

**The UNIDROIT Principles as Reference for the
Uniform Interpretation of National Laws**

The limited scope of the questionnaire

The preamble to the UNIDROIT Principles on International Commercial Contracts (“UPICC” or the “Principles”) lists, among the “uses” to which such Principles may be put to work, the possibility of resorting to this body of soft law in order to “*interpret or supplement domestic law...*”.

The questionnaire seeks to address this specific point. Rather than addressing general aspects of the UPICC, the national reporters are requested to focus their reports on the acceptance of the UPICC, actual or potential, for the interpretation, re-interpretation and complementation of their national rules and local views on the specific issues of contract law addressed in the questionnaire.

A set of initial questions address **whether the UPICC have actually been used by their national courts or arbitral tribunals and, if so, national reporters are asked to specify which courts have resorted to the UPICC and in which specific factual contexts** (with proper citation of authorities publicly available or, if not publicly available, attaching the full text of the decisions in which the UPICC have been used).

A second set of questions focus on specific principles and rules of the UPICC, on which **national reporters are asked to specify whether, on those rules, there is any incompatibility between such rules and those found in national rules on contract law**. Assuming that national contract law does not provide for a specific rule on that issue, national reporters are asked to indicate whether there is any support or opposition, either in case law or prevailing scholarly doctrine, for applying the UPICC in order to “supplement” national contract law (indicating the arguments used in support of either position).

National reporters are free to introduce other rules of the UPICC, in addition to those listed in the questionnaire, which have been used by courts or arbitral tribunals as a reference to interpret or supplement domestic rules of contract law.

**QUESTIONNAIRE ON THE USE OF THE UPICC IN ORDER TO
INTERPRET OR SUPPLEMENT NATIONAL CONTRACT LAW**

- 1) Is there any legal source in your legal system allowing the use of the UPICC to interpret or supplement national contract law (either by way of explicit and specific legislation, by

way of reference to “trade usages”, “general principles of law”, or based in any other source)? If so, please refer to such legal source, explaining how the court has reached such a decision (indicating, for example, whether and how the courts reached the conclusion that the UPICC represent “trade usages” or “customs” in the field of contract law).

- 2) Have the UPICC been used as evidence of a general consensus on the law applicable to contracts (for example, on the existence of a duty of good faith, the obligation to pay interest, the requirement that a breach of contract must be “fundamental” in order to allow for the termination of the contract, etc.)? If so, please indicate which specific provision of the UPICC has been used in this way, referring also to the factual context of the dispute in which the UPICC have been used in this manner.
- 3) Assuming that the UPICC **have been not** been used by courts in your country for the purpose of interpreting or supplementing national or local rules on contract law, indicate whether they have been used in any other way and how. Discuss, for example, whether references to the UPICC were made as a general body of contract law or to some of its provisions in particular; whether references to the UPICC were made in combination with other instruments of uniform law such as the UN Convention on Contracts for the International Sale of Goods (“CISG”) or a more diffuse body of state laws (e.g., the so called *lex mercatoria*).
- 4) Please indicate whether any of the following selected provisions of the UPICC have a counterpart in your national (domestic) contract law:

ARTICLE 2.1.15 (Negotiations in bad faith)

ARTICLE 2.1.20 (Surprising terms)

ARTICLE 4.1 (Intention of the parties)

ARTICLE 4.2 (Interpretation of statements and other conduct)

ARTICLE 4.3 (Relevant circumstances)

ARTICLE 4.4 (Reference to contract or statement as a whole)

ARTICLE 4.5 (All terms to be given effect)

ARTICLE 4.7 (Linguistic discrepancies)

ARTICLE 6.1.9 (Currency of payment)

ARTICLE 7.3.1 (Right to terminate the contract)

ARTICLE 7.4.9 (Interest for failure to pay money)

ARTICLE 7.4.10 (Interest on damages)

- 5) If there is a statutory or case-law rule (such as a code provision or jurisprudential line of decisions) dealing with the same or similar issue addressed by those selected provision of the UPICC, please reproduce the full text of such a provision or case-law rule, indicating any relevant difference you find between the domestic rule of contract law and the selected rule of the UPICC, also indicating whether the UPICC may be relied upon by the courts of your country as a general principle of contract law interpreting and supplementing national contract law.
- 6) If there is no such a rule of contract law in your jurisdiction, please indicate, with reasons, whether any of those selected provision of the UPICC may, in your view, be relied upon as a source of interpretation of the law of contracts in force in your country, or for the purpose of supplementing gaps in your national contract law
- 7) Please include those rules of the UPICC (other than those included in the given list) which have been relied upon by courts or arbitral tribunals for the purpose interpreting a similar provision of your national contract law or in order to supplement (thus serving as a gap-filler) the national contract law in force in your jurisdiction:

Jose Moreno Rodriguez – Alejandro M. Garro

General Reporters
