

In Memoriam

Ole Lando

Professor Ole Lando, who died on 5 April 2019 at the age of 96, was a founding member of the European Law Institute.

Lando is best known for *The Principles of European Contract Law*, produced by a group of scholars and practitioners whom he inspired and led. He is rightly regarded as one of the most influential figures in the development of European private law to date. But the Principles were just the culmination of a long and varied career in which he came to specialize first in private international law and then in comparative contract law.

Lando's background was cosmopolitan. His paternal grandfather, an industrialist and merchant in Warsaw of Jewish decent, had sent his son Zelman to study in Frankfurt-am-Main when the First World War broke out. As a Russian citizen, Zelman was rounded up but he escaped to Sweden and the following year he settled in Denmark. In 1919 he married Gudrun Petersen, who had been brought up as a Lutheran; and with her support Zelman obtained first a doctorate in economics and then an associate professorship at the Copenhagen Business School. Lando was clearly very much influenced by his mother (see 'My Life as a Lawyer', ZEuP 10 (2002), 508 – a fascinating account that gives a wonderful sense of Lando as a person). In particular, she instilled in him a love of literature, getting him to read authors such as Defoe, Dickens, Mann and Martin du Gard. She also insisted that he should always speak the truth, and give his honest opinion, whether or not it was what the other person wanted to hear; and that he should speak and write in simple language.

Zelman and Gudrun were freethinking and politically engaged. Zelman was free trader and the young Lando dreamed of being a eminent economist who would promote economic integration among nations. At this time Lando was strongly attracted to communism, though he did not join the party. However his father, who had made some enemies in the Copenhagen Faculty of Economics, encouraged him to take a degree in law instead. Lando found the first-year teaching boring and at first persevered only because he wanted to be able support himself in another dream, to become a novelist like those his mother had encouraged him to read. (He said that later he discovered that he did not have the skills for this.) But in his second year he attended lectures by Alf Ross, and was immediately attracted to legal realism.

Lando's studies were rudely interrupted in 1943, when the Nazis attempted to round up the Jews in Denmark and Lando and his father had to flee to Sweden. Lando was only able to return to Denmark in 1945. But curiously this interruption may have led to Lando's success. Zelman arranged for Lando to have access to the Law Library at Gothenburg Business School, where Zelman was teaching; and there Lando found and

read a copy of Cheshire's *Private International Law*. He found the common law emphasis on cases and their outcomes fascinating. He wrote a article on party autonomy in private international law and presented it as part of his law degree, which he obtained in 1947.

After graduating, Lando joined the Ministry of Justice, which he found very conservative. He said that he did not work hard and 'was considered to be almost a failure'. In the meantime, his political thinking was changing: in the light of the cruelties and oppression by the Soviet Union, he was looking more favorably on a (regulated) free market as the best way forward. In addition, as Western Europe began to recover from WWII and more borders opened, he yearned to travel.

Perhaps someone in the Ministry may have realized that Lando's heart and mind were elsewhere, because he was given several periods of extended leave in order to study. In 1951, in order to prepare and write an essay for the Copenhagen University prize on qualification in private international law, he was allowed to study in Paris (where by his own account he spent more time with various young ladies than with his books) and in Oxford (where there seem to have been only too few such distractions from work). Lando later said the article was immature and did not use the comparative methods that it should have done, but it won a third prize and was enough to get him a teaching job at Copenhagen Business School.

The second period was for a year in the US for Lando to work on a thesis on conflict of laws in the law of contract; and in September 1955 Lando and his newly-married wife Ellen, a polyglot correspondent and also a remarkable singer, arrived in Ann Arbor, Michigan. In Ann Arbor Lando received both encouragement from Professor Yntema and inspiration from the comparative law lectures of Professor John Dawson. He also made two friendships that would be important: with Ulrich Drobnig and with Claus-Dieter Ehlermann. It was Drobnig who arranged for Lando, when he returned to Europe, to have access to the Max-Planck Institute in Hamburg, where he met Professor Paul Heinrich Neuhaus, who helped Lando enormously. Drobnig would become a life-long collaborator and friend.

Lando defended his thesis in 1963 and was finally able to leave the Ministry to take up a professorship in international and comparative business law at the Copenhagen Business School. He taught private international law, of course, and also European Community law (he chaired the Danish Association of European Law from its inception in 1973 until 1995) and comparative business law. He very much enjoyed the teaching. Anyone fortunate enough to have shared a class with Lando will know what a wonderful rapport he had with his students. He also continued to write, on Danish and comparative contract law and private international law.

However, Lando was gradually becoming disillusioned with private international law as a means of settling international contractual disputes. He was in favour of a 'universalist' approach, so that the parties would get the same decision in whichever jurisdiction the case was heard. He believed that if courts made use of comparative law rather than applying the *lex fori*, this would be attainable. But when he studied the cases in both the US and Europe, he came to believe that in practice

courts would always be influenced by the merits of the case or would apply whichever rule seemed the best in substance. Although he did not abandon private international law, Lando adopted a new approach: the unification of contract law.

Lando told colleagues that the idea of unifying contract law across Europe came to him one morning in 1974, as he was taking a shower. Of course by this date there had already been harmonization, or attempts at it, elsewhere in the world. In the US, the States had all adopted the model Uniform Commercial Code produced by the American Law Institute and the National Conference of Commissioners on Uniform State Laws; work on the United Nations Convention on International Sale of Goods was advanced; and in Rome, UNIDROIT was beginning work on what was then envisaged as a Uniform International Commercial Code. (Lando would join the UNIDROIT Working Group on Contracts in 1976, and many of his later collaborators were members of the UNIDROIT team.) But it is not clear that by that date anyone else was thinking of replacing the laws of the Member States by a single contract law – which was Lando’s vision.

Now old friendships helped. Not only was Ulrich Drobnig a key player in the project from the outset, but Claus-Dieter Ehlermann, by now the Director General of the Legal Service of the European Commission, was able to ensure funding for the project. Lando quickly assembled a very strong team of 16 – more members were added as new countries joined the EC – to become the first ‘Commission on European Contract Law’. Work began in 1980 and the drafting of the first Part (on Performance, Non-performance and Remedies) was completed in 1990. Lando then formed a Second Commission, which started in 1992 and finished its drafting in 1996; and the Third Commission worked from 1997 to 2001. From 1994, the European Commission ceased to fund the work, but Lando was tireless in finding, or getting friends to find, funding for the Second Commission; and the work of the Third Commission was very generously funded by Professor Reinhard Zimmermann from the Leibniz prize that he had won.

Lando’s method was firmly rooted in his concerns with the practical outcomes of cases and his experience in comparative law. Reporters were expected to draft rules only after considering how the situation would be dealt with in at least the main systems (or ‘families’) of contract law; and they should employ the ‘functional approach’. In other words, they should look beyond differences in terminology and concepts and concentrate on the practical outcomes. So far as possible, the Principles should reflect these outcomes – which in many cases turned out to be much the same. Where outcomes differed, the Commission would have to make a choice, or find a compromise that everyone could live with. The aim was always to produce a set of rules that would form a workable system.

The other thing on which Lando insisted may have reflected his mother’s influence. It was that the Principles must be easy to understand – not just for the lawyer but for the average business person.

It must be said that not all members of the Commissions shared Lando’s vision of a single, unified contract law across Europe. Some thought that the rules should be designed for adoption by the parties as an alternative to using an existing law, either if this came to be permitted (as was indeed proposed by the European Commission at

one point during the drafting of the Rome I Regulation) or as part of an arbitration. (Many systems allow arbitrators to decide cases according to non-national rules, such as ‘internationally accepted principles of contract law’.) Others saw the Principles primarily as a model for law reform, particularly in the new democracies of Central Europe and the Baltic. But Lando, as ever, was tolerant of a broad church within the Commissions; and in any event, the differences in view had little impact on the substance or form of the Principles.

Needless to say, there were disagreements within each Commission over both substance and how to express the rules – when systems produce different outcomes, or formulate the rules in different ways, there is a natural tendency for lawyers to think that their own system’s approach is the best or the easiest to understand. But it is a tribute to Lando’s skill in choosing members of the Commission, and in chairing the Drafting Group that considered the drafts in great detail before they were submitted to the Commission as a whole, that the work progressed remarkably smoothly. It was not always possible to get a consensus around the table. Some questions had to be put to a vote, and some of the votes were very close. But they were very few times when anyone seemed to go away feeling that they could not live with what had been decided. That, and the clarity of the rules, have contributed enormously to the success of the Principles.

What was less simple was to prepare the Principles for publication, because, being the true comparatist that he was, Lando was insistent that the Principles should have not only Comments explaining how the Principles should apply and giving examples, but also comparative Notes, explaining the sources used and the similarities or differences to the various national laws. Collecting, synthesizing and updating the Notes took a very long time, and that was the principal reason for the time lapse between completion of the drafting and publication of the final version. Lando was often worried both by the time taken and the risk that something in the Notes would be wrong. But in the end the work was done; and it is thought that the Notes add enormously to the value of the work, particularly for scholars and legislators who want to know what rules are used and where.

This is not the place to try to evaluate the Principles or describe their impact in detail. Suffice it to say that they inspired directly the work of the Study Group on a European Civil Code established and led by Professor Christian von Bar; they formed the essential basis for the *Draft Common Frame of Reference* produced for the European Commission; and they formed the basis of the Common European Sales Law proposed by the European Commission in 2011, though subsequently withdrawn in the light of opposition in the European Council of Ministers. The Principles had a significant impact on law reform in the European countries that were modernizing their contract law or civil codes after years of Soviet domination, and also in France, where the reforms to the Code civil of 2016 were much influenced by the Principles. The Principles inspired the *Principles of Latin American Contract Law* and the work on Asian Principles of Contract Law.

The Principles may have been Lando's greatest achievement but it is a person that he will be remembered even more by those who met him. He had the gift to inspire and encourage at the same time as guiding. He was always ready to listen to different views, and he developed the skill of giving his own opinion in such clear, simple and gentle terms that it was hard for even those who had differed not to accept his advice. He was particularly open to the views of younger colleagues. He seemed to enjoy the meetings of Study Group almost more than those of the Commissions because the Study Group included so many bright young researchers, and they in turn came to regard him as a father figure, both revered and loved. Many of them will recall him walking round the meeting room to stand behind them as they were speaking, so that he did not miss a word of what they were saying. Lando gave them the sense of being wholly included in what came to be almost the 'family' of European contract lawyers.

Lando was also renowned for his sense of humour. The meetings of the Commission on European Contract Law were hosted by many different universities and Governments, and Lando had to make a great number of after-dinner, 'thank you' speeches. They were at once sincere and peppered with funny stories, many of which involved either Lando's (hopefully fictitious) German aunt or a pair of Danish sailors (almost invariably on the razzle). Even Members of the Commission who had listened to Lando's speeches many times before looked forward to the next adventure of these dubious characters. They also enjoyed the many less formal meals that they shared, partly because Lando had an excellent nose for good restaurants but mainly because he was so good at putting everyone at ease. Many of us were also privileged to visit Ole and Ellen in their lovely home in Holte, where we enjoyed both wide-ranging conversation and great food. Lando was a good cook – his soufflé au fromage was much in demand.

By the time Part III of the Principles was published, Lando was over 80. Nonetheless he played an active role in the Co-ordinating Committee of the Study Group, and for some years he continued to attend the many conferences that took place during the preparation of the Common Frame of Reference (whose complex structure and technical language did not much please him.) He also continued to write and put forward new ideas, including suggesting that we should adopt a Global Code of contracts (see *Recueil Dalloz* 13 (2008), 904). His continued participation was welcomed on all sides, but it came at no small cost: restricted mobility and some deafness made taking part in meetings more and more difficult. So gradually Lando withdrew to Holte, where he and Ellen lived close to their children and grandchildren, in whom Lando delighted and had enormous pride.

When Lando's death was announced, tributes and personal recollections came pouring in from across Europe. They show the enormous esteem in which Lando was held and how much he will be missed. As Hamlet said of another Dane, 'I shall not look upon his like again.'

Ole Bent Lando, 2 September 1922–5 April 2019. He is survived by his wife Ellen and his children Ane Vibeke, David, Henrik and Helene.

Hugh Beale