This article from European Journal of Law Reform is published by Eleven international publishing and made available to anonieme bezoeker

Book Reviews

Klaus Peter Berger (ed.), *The Practice of Transnational Law,* The Hague: Kluwer Law International (2001), pp. i–xiv and 1–228

Globalization. My law classes, from human rights law to contracts law, address the question of what can the law do to cope with internationalism. Students want to know what impact lawyers are having on the globalization process. International lawyers, dealing with cross-border transactions on a daily basis, must be using creative measures to harmonize the legal systems of the world. Right? Wrong!

At least not according to Germany's Münster University. In a survey of 2,700 practitioners in 78 countries, Münster's scholars asked lawyers in 1998 if they are utilizing international rules in contract formation and for designating forms of dispute settlement. The results were disappointing. Nearly 70 per cent of the lawyers surveyed had not heard of anyone using transnational law during international contract negotiations. Forty-three per cent of the respondents admitted to being afraid to use transnational law.

Berger's publication compiles eight articles from authorities in the field of commercial law, who were asked to react to the Münster survey results and to comment on today's practice of transnational commercial law. The general issue at hand was whether, in the drafting of international contracts, lawyers stick to the legal language of their own country, or are they making use of the evolving rules of a transnational system? How do the French and English partners draft a contract? What do the Japanese and Americans do? Well, the answer is: lawyers are not using UNIDROIT or the Vienna Sales Convention.

The survey respondents admitted they lacked information on the new *lex mercatoria* (common contract law for multi-state transactions), and needed assurance that the new laws would be beneficial to their clients. In a field where differing laws of countries can be barriers to smooth legal negotiations, the editor/author Klaus Peter Berger suggests that lawyers are in a unique position to design a contract system that better suits transnational transactions. Armed with knowledge and a resolve to modernize transnational practice, lawyers could quickly make a change.

In his chapter, Friedrich K. Juenger analyzes the question from the viewpoint of the United States. For Americans, considering rules and institutions outside the practitioner's home state is a common aspect of practice. Coming from 50 separate, albeit similar, legal systems, American lawyers are familiar with the underlying

European Journal of Law Reform, Vol. 4, No. 1
© Kluwer Law International 2002.

This article from European Journal of Law Reform is published by Eleven international publishing and made available to anonieme bezoeker

principles of private international law (which they justifiably label 'conflict of laws'). Juenger admits, however, that American lawyers are generally unaware of the transnational commercial rules. He warns: '[b]lissful as such ignorance may be, it hardly promotes progress.'

Such parochialism causes confusion and poor relations between parties in the international commercial world. And, with the intensification of globalization in finance and business in the late 20th and early 21st centuries, it is apparent that today's laws, and professionals, lag behind the needs of international business. The goal of this collection of commentaries is an ambitious proposal for modernizing the international legal profession, giving it better tools to serve its clients in the changing global economics. For this purpose, it also includes contributions by Michael J. Bonell on 'The Unidroit Principles and Transnational Law', by Yves Derain on 'Transnational Law in ICC Arbitration', by Emmanuel Gaillard on 'Transnational Law: A Legal System or a Method of Decision-Making?', and by Norbert Horn on 'The Use of Transnational Law in the Contract Law of International Law and Finance'.

The book is a quick read with 132 pages of text, followed by 95 pages of charts detailing the survey conducted by Münster University. The chapters, with discussions on the history and practice of transnational law, were interesting and thought provoking. However, two complaints may be leveled against it. First, as is often the case with Kluwer publications, the book at EUR 84 (USD 72/GBP 52) is priced beyond what most academics and students can afford. This is unfortunate, as the stated purpose of the authors was to make information on the practice of transnational law available to more members of the profession. Secondly, the text is poorly edited with numerous English language mistakes. For the price asked, one would expect a better-edited piece of work.

Maureen B. Fitzmahan

Jan Ramberg, *International Commercial Transactions*, 2nd ed., Paris: ICC Publishing SA (2000), pp. 1–516

Jan Ramberg has been serving as Vice President of the ICC Commission on International Commercial Practice and as Chairman of the Working Party on Incoterms 2000. He is uniquely qualified to explain the Incoterms and their context in international commercial transactions and he does so in some 180 pages of text in a very lucid and straightforward manner.

After an introduction to the general principles of international commercial contracts, the first part of the book deals with specificities of contracts of sale, payment modalities, protection against breaches and changed circumstances, trade terms and terms of carriage, the distribution of the risk of loss, damage or delay, insurance, financing, and dispute settlement. In the second part, the book goes into

This article from European Journal of Law Reform is published by Eleven international publishing and made available to anonieme bezoeker

greater depth about the obligations of buyers and sellers in sales transactions. Finally, the third part covers contracts of carriage and related issues in greater detail.

While the explanatory parts of the book are excellent, the annexes may be even more useful for practitioners and students alike. On more than 300 pages, Ramberg has compiled a wealth of documents, beginning with the CISG, the UNIDROIT Principles and the Principles of European Contract Law, but extending much further into material that is otherwise not easily available. Particularly noteworthy are a series of model contracts and specimens for bills of lading, various waybills and so on.

The only critical remark that can be made with respect to this book might be construed as more of a suggestion: It is almost certain that every practitioner who deals with international commercial transactions, even occasionally, will find the book a most valuable addition to his or her private library – and probably a volume that will never be far from the workplace. However, a paperback edition for students is necessary so that this book may be used in the classroom because at a more competitive price (instead of the EUR 125 for the hardbound copy), this book has great potential for providing a remedy for the problem identified by Münster University and referred to in the previous review, namely the fact that the vast majority of practising attorneys does not feel comfortable with and tries to avoid international law when drafting contracts and planning commercial strategies. Other than that, there are only compliments to Jan Ramberg and the ICC on this excellent publication.

Frank Emmert

Paul J. Omar (ed.), *Procedures to Enforce Foreign Judgments*, Aldershot: Dartmouth Publishing Co./Ashgate Publishing Ltd. (2002), pp. i–xiv and 1–118

'Judgments of foreign courts are official acts of the state in which the court is located, that is the state of the forum, and are effective only within the territory of that state. This international law principle of territoriality, or territorial sovereignty, is the reason that prompts the need for an official act by the recognising state allowing the foreign act of state, or foreign judgment, to have effect in the recognising state.' This introductory passage in the chapter by Jürgen Böhmer on Germany outlines the background of the present volume.

It is the result of a project implemented by the Association of European Lawyers and brings together short country reports on the applicable rules and procedures for the recognition and enforcement of foreign judgments. Countries covered include Austria (Friedrich Schwank), Belgium (Nicole Van Crombrugghe), England and Wales (Lisa Barstow and Julia Staines), Estonia (Risto Vahimets and Ilona Nurmela), Germany (Jürgen Böhmer), Guernsey (Tow Crawford), Isle of Man

This article from European Journal of Law Reform is published by Eleven international publishing and made available to anonieme bezoeker

(Jason Stanley), Spain (Jesus Muñoz-Delgado), Sweden (Annika Freij), and Switzerland (Phillip Känzig and Dorothea Meyer Schmidiger). With the exception of the German contributor, who is an academic, all authors are practising attorneys.

The idea of the book is to be complimented. To bring together all essential information on how to obtain recognition and enforcement of a foreign judgment for all major (European) jurisdictions in one slim volume in English certainly meets a growing need among legal practitioners and comparative lawyers in general. The implementation is not without weaknesses, however. While the editor claims that 'there has been an attempt to structure the information so that direct comparisons can be made between jurisdictions', this structure has largely escaped the attention of the present reader. Hence, the individual country reports or chapters are of very different length and detail and do not follow a consistent outline. This may be a disadvantage more for the comparative lawyer than for the practitioner because the latter is unlikely to want to read the book from cover to cover but rather look up country-specific information. However, this information is not consistent and complete in each case either. Some chapters provide information on court fees, others do not. Some chapters provide a concordance table for the Brussels/Lugano Conventions and national law provisions, others do not. Some chapters provide a fair number of references to further reading, others do not.

At some point the reader begins to wonder what the instructions to the authors could have looked like and what the 'project' of the Association of European Lawyers consisted of. Unfortunately, however, there is no general or introductory chapter which could explain these questions and put the different reports in context. All that is given is a few sentences about the aspirations of the book in the editor's preface and then a series of ten country reports. This makes it appear a little as though the editor simply asked corresponding law firms within the association to provide a couple of pages on the recognition and enforcement of foreign judgments in their jurisdiction and then for some reason did not have the time to write a general part before the deadline for the review exercise.

The selection of jurisdictions is another source of amazement. Granted, Guernsey and the Isle of Man may have their importance for practitioners in the UK. However, how can it be explained that Scotland is missing? And Ireland? Where are the Netherlands, France, or Italy? Why was Estonia included but not a single one of the other Central and Eastern European Countries (CEECs)? Particularly, since only Poland so far has been invited to join the Lugano Convention and certainly Poland, Hungary and the Czech Republic are much more important from the point of view of transnational legal practice. Again, the reader cannot help but get the impression that the selection was not based on conscious decisions but on chance – where do we know somebody? Or who submitted their reports in time?

Generally, the book is an example of a good idea lost in poor implementation. At GBP 40 it is a bad deal. Properly done, it would be a bargain even at GBP 100.

Frank Emmert

This article from European Journal of Law Reform is published by Eleven international publishing and made available to anonieme bezoeker

Gerhard Walter/Samuel P. Baumgartner (eds.), *Recognition and Enforcement of Foreign Judgments Outside the Scope of the Brussels and Lugano Conventions*, The Hague: Kluwer Law International (2000), pp. i–xii and 1–580

This book has a similar ambit as the one edited by Paul Omar, reviewed above. However, it competes in quite a different league. First, it is part of a highly professional series published by Kluwer under the titled 'Civil Procedure in Europe'. The first book in this series deals with 'Seizures and Overindebtedness in the European Union' and appeared in 1997. The second provides comparative overview of 'Recourse Against Judgments in the European Union', that is, the various appeals and legal remedies against judicial decisions, and came out in 1999. The present one is the third book in the series. Since its publication, volume four, which is dedicated to 'Orders for Payments in the European Union', has also appeared. Other volumes on other aspects of civil procedure – such as computation of time, evidence, injunctions, costs, and so on – will follow in due course. All books in the series are addressed equally to practitioners seeking reliable information about a certain foreign jurisdiction, and to comparative legal scholars and all those involved in law reform and development seeking inspiration from solutions found elsewhere.

The second difference from Omar's book is the fact that the present book – and the entire series – is edited and authored by very well known scholars and authorities in the field, which in and of itself guarantees certain standards of quality. Theoretically, this could have the drawback of making the book rather academic and not responsive to the daily needs of the practitioner. However, virtually all contributors are not only academics but also practitioners or consultants and obviously well aware of the questions that come before attorneys and judges in the context of transnational litigation.

Thirdly, the present book begins with a very substantial general report on the issues related to the recognition and enforcement of judgments outside the scope of the Brussels and Lugano Conventions, which enables unfamiliar readers to quickly grasp the purpose and scope of the book and which also includes extensive bibliographic references. In fact, this general report by Walter and Baumgartner is so well written and so systematically structured that it should be recommended reading for every student of the field and every lawyer feeling less than very comfortable about his or her knowledge on the typical problems connected to the recognition and enforcement of foreign judgments.

Fourthly, this book covers virtually all important jurisdictions in Europe: thirteen of the fifteen EU Member States (the exceptions being Denmark and Ireland) plus Switzerland and Norway, as well as the Czech Republic, Hungary, and Poland. Hence, the omission of Guernsey and the Isle of Man (see above) should be a minor drawback for the great majority of readers.

Furthermore, and by now the reader will no longer be surprised that yet another weakness of the book by Omar reviewed above is in fact taken care of in the present

This article from European Journal of Law Reform is published by Eleven international publishing and made available to anonieme bezoeker

volume, the reports follow a coherent structure. Obviously, they do not do so by coincidence but because the editors elaborated a questionnaire with 67 points as guidance and structure for the various contributors and their country reports. Accordingly, each report begins with a discussion of the sources of law for the recognition and enforcement of foreign judgments in the respective country (autonomous law, bilateral and multilateral conventions). The subsequent structure is as follows:

- recognizable decisions,
- prerequisites for recognition,
- reasons for refusing recognition,
- effects of recognition,
- proceedings for declaration of recognizability and enforceability
- enforcement – execution,
- and, last but not least, credit given to pending foreign litigation.

In conclusion, this book by Walter and Baumgartner truly achieves its purpose, namely, to provide all the information required by practitioners who are drafting contracts and have to decide choice of law and jurisdiction questions, or who are confronted with disputes where foreign judgments have to be or should not be recognized and enforced. It also makes interesting reading for students and scholars dealing with comparative analysis of law and it provides valuable information for legislative drafters, for example, in CEECs, who are seeking models of how to – or how not to – design their own future laws. Last but not least, it can teach authors and editors such as Paul Omar how to organize a project with country reports from a large number of different jurisdictions.

Only two warnings have to be mentioned for the sake of fairness: The book – as the entire series – is trilingual. Thus, eleven contributions are presented in English, five in French, and three in German. The disadvantage this may present to some readers is, however, mitigated by rather extensive summaries which are included at the end of each part in the other two languages. Finally, the price of the book, at EUR 195 /usd 210/GBP 133 is rather hefty and a law firm or library planning to purchase the entire series – which would seem to make a lot of sense to the present reviewer – will have to make budgetary allocations accordingly.

Frank Emmert