Review of Choice of Law in International Commercial Contracts

While doing research on a choice of law article, I found it necessary to consult a book generally co-edited by Professors Daniel Girsberger, Thomas Graziano, Jan Neels on *Choice of Law in International Commercial Contracts* ('Girsberger et al'). The book was officially published on 22 March 2021. I began reading sections of the book related to tacit choice of law sometime in December 2022 and found the work truly global and compelling. At the beginning of June this year, I decided to read the whole book and finished reading it today. It is 1376 pages long!

To cut the whole story short, the book is the bible on choice of law in international commercial contracts. It covers over 60 countries, including regional and supranational bodies' rules on choice of law. Professor Symoen Symeonides had previously written a single authored award winning book on *Codifying Choice of Law Around the World,* but that work did not cover as much as Girsberger et al's book in terms of the number of countries, and regional and supranational instruments (or principles) covered.

The book arose from the drafting of the Hague Principles on Choice of Law in International Commercial Contracts, headed by Professor Girsberger and commissioned by Professor Marta Partegas. The central aim of the Hague Principles is to promote party autonomy, as the Hague Principles does not touch on the law applicable in the absence of choice.

The book starts with a general comparative outline of choice of law around the world and its comparison to the Hague Principles. This outline is derived from the works of many other scholars that contributed to the book. In other preliminary chapters, there are discussions devoted to party autonomy, provenance of the Hague Principles, roadmap to promoting the Hague Principles, international commercial arbitration, and perspectives from UNIDROIT and UNCITRAL.

The essential part of the book focuses on regional and national reports of countries around the world, with a focus on comparison to the Hague Principles.

The format used is consistent, and easy to follow for all the reports in this order: introduction and preamble, scope of the principles, freedom of choice, rules of law, express and tacit choice of law, formal validity of the choice of law, agreement on the choice of law and battle of forms, severability, exclusion of renvoi, scope of the chosen law, assignment, overriding mandatory rules and public policy, establishment, law applicable in the absence of choice, and international commercial arbitration.

The Hague Principles has been successful so far given the regional or supranational bodies such as Asia,[1] and Latin America[2] that have endorsed it.

From 31st May to 3 June 2023, the Research Centre for Private International Law in Emerging Countries in University of Johannesburg held a truly Pan-African Conference on the African Principles on Choice of Law in International Commercial Contracts.[3] Many African scholars (including myself) and some South African government officials were present and spoke in this very successful conference. The African Principles also draws some inspiration from the Hague Principles, which involved the participation of African scholars like Professors Jan Neels and Richard Frimpong Oppong.

Girsberger et al's book and the Hague Principles success so far may be due to the more inclusive approach it took, rather than other Hague Conventions that are not fully representative of countries around the world, especially African stakeholders.

More please.

[1] Asian Principles on Private International Law 2018.

[2] Guide of the Organization of American States on the Applicable Law to International Commercial Contracts 2019

[3] See generally JL Neels and EA Fredericks, "An Introduction to the African Principles of Commercial Private International Law"(2018) 29 Stellenbosch Law Review 347; JL Neels, 'The African Principles on the Law Applicable to International Commercial Contracts – A First Drafting Experiment' (2021) 25 Uniform Law Review 426, 431; JL Neels and EA Fredericks, 'The African Principles of Commercial Private International Law and the Hague Principles' in Girsberger et al paras 8.09-8.11.