Article on Non-State Law

Giuditta Cordero Moss (University of Oslo) has written an intriguing article in the Global Jurist (Vol. 7 : Iss. 1 (Advances), Article 3) entitled “International Contracts between Common Law and Civil Law: Is Non-state Law to Be Preferred? The Difficulty of Interpreting Legal Standards Such as Good Faith”. Here is the abstract:

> *Most commercial contracts are nowadays written on the basis of English or American contract models, irrespective of whether the legal relationship that the contracts regulate is governed by a law belonging to a Common Law system or not. These contract models are drafted on the basis of the requirements and structure of the respective Common Law system in which they were originally meant to operate. These models may therefore be in part ineffective or parts thereof may redundant, if the governing law belongs to a Civilian system. To overcome this tension between Common and Civil Law, it is sometimes recommended to subject international contracts to non-state sources of law (also referred to as transnational law, lex mercatoria, soft law). This article analyses the tension between the Common and the Civil Law of contracts, and to what extent non-state sources may represent a satisfactory solution to such tension. This is made by analyzing the role that good faith and fair dealing play in contracts according to the respective systems: English law as an illustration of Common Law systems, Norwegian, German and Italian law as illustrations of Civil Law Systems, the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law as illustration of non-state sources.*

You can download the paper from here.