

Private International Law Instruments and Sustainable Economic Development: The Role of the Judiciary

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PIL Institutions

- UNIDROIT
- Hague Conference on Private International Law
 - Family law: adoption, child support, abduction, divorce
 - Access to justice: service, apostille, evidence, choice of court, judgments
- UNCITRAL (UN Commission on International Trade Law)
 - New York Convention (International Commercial Arbitration)
 - CISG (International Sales of Goods)
 - Singapore Convention (International Mediation)
- International Chamber of Commerce
 - INCOTERMS
 - Uniform Customs and Practice for Letters of Credit (UCP 600)

PIL Instruments

- Conventions/Treaties
- Model Laws
- Legislative/Legal Guides
- Statements/Principles

State Parties to Private Law Instruments

- Algeria
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
- Cameroon
 - Convention on Contracts for the International Sale of Goods (CISG)
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
- Democratic Republic of Congo (DRC)
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
 - UNICITRAL – Convention on International Commercial Mediation
 - Convention on Contracts for the International Sale of Goods (CISG)
- Egypt
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
 - Convention on Contracts for the International Sale of Goods (CISG)
 - Hague Convention on Private International Law
 - Hague Service of Process Convention
- Ghana
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
 - UNICITRAL – Convention on International Commercial Mediation
 - Convention on Contracts for the International Sale of Goods (CISG)
 - UNIDROIT – Convention on International Factoring
 - Hague Convention on Private International Law
- Kenya
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
 - Hague Convention on Private International Law

State Parties to Private Law Instruments

- Liberia
 - Convention on Contracts for the International Sale of Goods (CISG)
 - UNCITRAL – Convention on the Assignment of Receivables in International Trade
 - Hague Convention on Private International Law
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
- Malawi
 - Hague Convention on Private International Law
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
 - Hague Service of Process Convention
- Mauritania
 - Convention on Contracts for the International Sale of Goods (CISG)
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
- Mauritius
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
 - UNICITRAL – Convention on International Commercial Mediation
 - Hague Convention on Private International Law
- Morocco
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
 - UNIDROIT – Convention on International Factoring
 - Hague Convention on Private International Law
 - Hague Service of Process Convention
 - Hague Evidence Convention

State Parties to Private Law Instruments

- Nigeria
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
 - UNICITRAL – Convention on International Commercial Mediation
 - UNIDROIT – Convention on International Factoring
- Ethiopia
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
- South Africa
 - Hague Convention on Private International Law
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
 - Hague Evidence Convention
- Tanzania
 - UNIDROIT – Convention on International Factoring
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
- Tunisia
 - Hague Convention on Private International Law
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)
 - Hague Service of Process Convention
- Zambia
 - Convention on Contracts for the International Sale of Goods (CISG)
 - Hague Convention on Private International Law
 - New York Convention (UNCITRAL – Convention on International Commercial Arbitration)

Important PIL Instruments worldwide

- Facilitating Commerce and Trade across Borders
 - CISG Convention on Contracts involving International Sales of Goods
- Dispute Resolution
 - New York Convention
 - Singapore Convention
 - Hague Judgments Convention
 - Hague Evidence Convention
 - Hague Service of Process Convention
- Other

Sources of Law--International Business

- Treaties/Conventions
 - Multilateral; Regional
 - Bilateral
- *Lex Mercatoria*
- Model laws; Legislative Guides (UNCITRAL; Hague Conference; UNIDROIT)
- Codification of customs and usage by international governmental/non-governmental body (e.g. ICC: Incoterms; UCP 600)
- International trade terms/model industry contracts by international industry association(e.g. LMA-Bank Loans; ISDA-derivatives)
- Restatements of scholars and experts

Economic Development

- Facilitating trade and commerce across borders
 - Goods
 - Services
 - Capital
 - People
 - Technology
 - Data???

The Judiciary—Key functions

- Decides disputes
- Uses Domestic/National Law
- Uses International law
- Uses Tools to address ambiguity/gaps in legislation
- Transparency; accountability
- Efficiency: reduce delay
- Quality/correctness of decisions

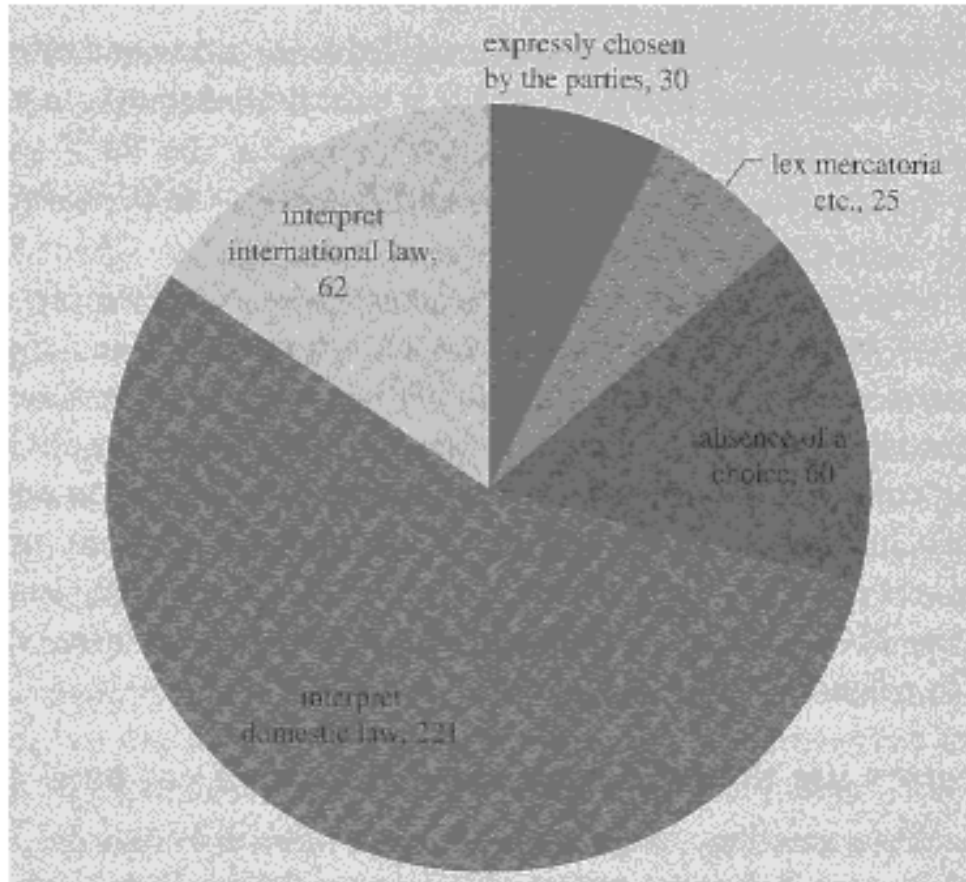
The Judiciary—Key Functions

- Interpretation and application of conventions and domestic laws derived from model laws
- Training Judicial Institutes
- International principles: When to use?
- Specialized business and commercial courts

Role of the Judiciary

- The UNIDROIT principles have been taken by a number of national legislatures as a source of inspiration for the reform of their domestic laws
- Domestic courts increasingly refer in their decisions to the UNIDROIT principles. In a number of decisions, the UNIDROIT principles have been applied as the rules of governing the substance of the dispute, in other decisions, the UNIDROIT principles have been used to interpret international uniform law instruments. In still other decisions, the UNIDROIT principles have been invoked in support of a particular solution under the applicable domestic law or in order to fill gaps in the latter
- Many decisions equate the UNIDROIT principles in their entirety to the general principles underlying CISG and so justify the application of individual provisions of the UNIDROIT principles to interpret or supplement CISG
- Still other courts go even further and apply the UNIDROIT principles as trade usages or because they represent a world-wide consensus in most of the basic matters of the law

Role of the Judiciary



Of those court and arbitral judgments surveyed:

25 judgments utilized the UNIDROIT principles as *lex mercatoria*

30 judgments utilized the UNIDROIT principles because they were expressly chosen by the parties

60 judgments utilized the UNIDROIT principles due to an absence of another viable law choice

62 judgments utilized the UNIDROIT principles to interpret international law

221 judgments utilized the UNIDROIT principles to interpret domestic law

Judicial Tools

UNCITRAL

Clout: Case Law on UNCITRAL Texts (CLOUT)

https://uncitral.un.org/en/case_law

Digest: UNCITRAL Digest of Case Law on the CISG (2016),
meant to reflect the evolution of case law.

www.uncitral.org/pdf/english/clout/CISG_Digest_2016.pdf

UNIDROIT

UNILEX International Case Law & Bibliography on UNIDROIT PRINCIPLES
OF INTERNATIONAL COMMERCIAL CONTRACTS AND UNITED NATIONS
CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALES OF
GOODS <http://www.unilex.info>

Uniform Law Review

Judicial “Guidance”--CISG

- Widely ratified by States and applied by courts
- Art. 7: “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.” Idea of “autonomous interpretation” – not just domestic law
- Art. 9:
 - (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.