

## РЕЦЕНЗИИ

Book review: Eckart Brödermann, *Unidroit Principles of International Commercial Contracts: an Article-by-Article Commentary*, 2nd edition (Kluwer law International 2023)

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Key Words

UNIDROIT Principles, Commentary, Review

Introduction

The UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles) were adopted as a response to the dire need for a framework for international commercial contracts that can be used by parties from different legal systems. Despite their potential to bridge the gap between different legal traditions, providing a common approach to contract law, the UNIDROIT Principles did not seem to enjoy the widespread support that the

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creation of such an instrument implies. Now, almost thirty years after the adoption of their first edition, followed by three amended versions, „the time of the UNIDROIT Principles has arrived“.<sup>2</sup>

2023 saw the publication of the second edition of Prof. Eckart Brödermann’s „UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary“ („Commentary“). Following a well-received first edition in 2018<sup>3</sup>, translated and published in Chinese in 2021<sup>4</sup>, the second edition of the Commentary incorporates further examples of the author’s solid practical experience applying the UNIDROIT Principles, as well as new studies, case law and scholarly work. A Spanish version of the second edition is on the way.<sup>5</sup>

The second edition of the Commentary follows the main structure of the first one, adding an extra layer of depth following five more years of regular work with the UNIDROIT Principles by the author since the publication of the first edition. The Commentary provides an analysis of each of the 211 articles’ background and application, including options where possible and interpretative comments. The explanations are supported with practical examples from both judicial and arbitral practice, legal doctrine and the author’s more than twenty years of experience applying the UNIDROIT Principles. In this second edition, Prof. Brödermann provides more detailed historical context, including by referring to discussions of the Working Group during the preparation of the 2010 edition of the UNIDROIT Principles, to which he was a party.<sup>6</sup>

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<sup>2</sup> E. Brödermann. *UNIDROIT Principles of International Commercial Contracts: An Article-by-Article Commentary. Second Edition*. Alphen aan den Rijn, Kluwer Law International, 2023, pp. VII – XI.

<sup>3</sup> For a book review of the first edition of the Commentary, please see V. Hristova. Book review, Eckart J. Brödermann: UNIDROIT Principles of International Commercial Contracts: An Article-by-article Commentary, Kluwer Law International (2018). *Commercial Law Journal*, 1-2 (2020), pp. 109 – 112.

<sup>4</sup> E. Brödermann. 国际统一私法协会国际商事合同通则—逐条评述 [*UNIDROIT Principles of International Commercial Contract – article by article of the International Institute for the Unification of Private Law*], G. Wang (transl.). China, Law Press, 2021.

<sup>5</sup> Brödermann (2023), pp. VII – XI.

<sup>6</sup> *Ibid.*

The second edition of the Commentary continues to give deserved attention to the role of the UNIDROIT Principles in providing a „compromise point bridging between civil and common law“.<sup>7</sup> In line with his goal to keep the approach of the Commentary practical, the author further expands substantially the number of integrated practical examples from long-term contract negotiations in the automotive industry and pro bono work for humanitarian support to Ukraine.

## Notable additions to the second edition

Prof. Brödermann has successfully achieved his goal of maintaining the Commentary’s practicality by deftly incorporating two new chapters to the second edition in the form of annexes. This approach has the potential to greatly enhance readers’ comprehension of the rules, allowing them to seamlessly apply the provisions in practical scenarios. For this review, a few portions of the annexes will be highlighted.

## Annex to Preamble – UNIDROIT Principles as General Principles of International Commercial Contract Law

The author’s own experience working on a USD 15 billion international arbitration dispute under the UNIDROIT Principles inspired the addition of an annex to the Preamble. The case-associated comparative research on case law in 26 jurisdictions undertaken by Prof. Brödermann provided the basis for assessing the UNIDROIT Principles as general principles of international commercial contract law.<sup>8</sup> In making this assessment, the author further considers the wording and purpose of the Preamble of the UNIDROIT Principles, the contents of the rules, their history, the practice of arbitral tribunals and an emerging *opinio iuris*.

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

As a result of this assessment, the Commentary conveniently offers options for the utilisation of the UNIDROIT Principles in arbitration and litigation practice. The UNIDROIT Principles can be relied on when a reference is made to generally accepted principles and rules of international commercial law or general principles of international law or in the absence of a choice of law by the parties. They can also be used when interpreting or supplementing international or domestic law instruments.<sup>9</sup>

Further, the author suggests that the UNIDROIT Principles can be used in international contracting and that more organisations should follow the approach of the UN Food and Agricultural Organisation and the Global Fund and include a clause choosing the UNIDROIT Principles in their standard terms; thus, equally respecting the interests of all involved.<sup>10</sup>

Prof. Brödermann further acknowledges how helpful the UNIDROIT Principles had proven to be in the private business sector „as a cost efficient and risk minimising alternative to an agreement under national law.“<sup>11</sup> On the one hand, the UNIDROIT Principles allow the parties to „move out of their personal comfort zone of their own national law and to agree on the choice of the UNIDROIT Principles as a neutral contractual regime.“<sup>12</sup> On the other hand, they also allow the parties to focus on the specifics of their particular agreement and avoid wasting time and money negotiating all the details.<sup>13</sup> Those can be covered by the UNIDROIT Principles.

## Annex to Section 5.1 - UNIDROIT Principles for Specific Kinds of Contracts

Another useful supplement to the second edition of the Commentary is the Annex to Section 5.1 – UNIDROIT Principles for

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<sup>9</sup> *Ibid.*, pp. 41 – 74, Paras 47 – 48.

<sup>10</sup> *Ibid.*, pp. 41 – 74, Para 49.

<sup>11</sup> *Ibid.*, Paras 50 – 51.

<sup>12</sup> *Ibid.*, Para 51.

<sup>13</sup> *Ibid.*

Specific Kinds of Contracts. This new chapter presents a practical overview of the use of the UNIDROIT Principles for specific kinds of contracts. According to the author, while the UNIDROIT Principles can be applied to all types of contracts, they are particularly helpful in the context of sales, services and construction agreements.<sup>14</sup> The checklist format of the Annex provides an overview of the key elements that should be taken into consideration when negotiating and drafting such agreements. The checklists are concise and handy tools, providing a systematic way of ensuring that all important elements of the different kinds of agreements are considered by the business stakeholders. Additionally, by following a checklist, they can avoid overlooking crucial details due to forgetfulness or lack of attention.

For instance, the author recommends parties entering into a sales agreement actively decide whether to stipulate specific provisions for a particular issue or rely on the default rules provided in the UNIDROIT Principles.<sup>15</sup> The checklist for the sales agreements suggests items for the parties to consider for both short-term agreements for one-off transactions as well as long-term transactions and presents a non-exhaustive overview of the default rules under the UNIDROIT Principles, which apply absent a specific agreement by the parties.

Prof. Brödermann notes that when it comes to services agreements, there exist treaty alternatives to the UNIDROIT Principles only for very limited kinds of services, more specifically in the transportation industry.<sup>16</sup> The Commentary helpfully lists the key elements to be considered by the parties entering any type of service agreement. Here, the author also shares one of the many examples from his practice where, in the context of services agreements, it was proven beneficial to use the UNIDROIT Principles and avoid relying on Romanian or Ukrainian law, which were not known or readable to him in their original languages.<sup>17</sup>

So, if you want to ensure that your sales, services, or construction agreements are comprehensive and legally sound, consulting

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<sup>14</sup> *Ibid.*, pp. 227 – 280, Para 2.

<sup>15</sup> *Ibid.*, Para 4.

<sup>16</sup> *Ibid.*, Para 6.

<sup>17</sup> *Ibid.*

the Commentary during the process of negotiation and execution of such agreements could be a wise decision.

## Conclusion

Prof. Brödermann's comprehensive review of the UNIDROIT Principles is an invaluable contribution to the field, and undoubtedly a testament to his expertise and dedication. This article-by-article analysis of the UNIDROIT Principles offers practical insights and perspectives that can significantly enhance the process of negotiation and execution of international commercial contracts.

The Commentary is presented in an easily understandable and practical format that goes beyond merely explaining the application of the UNIDROIT Principles. Instead, it encourages and promotes the use of the UNIDROIT Principles in the drafting, negotiation, and risk management associated with international commercial contracts.

This complete and all-encompassing guide is an exceptional resource that those in the legal profession, business stakeholders, and the thousands of students from all around the world participating in the Willem C. Vis International Commercial Arbitration Moot every year will find incredibly helpful.