

ARBITRATION, UNIDROIT PRINCIPLES AND THE CISG: A RECENT DECISION OF THE PARIS COURT OF APPEAL

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INTRODUCTION

1.-The purpose of this article is to examine, through recent cases, the interaction between arbitration, Unidroit principles and the Vienna Convention on the international sales of goods.

Maybe we can give a recent case recently pronounced by the Court of Appeal of Paris on 25 February 2020 where the Court refused to set aside an ICC award, dismissing all grounds of annulment on which the claimant relied.²

The facts are as follows:

An Indian company Prakash agreed to deliver stainless steel tubes to a Romanian company Uzuc.

The buyer alleged that the tubes were defective and filed a request for arbitration with the ICC on 19 December 2014, claiming compensation from Prakash.

On 13 June 2017, the arbitral tribunal issued an award ordering Prakash to pay EUR 1 million in damages to Uzuc for breach of its contractual obligations under the sales agreement.

2. The Paris Court's decision

In November 2017, Prakash commenced annulment proceedings before the Paris Court of Appeal on various grounds, and more specifically the application by the Tribunal of the Unidroit Principles.

Prakash argued that the tribunal exceeded its mandate by applying the Unidroit Principles to the dispute. Prakash claimed that Indian law was applicable and that the tribunal's decision to apply the Unidroit Principles instead amounted to a ruling in equity rather than in law, which exceeded the tribunal's mandate.

The Court rejected this argument. The Court underlined that, considering the Parties' disagreement as to the applicable law (with Prakash arguing that Indian law was applicable and Uzuc arguing that Romanian law was applicable), the tribunal issued two procedural orders: (i) procedural order No. 1 which invited the Parties to examine the application of substantive norms and to consider the application of transnational principles such as the Unidroit Principles; and (ii) procedural order No. 3, by which the tribunal decided to apply the

² Cour d'appel de Paris, 25 February 2020, n° 17/18001.

Unidroit Principles in accordance with article 21.1 of the rules of the International Chamber of Commerce³ and article 1511 of the French code of civil procedure⁴

On the basis of those provisions and the Parties' agreement on the direct application method of choice of law, the tribunal decided that it enjoyed broad discretion to apply substantive norms it deemed appropriate, taking into account trade usages and without the need to refer to conflict of law principles. On the basis of the "largely international" character of the sales agreement, the tribunal applied the Unidroit Principles. The Court held that that this was a decision in law rather than in equity and that it did not exceed the tribunal's mandate.

The judgment illustrates the arbitrators' broad discretion under French law to apply transnational legal principles, such as the Unidroit Principles, where the parties have not expressly agreed an applicable law to their arbitration proceedings.

Previously, the Paris Court of Appeal considered an award founded in law where the tribunal applied Unidroit principles chosen by the parties as a **supplement** to the law applicable.⁵ However, to our knowledge it is the first time that a French court ruled on the application of the Unidroit principles as the rules governing the dispute and **in the absence of any indication by the parties**.

We want to make three prior reflexions.

1. Globalization, international trade law arbitration.

3.- Globalization is a reality illustrated by a lot of current phenomenon's and more recently by the coronavirus crisis or the worldwide digital activities.

National law is not always suitable to deal with international disputes and international business norms are needed and register a greater influence in international arbitration.

³ Article 21.1. of the rules of the Court of Arbitration of the International Chamber of Commerce prescribes

« The parties shall be free to agree upon the rules of law to be applied by the arbitral tribunal to the merits of the dispute. In the absence of any such agreement, *the arbitral tribunal shall apply the rules of law which it determines to be appropriate* ».

⁴ Article 1511 CPC applicable to international arbitration provides a similar rule :

« *Le tribunal arbitral tranche le litige conformément aux règles de droit que les parties ont choisies ou, à défaut, conformément à celles qu'il estime appropriées.*

Il tient compte, dans tous les cas, des usages du commerce. »

Free Translation "The Arbitral Tribunal shall decide the dispute in accordance with the rules of law chosen by the parties or, failing that, in accordance with such rules as it considers appropriate. It shall in all cases take into account the usages of the trade. "

⁵See for instance, amongst others, Cour d'appel de Paris, Pôle 1, chambre 1, June 14 2016, n° 14/16113 and Cour d'appel de Paris, September 26 2017, n° 16/15338

The best and more important example of international trade norms is the Vienna Convention on the international sales of goods (CISG); this is applied frequently by the arbitrators and the judges in international matters.

The arbitrators enjoy more freedom in the choice of the law applicable to the cases submitted to them.⁶ The rules of the Court of Arbitration of the International Chamber of Commerce, as already quote, foresee that the arbitral tribunal shall apply the rules of law which it determines to be appropriate, in the absence of agreement of the parties.⁷

Logically the international arbitrators will more often apply transnational rules which are frequently more suitable for international cases.⁸

2. UNIDROIT (formally, the International Institute for the Unification of Private Law; In French Institut international pour l'unification du droit privé)

4.- It is an intergovernmental organization whose objective is to harmonize international private law across countries through uniform rules, international conventions, and the production of model laws, sets of principles, guides and guidelines. Established in 1926 as part of the League of Nations, it was re-established in 1940 following the League's dissolution through a multilateral agreement, the Unidroit Statute. As at 2019 Unidroit has 63 member states.

Unidroit has prepared multiple conventions, but has also developed soft law instruments. An example are the Unidroit Principles of International Commercial Contracts.⁹

The principles deal with the main legal issues of international contracts.

The first edition of the principles was published in 1994. The principles were updated and completed in 2004 and 2010. In 2016 was published the 4th edition ; new chapters (a.o. prescription, assignment of rights) have been added in the successive editions and the last edition takes the special needs of long term contracts.

The preamble of the Unidroit Principles explains :

« These Principles set forth general rules for international commercial contracts. They shall be applied when the parties have agreed that their contract be governed by them. () They may be applied when the parties have agreed that their contract be governed by general principles of law, the lex mercatoria or the like. They may be applied when the parties have not chosen any law to govern their contract. They may be used to interpret or supplement international uniform law instruments. They may be used to interpret or supplement domestic law. »*

The arbitrators, as we have seen hereabove, apply frequently principles of international law, and the lex mercatoria. We can consider that the Unidroit principles are part of the lex mercatoria and of the international law. Why ?

The principles are part of courses at the University ; they have been published with comments and examples(they are accessible on the web) ; they have been drafted by esteemed

⁶ See M. FONTAINE , Principes Unidroit et l'arbitrage international, (Unidroit Principles and International Arbitration) in *Mélanges Guy HORSMANS*, Bruylant, 2004 n°24

⁷ See also D.PHILIPPE,« La clausula rebus sic stantibus et la renégociation du contrat dans la jurisprudence arbitrale internationale », in *Liber amicorum Guy Keutgen*, Bruxelles, Bruylant, 2008, pp. 473 à 493 ;

⁸ See International Chamber of Commerce, Policy and Business practices, Developing neutral legal standards for international contracts, 2015.

⁹ This text is taken over from the Unidroit website.

professors originated from all over the world and representing the main legal systems. They have largely inspired the most recent codifications and they are recognized all over the world.¹⁰

Furthermore, the Principles are also often chosen by the parties as applicable law to their contract and, as we will see, apply by the arbitrators in the absence of agreement by the parties.

3. The Vienna Convention on the International Sales of Goods (CISG)

5.- The CISG is ratified by 93 countries¹¹ and applies to international sales contract. The CISG is thus part of the legislative arsenal of a State contrary to the Unidroit Principles. The main rules governing the law of sales are contained in the CISG but the CISG must be interpreted and gaps must be filled in for all the topics which are not dealt with, in the CISG.

In this regard, article 7 CISG foresees that :

« (1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law. »

Unidroit principles are in line with this article of the CISG ; they promote uniformity of the application of sales law (article 7.1) and besides they can be considered as principles underlying the CISG and as such they can fill the gaps for the questions not regulated by the CISG (art.7.2) . We will see examples later.

Article 9 CISG foresees :

“1.The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves. .

2.The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.”

This article gives a broad scope of application to the usages. The Unidroit principles can be considered as usages as we will see later.

¹⁰ See M. FONTAINE, *op.cit.*

¹¹ Guatemala is the latest country where the CISG will enter into force (it will be the 1st of January 2021) The United Kingdom is one of the most noticeable exception.

CHAPTER I. APPLICATION OF THE UNIDROIT PRINCIPLES BY THE ARBITRATORS.

6. The decision of the Paris court confirmed that Unidroit principles on commercial contracts can have an important function in international arbitration. We can give illustrations of this. Various decisions make indeed reference to the Unidroit principles in arbitration. We will only refer to the most recent decisions.¹² We will distinguish the different functions of the Unidroit principles in international arbitration.

§1. Principles as expression of “general principles of law” referred to in the contract

7.- A Kuwaiti company entered into a Franchise Development Agreement (“the Agreement”) for a period of 10 years with Respondent, a Lebanese company. Few years later, following a corporate reorganisation, the Kuwaiti company became a subsidiary of Claimant, another Kuwaiti company. A dispute arose under the contract, leading Respondent to commence an arbitration against Claimant. On the merits the Arbitral Tribunal had to decide whether there had been a breach of contract by Claimant.¹³ The Arbitration Clause specified that Paris would be the seat of arbitration and that “*the arbitrator(s) shall apply the provision contained in the Agreement and ... principles of law generally recognized in international transactions*”.

The arbitral tribunal decided that the Unidroit principles must be considered as principles of law generally recognized in international transactions and rendered a decision applying the Unidroit principles on the assignment of rights.

Claimant filed an application before the Paris Court of Appeal to annul the award.

The Paris Court decided that the Arbitral Tribunal had applied the strict wording of the Agreement since it reached its decision by taking into account the principles of law generally recognized in international transactions, as indicated in the agreement, when examining the dispute in light of the Unidroit Principles.

¹² See for awards until 2004, M. FONTAINE, *op.cit.* see also PHILIPPE (D.), « La force majeure et le hardship », in *Les principes UNIDROIT relatifs aux contrats de commerce international (ed. 2010) et l'arbitrage. Actes du colloque du CEPANI du 24 mai 2011*, Bruxelles, Bruylant, 2011, pp. 97 à 124 and the herein mentioned cases.

We can more particularly mention the Andersen case, often quoted in the legal studies, where the clause rejected the application of national law and foresees the application of the general principles of law and equity commonly accepted in most countries of the world and the arbitrator applies the Unidroit principles qualified by him of « reliable source of international commercial law in international arbitration » ICC award 9797 of 28 July 2000. *17 Arbitration Law Journal* (2001), pp. 249-261.

¹³ Court of Appeal of Paris, 23 June 2020, 17/22943

In the commented decision of the appeal court of Paris dd 25 February 2020, it is in a procedural order that the tribunal decided to apply the Unidroit principles.¹⁴¹⁵The application of the Unidroit principles or the principles of international law were not foreseen expressly by the contract, contrary to the decision

§2. Principles as “the rules of law (arbitrators) determine to be appropriate”

8.-In the settlement agreement following the famous dispute between Iran and the US, an arbitration clause was inserted which foresees :“*[t]he Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances*”.

The US was condemned to pay damages to Iran. The Republic of Iran claimed an interest rate of 10% relying on the decisions rendered in the previous disputes between the US and Iran in the 80s. The tribunal, in an award of 2 July 2014, considered that this interest was too high and applies the interest rate prescribed by the Unidroit principles with the following words :

“[it] was also mindful of Article 7.4.9 (2) of the UNIDROIT Principles 2010, which provides [that] the rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment [...]”.

We see that the Unidroit principles are integrated in the international trade law.

§3. Unidroit principles as laws of natural justice in international trade

9.- We can quote a decision of the Dutch Hoge Raad (Dutch supreme court) dd.22-05-2015¹⁶. An English company has agreed to supply military equipment to the Iranian Republic. There was no express choice of law clause but the contract made reference to the laws of natural justice. The arbitration tribunal decided to apply the Unidroit principles which enjoy wide international consensus. The tribunal applied the rules of these Principles on damages (art. 7.4.3.)

Raised also the question whether the claim was time barred. In the 1994 version of the Principles, there was no provision on prescription but the Tribunal applied article 1.7 of the Principles stating that parties must act in accordance with good faith and fair dealing and consequently a claim is time barred when it is pursued with an unreasonable delay.

The annulment of the award was claimed before the Court of The Hague.

The claimant argues that by invoking on its own motion Article 7.4.3(3) of the UNIDROIT Principles, had exceeded the scope of its mandate and that the tribunal must have applied the Unidroit principles of 2004 on prescription.

¹⁴ See for an application in the terms of reference, ICC Award, n° 8331, *Journ. Dr. Int.*, 1998, 1041, note Y. DERAÏNS, *I.C.C. International Court of Arbitration Bulletin*, vol. 10, n° 2, 1999, pp. 65-68,

¹⁵ See for other applications, M.FONTAINE, *op.cit.* where reference was made to *principles of natural justice, general rules and principles enjoying wide international consensus* and where the arbitrators applied the Unidroit principles

¹⁶ Bae systems plc, UK vs Ministry of defence and support for armed forces of the Islamic Republic of Iran.

The claim has been dismissed by the court of first instance and the Supreme Court. There was no excess of the scope of the mandate.

In the commented decision of the Court of Paris, the claimant invoked also the exceeding of the scope of the mandate

§4. Unidroit as expression of international trade usages.

10.- In a decision of April 17 2017¹⁷, a damage resulting from the violation of an investment treaty must be calculated. The arbitral tribunal considered that the calculation must be done taking the Investment Treaty into consideration but also customary law. The Court found that their content coincided to a large extent with new *lex mercatoria*, i.e. the principles and rules, model contracts and clauses, usages and customs, which have been developed independently from the States by international trade practice and may therefore be considered "an authentic transnational commercial law". Finally he Court also cited Lauro Gama Jr, " , stating that "the use of the UNIDROIT reaffirms a flexible, non-positivist approach to disputes as is required in the field of international commercial law."¹⁸

The arbitrator made reference to the Unidroit principle in his reasoning. We can conclude that the arbitrator considered the Unidroit principles as a custom of international trade law. ¹⁹

§5. Unidroit principles as expression of international law.

11.- United States investors introduced a claim against the Canadian authorities which rejected the exploitation of a quarry for environmental reasons.

The permanent court of arbitration in an award dd. 10 January 2019 decided that Canada has infringed provisions of the Nafta Treaty. For the assessment of damages, one of the arbitrators, in a concurring opinion, based his reasoning on article 7.4.3.(2) of the Unidroit principles (compensation for future damage and loss of a chance).²⁰

The Unidroit principles can also be a tool to interpret national laws.²¹ But the analysis of these decisions lies beyond the scope of this article.

¹⁷ See also ICSID, 18 April 2017, ARB/12/25

¹⁸ Os princípios do Unidroit relativos aos contratos do comércio internacional : uma nova dimensão harmonizadora dos contratos internacionais", in XXXIII Curso de Derecho Internacional. Washington, D.C.: OEA, Secretaria General, 2007, p. 95/142

¹⁹ The following decision is very explicit in defining the nature of UNIDROIT Principles in international trade law.Court of Appeal of Rio Grande do Sul, 14-02-2017, Noridane Foods S.A. v. Anexo Comercial Importação e Distribuição Ltda.

²⁰ Permanent Court of Arbitration, 10 January 2019, case 2009-04.

²¹ See Italian Corte dei Conti - Sezione Giurisdizionale per la Regione Siciliana29-09-2019, nr 859. Application of the prohibition of *venire contra factum proprium* inconsistent behaviour , and reference to article 1.8 of the Unidroit Principles ; see alsoTribunal de Apelación en lo Civil y Comercial de Asunción, Paraguay, Quinta Sala, nr 19.Article 7.1.1 of the UNIDROIT Principles which states that "non-performance is failure by a party to perform any of its obligations under the contract, including defective performance or late performance"; see also in the United Kingdom, Supreme Court, 16 May 2018, [2018] UKSC 24, Rock Advertising Limited

CHAPTER II.UNIDROIT AND CISG.

§1.Application of article 7.1. CISG: uniform interpretation.

12.- We have seen that a uniformity of the application of the Convention is a priority. Thus, the application of the Unidroit principles can contribute to this aim.

Claimant, a Venezuelan company bought 16 engines from Defendant, a Brazilian company, for US\$ 73,996.44. This amount was paid in advance by the Venezuelan buyer.

But the Venezuelan import-export and exchange regulations requires payment only once the goods had already been delivered at a port in Venezuela.

Claimant anticipated the price to Defendant through a U.S. bank in order to make the sale possible. Once the goods arrived at the Venezuelan port of delivery, Claimant was obliged to pay a second time in order to comply with the Venezuelan import-export exchange regulations.

Claimant introduced an action before the Brazilian Courts requesting the restitution of the first payment. Defendant argued that any restitution in favor of the Claimant would be against the law, because the first payment was made in violation of the Venezuelan import-export and exchange regulations and therefore illegal. Moreover, the Defendant asked the Court to declare the sales contract as a whole null and void .

In first instance, the Court ordered the Defendant to retribute to Claimant the payment made in excess. On appeal, as a preliminary matter, the Court of Appeal determined the law applicable to the merits of the dispute.

The Court found that the parties' submissions concerning the place of the conclusion of the contract were inconclusive so that the locus actus could not be used as connecting factor. The Court found that the laws applicable to the substance of the dispute were the 1980 Vienna Sales Convention ("CISG") and the UNIDROIT Principles. And since the validity of the sales contract is not a matter governed by the CISG, the Court decided that in accordance with the criteria for the interpretation of the Convention set forth in Art. 7(1) CISG it would base its decision of the issues at stake on the UNIDROIT Principles, in particular on the provisions set forth in Chapter 3, Section 3 on illegality.

We think that this case deals with gap filling also (article 7(2) CISG (see §2) ; the court said that the validity of the sales contract is not regulated in the UNIDROIT principles ; it is not really a

(Respondent) v MWB Business Exchange Centres Limited (Appellant), the English Supreme Court refers to the Unidroit principles as a widely used Code.

question of uniformity of interpretation (article 7(1) but more of finding rules to a matter not organized in the CISG.

§2 Application of article 7.2 CISG: gap filling

13.- When parties have chosen a law applicable, for instance, the law of the United States; the CISG which is in force in the US will also apply; but the Unidroit principles can apply through the gap filling mechanism²² the courts will apply a national law, but by applying the CISG, the courts can apply the CISG through article 7.2.²³

We have to stress an important decision of the Supreme Court dd. 19 June 2009 which applied the Unidroit Principles.²⁴ A French seller enters into a long term sales of steel contract with a Belgian buyer. The steel price increased sharply at the beginning of this century due to a rise of the demand in the emerging countries. The seller asked a renegotiation of the price to the buyer due to hardship. It was refused by the buyer.

The seller brought the case before the trade court of Tongeren. The judge considered that the CISG applied; article 79 of this Convention deals with exemption. In case of events beyond the control of the parties. But the exemption required the presence of an impediment; but, concluded the judge, a rise of the price does not constitute an impediment and the claim was dismissed.

In appeal, the court of Antwerpen considered that the Convention did not address the hypothesis of hardship. In case of gap, article 7.2. of the CISG applies. In case of gapfilling, the Convention must find the rules applicable firstly in the general principles which underly the

²² G. WEISZBERG, Vingt ans d'interprétation et de comblement des lacunes dans la Convention internationale de vente de marchandises du 11 avril 1980, Janvier 2009, <http://www.cisg.law.edu/cisg/biblio/weiszberg.html> ; André JANSSEN & Sörren Claas KIENE, The CISG and Its General Principles, 2009, in André JANSSEN / Olaf MEYER Editors, *CISG Methodology*, Sellier European Law Publishers, 261-286

²³ Franco FERRARI, Das Verhältnis zwischen den UNIDROIT-Grundsätzen und den allgemeinen Grundsätzen internationaler Einheitsprivatrechtinvention. Zugleich ein Beitrag zur Lückenfüllung durch staatliche Gerichte [The Relationship between the UNIDROIT Principles and the General Principles of International Conventions Unifying Private Law - *in German*], 53 *Juristen Zeitung* (1998)

²⁴ See for a comment, D. PHILIPPE, « Renégociation du contrat en cas de changement de circonstances : une porte entrouverte ? », Note under Cass. (1ste k.), 19 June 2009, *D.A.O.R.*, n°94 (Juin 2010), pp.156 – 162 ; PHILIPPE D., ANCEL P., FAUVARQUE-COSSON B., WINTGEN R., « Droit comparé des contrats. Renégociation du contrat en cas de changement de circonstances dans la vente internationale, *Revue des contrats*, R.D.C. 2011, pp. 963-985 ; see also D. PHILIPPE in *La rédaction des contrats internationaux*, Larcier, 2012 pp. 181 e.s.

convention and secondly in the law applicable by virtue of the rules of international private law.

The court considered that no principle could apply and applies the law applicable on basis of the international private law, ie the French law.

The French law introduced an obligation of renegotiation of the contract in case of hardship²⁵. The buyer refuses the renegotiation and was thus liable for the damage suffered by the seller. The damage was fixed *ex aequo et bono* at 450.000euros

The buyer introduced an appeal before the Supreme Court. The petition exposed that the CISG sanctions the principle *pacta sunt servanda*.

The Court rejected the petition. Two main elements in the motivation of the Court were the following

1. Article 79 of the CISG applies in case of hardship and not only in case of force majeure
2. Applying also article 7.2., the Court considered that in case of gap (the CISG did not organize the renegotiation of the sales contract) the Convention must be fulfilled with the principles underlying the Convention.

The Unidroit principles are principles underlying the CISG; article 6.2.2. of the Unidroit principles foresees the renegotiation of the contract in case of change of circumstances; thus, in this case, the Belgian buyer has to renegotiate the contract with the French seller.

This decision has been criticized by some authors²⁶ because the Unidroit principles do not constitute principles underlying the CISG. They come with an easy argument: Unidroit principles have been adopted after the entry into force of the CISG.²⁷ But we think that international trade law is in evolution and we cannot stick to the sole principles of law in force in 1980; otherwise the CISG would become a frozen piece of law; it was certainly not the intention of the drafters of the CISG. Unidroit Principles play a very important role in the international trade and this progressive decision of the Belgian Supreme Court is most welcome.

The Unidroit principles which are regularly updated, can fulfill the gap of the convention,²⁸ can help to explain and clarify the conventions.

²⁵ Cass. com, November 3 1992, 'arrêt Huard', *Bull.* 1992 IV n° 338 p. 241, *J.C.P.*, 1993-11-24, n° 46-47, p. 469. See also, Cass. com. November 24 1998, *Bull.* 1998 IV n° 277 p. 232, *J.C.P.E.*, 1999-07-22, n° 29, p. 1242, *Obs. C. JAMIN*. Since then, the new civil code has recognised the doctrine of *imprévision* or change of circumstances (article 1195Ccivil).

²⁶ See D. PHILIPPE in *Revue des contrats, loc.cit.*

²⁷ See for more details on this, D. PHILIPPE, *loc.cit.*

²⁸ Another example is the determination of the interest rate. See DEFORCHE, D., VIGGRIA, A., « La fixation du taux d'intérêt applicable aux retards de paiements dans le cadre de la Convention des Nations Unies sur les contrats de vente internationale de marchandises (CVIM) », *Revue de Droit Commercial (belge)*. 2009, liv. 10, 1063 ; see D.PHILIPPE, "The Rate of Interest under CISG and Peculiarities of International Commercial Arbitration", *Arbitragem e Comércio Internacional – Estudos em Homenagem a Luiz Olavo Baptista*, Quartier Latin, 2013, pp. 625-651

What can be inferred concerning arbitration?

That means that through the provisions of article 7.2. of the Unidroit principles can be called upon by the arbitrator even if national law has been declared applicable to the contractual relations. Indeed let us take the example of a sales contract between a Czech seller and an US buyer. They choose the Czech law as applicable to the contract; by virtue of Czech law, the CISG will apply to the sales contract. And the arbitrator can on basis of article 7.2 apply the principles underlying the Convention and we share the view that the Unidroit principles constitute such principles.

§3. Application of Article 9 CISG: usages

14.- We already exposed that the CISG gives a broad definition of the usages. We can refer to the reflexions of Pilar PERALES VISCASILLAS :

*"More than twelve years ago, I considered that the UPIC cannot be generally identified with lex mercatoria or international usages of trade, but that it "should be recognized that the Principles may eventually become recognized as lex mercatoria by practitioners of international trade" and that this future development of the principles was predictable given that the CISG was being applied by arbitrators as lex mercatoria. After more than fourteen years since the publication of the first edition of the UPIC and the great acceptance by scholars and case law, the UPIC are achieving great acknowledge by international operators and are in the process of it being recognizes part of the lex mercatoria... This would finally be the case, I believe, it's just a matter of time to educate business people, to be in more acceptance in scholarly writings and particularly time is needed to develop a more abundant and coherent body of case law."*²⁹

We find as mentioned in the case laws on Unidroit Principles, that these Principles can now be considered as usages for the reasons mentioned hereabove.

And the usages are an important source of law in the international sales law.

Conclusion

15.- International arbitrators have more freedom in the choice of the law and we welcome the elaboration of transnational soft law which can be more appropriate to solve international disputes.

Unidroit is one of the best sources of transnational trade law.

In this regard, the close interaction between the CISG and the Unidroit principles reinforced the uniformity of international trade law.³⁰

It is important for arbitrators to know that they can apply the Unidroit principles to rule the arbitration in the absence of indication of parties, and they have not to fear the annulment of

²⁹ *Op. cit.* p. 315

³⁰ See PILAR PERALES VISCASILLAS, The Role of the Unidroit Principles and the PECL in the interpretation and gap-filling of CISG, , in André JANSSEN and Olaf MEYER, *CISG Methodology* Berlin-New York 2009, p. 287-318, spec. p. 294; P. ANCEL a.o. Renégociation du contrat, n°20.

the award for this choice. ³¹The decision of the Paris Appeal Court constitutes an illustration of this conclusion and this decision must be approved.

³¹ See also *Developing neutral standards for international contracts, op.cit.*