The UNIDROIT Principles: First Practical Experiences

Michael J. Bonell*

A. Introduction

When the Governing Council of UNIDROIT decided in 1994 to publish the UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles), it not only recommended their widest distribution, but also stressed the importance of monitoring their use in practice.[1]

The UNIDROIT Principles immediately proved to be something of a bestseller. Within a short period of time over 3,000 copies of the complete version, i.e. the text of the provisions and comments, were sold all over the world. The great majority of orders of the UNIDROIT Principles have come from circles such as international law firms, corporate lawyers, Chambers of Commerce, arbitration courts and the like, which are the kind of potential users to whom the UNIDROIT Principles are mainly addressed.

Encouraged by these developments, the Secretariat of UNIDROIT launched a formal survey in September 1996 with a view to gathering more detailed information as to the different ways in which the UNIDROIT Principles have been used in practice so far. A detailed questionnaire was circulated to those who had shown a particular interest in the Principles during their preparation and/or after their publication. The survey turned out to be a great success. Of the 1,000 persons contacted, more than 20 per cent replied a remarkable return in this type of survey. Replies came from 39 countries of all the major regions of the world: the US, Japan and Russia as well as from Uruguay, the United Emirates and Estonia. More than half of those who replied were practising lawyers and in-house counsel, the remainder were professors. Many respondents indicated they were also arbitrators.

How, then, have the UNIDROIT Principles been received and what are the ways

---

* Professor of Law, University of Rome I; Chairman of the Working Group for the preparation of the UNIDROIT Principles.

1 Report on the 73rd Session of the Governing Council (Rome, 9 to 13 May 1994), UNIDROIT 1994, CD (73) 18, p. 22. For further details concerning the origin and preparation of the UNIDROIT Principles, *see* M. J. Bonell, *An International Restatement of Contract Law* (1997, 2nd ed.) at pp. 19–39.

European Journal of Law Reform, Vol. 1, No. 3

in which they have been used in practice? The following article provides an overview of the situation so far, particularly in the light of the results of the above survey.

B. Reception of the UNIDROIT Principles in Academic and Professional circles

The success, even of binding uniform law instruments, notoriously depends upon their being brought to the attention of the potential users. This is all the more true of non-binding instruments such as the UNIDROIT Principles. The fact that they are already the focus of world-wide interest is therefore particularly encouraging. Thus, in the few years of their existence, the Principles have already been the subject of numerous seminars and colloquia in many parts of the world. Some of these were held even before the adoption of the final version, such as the seminars held in January 1992 at the Law School of the University of Miami,[2] in December 1993 in Rome organized by the Centre for Latin American Studies and the Centre for Comparative and Foreign Studies[3] and in February 1994 at the Law School of Tulane University in New Orleans.[4] Of the meetings held post-publication, mention may be made among others of the October 1994, 25th Biennial Conference of the International Bar Association (Section on Business Law) in Melbourne;[5] the October 1994, International Chamber of Commerce meeting in Paris; the November 1994, National and International Court of Arbitration meeting in Milan;[6] the October 1995 seminar organized by the Italian legal journal *Diritto del commercio*

---

[2] (1992) 40 *American Journal of Comparative Law* containing contributions by M.J. Bonell, U. Drobnig, E.A. Farnsworth, M. Fontaine, M.P. Furmston, R. Hyland, D. Maskow, A. Rosett and D. Tallon.

[3] M.J. Bonell and S. Schipani (eds.), *Principi per i contratti commerciali internazionali, e il sistema giuridico latinoamericano* (Padova, 1996), containing contributions by J. Adame Goddard, E. Aimone Gibson, E.C. Banchio, L.O. Baptista, F. Hinestrosa, A. Leon Steffens, J.C. Moreira Alves, L.G. Paes De Barros Leaes, G. Parra-Aranguren, S. Rippe, J.C. Rivera, H. Veytia.

[4] (1994) 3 *Tulane Journal of International and Comparative Law* containing contributions by E.A. Farnsworth, A. Hartkamp, M.J. Bonell, A.M. Garro, O. Lando, M. Evans.

[5] Papers presented by M.J. Bonell, P. Brazil, F. Enderlein, H. Hirose, H. van Houtte, S. Martinez Cazon, M. Riccomagno.

[6] Institute of International Business Law and Practice (ed.), *UNIDROIT Principles for International Commercial Contracts: A New Lex Mercatoria?*, ICC Publication No. 490/1 (1995), containing contributions by J.-P. Béraudo, G. De Nova, U. Drobnig, E.A. Farnsworth, M. Fontaine, M.P. Furmston, V. Gaymer, A. Giardina, J. Huet, A. Komarov, P. Lalive, R. Monaco, R. Morera, K. Razumov, H. Raeschke-Kessler, C. Reymond, D. Tallon, H. van Houtte.

internazionale in Rome;[7] the November 1996, Inter-American Congress at the University of Carabobo, Valencia (Venezuela);[8] the November 1996, Universidad Panamericana meeting in Mexico City;[9] and the June 1997, Russian Federation Chamber of Industry and Commerce meeting in Moscow.[10]

In addition, the UNIDROIT Principles are the subject of a growing volume of scholarly writings published in the leading legal journals and, what is even more important, their reception has generally been very positive.

A particularly prestigious forum for an extensive discussion is the forthcoming Congress of the International Academy of Comparative Law to be held in Bristol in 1998, which will be devoting a special section to the Principles. All national *rapporteurs* will be invited to consider the Principles from the viewpoint of their own legal systems and/or their local business communities, in order to highlight convergencies and divergencies in content and advantages and possible shortcomings of the different ways in which the Principles have been used in practice.[11]

Last but not least, the UNIDROIT Principles have been included in the courses and teaching materials of a great many law schools and universities world-wide.[12]

C. The Use of the UNIDROIT Principles in Practice

II. A Model for National and International Legislation

Even when still only in draft form, the UNIDROIT Principles served as a source of inspiration in some of the most recent codifications: for example, in the case of the new Dutch Civil Code and of the new Civil Code of Quebec; references to individual provisions of the Principles may also be found in the Final Report of the

---

[7] M.J. Bonell and F. Bonelli (eds.), *Contratti commerciali internazionali e Principi UNIDROIT* (Milano, 1997), containing contributions by G. Alpa, P. Bernardini, M.J. Bonell, F. Bonelli, S. Carbone, C. Castronovo, A. Di Majo, U. Drobnig, E.A. Farnsworth, L. Ferrari Bravo, G.B. Ferri, M. Fontaine, A. Giardina, Ph. Kahn, E. Kramer, P. Lalive, O. Lando, R. Luzzatto, P. Schlechtriem, D. Tallon.

[8] Papers presented by J.M. Abascal, L.O. Baptista, J.-P. Béraudo, A. Boggiano, M.J. Bonell, L. Borjas Hernandez, R. Eyzaguirre Echeverria, E.A. Farnsworth, L. Ferrari Bravo, F. Hinestrosa, H.M. Holtzmann, F.K. Juenger, B. Kozolchyk, R. Illescas Ortiz, D. Opertti Badan, G. Parra-Aranguren, J.L. Siqueiros, J.S. Ziegel (to be published).

[9] Papers presented by L.M. Abascal, F. Contreras Vaca, R. Cruz Miramontes, J. Esquirol, A. Garro, J. Adame Goddard, J.L. González Alcánta, F.K. Juenger, B. Kozolchyk, P. Linzer, L. Pereznieto, J. Perillo, A. Rosett, J. Sanchez Calero, J.L. Siqueiros, J. Smith, L. Trakman, J.C. Treviño Azué, D. Vagts, H. Veytia (to be published).

[10] Papers presented by M.J. Bonell, A.S. Komarov, A.A. Kostin, A.L. Makovsky, W. Rodino, M.G. Rosenberg, Y.A. Sukhanov, N.G. Vilkova, I.S. Zykin (to be published).

[11] The author of this paper has the honour of acting as *General Rapporteur*. Over 20 national reports have been announced, further proof of the interest aroused by the subject.

[12] According to the UNIDROIT survey these total 95.

Commission for the Revision of the German Law of Obligations.[13] The most telling example, however, is that of the recently adopted Civil Code of the Russian Federation,[14] in the preparation of which the UNIDROIT Principles played a significant role,[15] with specific provisions directly inspired by them.[16] After their publication, the Estonian Government officially declared that it considered the Principles one of the most important and authoritative terms of reference in the drafting of its new Law of Obligations, now under preparation.[17] Likewise, most of the general contract provisions of the draft Civil Code of the Republic of Lithuania very closely follow the Principles,[18] and the same is likely to be true of the new Czech Civil Code currently under preparation.[19] In its proposals for the reform of the rules on interpretation of legal acts, the Scottish Law Commission also expressly refers to

---

[13] *See* Bundesminister der Justiz (ed.), *Abschlußbericht der Kommission zur Überarbeitung des Schuldrechts* (Cologne, 1992), p. 149 (with reference to the provision on hardship) and p. 165 (with reference to the provision on termination for fundamental breach).

[14] Part 1 of the new Code, containing rules on Persons, Legal Acts, Ownership and Contracts in General, entered into force on 1 January 1995, while Part 2, including rules on specific contracts, came into force on 1 March 1996; Part 3, dealing *inter alia* with succession and private international law is expected to be finalized shortly: *see* V.B. Kozlov, *The New Russian Civil Code of 1994*, Centro di studi e ricerche di diritto comparato e straniero; Saggi, Conferenze e Seminari No. 21, Rome, 1996. For an English translation of the Code *see* Private Law Research Centre Attached to the Office of the President of the Russian Federation (ed.), *The Civil Code of the Russian Federation*, Parts 1 and 2 (Moscow, 1997).

[15] *See* A. Komarov, 'The UNIDROIT Principles of International Commercial Contracts: A Russian View' in (1996) *Uniform Law Review* 247 at p. 249, who openly declares that '...[i]n relation to the new Russian Civil Code the Principles have already played the role indicated for them in the Preamble ... in the sense that they have served as a model for national legislation'. Indeed, the Special Commission set up by the President of the Russian Federation for the preparation of the new Civil Code called upon a number of experts including the author of this book to comment upon the preliminary drafts, also in the light of the UNIDROIT Principles.

[16] This is the case in particular of Art. 451 on substantial alteration of contractual equilibrium which according to A. Komarov, ibid., was directly inspired by Arts. 6.2.16.2.3 of the UNIDROIT Principles and the comments thereon.

[17] *See* the letter of 8 June 1995 from the Ministry of Justice of Estonia to UNIDROIT: 'At present time we're elaborating a new draft law of obligations of the Estonian Republic. The UNIDROIT Principles of International Commercial Contracts is certainly one of the most important and authoritative sources for drafters of the new law of obligations because it contains a positive experience of different States.'

[18] *See* Part II, Book 5 ('Contract Law') of the draft Civil Code as submitted to the Parliament of Lithuania in September 1996. The provisions of the UNIDROIT Principles which have been more or less literally taken on are Arts. 1.11.4 and 1.7 of ch. 1, Arts. 2.12.16 and 2.202.22 of ch. 2, Art. 3.10 of ch. 3, the entire ch. 4, Arts. 5.15.3 and 5.65.8 of ch. 5, Arts. 6.1.16.1.6 and 6.1.146.1.17 of ch. 6, 1, the entire s. 2 of ch. 6 and the entire ss. 1, 2 and 3 of ch. 7.

[19] According to information received from one of the members of the Codification Commission, the relevant provisions of the UNIDROIT Principles are Arts. 2.12.11, 4.14.6, 7.1.7, 7.4.27.4.6 and 7.4.13.

specific provisions contained in Chapter 4 of the Principles, namely to Articles 4.1, 4.2, 4.4, 4.5, 4.6 and 4.7.[20] Outside Europe, mention may be made of the recent drafts for the revision of Article 2 on Sales of the United States Uniform Commercial Code,[21] the new legislation on contracts of the People's Republic of China currently under preparation,[22] the draft new Commercial Code of Tunisia,[23] and the draft new Civil Code of Argentina.[24] Furthermore, specific provisions of the UNIDROIT Principles have been chosen as the basis for a tentative draft Code prepared by a member of the New Zealand Law Commission and intended to lay down the basic principles of the New Zealand law of contracts.[25]

III. A Guide in Contract Negotiations

Though not expressly mentioned in the Preamble as one of the purposes, the use of the UNIDROIT Principles as a guide in contract negotiations has turned out to be one of the most important ways in which they are being employed. This may partly be due to the fact that the Principles are available in all the major languages of the world. The complete version exists not only in the official languages of UNIDROIT, i.e. English, French, Italian, and Spanish, but also in Chinese, Czech, Russian and Slovak (due to unforeseen difficulties the complete German version has yet to appear). Moreover, the black letter rules have been translated into Arabic, Bulgarian, Dutch, German, Hungarian, Japanese, Korean, Portuguese, Romanian and Serbian.

It is obviously hard to give precise figures as to the actual use of the UNIDROIT Principles in contract practice. However, approximately two-thirds of those who replied to the UNIDROIT questionnaire indicated that they had used the Principles in the course of contract negotiations, with one-third declaring that they had done so to overcome language barriers, another third to have at hand a checklist of issues to

---

[20] *See* Scottish Law Commission, Discussion Paper No. 101, 'Interpretation in Private Law', August 1996, pp. 23, 33, 52, 55 and 58, respectively.

[21] *See* National Conference of Commissioners on Uniform State Laws (ed.), *Uniform Commercial Code: Revised Article 2 Sales*, 21 March 1997 draft, p. 6 (with reference to the definition of standard terms), p. 33 (with reference to 'battle of forms') and p. 127 (with reference to cure); also the proposed solution as to merger clauses (pp. 1821) and to surprising terms contained in standard terms (pp. 2629) is basically inspired by that provided for by the UNIDROIT Principles.

[22] *See* Jiang Ping, 'Un progetto di una legge contrattuale unitaria della Repubblica Popolare Cinese' (paper presented at a seminar held at the University of Rome II in January 1997).

[23] Information supplied in a reply to the UNIDROIT questionnaire.

[24] *See* the statement by A. Boggiano at the 76th Session of the Governing Council of UNIDROIT (UNIDROIT, 1997), CD (76) 17, p. 18.

[25] *See* R. Sutton, Commentary on 'Codification, Law Reform and Judicial Development', Appendix Tentative Scheme for a Draft Code, (1996) 9 *Journal of Contract Law*, pp. 204205. The provisions in question are Arts. 1.1, 1.31.5, 3.3, 3.83.12, 3.163.18, 7.1.1, 7.1.2, 7.1.7, 7.3.37.3.6 and 7.4.27.4.9.

be addressed and the final third stating that they used them as a model for contract provisions. In all cases, over half indicated that they had so used the UNIDROIT Principles on more than one occasion.

Moreover, a good quarter of the replies stated that the UNIDROIT Principles had been chosen as the law governing the contract, with half expressly referring to them in the contract and the other half considering them as an expression of 'general principles of law', the *lex mercatoria* or the like. Again, in many cases they did so on more than one occasion.

Unfortunately, not all replies indicated the nationality of the parties or the nature of the transaction involved. By and large, half appear to have involved North–North relations (with more than half inter-European), one-third North–South relations, and the remainder divided into East–West and South–South relations. As to the kind of transaction involved, these range from sales contracts (44 per cent), commercial agency and other distribution contracts (15 per cent), to construction and engineering contracts (18 per cent), transport and insurance contracts (4 per cent) and others (19 per cent).

IV. Relevance in Judicial Proceedings

Since the UNIDROIT Principles offer a coherent system of rules tailored to the needs of international commercial transactions, a particularly important test of their success is the role which they are called upon to play as a legal basis for the settlement of disputes.

A quarter of those who replied to the UNIDROIT questionnaire indicated that they referred to the Principles in support of a particular argument developed in a statement of claim or defence. The overwhelming majority did so in an arbitral proceeding (often on more than one occasion), others in a state court proceeding (again, usually more than once). Although not all the replies gave details as to the specific provisions invoked, it would appear that Chapters 2, 4, and 7 played the most important role.

What is even more important, some 13 per cent of those who replied indicated that they referred to the UNIDROIT Principles in support of a solution adopted in an arbitral award or a state court decision, with more than half specifying that they had done so more than once.

These figures are all the more significant bearing in mind that not all those who may have used the Principles received the questionnaire and that only some 20 per cent of the recipients replied. Indeed, the number of cases in which the Principles have been used in judicial proceedings may be estimated to run into the hundreds, and the number of arbitral awards and court decisions which have applied the Principles in one way or another is somewhere in the fifties. Unfortunately, only a few of these awards and decisions have been published so far. While some of the others have at least been brought to the attention of the UNIDROIT Secretariat, approximately half are still unknown.

1. The UNIDROIT Principles as a Means of Interpreting the Applicable Domestic Law

A first group of 11 awards and decisions refer to the UNIDROIT Principles to demonstrate that a particular solution provided by the applicable domestic law conforms to internationally accepted standards. By way of example, two of these may be illustrated here in detail.

The first is an award rendered in 1996 by the ICC Court of Arbitration[26] which concerned a pre-bid agreement between a supplier of telecommunications systems in the US (the claimant) and a Middle Eastern manufacturer of telecommunications cables (the defendant), whereby the parties undertook the obligation to negotiate in good faith the supply of cables in the event that claimant's bid to become prime contractor for a telecommunications expansion project succeeded. The claimant did secure the entire contract but after a series of fruitless negotiations terminated the preliminary agreement on the grounds that the parties were unable to conclude the contemplated final agreements. In the absence of a choice of law clause, while the claimant invoked the law of Saudi Arabia or that of England or Georgia as the applicable law, the defendant invoked the law of New York or that of New Jersey and in addition requested that the arbitral tribunal also apply the UNIDROIT Principles as evidencing general principles of international commercial contracts. The Tribunal admitted that international arbitrators were fully justified in turning to general principles of law which may present some advantage over the selection of one of many competing municipal systems of law where none of the connecting factors is compelling, but in the case at hand it decided in favour of the law of the State of New York as the applicable law. The Tribunal, however, also referred to the UNIDROIT Principles defined as a 'useful source for establishing general rules for international commercial contracts' in order to demonstrate that the same solution provided by New York law, i.e. the enforceability of the parties' express obligation to negotiate in good faith, corresponds to the general principles of law as reflected in the UNIDROIT Principles (in particular Arts. 1.1, 1.3, 1.7 and 2.15). On the basis of its findings the Tribunal ordered the parties to resume negotiations promptly with a view to reaching an agreement on the supply of cables within the parameters set forth in the preliminary agreement.

The second example is a decision issued by the Federal Court of Australia on 30 June 1997[27] which concerned a dispute over a bidding procedure that had arisen between a Californian company and an Australian governmental agency after the latter awarded the contract to another bidder. According to the claimant, the defendant had failed to conduct the tender evaluation fairly and in a manner that would have ensured equal opportunity to both bidders. In considering whether such a

---

[26] See the summary in *White & Case International Dispute Resolution*, Vol. 10, March 1997, pp. 36.

[27] *Hughes Aircraft Systems International v. Airservices Australia*: *see* http://www.lawnet.com.au/private/fct/1997/J970558.html.

duty was imposed by law in pre-award contract contexts, the court, after stating that Australian judicial and scholarly opinion differed sharply on this matter, concluded in the affirmative. In support of its ruling, it stated that a general duty of good faith and fair dealing was not only recognized in a number of foreign jurisdictions, but had also been 'propounded as a fundamental principle to be honoured in international commercial contracts' in Article 1.7 of the UNIDROIT Principles.

2. *The UNIDROIT Principles as a Means of Interpreting International Uniform Law*

Three awards, two of them rendered by the International Court of Arbitration of the Federal Chamber of Commerce of Vienna,[28] and one by the Court of Arbitration of the International Chamber of Commerce[29] and a state court decision refer to the UNIDROIT Principles in order to fill a gap in the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG).

All three awards deal with the question of the applicable interest rate. As is known CISG does not expressly regulate on this point, while the prevailing view in legal writings and case law is that the question should be settled in accordance with the law which would govern the contract in the absence of the Convention. In the cases at hand the respective arbitrators preferred, however, to fill this gap via Article 7(2) of the CISG by means of Article 7.4.9(2) of the UNIDROIT Principles. According to this Article, the applicable rate of interest is the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place of payment. The ICC award applied this provision of the UNIDROIT Principles directly as 'one of the general principles according to Article 7(2) CISG'. In the two Austrian awards the sole arbitrator justified his reference to Article 7.4.9(2) of the UNIDROIT Principles on the ground that the basic idea underlying it, i.e. the principle of full compensation, constituted likewise a general principle underlying CISG.

The state court decision, rendered by the Court of Appeal of Grenoble on 23 October 1996, concerned a sales contract between a German and a French company. In order to determine its own jurisdiction in conformity with Article 5(1) of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, the court had to determine the place of performance of the seller's obligation to return part of the price unduly paid by the buyer. CISG, which

---

[28] Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft, Wien, Schiedssprüche SCH 4318 and SCH 4366 of 15 June 1994: for an English translation *see* M.J. Bonell *et al.* (ed.), *UNILEX International Case Law & Bibliography on the UN Convention on Contracts for the International Sale of Goods* (Transnational Publishers, Inc., Irvington, NY 1997, 3rd ed.), E.1994-13 and E.1994-14. For extracts of the original German version *see* (1995) *Recht der internationalen Wirtschaft*, p. 590 et seq., with note by P. Schlechtriem (p. 592 et seq.); for a succinct presentation in French, *see* I. Seidl-Hohenveldern, (1995) *Journal du droit international*, pp. 1055–1056.

[29] ICC Award No. 8128 of 1995, (1996) *Journal de droit international*, p. 1024 et seq., with note by D. Hascher, ibid., p. 1028 et seq.

governed the contract, does not expressly regulate on this point. The court, openly rejecting the opposite solution adopted by both French and German domestic law, decided in favour of the buyer's place of business. Thus it based its decision on the general principle that monetary obligations are to be performed at the obligee's place of business, which could be deduced not only from Article 57(1) of the CISG, but also, and more convincingly, from Article 6.1.6 of the UNIDROIT Principles.

3. The UNIDROIT Principles as the Law Governing the Contract

Finally, no fewer than ten awards are known in which the UNIDROIT Principles have been applied as the law governing the contract. Most of them were rendered by the ICC Court of Arbitration, while the others were rendered by the London Court of Arbitration, the National and International Court of Arbitration of Milan and the International Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation.

As a first example reference can be made to an ICC award of 1995. It concerned a series of contracts for the supply of equipment concluded by an English company and a governmental agency of a Middle Eastern country. The contracts referred to 'principles of natural justice' (not further specified) as the applicable law. In a partial award,[30] rendered in 1995, on the question of the law applicable to the substance of the dispute, the arbitral tribunal, after a detailed analysis of the origin and nature of the UNIDROIT Principles, concluded that the latter are the most genuine expression of general rules and principles enjoying wide international consensus and, as such, should be applicable as the law governing the contracts in question.

Another ICC award concerned a contract between an Italian company and a governmental agency of a Middle Eastern country.[31] The contract did not contain any choice of law clause, since both parties had insisted on the application of their own national law. In a partial award the arbitral tribunal declared that it would base its decision on the 'terms of the contract, completed by the general principles of law applicable to international trade as embodied in the *lex mercatoria*'. On the basis of this decision the same arbitral tribunal subsequently, when dealing with the merits of the dispute, referred, without further explanation, to individual provisions of the UNIDROIT Principles, thereby implicitly considering the latter a source of the *lex mercatoria*. Thus, apart from another partial award on some preliminary questions of substance in which it referred to Articles 4.8 ('Supplying omitted terms') and 4.6 ('*Contra proferentem* rule') in its final award, rendered in 1996, the arbitral tribunal invoked Articles 7.4.1 ('Right to damages'), 7.4.7 ('Harm due in part to aggrieved party') and 7.4.13 ('Agreed payment for non-performance') in support of its reasoning.

---

[30] ICC Case No. 7110. For extensive references *see* P. Lalive, 'L'arbitrage international et les Principes UNIDROIT', in M.J. Bonell and F. Bonelli (eds.), *Contratti commerciali internazionali e Principi UNIDROIT* (Milano, Giuffrè, 1997), p. 71 et seq.

[31] ICC Case No. 8261 of 1996.

As the last example reference can be made to an award rendered by the International Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation[32] which concerned a sales contract entered into between a Russian trade organization and a Hong Kong company. The contract did not contain any choice of law clause, but when the dispute arose the parties agreed that the arbitral tribunal should apply the UNIDROIT Principles to resolve any question not expressly regulated in the contract. In its decision the arbitral tribunal applied a number of individual articles of the Principles. More precisely, Article 7.3.1 in order to affirm the right of the Russian buyer to terminate the contract; Article 7.3.6 with respect to the restitution of the goods already delivered; and Article 7.4.5 in regard of the buyer's right to recover the difference between the contract price and the price of the replacement transaction.

D. Conclusions

The UNIDROIT Principles, resulting from the work of a group of experts acting under the auspices of an inter-governmental organization such as UNIDROIT without legislative power, may initially have appeared to a sceptical observer to be little more than an academic exercise of no practical utility. Experience since their publication has shown this not to be the case. Their success in practice has gone beyond all expectation. The reasons for the favourable acceptance of the Principles are manifold.

To begin with, the Principles are not just the product of a few law professors pottering in an ivory tower. As pointed out by Marc Blessing[33] '[the] Principles are likely to find a quite universal acceptance, since they have been worked out ... with the contribution of over 70 well-known specialists from all major areas and legal systems of the world, including formerly socialist countries, Latin American countries and countries of the Far East'.

Yet there might also be more practical reasons for the success of the UNIDROIT Principles. To quote the statement of an international lawyer of the US,[34] '...[t]he great importance of the [UNIDROIT] Principles is that the volume exists. It can be taken to court, it can be referred to page and article number, and persons who are referred to its provisions can locate and review them without difficulty. This alone is a great contribution towards making *lex mercatoria* definitive and provable.'

---

[32] Award No. 116 of 20 January 1997.

[33] *See* M. Blessing, 'Regulations in Arbitration Rules on Choice of Law', in *ICCA Congress Series No. 7: XIIth International Arbitration Congress, Vienna, 36 November 1994* (Kluwer Law International The Hague/London 1996) at pp. 391 et seq.

[34] B.S. Selden, 'Lex Mercatoria in European and US Trade Practice: Time to Take a Closer Look' in 2 11 (1995) *Annual Survey of International & Comparative Law*, p. 121 et seq., n. 65, p. 122.