

**FRANCO-BRITISH LAWYERS SOCIETY**

**JUSTICE ON THE MOVE:**

**ARE THE LEGAL SYSTEMS OF FRANCE,  
ENGLAND AND SCOTLAND CONVERGING?**

**OUTLINE PAPER ON THE  
LAW OF CONTRACT**

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“I encountered Mr. Hackman, an Englishman, who has been walking the length and breadth of Europe for several years. I enquired of him what were his chief observations. He replied gruffly, “I never look up” and went on his way”. (N. Brooke, 1796)

## **I . Organised convergence of legal systems**

### **1. Examples of historical non normative convergence**

- a) International Chamber of Commerce
  - Incoterms
  - Uniform Rules (documentary credits, collections, guarantees)
  - Model contracts (agency, distributorships, franchises)
- b) Unidroit
  - Principles relating to international commercial contracts
- c) Uncitral
  - Guarantees
- d) Lex mercatoria
  - international arbitration
  - general principles of international commercial law
  - contractual principles (good faith, agreement, attribution of jurisdiction, loyalty, capacity and obligation to negotiate, obligation to inform and to enquire, confidentiality, common interests of the parties)
  - codes of conduct/ethics
  - professional codes/conditions
    - i. RUCIP code (“règlement unifié du commerce international de la pomme terre”)
    - ii. London Corn Trade Association

### **2. Specific conventions requiring national ratification**

- Hague Convention 1964
- Vienna Convention 1980
- Brussels Conventions (international maritime transport)
- New York (1958) and Geneva (1981) conventions on arbitration
- Mercosur treaties

### **3. The work of regulators**

- European Commission
  - i. The Action Plan; Lando Principles, free circulation of goods, services and people
  - ii. Principle of subsidiarity and exceptions to mandatory law
- Securities and competition authorities

#### **4. European instruments facilitating convergence**

- Société Européenne (“SE”)
- Groupement Européen d’Intérêt Economique (“GEIE”)

#### **5. Absence of supranational law**

- over and above national sovereignty without acceptance by individual nations
- attempts to use competition law to create supranational laws

#### **6. Recourse to a national law to govern a contract**

- Rome Convention (1980)
- Brussels Convention (27.9.68)
- Applicable law
- Jurisdiction

## **II. Convergence due to international economic influence, exchanges, operations and practices**

1. Financial power and legal hegemony/ideology of major exporters/investors
2. Data processing and electronic exchanges
3. Transport
4. Dematerialisation
5. Liberalisation of economies/political regimes
6. Intra-group contracts
7. Globalisation of business, regulators (Gatt, WTO, IMF, WIPO, Trips) and scandals
8. Consumer rights (e.g. product liability)
9. International investments (competition rules, insider trading, corporate governance, securities and stock exchange regulations).

### **III. Is there still time for a European Contract Law ?**

1. Principles of civil law systems
2. Principles of common law systems
3. Pragmatic reactions of the business community
4. Examples of :
  - m&a deals
  - information technology contracts
  - transfer pricing/intra-group management fees
5. Default system of common law, practice and legal philosophy in drafting international contracts
6. Problems of conflicts between such philosophy and national legal systems