational character*

- ICC Award 28. 7. 2000 No. 9797 *Andersen Consulting Business Unit Member Firms vs. Arthur Andersen Business Unit Member Firms and Andersen Worldwide Societe Cooperative* <http://www.unilex.info/case.cfm?pid=2&do=case&id=668&step=Abstract>
(for numerous other cases of this kind see [http://www.unilex.info/dynasite.cfm?dssid=%202377&dsmid=%2013621&x=1%20\(under%20issue%202.1.3\)](http://www.unilex.info/dynasite.cfm?dssid=%202377&dsmid=%2013621&x=1%20(under%20issue%202.1.3))).

(3) *because applied by the arbitral tribunal on its own motion*

- ICC International Court of Arbitration 11265 of 2003 <http://www.unilex.info/principles/case/1416#RWANDESE>
- (for other decisions of this kind see at <http://www.unilex.info/dynasite.cfm?dssid=2377&dsmid=13621&x=1> (under issue 2.1.5)).

(4) *because the contract was silent as to the applicable law or the choice-of-law clause was manifestly invalid or incomplete*

- Award of the London Court of Arbitration of 1995 <http://www.unilex.info/principles/case/712>
- ICC Award of 2001 No. 10422 <http://www.unilex.info/principles/case/957>
(for other cases see http://www.unilex.info/principles/cases/article/102/issue/1224#issue_1224)

(5) *because the domestic law governing the contract or an applicable international uniform law instrument was unclear or did not address the issue at stake*

- Cour d'Appel, Province de Québec, District of Montreal of 8 August 2016 (*Churchill Falls (Labrador) Corporation Ltd. c. Hydro-Québec*) <http://www.unilex.info/case.cfm?id=1968>
- Court of Cassation of Belgium, 19 June 2009 <http://www.unilex.info/principles/case/1456>
(for the list of the numerous other cases of this kind see http://www.unilex.info/principles/cases/article/102/issue/1941#issue_1941)

B.- THE APPLICATION OF THE UNIDROIT PRINCIPLES AS RULES OF LAW IN INTERNATIONAL INVESTMENT ARBITRATION

(1) *because expressly or impliedly chosen by the parties*

- *Joseph Lemire v Ukraine (Lemire II)* (ICSID Case (No ARB/06/18; IIC 424 (2010), Award 14 January 2010
<http://www.unilex.info/principles/case/1533>)

(2) *because applied by the arbitral tribunal on its own motion as a supporting argument for a particular interpretation of the applicable domestic or international law*

- International Centre for Settlement of Investment Disputes (ICSID) (*Investment El Paso Energy International Company vs The Argentine Republic*) (2011)
<http://unilex.info/principles/case/1658>

C. MATERIAL SCOPE OF APPLICATION

The decisions collected in UNILEX concern no less than 51 different types of contract, ranging from administrative contracts (14 cases) to transport contracts (4 cases), and including agency contracts (8 cases), bank guarantees (3 cases), concession agreements (6 cases), consulting contracts (2 cases), construction contracts (29 cases), distribution agreements (19 cases), gas supply contracts (6 cases), insurance contracts (5 cases), joint venture agreements (5 cases), lease contracts (16 cases), licensing agreements (10 cases), loan agreements (11 cases), sales contracts (141 cases), satellite contracts (3 cases), settlement agreements (9 cases), share purchase agreements (16 cases), service contracts (43 cases), state contracts (37 cases) and telecommunication service contracts (2 cases).

Cf. http://www.unilex.info/principles/cases/keywords/all#_by_type_of_contract_involved

D. TERRITORIAL SCOPE OF APPLICATION

As to the nationality of the parties to the disputes, individuals or companies from 92 States of all five continents were involved, ranging from Algeria (1 case) to the West Indies (2 cases) and including countries such as Argentina (14 cases), Australia (17 cases), Austria (10 cases), Belgium (5 cases), Belorussia (7 cases), Brazil (9 cases), Canada (12 cases), China (34 cases), Cyprus (7 cases), France (35 cases), Germany (22 cases), Hong Kong (4 cases), India (10 cases), Iran (10 cases), Italy (50 cases), Japan (5 cases), Lithuania (16 cases), Mexico (4 cases), New Zealand (5 cases), The Netherlands (22 cases), Paraguay (22 cases), Poland (14 cases), Russia (100 cases), Spain (41 cases), Sweden (8 cases), Switzerland (25 cases), Turkey (8 cases), United Kingdom (3 cases), United States (43 cases) and Uruguay (3 cases). Moreover, in disputes concerning so-called state contracts the parties involved were, on the one hand, foreign private investors from countries such as the United States (16 cases), the United Kingdom (7 cases), France (2 cases), and on the other hand Governments (or Government Agencies) of the host countries such as Iran (6 cases), Argentina (3 cases), Turkey (2 cases) and Czech Republic, Democratic Republic of Congo, Ecuador, Georgia, Kyrgyzstan, Lithuania, Libya, Mexico, Ukraine (1 case each).

Cf. http://www.unilex.info/principles/cases/keywords/all#by_nationality_of_parties

E. SELECTED TOPICS OF CONTRACT LAW

1. *Contract Formation & Precontractual Liability*

- M.J. Bonell, *An International Restatement of Contract Law*, 3rd ed. (2005), pp. 136 - 142; 105-117; Article 29(2) CISG; Articles 2.1.17, 2.1.18; 2.1.15 UNIDROIT Principles
- ICC Award No. 8540 (1996)
<http://www.unilex.info/case.cfm?pid=2&do=case&id=644&step=Abstract>

2. *Contract Interpretation*

- Articles 4.1 – 4.3, 4.6 – 4.8; 2.1.17- 2.1.18 UNIDROIT Principles ; Article 8 CISG;
- M.J. Bonell, *The UNIDROIT Principles and CISG - Sources of Inspiration for English Courts?* in *Uniform Law Review* 2006, pp. 305-317.
- Court of Appeal (Civil Division) (*Proforce Recruit Limited v The Rugby Group Limited*) 2006)
<http://www.unilex.info/case.cfm?pid=2&do=case&id=1119&step=Abstract>

3. *Illegality*

- Articles 3.3.1 and 3.3.2 UNIDROIT Principles
- M. J. BONELL, *The New Provisions on Illegality in the UNIDROIT Principles 2010*, in *Uniform Law Review* 2011, pp. 517 - 536
- Court of Appeal of Rio Grande do Sul, 30 March 2017
<http://www.unilex.info/case.cfm?pid=2&do=case&id=2042&step=Abstract>

(f) *Force Majeure & Hardship*

- Article 79 CISG; Articles 7.1.7; 6.1.17; 6.2.1 – 6.2.3 UNIDROIT Principles
M.J. Bonell, *An International Restatement of Contract Law*, 3rd ed. (2005), pp. 117 - 124
- Cour d'Appel, Province de Québec, District of Montreal 1 August 2016
<http://www.unilex.info/case.cfm?id=1968>
