

CISG AND UPICC AS THE BASIS FOR AN INTERNATIONAL
CONVENTION ON INTERNATIONAL COMMERCIAL CONTRACTS

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I. INTRODUCTION

CONVENTION states tend to regard international conventions as exceptions from their domestic legal regimes which therefore, whenever possible, are preferred. Nevertheless, under Article 7 of the CISG, all convention states commit themselves to truthfully regard the international character of the CISG by abstaining from using concepts and variants of their domestic law. Also, in the application of the CISG, “[T]he general principles upon which it is based” should be used with respect to “matters governed” by it, although they have not been “expressly settled in it.”¹

Although the aim to achieve uniformity is expressed in Article 7, this does not ensure that all states develop their understanding of the CISG in the same manner. As a first step to establishing an internationally recognized understanding of the CISG, not only with respect to its detailed provisions but also general principles, awareness of court decisions and arbitral awards in the convention states is needed. For this purpose, reports are submitted to UNCITRAL for its Case Law on UNCITRAL Texts (CLOUT) and CISG Digest. In addition, UNIDROIT assembles CISG cases in its Unilex and an even more extensive case law report is provided by Pace Law School in New York in its database with more than 2,000 cases.² Awareness of decisions may be helpful but more is needed to determine to what extent cases are generally accepted as authoritative. UNCITRAL could not provide assistance in this respect as the convention states may take offense if their decisions would be downgraded or even criticized. Likewise, the understanding of legal scholars in some countries may not be regarded as internationally generally recognized.

In order to remedy the situation, the Advisory Council³ was inaugurated in 2001 and has now, as of January 2013, provided thirteen unani-

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1. JAN RAMBERG & JOHNNY HERRE, *INTERNATIONELLA KÖPLAGEN (CISG): EN KOMMENTAR* 114–115 (Norstedts juridik, 3d ed. 2009); JOSEPH LOOKOFKY, *UNDERSTANDING THE CISG: A COMPACT GUIDE TO THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS* 38–42 (Kluwer Int’l Law, 3d ed. 2008); Jan Hellner, *Gap-Filling by Analogy: Art. 7 of the U.N. Sales Convention in Its Historical Context*, in *STUDIES IN INTERNATIONAL LAW: FESTSKRIFT TILL LARS HJERNER* 219 (Norstedts juridik, Jan Ramberg ed., 1990).

2. See Albert H. Kritzer, *CISG Database*, INST. OF INT’L COMMERCIAL LAW, www.cisg.law.pace.edu (last visited Mar. 6, 2013).

3. See *Welcome to International Sales Convention Advisory Council*, CISG ADVISORY COUNCIL, www.cisgac.com (last visited Mar. 6, 2013).

mous opinions on various articles and concepts of the CISG and a number of additional opinions are presently under preparation.

- Opinion 1 on Electronic Communications under the CISG.
- Opinion 2 on Examination of the Goods and Notice of Non-Conformity (Articles 38 and 39).
- Opinion 3 on the Parol Evidence Rule, Plain Meaning Rule, Contractual Merger Clause under the CISG (Article 11).
- Opinion 4 on Contracts for Sale of Goods to be Manufactured or Produced and Mixed Contracts (Article 3).
- Opinion 5 on the Buyer's Right to Avoid the Contract in Case of Non-conforming Goods or Documents (Article 25).
- Opinion 6 on Calculation of Damages under the CISG (Article 74).
- Opinion 7 on Exemption of Liability for Damages under Article 79 of the CISG (Article 79).
- Opinion 8 on Calculation of Damages under the CISG (Articles 75 and 76).
- Opinion 9 on Consequences of Avoidance of the Contract (Articles 81–84).
- Opinion 10 on Agreed Sums Payable upon breach of an Obligation in CISG Contracts (Articles 6, 8, 9, 77, 79.1, 80, and 81).
- Opinion 11 on Issues Raised by Documents under the CISG Focusing on the Buyer's Payment Duty (Articles 7.2, 9, 30, 34, and 58).
- Opinion 12 on the Liability of the Seller for Damages Arising out of Personal Injuries and Property Damage Caused by Goods or Services under the CISG (Articles 3.2 and 5).
- Opinion 13 on Inclusion of Standard Terms under the CISG (Articles 8, 9, 14, 18, and 19).

The opinions are frequently referred to in scholarly writing and to an increasing extent used as guidance in court decisions and arbitral awards. Hopefully, in the long-term perspective, the opinions may contribute to turn the "homeward trend" in the application of the CISG towards an internationally recognized understanding, and thus to ensure uniformity not only in form but also in fact.

II. SPILL-OVER EFFECT OF FUNDAMENTAL CISG PRINCIPLES

The CISG has now been ratified by seventy-eight states and a further increase is expected following Japan's ratification, which will induce other states in the Far East to ratify. The same goes for South America, where Brazil has taken all necessary steps for ratification. No doubt, the CISG constitutes world law and it remains to be seen how long important states—such as the United Kingdom—will retain their position as outsiders.

The contract of sale is a dominant contract in every legal system. In the Scandinavian countries, where other important contracts (such as con-

tracts for services and erections of buildings and plants) are not generally subjected to statutory law, it is particularly important to assess whether the CISG could be used as guidance. In other words, would the provisions and principles of the CISG have any effect, not in form but in fact? Some fundamental approaches to be found in the CISG may well be recognized also for other types of contract than contracts of sale or, perhaps, for contract law generally.

III. DISAPPEARANCE OF THE CONCEPT OF NEGLIGENCE IN CONTRACT

It is expected that the removal of the concept of negligence from the CISG will influence the general attitude to breach of contract. An analysis would have to be made of the contractual promise as such, and on the basis of such analysis, it could be decided whether there is a breach. And, if there is a breach, liability follows automatically with the exception for impediments beyond control. While the obligations of sellers and buyers obviously entail that they must reach the result to deliver conforming goods and pay, it is equally obvious that contracts for services—such as the service of a lawyer—is limited to an obligation of best efforts under Article 5.1.4 of the UNIDROIT Principles of International Commercial Contracts (UPICC). Once it has been established that there has been a failure to exercise best efforts, it is unnecessary to perform yet another test, namely if the failing party has been guilty of negligence. Irrespective of the nature of the obligation, the breach as such suffices. The traditional reliance on remedies similar to those available in non-contractual relations (i.e., tort law) will probably be replaced by an analysis of the contractual obligation.

IV. DOWNGRADING SUBJECTIVE CRITERIA IN CONTRACT INTERPRETATION

The methods of interpretation of contracts traditionally used in most jurisdictions correspond to Articles 8 and 9 of the CISG. However, so far contract interpretation has been performed mainly as suggested in scholarly writing and there has been some reluctance to rely on other data than those assumed to have been in the minds of the contracting parties themselves. It is reasonable to expect that the objective criteria mentioned in Article 8 will invite a certain departure from the traditional over-reliance on the possibility to extract reliable data from what is referred to as the common intention of the parties or, alternatively, the intention of one party of which the other party could not reasonably have been unaware. In most cases, an objective test would have to be made on the basis of an analysis of the contractual situation relying upon how it is understood in the market place. Thus, the understanding of a “reasonable person of the same kind as the other party . . . in the same circumstances” would for all practical purposes replace an assumption of a subjective intention of a

party or, alternatively, an assumed awareness of such intention by the other party.⁴

The objective approach also appears in Article 14 of the CISG and is used to determine whether a party has given an offer to the other party. It follows from that article that it would be impractical to perform an analysis of the subjective intention of the prospective offeror and that it is sufficient to look for his *indication* of intention. Further, an analysis of the indication as such will rest upon whether it is sufficiently definite in indicating the goods, the quantity, and the price under Article 14.1 of the CISG.

V. OBJECTIVE METHODOLOGY IN DEALING WITH LATE AND NON-CONFORMING ACCEPTANCE

While a subjective approach based upon assumptions on what was in the minds of offerors and offerees is favoured in many jurisdictions, the objective approach of the CISG Article 21.2, which focuses on what could be reasonably concluded from the acceptance letter as such (appearance of abnormal transmission) and Article 19, which addresses whether the non-conformity is sufficiently material, is preferred. If so, the non-conformity must be regarded as a rejection of the offer and constitutes a counter-offer under Article 19.1. However, if the materiality test shows that the discrepancy was not sufficiently material, then the non-conformity does not constitute an immediate rejection of the offer. Instead, if there is no objection by the offeror without undue delay, the non-conforming acceptance will constitute the terms of the contract. The practical importance of Article 19 is rather limited in view of the extensive enumeration of material terms in Article 19.3. Nevertheless, the objective methodology is clear and is a more practical approach than the hopeless task of finding real contractual intent or awareness in the minds of any one of the contracting parties.

VI. LOSS OF POSSIBILITY TO WITHDRAW AN OFFER OR ACCEPTANCE

Another example of the subjective methodology follows from the Scandinavian Contracts Act that appears in Section 7, determining when an offer or acceptance can no longer be withdrawn. Here, reference is made not only to the time when the offer or acceptance reaches the other party but also to the time when the recipient becomes aware of it. Thus, under this principle, it is possible to withdraw the offer or acceptance if it could be proven that the message had not actually come to the knowledge of the addressee. It goes without saying that the definition of “reaches” in Article 24 of the CISG is the only practical possibility to deal with the problem.

4. See Jan Ramberg, *Avtalstolkningmetoder*, in *FESTSKRIFT TILL GOSTA WALIN* 499, 511 (2002).

The recent (2012) withdrawal by Denmark, Finland, and Sweden of the Article 92 reservation, excluding Chapter II on formation of the contract, would undoubtedly also in this respect be a further step in the right direction.⁵

VII. IS THERE A LEGAL BASIS FOR EXPANDING THE PRINCIPLES OF CISG?

As a follow-up to the success of the CISG, general principles have been developed partly as a supplement to the CISG but also extending far beyond into the broad ambit of general contract law. On the global level, UPICC are well-known and frequently referred to in court decisions and arbitral awards.⁶ The same ambition to cover the whole field of contract law is evidenced by the Principles of European Contract Law (PECL).⁷ Would, in the distant future, PECL materialize into a European Civil Code? Or would, on the regional level, PECL function more or less as UPICC?

Although UPICC and PECL are similar, both in structure, form, and content, they should not be regarded as competitors. They contribute to the development of a common understanding of general contract law principles and their application in practice. Regardless of whether PECL will become law in form, they will remain as law in fact to the extent that they are actually used in decision-making. Also, they have formed the basis for further studies purporting to foster a common understanding within the European Union as demonstrated by the Draft Common Frame of Reference in the E.U.

But is use of UPICC and PECL really possible without solid contractual incorporation?⁸ I remember an interesting discussion with a former Judge of the House of Lords in England, and nowadays an experienced arbitrator, regarding the possibility to apply *lex mercatoria*. He had made an interesting presentation asking himself whether the *lex mercatoria* could be regarded in the same manner as statutory law. He concluded: “Of course, it cannot exist” and continued “yet, it is there.” I asked him whether I could apply it as an arbitrator and he answered “Of course you can . . . if you do not tell anybody.” Indeed, in this sense, UPICC, PECL, and the CISG outside their scope of application exist as rules of law in so far as they provide guidance to the judge or arbitrator, regardless of

5. See CISG PART II CONFERENCE STOCKHOLM, SEPTEMBER 4–5 2008 (Jan Kleineman ed., Stockholm Ctr. for Commercial Law Ser. No. 11, 2009).

6. See Michael Joachim Bonell, *The UNIDROIT Principles as a Means of Interpreting and Supplementing International Uniform Law*, in ICC INTERNATIONAL COURT OF ARBITRATION BULLETIN, SPECIAL SUPPLEMENT 29–38 (2002).

7. See Michael Joachim Bonell & Roberta Peleggi, *UNIDROIT Principles on International Commercial Contracts and Principles of European Contract Law: A Synoptical Table*, 9 UNIF. L. REV. 315, 315–96 (2004).

8. Incorporation may be made by the use of standard contract forms, such as those elaborated by the ICC. See FABIO BORTOLOTTI, *DRAFTING AND NEGOTIATING INTERNATIONAL COMMERCIAL CONTRACTS: A PRACTICAL GUIDE* (ICC Pub. No. 671, 2008).

whether they are referred to or appear from the decision.⁹ When the parties have not agreed on a national law, the ICC Rules of Arbitration, as well as the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, allow the arbitrators to by-pass choice of law rules and directly to choose any “rule of law” which they find “appropriate.”¹⁰ This provides a basis for using the provisions of UPICC, PECL, and the CISG outside their scope of application as internationally generally recognized principles of law and may encourage arbitrators to candidly disclose such use in the reasons for their awards. In some instances, arbitrators are particularly prone to do so.

So, is it true that the CISG will have an effect outside its scope of application? Will courts and arbitral tribunals continue to focus exclusively on national law chosen by application of choice of law rules or will they at least to some extent be influenced by the general principles of law appearing from UPICC, PECL, and the CISG? I had a particular reason to consider this problem because of the Article 94 reservation made by the Scandinavian states replacing the CISG with national law in intra-Scandinavian trade. The situation became further aggravated by Denmark retaining its Sale of Goods Act from 1906, while Finland, Iceland, Norway, and Sweden have introduced new Sale of Goods Acts based upon the main principles of the CISG.

Indeed, it can hardly be said that nowadays the sales law of Denmark is closely related to the sales law of the other Scandinavian states. Yet, the Article 94 reservation includes Denmark.¹¹ This being so, would a court of law in a dispute involving a Danish seller and a buyer in one of the other Scandinavian states uphold the *rigor commercialis* of the Acts from the early 1900s and allow the buyer in a commercial sale to avoid the contract immediately in case of a breach however insignificant? Or would a buyer lose the claim failing immediate notice to the seller? I have candidly disclosed that even if Danish law applied to the contract I would, as an arbitrator, at least in some cases, relax the *rigor commercialis* in favour of a decision influenced by the general principles of the CISG.¹²

My answer to the question of whether the principles of the CISG could also be applied outside its scope of application would therefore be in the affirmative. Regrettably, it is hard to prove to what extent this actually occurs in practice, because only a few judges and arbitrators have the courage to disclose in their reasons for the award to what extent they have

9. See Jan Ramberg, *The Creativity of Arbitrators in the Context of UNIDROIT Principles of International Commercial Contracts*, 3 UNIF. L. REV. 651, 656 (1998).

10. The International Chamber of Commerce, ARBITRATION AND ADR RULES art. 17.1 (2012); Stockholm Chamber of Commerce Arbitration Rules art. 24.1 (2010).

11. See RAMBERG & HERRE, *supra* note 1, at 652 (explaining views on validity of reservation suggesting that reservation should not be set aside even if contrary to requirements set forth in CISG).

12. See Jan Ramberg, *Sammordisk köprätt-finns den?*, in HYLDESTSKRIFT JØRGEN NØRGAARD 835, 844 (2003).

been influenced by other sources than those following from the applicable law.

VIII. THE RULE-MAKING APPROACH OF UPICC AS COMPARED WITH THE CISG

Needless to say, in elaborating UPICC, it became important to avoid unnecessary deviations from the pattern set by the CISG. Any differences can be explained by the mere fact that UPICC cover international commercial contracts generally and not merely contracts of sale and to a limited extent by the efforts to find better solutions. A comparison between UPICC Chapters 5 and 6 will show that only a few sections cover the same substance,¹³ while in other areas some differences deserve to be noted. One much debated issue concerns the rather strange formulation of CISG Article 7.1 which, like UPICC Article 1.7, refers to good faith but only “in the interpretation of this Convention.”¹⁴ Semantically, this expression is meaningless as, in the absence of these words, it cannot very well be that the convention should be interpreted otherwise than to give effect to the provisions as intended by the draftsmen.¹⁵ At least, the reference to good faith must mean not only in the “interpretation” but also in the “applica-

13. UNIDROIT Principles of International Commercial Contracts Article 5.1.7 (on open price) corresponds to CISG Article 55, and UPICC Article 6.1.1 (on time of performance) corresponds to CISG Article 33.

14. See C. MASSIMO BIANCA & MICHAEL JOACHIM BONELL, COMMENTARY ON THE INTERNATIONAL SALES LAW: THE 1980 VIENNA SALES CONVENTION 83 (1987); PETER SCHLECHTRIEM & INGEBORG SCHWENZER, COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) 127–28 (2005); John Felemegas, *The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation*, in REVIEW OF THE CONVENTION ON INTERNATIONAL SALE OF GOODS (CISG) 115, 115–265 (Kluwer Int'l Law 2001); Franco Ferrari, *Interpretation of the Convention and Gap-Filling: Article 7*, in THE DRAFT UNCITRAL DIGEST AND BEYOND 138, 151 (Franco Ferrari et al. eds., 2004); Peter M. Gerhart, *The Sales Convention in Courts: Uniformity, Adaptability, and Adoptability*, in THE INTERNATIONAL SALE OF GOODS REVISITED 77 (Petar Sarcevic & Paul Volken eds., 2002); Sylvette Guillemard, *A Comparative Study of the UNIDROIT Principles and the Principles of European Contracts and Some Dispositions of the CISG Applicable to the Formation of International Contracts from the Perspective of Harmonisation of Law*, in REVIEW OF THE CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG) 83, 100–13 (Kluwer Int'l Law 2001); Ole Lando, *Eight Principles of European Contract Law*, in MAKING COMMERCIAL LAW: ESSAYS IN HONOUR OF ROY GOODE 103 (Ross Cranston ed., 1997); E. Allan Farnsworth, *Duties of Good Faith and Fair Dealing Under the UNIDROIT Principles, Relevant International Conventions, and National Laws*, 3 TUL. J. INT'L & COMP. L. 47 (1995); Alexander S. Komarov, *Internationality, Uniformity and Observance of Good Faith as Criteria in Interpretation of CISG: Some Remarks on Article 7(1)*, 25 J.L. & COM. 75 (2005); Fredrik Liljebblad, *The Status of Good Faith in the 1980 United Nations Convention on Contracts for the International Sale of Goods* 263 (2002) (unpublished Master's Thesis, Lund University), available at <http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=1559579&fileOId=1565031>; Peter Schlechtriem, *Good Faith in German Law and in International Uniform Laws*, Remarks at Saggi Conferenze e Seminari 24 in Rome (Feb. 1997).

15. See RAMBERG & HERRE, *supra* note 1, at 116.

tion” of the convention when choosing between applying the provisions strictly or in a manner maintaining a fair relationship between the interests of the contracting parties.¹⁶ Although the wording of Article 7.1 may be explained by an opposition to a general application of good faith, an understanding of Article 7.1 as suggested here would reduce the difference between UPICC Article 1.7 and CISG Article 7.1.

It follows from UPICC Article 1.9 that usages should not be applied unless “reasonable.” Although there is no reference to reasonableness in CISG Article 9, an application of the notion of good faith would lead to the same result as it could seldom be acceptable to apply an unreasonable usage to the detriment of one of the contracting parties.

Also, in UPICC Article 2.1.18, there is a reference to “reasonableness” so that a party may be precluded by his conduct from invoking an “in writing” requirement, if the other party has “reasonably” acted in reliance on such conduct. Again, there is no requirement in CISG Article 29(2) that the action in reliance must be reasonable but, in practice, there is no difference, because an unreasonable action must be qualified as an independent action rather than an action in reliance on the other party’s statement or conduct.

The word “reasonably” appears in the foreseeability test under UPICC Article 7.4.4 but not in CISG Article 74. Again, there is no difference in practice, because what a party “ought to have foreseen . . . as a possible consequence” allows an assessment of all relevant circumstances. Thus, it is not excluded that the consequence of a breach, although it may be generally difficult to foresee the consequences of a breach of the relevant kind, is nevertheless foreseeable if the party would have such special knowledge that it ought to have foreseen the possible consequence. If so, it would be unreasonable to relieve him from paying damages when the possible consequence materializes.

The wording of UPICC Article 7.4.4 differs from CISG Article 74. Semantically, there is a difference between consequences “being likely to result” and “possible” consequences. The former expression signifies a mere probability, while the latter could include “the worst case scenario.” Apparently, no difference is expected in the practical application of the respective provisions, as both allow an assessment considering all circumstances.¹⁷

The efforts to reach consensus on the right to specific performance under the CISG were unsuccessful. Although the CISG, in Articles 46 and 62, allows specific performance, this is modified by Article 28 stipulating:

16. *See id.* at 117.

17. *See* INT’L INST. FOR THE UNIFICATION OF PRIVATE LAW, UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 271 (2010) (noting comment suggests that principle of Article 7.4.4 “corresponds to the solution adopted in Article 74 CISG”).

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.¹⁸

There is no corresponding modification, and rightly so, under UPICC Articles 7.2.2 and 7.2.3.

UPICC Article 2.1.11 and CISG Article 19 both deal with the effect of a modified acceptance of an offer. Although a modified acceptance is insufficient for the creation of a contract, it would be unfortunate to leave it as a rejection signifying game over. The parties may fail to observe or react against the modification and simply continue as if there were a valid contract. An unwinding of what has been performed without a valid contract would normally be an impracticable and undesirable measure. As it is sometimes suggested, you cannot unscramble the eggs. Therefore, it is provided that the modified acceptance results in a contract including the modification provided there is no timely objection. However, the CISG has added a definition of materiality in Article 19.3 while UPICC Article 2.1.11 has not. Unfortunately, the definition of materiality, as one could expect from a definition, is sufficiently wide to include most modifications occurring in practice. Thus, in order to find that a contract has been validly concluded in spite of the modification, it would frequently be necessary to use another basis than failure to timely object, such as an implied consent to the contract but not necessarily on the terms of the modified acceptance.

Although there is disagreement whether the CISG Article 19 should be used to resolve the “battle of the forms” where the modified acceptance constitutes a reference to another standard form contract than the standard form referred to in the offer,¹⁹ an alternative often suggested would be to find an implied contract either on the basis of one of these standard forms or, perhaps even better, by using the “knockout” principle of UPICC Article 2.1.22 where both standard forms are recognized as con-

18. U.N. Comm'n on Int'l Trade Law, United Nations Convention on Contracts for the International Sale of Goods art. 35, Apr. 11, 1980, 1489 U.N.T.S. 3 [hereinafter CISG], available at <http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>.

19. See John E. Murray, Jr., *The Definitive “Battle of the Forms”: Chaos Revisited*, 20 J.L. & COM. 1, 41–48 (2000); Maria del Pilar Perales Viscasillas, *“Battle of the Forms” Under the 1980 United Nations Convention on Contracts for the International Sale of Goods: A Comparison with Section 2-207 UCC and the UNIDROIT Principles*, 10 PACE INT'L L. REV. 97 (1998); Peter Schlechtriem, *Battle of the Forms in International Contract Law: Evaluation of Approaches in German Law, UNIDROIT Principles, European Principles, CISG; UCC Approaches Under Consideration*, in Festschrift für Rolf Herber zum 70, 36–49 (Martin Eimer trans., 1999).

tract terms but only insofar as they are common in substance.²⁰ The surplus is simply “knocked out.”

The important matter of contract interpretation is addressed both in UPICC and the CISG where UPICC Chapter 4 conforms with CISG Articles 8 and 9. UPICC, however, give considerably more guidance in Article 4.4 (contract interpreted as a whole), Article 4.5 (all terms to be given effect), Article 4.6 (*contra proferentem*), Article 4.7 (linguistic discrepancies), and Article 4.8 (supplying an omitted term). I can see no reason not to accept the added guidance offered by UPICC, albeit the guidance offers many alternatives and does not require strict appliance.

IX. THE FEASIBILITY OF AN INTERNATIONAL CONVENTION BASED ON UPICC

Some may well feel that such a project stands little chance of success. But the gradual acceptance of general principles of commercial law as evidenced by UPICC and the CISG would at least enhance the chances of success to such an extent that efforts should indeed be made. Even if states would be slow in accepting a global convention on international commercial contracts, the project as such may have a considerable effect to unify and consolidate at least the fundamental principles on a global level. Nevertheless, it may be questioned whether it is wise already to proceed directly to launching the project. In any event, it may be worthwhile to consider, in addition to the endorsement by UNCITRAL, further measures in order to encourage judges and arbitrators to use the principles of UPICC whenever appropriate.

20. See RAMBERG & HERRE, *supra* note 1, at 166.