The Commission on European Contract Law, Ole Lando and Hugh Beale (ed.), **Principles of European Contract Law, Parts I and II**. Kluwer Law International. 2000. ISBN 90-411-1305-3. 561 p.

1. Introduction and general comments

It started in 1974 after a symposium in Copenhagen.[1] Or maybe it started hundreds or even thousands of years before that. Either way, the Commission on European Contract Law[2] has responded to the need for uniformity in the law of obligations in the European Union by publishing a second, enlarged, edition of its Principles of European Contract Law.[3] At least one more part is planned.[4] The new edition has nine chapters, most of them dealing with a specific topic: Formation of Contracts (Chapter 2), Authority of Agents (3), Validity (4), Interpretation (5), Contents and Effects (6), Performance (7), Non-Performance and Remedies in General (8) and Particular Remedies for Non-Performance (9). The first chapter contains General Provisions. Some chapters are also divided into sections. The Principles are aimed at restating European contract law while at the same time accommodating future developments in the field.

It is hard to argue against the practical and economical value of uniform rules, at least as long as the rules are reasonable. But if uniformity is something good, why should one be content with Europe? Why not aim for worldwide uniform rules? Such rules have successfully been accomplished with respect to the sale of goods, where on April 30, 2000, CISG[5] had been adopted by 57 states.[6] There is also a set of principles with that aim, the Unidroit Principles of International Commercial Contracts.[7] At least five of the members of the Commission were also members of the group that worked out the Unidroit Principles. Although the European Principles cover more topics and although there are a few minor dif-

[1] See p. xi. If nothing else is indicated, all references will be to Principles of European Contract Law, Parts I and II.

[2] There were actually two commissions, one during the 1980s that worked on Part I and one between 1992 and 1996 that worked on Part II, see p. xi et seqq. They were bodies of lawyers drawn from all the member states of the European Union and will jointly be referred to as the "Commission".

[3] They will be referred to as the "European Principles" or simply the "Principles". The first part was published in 1995 (ISBN 0-7923-2957-0). Some articles have been re-arranged between the two editions. The new edition has a table of the old and the new articles on p. 94.

[4] See p. xiv. The third part is supposed to deal with i.a. illegality and immorality, conditions, assignments of claims and plurality of debtors.

[5] The UN Convention on Contracts for the International Sale of Goods, Vienna 1980.

[6] See http://cisgw3.law.pace.edu/cisg/countries/cntries.html.

[7] ISBN 88-86449-00-3. The Unidroit Principles are available on Internet: http://www.unidroit.org/english/principles/pr-main.htm.

ferences between the solutions chosen for the different sets of principles, the question must be asked whether it has not been a waste of time and talent to create *two sets* of principles. The fact that there are two sets of principles can possibly be justified by their partially different purposes. The Unidroit Principles are strictly for commercial international contracts, while the European Principles cover all contracts. The latter also have the expressed purpose to facilitate trade within the European Union and to strengthen the single European market. In my opinion, however, it would nevertheless have been better if the Commission and Unidroit had joined forces and created *one set of Principles of Contracts.*

2. The presentation of the Principles

After an introduction (pp. xxi-xxvii) there is a brief survey of the chapters (pp. xxix-xlii), followed by a list of abbreviations (pp. xliii-xlviii). On pp. 1-93 the uncommented text of the European Principles is presented[8] in English and French.[9] On pp. 95-459, each article is commented and explained. The comments are supplemented with notes that give excellent references to national law. The book has a rich bibliography and tables of cases as well as of code provisions and legislation.[10] The index covers approximately 700 entries.

The comments include a number of examples, called illustrations. Most of them are helpful and enhance the understanding of the articles. In a few cases, however, the illustrations are not altogether convincing.

> Thus, in e.g. the illustration to art 1:104 it can be questioned how art. 2:209 can come into effect at all, in illustration 1 to art. 3:207 one wonders if the contract would not have been in force even without the ratification and in illustration 1 to art. 4:106 why the elderly lawyer's statement about the income of the practice that he sells does not have contractual effect. Sometimes the lack of clarity is due to the fact that only one remedy is discussed, without reference to other possibly available remedies.[11]

[8] The English text is also available on Internet: http://www.jus.uio.no/lm/eu.contract.principles.1998/index.html.

[9] According to art. 5:107 a contract drawn up in two linguistic versions shall be interpreted in accordance with the version in which it was originally drawn up. If this rule were applied to the interpretation of the *Principles* one can probably conclude that the French version is simply a translation of the *authoritative English version,* since all explanatory notes are in English, which indicates that the Principles were originally drawn up in English.

[10] Some Nordic legislation can be found under the heading "Nordic Laws" as well as under the different countries.

[11] See e.g. illustrations 2 to art. 9:101 and 7 to art. 9:102 as well as chapter 2.7, below.

At least in one case, it is quite obvious that few of the members of the Commission are young: The closing of the Suez Canal[12] is used as an example of a situation where changed circumstances make performance excessively onerous and the performing party therefore may be excused under art. 6:111.[13]

2.1 Chapter 1 – General Provisions

Chapter 1 treats general questions such as the application of the Principles and the freedom of contract vs. mandatory law. Since the Principles do not have any direct authority, e.g. through a national legislative body, the question of application is maybe more troublesome than otherwise. Art. 1:101[14] states that the Principles apply when the parties have incorporated them into their contract. More surprising is maybe that they are said to apply – or rather "may be applied" – when the parties have agreed that their contract shall be governed by "general principles of law", "lex mercatoria" or the like, or even where the parties "have not chosen any system or rules of law to govern their contract".[15] From the comment it seems to follow that the latter provision should apply primarily when there is no default rule on choice of law. Articles 1:102 (*Freedom of Contract*) and 1:103 (*Mandatory Law*) distinguish between mandatory law and "super-mandatory"[16] law. The former can be avoided by agreeing that the contract shall be *governed* by the principles, whereas if the principles are simply *incorporated* into the contract, it is still *governed* by a national law and thus subject to its mandatory rules. "Super-mandatory law", in contrast, cannot be avoided.[17]

2.1.1 Good faith and fair dealing

Art. 1:201 states as a mandatory rule[18] that each party must act in accordance with good faith and fair dealing. This is an overriding principle of the Principles.[19] In some cases, it seems that it has been allowed to be *too overriding*, so

[12] The Suez Canal was closed between 1967 and 1975, see http://www.suezcanal.com/notes.htm.

[13] On the other hand, the Commission must be complemented for the relatively high frequency with which women occur in the illustrations. The lack of females in examples has been a source for criticism of textbooks for many years.

[14] All articles are written with a colon between the chapter and the article, as opposed to the former version, where the article was separated from the chapter with a simple point.

[15] Art. 1:101 (3,b).

[16] See p. xxix.

[17] See art. 1:103 (2).

[18] Since it must be up to the parties to set a standard for what should be meant by good faith in their relationship, the rule is possibly not as mandatory as the drafters might wish, see Kihlman, Fel, Stockholm 1999 (ISBN 91-973587-3-8) p. 161.

[19] See p. xxix and p. 113.

that it is preferred – as a matter of method – to a quite obvious and absolutely justified solution based on interpretation[20] or on economic considerations.[21]

2.1.2 Terminology

Art. 1:301 defines certain terms. Of special interest are the terms "intentional", "material" and "written". An *intentional* act includes an act done *recklessly*, but not one that is merely *careless*. A person acts recklessly, when he is aware of the possible consequences but does not care whether they will occur or not.[22] Although this seems to be rather close to what is often meant by gross negligence[23] – at least in some countries – it seems to follow from illustration 2 to art. 1:301 and even more from art. 9:503 that gross negligence – whatever that may be – is not included in the definition of an intentional act.

A matter is *material* "if it is one which a reasonable person in the same situation as one party ought to have known would influence the other in its decision whether to contract *on the proposed terms* or to contract at all".[24] CISG uses the term in art. 19, which deals with acceptances that do not correspond to the offer. In art. 25, CISG defines a *fundamental breach,* which gives the aggrieved party a right to *avoid*[25] the contract, in a totally different way.[26] The distinction is lost in the Swedish translation of CISG, where both *material* and *fundamental* are translated into the term "väsentlig".

According to art. 13 CISG, *writing* "includes telegram and telex". That was 1980. The Principles stress function rather than examples: A communication is in writing if the means of communication used is capable of providing a readable record of the statement on both sides – i.e. for both parties.

The concepts of *reasonableness* and its mirror image *unreasonableness* are introduced in art. 1:302. They are of great importance for the interpretation of the Principles as well as of the contracts governed by them or incorporating their

[20] See e.g. the example given at the bottom of p. 113, where the correct question to ask seems to be whether the "trivial breach" is fundamental *considering that the parties have agreed that strict compliance is of the essence of the contract.*

[21] See e.g. illustration 5 to art. 1:201, cf. illustration 4 to art. 9:102.

[22] At least this is my interpretation of the last sentence on p. 122: "A person's act is intentional when he does it deliberately, with the purpose of producing the consequences of the act, or recklessly, that is, when aware of the possible consequences but regardless whether or not they will ensue."

[23] Cf. the definition of gross negligence in ORGALIME S-92 art. 15 (2): "In these conditions gross negligence shall mean an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious supplier would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission."

[24] Italics added by me.

[25] Cf. at n. 40, below.

[26] On p. 125 (n. 5.) it is incorrectly stated that CISG has no definition of a fundamental breach.

provisions. Reasonableness is what persons acting in good faith and in the same situation as the parties would consider to be reasonable. The same standard can be found in e.g. art. 8 (2) CISG.

2.2 Chapter 2 – Formation of Contracts

According to the comment to art. 2:101, a *contract* is not only an agreement, but also a promise "to which one party is bound without acceptance by the other".[27] Nevertheless, the Principles do not adopt the promise theory, but rather the compromise between that theory and the contract theory found in CISG. In contrast to art. 16 CISG, art. 2:202 clearly states that an offer with a fixed time for acceptance is irrevocable.[28]

Art. 2:104 describes how standardized terms can be included in a contract. A mere reference to a standard form is not enough. The terms must be brought to the other party's attention. This must be done no later than at the conclusion of the contract. However, art. 2:210 gives material effect to a *written confirmation* between professional parties. Under the stipulated conditions the confirmation becomes a part of the contract and not mere proof of its content.[29]

The definition of an *offer* is different from the traditional Swedish definition as well as from the one given in art. 14 CISG in that it can be made not only to one or more specific persons, but also to the public:

> "A proposal to supply goods or services at stated prices made by a professional supplier in a public advertisement or a catalogue, or by a display of goods, is presumed to be an offer to sell or supply at that price until the stock of goods, or the supplier's capacity to supply the service, is exhausted."[30]

In note 3,b (aa) to art. 2:201 it is said that Swedish law regards advertisements as invitations to make offers and that it is uncertain whether the special rule in § 9 of the Swedish Contracts Act applies. The uncertainty is surprising, since it follows quite clearly from its wording that § 9 does not apply to advertisements.[31]

The Principles have a somewhat new approach to the Battle of Forms. According to art. 2:209, conflicting general conditions will form part of a contract *only*

[27] Cf. also art. 2:107.

[28] See n. 2 on p. 166 et seq. Cf. Lando in Essays in honor of Roy Goode (ISBN 0-19-826081-4) p. 108 et seq.

[29] Cf. NJA 1980 p. 46 *(Lastbilscentralen i Tureberg)*, where the terms were referred to *after* the conclusion of the contract, but were nevertheless considered to be a part of it.

[30] Art. 2:201 (3).

[31] See also Grönfors, Avtalslagen, 3 ed. 1995 (ISBN 91-38-50393-X) p. 90 et seq. Cf. for Danish law Andersen & Nørgaard, Aftaleloven, 3 ed. 1999 (ISBN x87-574-1152-2) p. 52 et seq.

to the extent that they are common in substance. This will of course create gaps in contracts, which will have to be filled by supplementary rules, e.g. the European Principles. It is doubtful whether the solution given is to be preferred to the more traditional "last shot" or "first blow" methods.[32] It must at least be modified in situations where both of the solutions offered by the general conditions are more advantageous to one party than the default rule:

> Assume that the parties have contracted for a sale of goods and that their (conflicting) general conditions contain i.a. liquidated damages of 1 percent and 2 percent per week respectively. Assume further that the *real damage* suffered by the buyer when the seller does not deliver on time is greater than the 2 percent per week stipulated by the buyer's conditions. According to sec. 5 of chapter 9, the buyer is entitled to full recovery as long as the loss was foreseeable. Gap filling using general rules would thus give the buyer *more* than what he possibly bargained for, which is not satisfactory. A better solution in cases like this would be either to compromise between the parties' conditions or to choose the solution closest to the default rule, i.e. 2 percent per week.

2.3 Chapter 3 – Authority of agents

Chapter 3 covers the authority of agents, both when the representation of the principal is direct and when it is indirect. Representation is direct when the third party knows that there is a principal, even though he does not have to know *who* that principal is. When the representation is indirect, the third party may – but does not have to – know that there is a principal. The deciding factor is whether the agent acts in his own name, in which case the representation is indirect.

Contrary to Swedish law, the Principles distinguish between authority by contract and authority by law. Only the former is covered.[33] Another difference between the Principles and Swedish law is that the Principles do not make any distinction between *power* (Sw. behörighet) and *authorization* (Sw. befogenhet).[34]

2.4 Chapter 4 – Validity; Chapter 5 – Interpretation

The choice of topics to be covered by the Principles has been based on function. When there is a functional link to the issues covered, a topic has been included even though it is covered by e.g. the law of torts or the equivalent in different

[32] See e.g. Hellner, Kommersiell avtalsrätt, 4 ed. 1993 (ISBN 91-7598-579-9) p. 50 et seqq.
[33] Cf. § 10 (2) Swedish Contracts Act.
[34] The English terms are used in Tiberg et al., Swedish law, a survey, 1994 (ISBN 91-7598-669-8) p. 184.

countries.[35] This functional approach is not always used when it comes to *the content* of the Principles. This is especially true for the chapter on validity, where the functional approach sometimes is absent when it comes to the solutions given. Some of the topics covered by chapter 4 are by tradition closely linked to criminal law, and the solutions given in the Principles – as often elsewhere – are sometimes not based purely on contractual considerations.

> One example is found in the comments to art. 4:103 (*Fundamental Mistake as to Facts or Law*). On p. 230 it is said that avoidance because of invalidity requires the mistake to be fundamental. "The only exception is the case of fraud, where the intention to deceive is itself a sufficient ground to justify the innocent party having the power to avoid the contract". This is nonsense – at least as a matter of reason – when the contract is for the sale of a good, or for any other contract where the parties perform once and for all, since the buyer's only concern should be whether the *object of the contract* will satisfy him. If, on the other hand, the contract will prevail over time and the trust between the parties is essential, the fact that the innocent party cannot trust the other may in itself be of fundamental importance. Not even in this situation, however, is it the fraud as such, but rather the future distrust that should be judged.

A more progressive approach would have been to merge chapter 4 with chapter 5, which deals with interpretation. By doing so, the Principles would assure that the aggrieved party would never get *more* than what he bargained for. Many of the illustrations to the different provisions of chapter 4 could just as well have been illustrations to provisions on interpretation and non-conformity.

> Illustration 2 to art. 4:103 may serve as an example: "The seller of a lease of a property which he had used for residential purposes told a prospective purchaser that the purchaser would be able to use it as a restaurant, which was the purchaser's main object. In fact the seller had forgotten that there was a prohibition on using the property other than for residential purposes without the landlord's consent and the landlord refuses consent. The purchaser of the lease may avoid the contract." It seems to follow from the contract that the purchaser shall be able to use the property as a restaurant, i.e. the seller shall "deliver" the landlords consent. Since he cannot deliver the consent he is in breach of contract and the purchaser is entitled to remedies for the non-delivery, which, of course, can still include avoidance, or rather termination.[36]
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> Another example is illustration 1 to art. 4:116 *(Partial Avoidance)*: "C takes a ball room gown to be cleaned. She is asked to sign a contract limiting the cleaner's liability for any damage to the dress. She asks why she has to agree to this and is told that it is just to protect the cleaners if any of the sequins on the dress comes off in the cleaning. She signs. The dress comes back with a large

[35] See e.g. art. 2:301 on culpa in contrahendo.
[36] See at n. 40, below.

> stain on it and the cleaners try to rely on the clause. C may avoid the clause without avoiding the whole contract." Again, the solution seems to be based on interpretation of the contract rather than on whether a clause or the contract is valid. Clearly, the cleaner would have been protected by the clause if the dress had not been stained, but the sequins had come off. Thus, the clause is valid, but it does not cover the stain.

Although art. 4:116 deals with partial avoidance, most of chapter 4 is concerned with total avoidance. In cases where the ground for invalidity is one party's mistake, it has to be fundamental for the mistaken party to be allowed to avoid. Instead of allowing partial avoidance in the case of a non-fundamental mistake, it is stated in the comment to art 4:103 that "less important misapprehensions must be borne by the party on whom they fall". On the other hand it is also stated that damages may be available in cases of less serious mistakes.[37] In a great number of cases these damages will have the same effect as a partial avoidance based on partial invalidity would have had.

When a fraud is successful, the other party has been led to believe something that is not true. Since it is a fraud, the fraudulent party must by definition be aware of the other's mistake. All cases of fraud are therefore also covered by art. 5:101 (2) *(General Rules of Interpretation)*:

> "If it is established that one party intended the contract to have a particular meaning, and at the time of the conclusion of the contract the other party could not have been unaware of the first party's intention, the contract is to be interpreted in the way intended by the first party."

Art. 5:102 lists factors that should be taken into account when a contract is interpreted. The ever-present principle of good faith and fair dealing is one of these factors. One might find it hard to *interpret a contract* with regard to good faith and fair dealing, but quite easy to use the concept to answer the question what a party *is entitled to under a contract*.

> One of the few differences between the Swedish Sales Act[38] and CISG, where the solution in the Swedish act can be said to be better, can be used as an example. According to § 17 (3) SSA a good shall conform with what the buyer can reasonably expect. According to § 20 (1) the buyer has no remedies if he knew or ought to have known about the defects claimed to be non-conforming. The corresponding provision in CISG, art. 35 (3), distinguishes between non-conformity in relation to art. 35 (1) and art. 35 (2). Only when the buyer was aware of a lack of conformity with the standard set in art. 35 (2) is he prevented from claiming non-conformity. What then if the buyer is aware of a lack of

[37] See p. 230.
[38] SFS 1990:931, hereinafter referred to as SSA.

> conformity with a standard *expressed* in the contract? According to SSA, the relevant question is what the buyer is entitled to expect from the contract. The answer is then quite simple: He cannot reasonably expect the good to be any different than what he knew it would be. Under CISG it is harder to arrive at the same result, since it requires a disregard of the deliberate phrasing of art. 35 (3). It is also hard to interpret *the contract* contrary to what it actually says, even if one takes the concept of good faith and fair dealing into account. However, in many circumstances the concept seems to require that the buyer should not be able to demand delivery of what he knew would not be delivered. The question what the buyer may reasonably expect *because of the contract* could be a useful tool when one "interprets the contract".[39]

Art. 5:105 states that terms are to be interpreted in the light of the whole contract in which they appear. The comment states i.a. that one must presume the terminology to be coherent. One could have wished that the terminology of the Principles had been coherent with other sets of rules such as CISG. However, this is not always the case. Thus, the term "termination" is used for what CISG calls "avoidance", while the term "avoidance" is used to describe the effect of invalidity.[40]

2.5 Chapter 6 – Contents and effects

Chapter 6 contains different provisions that give a contract its content, such as art. 6:102 with requirements for implied terms and art. 6:104 for determination of the price. Art. 6:108 specifies that a party must tender performance of at least average quality, if there is no specification in the contract. From the comment it follows that the concept of reasonableness as described in art. 1:302 shall be taken into account when determining what is average quality. Maybe it would have been better to relate the quality requirement to reasonableness already in the text of the article instead of only in the comment.

Art. 6:111 deals with changed circumstances and the right to either adapt or end the contract. Para. 2 requires the parties to enter into negotiations and only if the negotiations are unsuccessful can the conflict be taken to court or arbitration (para. 3). Para. 2 seems to be a waste of ink, since any sensible party would try to negotiate before allowing the conflict to be brought to court – para. 2 or no para. 2 – if there is any value in such a negotiation. On the other hand, when there is no such value, there is no reason to require the parties to negotiate and

[39] Cf. Honnold, Uniform Law for International Sales, 3 ed. 1999 (ISBN 9041106480) § 99: "Various provisions of [CISG] are inconsistent with a technical and narrow view of 'contract' and evince a broader view of the relationship between the parties".

[40] Cf. also art. 7:105, where the term "fundamental" seems to be used with a different meaning than the definition of fundamental non-performance in art. 8:103.

waste time and money. In the comment to para. 3 the modification made by a court is required to re-establish "the balance within the contract by ensuring that the extra cost imposed by the unforeseen circumstances are borne equitably by the parties. They may not be placed solely on one of them." The last sentence must be disregarded when one can conclude from the contract that the mentioned balance requires that the risk in question shall be borne by one of the parties.

2.6 Chapter 7 – Performance

Chapter 7 deals with different aspects of performance, such as where[41] and when[42] performance is due. With increasing international trade, different aspects of payment may be more in focus now than they used to be. Art. 7:107 states that payment can be made in any form used in the ordinary course of business, while art. 7:108 deals with the choice of currency.

2.7 Chapter 8 – Non-Performance and Remedies in General

Chapter 8 must be read together with chapter 9 on particular remedies for non-performance. Even then it is sometimes hard to follow the comments and especially the illustrations, since they often deal with only one aspect of a conflict, without regard to the availability of other remedies than the one discussed. Art. 8:103 defines the concept of fundamental non-performance. It contains three parts, of which the second part, (b), is identical to art. 25 CISG. According to art. 8:103 (a) a non-performance is also fundamental if strict compliance with the obligation is of the essence of the contract, while (c) states that a non-conformity is fundamental if it is intentional and gives the aggrieved party reason to believe that it cannot rely on the other party's future performance. As with validity, one must question whether the intention as such is essential or whether the second part of the definition is what really matters.

According to art. 8:106, the aggrieved party may allow an additional time for performance if the other party has not performed. If the additional time is of reasonable duration, the aggrieved party may terminate the contract when the time has expired. The article also gives some interesting clarifications if compared with § 25 SSA or articles 47 and 49 CISG. According to art. 8:106 (3) the notice containing the additional time may provide that the contract will be *automatically terminated* when the time has expired. If the allowed time is too short, i.e. of less than reasonable duration, the notice is still valid, but termination may take place only after a reasonable time.

[41] Art. 7:101.
[42] Art. 7:102.

Art. 8:109 raises at least two interesting questions: "Can there be obligations without remedies?" and "What are remedies?". According to the comment, exclusion clauses cannot always have full effect, since that would allow a party to undertake to perform while there would be no remedies for a non-performance. A full exclusion – which of course must be possible – would simply make the "obligation" purely moral, but totally void of legal consequences. The question of the nature of remedies is apparent in illustration 1, where a construction contract contains a penalty clause amounting to 10 000 francs per week for late completion. The contractor deliberately neglects the job in favor of another, which is more profitable for him. The loss suffered by the employer is 20 000 francs per week. The employer is said to be able to recover the whole 20 000 francs, since it would be contrary to good faith and fair dealing if the contractor would be allowed to invoke the clause. This sounds satisfactory if one views the clause as a *remedy*, i.e. a *reaction to a breach of contract.* But one can just as easily view it as a *price tag on time*: According to the contract the contractor is allowed to complete the construction *whenever he chooses* as long as the employer does not have the right to terminate the contract. If construction is completed later than a certain date, the employer will not have to pay the full amount, but will get a certain reduction: 10 000 francs per week. Even in the latter case the employer will get exactly what he has bargained for and there is no reason whatsoever to disregard the clause, even if the contractor deliberately has chosen to give priority to another, more profitable contract, i.e. one with a more burdensome penalty clause.

2.8 Chapter 9 – Particular Remedies for Non-Performance

The last chapter contains a survey of the different remedies that are available to a party who suffers under the other party's breach of contract. It distinguishes between monetary[43] and non-monetary[44] obligations. Art. 9:102 has more balance between the right to specific performance and other remedies than does CISG[45] or SSA,[46] since para. 2,d states that specific performance cannot be obtained if "the aggrieved party may reasonably obtain performance from another source".

Termination of the contract is as a rule allowed only if the other party's non-performance is fundamental. The comment to art. 9:301 suggests that the availability of other remedies often will "safeguard the interests of the aggrieved party sufficiently so that termination should be avoided" (sic!). From the state-

[43] Art. 9:101.
[44] Art. 9:102.
[45] See art. 46 CISG.
[46] See § 23 and §§ 34-35 SSA.

ment it seems to follow that termination is more or less out of the question as long as a commercial party's right to damages covering its total loss is not in any way threatened.

From a Swedish perspective it is encouraging to see that the somewhat odd rule in § 54 (4) SSA is not reproduced in art. 9:308 and that the calculation of damages primarily is based on foreseeability rather than negligence.[47] In comparison with art. 74 CISG, art. 9:503 contains the addition that damages due to intentional or grossly negligent actions are to be covered even if they were not foreseeable. One can question whether such a rule has anything to do with contracts.

3. Concluding remarks

The world is rapidly becoming smaller and the need for deeper legal integration is more obvious than maybe ever before. The European Principles is an ambitious project with great merits. Most of the solutions suggested are well founded and explained.

The Principles need to be spread if they are to flourish. Otherwise the work and costs put into them might have been in vain. One way of spreading them would be to make them economically accessible to students, so that they can be used in the education of young lawyers throughout the European Union. The price in Stockholm is approximately € 200 (including taxes). That is a bit much for students. The ultimate solution to this problem would of course be to publish the whole text – including comments, illustrations and notes – on Internet. That would really promote the goals stated in the book's introduction.

Jon Kihlman

[47] See Herre, Ersättningar i köprätten, Stockholm 1996 (ISBN 91-7598-761-9) pp. 679-705 for a critical discussion of the solution in SSA.