

Symeonides on the Hague Principles on Choice of Law

Dean Symeon C. Symeonides (Willamette University – College of Law) has posted *The Hague Principles on Choice of Law for International Contracts: Some Preliminary Comments* on SSRN.

This Article discusses The Hague Principles on Choice of Law for International Contracts, a new soft-law instrument recently adopted by the Hague Conference of Private International Law.

The Principles will apply to “commercial” contracts only, specifically excluding consumer and employment contracts. For this reason, the Principles adopt a decidedly liberal stance toward party autonomy, exemplified inter alia by a strong endorsement of non-state norms. Such a liberality would be unobjectionable, indeed appropriate, if a contract’s “commerciality” alone would preclude the disparity of bargaining power that characterizes consumer and employment contracts. The fact that — as franchise contracts illustrate — this is not always the case makes even more necessary the deployment of other mechanisms of policing party autonomy. The Principles provide these mechanisms under the rubric of public policy and mandatory rules, but their effectiveness is not beyond doubt.

The Principles are intended to serve as a model for other international or national instruments and as a guide to courts and arbitrators in interpreting or supplementing rules on party autonomy. Like other international instruments, the Principles are as good as the consensus of the participating delegations would allow. But the real test of success for these Principles depends not on academic approbation but on their reception by contracting parties, courts, and arbitrators. While it is too early to tell whether the Principles will pass this test, there is reason for optimism.

In any event, and regardless of whether they will be widely accepted, the Principles will enrich the quality of the international discourse by providing a guiding light in the search for proper solutions to the problems encountered in honoring, and defining the limits of, contractual choice of law in international

contracts. This alone would be a significant contribution to the advancement of the art and science of law-shaping.

The Article is forthcoming in the *American Journal of Comparative Law* (Vol. 61, 2013) and, in French, in the *Revue critique de droit international privé*.