

The Interplay Between the CISG and the UPICC

The Role of the UNIDROIT Principles in the
Interpretation and Supplementation of the
CISG

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DEPARTMENT OF BUSINESS LAW

Master's Thesis in European and International Trade Law

15 ECTS

HARN63

Spring 2026

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Abstract

This thesis investigates the use of the UNIDROIT Principles of International Commercial Contracts (UPICC) in the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG), with particular attention to their role in interpretation and gap-filling. Rather than focusing solely on theoretical compatibility, the study examines how courts and arbitral tribunals actually employ the UPICC in practice. Through a qualitative analysis of case law, the research identifies the contexts in which the UPICC are invoked, the functions they perform, and the reasoning patterns underlying their use.

The analysis is complemented by a doctrinal and comparative framework, focusing on Article 7 CISG and the notion of general principles. This combined approach allows for an assessment of whether the use of the UPICC reflects the internal methodology of the CISG or introduces external normative elements.

Particular attention is given to the distinction between interpretation under Article 7(1) and gap-filling under Article 7(2), as well as to the relationship between uniformity, flexibility, and legal certainty in international commercial law.

The findings reveal the existence of three principal approaches in international practice. An integrationist approach treats the UPICC as an expression of the general principles underlying the CISG and employs them to fill internal gaps in the Convention. A restrictive approach rejects the UPICC as a gap-filling mechanism and favours recourse to domestic law where no internal CISG principles can be identified. A third, complementary approach uses the UPICC primarily as interpretative guidance to reinforce or clarify principles already embedded in the Convention. The study further demonstrates that arbitral tribunals tend to adopt a more flexible attitude towards the use of the UPICC than national courts.

The thesis concludes that the UPICC may contribute to a more coherent and internationally oriented application of the CISG when used to support the identification and interpretation of principles genuinely underlying the Convention. However, their legitimacy ultimately depends on maintaining consistency with the autonomous interpretative and gap-filling methodology established by Article 7 CISG and avoiding the introduction of external norms that cannot be derived from the Convention itself.

Keywords: CISG, UPICC, Article 7 CISG, gap-filling, general principles, international sales law, international contract law.

Abbreviations

CISG	United Nations Convention on Contracts for the International Sale of Goods
UPICC:	UNIDROIT Principles of International Commercial Contracts
UNIDROIT	International Institute for the Unification of Private Law
UNCITRAL	United Nations Commission on International Trade Law
GAI	Generative Artificial Intelligence
ICC	International Chamber of Commerce
Lex mercatoria	Transnational commercial law / law merchant
Art.	Article
Arts.	Articles
v	versus
et al.	et alia
e.g.	exempli gratia
i.e.	id est

1 Introduction

1.1 Background

The United Nations Convention on Contracts for the International Sale of Goods (CISG)¹ is one of the most successful instruments in the harmonization of international commercial law, providing a uniform framework for cross-border sales contracts. However, despite its broad scope, the Convention does not regulate all aspects of international sales law. As a result, issues arise concerning interpretation and gap-filling.

In parallel, the UNIDROIT Principles of International Commercial Contracts (UPICC)² have emerged as an influential soft law instrument which has been increasingly used in international commercial practice and arbitration.³

The relationship between the CISG and the UPICC raises important methodological questions. In particular, the role that the UPICC may play in the interpretation and supplementation of the CISG remains controversial, especially in light of the Convention's autonomous character and the objective of promoting its uniform application.⁴

International instruments such as the CISG, ratified by a significant number of States, were created precisely to promote a degree of uniformity in international commercial law. Consequently, despite the existence of different jurisdictions and legal traditions, one could reasonably expect the interpretation and application of the Convention to remain relatively consistent across contracting States.

While this flexibility permits courts and arbitral tribunals to adapt the Convention to complex international commercial realities, it may also lead to divergent methodologies regarding the use of external instruments such as the UPICC.

1.2 Purpose and research questions

The purpose of this thesis is to analyse how courts and arbitral tribunals use the UPICC in the application of the CISG and evaluates whether such use is methodologically consistent with the Convention's objective of autonomous and uniform interpretation.

¹ United Nations Convention on Contracts for the International Sale of Goods (adopted 11 April 1980, entered into force 1 January 1988) 1489 UNTS 3 ('CISG' or 'the Convention').

² UNIDROIT, UNIDROIT Principles of International Commercial Contracts 2016 (UNIDROIT 2016) ('UPICC' or 'the UNIDROIT Principles').

³ Michael Joachim Bonell, 'UNIDROIT Principles 2004 – The New Edition of the Principles of International Commercial Contracts adopted by the International Institute for the Unification of Private Law' (2004) 9 Uniform Law Review 5, 6–10.

⁴ Pilar Perales Viscasillas, 'Interpretation and Gap-Filling under the CISG: Contrast and Convergence with the UNIDROIT Principles' (2017) 22 Uniform Law Review 4, 5–6, 19–20.

Particular attention is given to the role of general principles, the distinction between interpretation and supplementation, and the tensions between uniformity, flexibility, and legal certainty in international commercial law.

The main research question is:

To what extent may the UPICC legitimately be used within the interpretative and gap-filling framework of the CISG?

This question is supported by the following sub-questions:

What is the CISG approach to interpretation and gap-filling?

How can the UPICC be used in interpretation and gap-filling of the CISG?

How have courts and arbitral tribunals used the UPICC for interpretation or gap-filling of the CISG, or rejected such use?

1.3 Delimitations

This thesis focuses on the interplay between the CISG and the UPICC in the context of interpretation and gap-filling. It does not aim to provide a comprehensive comparison of all provisions of both instruments.

The comparative analysis is limited to selected jurisdictions. However, the availability of relevant case law is not uniform across jurisdictions, particularly due to differences in legal traditions, judicial methodologies, and the varying use of international and non-binding instruments in commercial dispute resolution.

The purpose of the analysis is to examine how the UPICC are used in practice, whether as interpretative tools, gap-fillers, or independent sources of reasoning within the framework of the CISG.

In examining the interpretation and gap-filling methodology of the CISG, the analysis is limited to judicial and arbitral reasoning developed in connection with Article 7 of the Convention. Accordingly, the thesis does not seek to examine interpretations or doctrinal approaches based primarily on provisions outside the framework established by Article 7 CISG.

Furthermore, the case law analysis is conducted primarily as a comparative exercise aimed at identifying international practices and methodological tendencies in the interpretation and application of the CISG across jurisdictions that have ratified the Convention. Particular attention is given to differences in the interpretation of similar legal issues within the context of international commercial practice.

Due to the confidential nature of international commercial arbitration, many significant arbitral awards containing substantial discussions on the relationship

between the CISG and the UPICC remain only partially accessible or entirely unavailable to the public.⁵

1.4 Method and materials

First, a doctrinal legal analysis methodology is adopted in order to examine the interpretative and gap-filling framework of the CISG, particularly in relation to Article 7 and the role of general principles within the Convention⁶. This includes an analysis of the relevant provisions of the CISG, judicial decisions, arbitral awards, and academic literature in order to clarify the relationship between the Convention's provisions and the general principles underlying its framework.⁷

In parallel, the thesis also examines the UPICC as a soft law instrument frequently used in international commercial practice.⁸ Given the non-binding nature of the UPICC, the research does not approach them as a source of positive law equivalent to the CISG, but rather analyses their interpretative and supplementary role through their text, Preamble, academic commentary, and judicial and arbitral practice.

Second, the core of the research consists of a qualitative analysis of case law and arbitral decisions. The case selection process consists of identifying relevant judicial and arbitral decisions from different jurisdictions in which the UPICC and Article 7 CISG are discussed in the context of interpretation, gap-filling, or the identification of general principles.

With regard to judicial decisions, the analysis is limited to cases in which courts explicitly refer to the UPICC when applying the CISG. Priority is given to decisions issued by higher or supreme courts, in light of their greater interpretative authority and their influence on the development of jurisprudence within their respective legal systems.

In relation to arbitral awards, the study focuses on accessible arbitral awards, as well as doctrinal commentary and secondary sources referring to cases in which arbitral tribunals have relied upon or discussed the UPICC in the application of the CISG.

Each case is analysed according to a common methodological structure. This includes: (i) a brief factual background of the dispute; (ii) the relevant legal issue before the tribunal or court; (iii) the reasoning adopted by the decision-maker; (iv) whether Article 7(1) or Article 7(2) CISG was considered applicable; and (v) the role played by the UPICC within the interpretative process or gap-filling analysis. Particular attention is given to whether the UPICC are used merely as persuasive authority reflecting internal CISG principles, or whether they function as supplementary external norms within the tribunal's reasoning.

⁵ Gary B Born, 'Chapter 20: Confidentiality in International Arbitration (Updated November 2023)' in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 3003-3062.

⁶ Christopher McCrudden, 'Legal Research and the Social Sciences' (2006) 122 *Law Quarterly Review* 632, 633–635

⁷ *ibid.*

⁸ Eckart J Brödermann, 'Introduction' in *UNIDROIT Principles of International Commercial Contracts 2016* (UNIDROIT 2016) xv.

Methodological limitations arise in relation to arbitral awards. Due to the confidential nature of international commercial arbitration, many arbitral decisions are only partially accessible or unavailable in full. Consequently, certain awards are examined through secondary sources and doctrinal commentary discussing their reasoning and relevance.

Given the international nature of the sources, the research relies on translations of judicial decisions where necessary. Potential limitations arising from translation and interpretation are acknowledged, particularly where reasoning may be affected by linguistic or contextual differences.

Furthermore, generative artificial intelligence (GAI) tools have been used in a limited and supportive manner throughout the research process, particularly for the identification of academic literature, language correction, translation, and linguistic enhancement in specific legal contexts. Such tools were also used to assist in the translation and comprehension of certain judicial decisions and arbitral awards originally available in foreign languages. The principal tools used for these purposes were ChatGPT and Perplexity AI. Their use has been carried out in accordance with The Department of Business Law's Policy for Generative Artificial Intelligence (GAI) in Teaching and Assessment as Applicable to Students.

1.5 Outline

Following this introduction, Chapter 2 presents the legal framework of the CISG, focusing on interpretation, gap-filling, and the role of general principles under Article 7.

Chapter 3 introduces the UPICC and examines their nature, functions, and relationship with the CISG as a soft law instrument in international commercial law. Particular attention is given to the methodological debate surrounding the use of the UPICC under Article 7 CISG.

Chapter 4 analyses judicial and arbitral practice concerning the use of the UPICC in the application of the CISG. Through selected case law and arbitral doctrine and awards, the chapter identifies different methodological approaches regarding interpretation, gap-filling, and the role of transnational principles.

Finally, Chapter 5 presents the conclusions of the thesis. Building upon the previous analysis, it examines the methodological implications of the approaches identified in practice, evaluates their consistency with the interpretative framework of Article 7 CISG.

2 The CISG and Article 7: Interpretation, Gap-Filling and General Principles

2.1 The CISG and its objective of uniformity

The United Nations Convention on Contracts for the International Sale of Goods (CISG), adopted on 11 April 1980 by the United Nations Commission on International Trade Law and entering into force on 1 January 1988, establishes a uniform legal framework for international sales contracts. As of 2026, the Convention has been ratified by more than 95 States, representing a significant proportion of global trade. Its primary objective is to promote legal certainty and predictability in cross-border transactions by reducing reliance on domestic legal systems.⁹

A central feature of the CISG is its international character. Beyond its formal structure, the CISG has been widely recognized as a keystone in the broader project of harmonizing international contract law. The Convention constitutes “*an extraordinary achievement*” not only because of its wide adoption but also due to its role in creating a shared legal framework across jurisdictions.¹⁰ In particular, it has contributed to the development of “*a shared vocabulary and a common denominator of rules*” that facilitate international commercial practice.¹¹

Moreover, the CISG is frequently described as providing a neutral and modern framework for international sales, capable of operating across different legal traditions and levels of economic development.¹² The Convention seeks to ensure that its provisions are interpreted autonomously and independently of domestic legal concepts.¹³ This objective is closely linked to the principle of uniformity, which requires courts and tribunals to take into account the need for a consistent interpretation across jurisdictions.¹⁴

However, despite its success, the CISG does not regulate all aspects of international sales contracts. In this respect, the Convention also reflects a certain degree of flexibility, allowing courts and arbitral tribunals to interpret and resolve issues that are not expressly regulated within its text. As a result, issues arise when the

⁹ UNCITRAL, ‘Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)’ <https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status> accessed 22 May 2026.

¹⁰ Anna Veneziano, ‘The Soft Law Approach to Unification of International Commercial Contract Law: Future Perspectives in Light of UNIDROIT’s Experience’ (2013) 58 Villanova Law Review 521, 522.

¹¹ *ibid.*

¹² Michael J Dennis, ‘Modernizing and Harmonizing International Contract Law: The CISG and the UNIDROIT Principles Continue to Provide the Best Way Forward’ (2014) 19 Uniform Law Review 114, 118–119.

¹³ CISG, art 7(1).

¹⁴ *ibid.*

Convention is silent on a particular matter, giving rise to questions of interpretation and gap-filling.¹⁵

The application of the CISG appears to be guided by three interconnected principles: uniformity, autonomy, and flexibility.¹⁶ None of these principles can be understood as absolutely prevailing over the others. Rather, they coexist within the interpretative framework of the Convention and must be balanced in light of the particular circumstances of each case. What cannot be denied is that the promotion of uniformity constitutes one of the central objectives underlying the creation of the CISG itself. The Convention was specifically designed to establish a more harmonized and predictable framework for international commercial law across jurisdictions, thereby reducing fragmentation and fostering greater legal certainty in international trade relations.¹⁷

2.2 Article 7 CISG: Interpretation and gap-filling

Article 7 of the CISG establishes the interpretative framework of the Convention. It consists of two key elements: interpretation Article 7(1)) and gap-filling (Article 7(2)). The provision reads as follows:

Article 7

- (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.

Article 7(1) requires that the CISG be interpreted with regard to its international character, the need to promote uniformity, and the observance of good faith in international trade. This provision reflects the principle of autonomous interpretation and discourages reliance on domestic legal concepts.

The importance of Article 7(1) goes beyond a mere interpretative guideline. It reflects a broader methodological commitment to transnational reasoning, encouraging courts and tribunals to interpret the Convention in light of its international function rather than domestic doctrinal categories.

Article 7(2) addresses matters governed by the CISG that are not expressly settled in it. In such cases, the Convention provides a two-step approach. First, gaps are to be filled in conformity with the general principles on which the CISG is based. Only in the absence of such principles may recourse be made to the applicable domestic law through private international law.

¹⁵ CISG, art 7(2).

¹⁶ Herbert I Lazerow, 'Uniform Interpretation of CISG' (2019) 52(3) *The International Lawyer* 376.

¹⁷ *ibid.*

This internal hierarchy is crucial. It demonstrates that the CISG seeks to preserve its autonomy even in situations where it is incomplete, favoring internally derived solutions over recourse to domestic law.

At the same time, this mechanism has generated significant debate. Uncertainty arises as to whether the “*general principles*” referred to in Article 7(2) should be understood narrowly, limited to principles explicitly embedded in the CISG, or more broadly, as reflecting evolving principles of transnational commercial law.¹⁸

This debate is directly relevant to the present thesis, as it determines the extent to which external instruments, such as the UPICC, may be used within the CISG framework.

2.3 General principles under the CISG

The notion of “*general principles*” under Article 7(2) CISG is not explicitly defined in the Convention. It is generally understood as referring to principles underlying the Convention itself, which are to be used primarily to fill internal gaps.

Although no exhaustive list exists, these principles have progressively emerged through judicial practice and academic commentary¹⁹. They include, among others, party autonomy, the principle of full compensation, *favor contractus*, and the prohibition of contradictory behaviour (*estoppel*).²⁰

In addition, as noted by Schwenzer, some authors and courts from civil law legal systems rely on the principle of good faith and fair dealing as an overriding general principle of the CISG, although this approach remains debated due to concerns regarding uniform interpretation and predictability under the Convention.²¹

These principles serve as the internal normative foundation of the Convention and guide both interpretation and gap-filling; nevertheless, their identification and application are not always straightforward. Since the CISG does not provide an exhaustive enumeration of such principles, and neither their precise content nor their effects are expressly established within the Convention, methodological difficulties may arise in determining which principles may legitimately be derived from the CISG and how they should be applied in practice. Divergences may also emerge regarding whether certain issues should be resolved through the application of general principles or by analogy to existing CISG provisions²².

According to Bonell, judges and arbitral tribunals have increasingly resorted to the UPICC in order to interpret and supplement the CISG.²³ In some cases, recourse to

¹⁸ Herbert Kronke, ‘The UN Sales Convention, the UNIDROIT Contract Principles and the Way Beyond’ (2005) 25 *Journal of Law and Commerce* 451, 457–458.

¹⁹ Stefan Kröll, Loukas Mistelis, and Maria Pilar Perales Viscasillas (eds), *UN Convention on Contracts for the International Sale of Goods (CISG)* (2nd edn, Nomos 2018) 139

²⁰ Ingeborg Schwenzer, ‘Interpretation and Gap-Filling under the CISG’ in Ingeborg Schwenzer, Yeşim M Atamer and Petra Butler (eds), *Current Issues in the CISG and Arbitration* (Eleven International Publishing 2014) 116–117.

²¹ *ibid.*

²² Kröll and others (n 19) 139

²³ Michael Joachim Bonell, *Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts in Transnational Contract and Dispute Resolution Practice* (UNIDROIT Study L – MC Doc 1 Rev, 2013)

the UPICC has been justified on the basis that certain provisions of the UNIDROIT Principles may reflect general principles underlying the CISG itself, while in other instances the UPICC have been used as evidence of international trade usages under Article 9(2) CISG.²⁴

This practice is often justified on the basis that the provisions of the UPICC may reflect or express general principles underlying the CISG.²⁵ In some cases, the UPICC have even been used as evidence of “*usages widely known in international trade*” within the meaning of Article 9(2) CISG.²⁶ Under that provision, parties are considered bound by international trade usages that are widely known and regularly observed in the relevant commercial sector, unless otherwise agreed. In this way, this article allows internationally recognized commercial practices and principles to become relevant in the interpretation and supplementation of international sales contracts.²⁷

However, this approach is not uncontroversial. Reliance on external instruments may lead to the introduction of solutions that cannot be clearly derived from the CISG, thereby risking interference with its autonomous framework and the goal of uniform application.

At the same time, a distinction may be drawn between principles that are generally considered to be inherent in the CISG itself and principles that originate primarily from broader conceptions of transnational commercial law. Principles such as good faith, reasonableness, estoppel, favour contractus, and mitigation are commonly identified as underlying the CISG framework.²⁸ By contrast, other concepts, such as hardship, remain more controversial due to the absence of explicit regulation within the Convention.²⁹

As will be illustrated in the case law analysis below, courts and arbitral tribunals have adopted differing approaches regarding the extent to which external instruments, including the UPICC, may legitimately be used in the interpretation and supplementation of the Convention.

14–16, cited in Michael J Dennis, ‘Modernizing and Harmonizing International Contract Law: The CISG and the UNIDROIT Principles Continue to Provide the Best Way Forward’ (2014) 19 Uniform Law Review 114, 131.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ Karolina Kryla-Cudna, ‘Internationality Overreach in the Interpretation of Uniform Private Law Conventions: The Contra Proferentem Rule and the CISG’ (2025) 74(2) International and Comparative Law Quarterly 437, 448–450.

²⁸ Denis Philippe, ‘Gap filling on the basis of general principles (article 7.2. of the CISG) and Unidroit Principles’ (Philippe & Partners, 2020) 8-11 <<https://philippelaw.eu/wp-content/uploads/2021/01/Gap-filling-on-the-basis-of-general-principles-article-7.2.-of-the-CISG-and-Unidroit-Principles.pdf>> accessed 22 May 2026.

²⁹ *ibid* 11 - 14.

3 The UPICC and their role in international contract law

3.1 Nature and purpose of the UPICC

The UNIDROIT Principles of International Commercial Contracts (UPICC) constitute a non-binding set of rules developed to reflect general principles of international commercial contracts.³⁰ Unlike the CISG, the UPICC do not have the status of a convention and are not directly applicable unless incorporated by the parties or relied upon by courts and arbitral tribunals.³¹

The UNIDROIT Principles are commonly presented as a form of soft law; they constitute a written expression of transnational commercial principles associated with the modern *lex mercatoria*, namely, internationally recognized commercial customs and practices.³²

Despite their non-binding nature, the UPICC have gained increasing influence in international commercial practice. Their authority derives not from formal binding force, but from their intended use in practice and their role as a restatement of general principles of international contract law.³³

They are also increasingly relied upon in arbitral practice and have been referred to in numerous judicial and arbitral decisions in connection with the interpretation and supplementation of international commercial instruments.³⁴ The UPICC contribute to the development of international contract law by providing a set of principles that may complement existing uniform instruments and assist in their interpretation and supplementation.³⁵

Daniel observes that several scholars on international commercial law, consider that the UPICC were drafted with the intention of providing a coherent set of international contractual rules capable of guiding transnational commercial relationships and even complementing existing hard law instruments.³⁶ Their objective was not to replace binding international conventions, but rather to provide

³⁰ UNIDROIT, *UNIDROIT Principles of International Commercial Contracts 2016* (UNIDROIT 2016) Preamble.

³¹ *ibid.*

³² Tomáš Masny, 'The UNIDROIT Principles on International Commercial Contracts as a Tool to Interpret and Supplement the UN Convention on Contracts for the International Sale of Goods' (LLM thesis, Central European University 2017) 56.

³³ Michael Joachim Bonell, 'An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts' (3rd edition, Brill 2009) 27–29.

³⁴ Dennis (n 12) 131.

³⁵ Dennis (n 12) 119–120.

³⁶ Jason Daniel, 'An Investigation into the Relationship between the UNIDROIT Principles of International Commercial Contracts (UPICC) and the UN Convention on the International Sale of Goods (CISG)' (LLM thesis, University of Johannesburg) 1–64. <<https://ujcontent.uj.ac.za/esploro/outputs/graduate/An-investigation-into-the-relationship-between/9911593407691>> accessed 20 May 2026

interpretative guidance and supplementary principles where uniform law instruments remain incomplete.³⁷

In this sense, the UPICC complement the CISG by addressing issues that fall outside its express scope, such as hardship and other situations involving substantial changes in contractual equilibrium.

The UPICC appear particularly relevant in the context of increasingly complex international commercial relations. The UNIDROIT Principles may provide useful guidance in discussions concerning interpretation and gap-filling under Article 7(2) CISG.

In practice, the UPICC have been used in different ways by courts and arbitral tribunals.³⁸ First, they may serve as an interpretative tool. In this function, the UPICC are used to clarify the meaning of provisions of the CISG, particularly where the Convention employs open textured concepts such as reasonableness or good faith.³⁹ This function aligns with Article 7(1) CISG, which requires an autonomous and internationally oriented interpretation.

Second, the UPICC may be used as a gap-filling mechanism. In cases where the CISG does not provide a clear rule, courts and tribunals have, in some cases, relied on the UPICC to supply a solution, especially in areas such as hardship or the calculation of damages.⁴⁰ This use directly engages Article 7(2) CISG and raises the question of whether the UPICC reflect the “general principles” on which the Convention is based.

Third, the UPICC may be used to support the existence of general principles of international commercial law. In this role, they may reflect widely recognized principles relevant to the interpretation and supplementation of international uniform law instruments, rather than as an independent source of binding legal norms.⁴¹

This multifunctional role of the UPICC is also reflected in their Preamble as stated before, which expressly provides that the Principles “*may be used to interpret or supplement international uniform law instruments.*” The Preamble further recognizes that the UPICC may apply where parties refer to “*general principles of law*” or the *lex mercatoria*, thereby reinforcing their connection with transnational commercial reasoning and their potential relevance in the interpretation and supplementation of the CISG.

These different functions are not always clearly distinguished in practice, which contributes to inconsistencies in the use of the UPICC, as reflected in the variety of uses envisaged in their Preamble.⁴²

³⁷ Daniel (n 36) 1 - 64

³⁸ Dennis (n 12) 131

³⁹ Dennis (n 12) 120-121.

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² Kronke (n 18) 452 – 453.

3.2 The relationship between UPICC and the CISG

The relationship between the CISG and the UPICC is not formally defined, and their interaction raises important questions, particularly considering the absence of a uniform approach to interpretation across jurisdictions.⁴³

On the one hand, the UPICC may be understood as reflecting generally accepted principles of international contract law.⁴⁴ From this perspective, they may serve as a reference in identifying principles relevant to the CISG within the meaning of Article 7(2).

On the other hand, the use of the UPICC raises concerns where they are relied upon to address “open” or “hidden” gaps in the CISG, that is, situations where the Convention is either deliberately silent or lacks clarity as a result of negotiated compromises.⁴⁵ In such cases, it may become difficult to distinguish between solutions derived from the Convention itself and those drawn from external sources.

In practice, the absence of a clearly defined methodological framework has resulted in varying approaches. It is often difficult to determine the extent to which courts explicitly rely on the UPICC, and judicial reasoning does not always disclose the basis for such use.⁴⁶ This suggests that the interaction between the CISG and the UPICC is not only theoretically contested but also inconsistently applied in practice.

This discussion must also be understood in light of the Preamble to the UPICC, which expressly provides: *“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 used to interpret or supplement international uniform law instruments.”* In this respect, the UPICC present themselves not merely as contractual rules, but as a broader expression of transnational commercial principles.

⁴⁷

Nevertheless, the use of the UPICC raises a fundamental methodological question: whether they serve merely as a tool to identify existing general principles within the CISG, or whether they function as an independent source of law that supplements the Convention.

Article 7(2) CISG provides that matters governed by the Convention but not expressly settled in it are to be resolved in conformity with the general principles on which the CISG is based, before resorting to domestic law through private international law rules. It may be argued that the central doctrinal debate concerns whether the UPICC merely support, reaffirm, or reflect principles already underlying the CISG, or whether they may also legitimately supplement the Convention by

⁴³ Jan Ramberg, ‘CISG and UPICC as the Basis for an International Convention on International Commercial Contracts’ (2013) 58 Villanova Law Review 681, 681-682.

⁴⁴ *ibid* 686-687.

⁴⁵ Kronke (n 18) 452.

⁴⁶ Ramberg (n 43) 686- 687.

⁴⁷ UNIDROIT (n 30) Preamble.

providing solutions to issues that are not expressly regulated or fully developed within its framework. It may further be argued that the central issue ultimately concerns the extent to which the UPICC may be used consistently with the autonomous interpretative and gap-filling methodology established under Article 7 CISG, without improperly introducing external norms into the Convention's framework.

3.2.1 The UPICC as an Interpretative Tool

The wording of Article 7 CISG reflects a clear preference for internally derived solutions. This reflects the intention of the drafters to create an autonomous law, independent of domestic legal systems.

But, the use of the UPICC raises important methodological concerns. Excessive reliance on the UNIDROIT Principles may blur the distinction between interpretation and law-making, particularly where tribunals present externally derived solutions as if they constituted internal CISG principles.⁴⁸

At the same time, an excessively rigid conception of interpretative autonomy may fail to reflect the reality of contemporary international commercial law, which increasingly operates through a network of interacting transnational instruments. From this perspective, the UPICC may be viewed not as entirely external to the CISG, but rather as part of a broader transnational commercial framework capable of assisting in the interpretation and development of uniform sales law.

3.2.2 The UPICC as a Gap-Filler

The UPICC can reasonably be understood as an expression, in soft law form, of general principles of international commercial law.⁴⁹ This is particularly evident where the UPICC reflect principles already embedded within the CISG itself. In this respect, the UPICC may be used as a tool to interpret or supplement the CISG, particularly where no conflict exists between the two instruments. As noted by Perales Viscasillas, modern trends in the interpretation of the CISG increasingly allow the UPICC to function as interpretative and supplementary instruments within the CISG framework⁵⁰.

At the same time, the CISG contains certain gaps and unresolved matters as a consequence of its own legislative nature. The Convention was drafted as a compromise instrument intended to secure broad international acceptance among legal systems with different commercial traditions.⁵¹ Consequently, some issues were intentionally left unresolved or only partially regulated, since complete consensus among contracting States could not always be achieved. As with many

⁴⁸ Masny (n 32) 89.

⁴⁹ *ibid* 34.

⁵⁰ Perales Viscasillas (n 4) 19–20.

⁵¹ Noor Albandar, 'Beyond the CISG: Utilizing UNIDROIT Principles to Synchronize International Contract Law Beyond Sales of Goods' (2025) 27 San Diego International Law Journal 171, 177.

international instruments, the CISG therefore tends to adopt broader and more flexible formulations than those typically found in domestic legal systems.

For this reason, the UPICC can be seen as a codification or restatement of transnational contractual principles associated with the modern *lex mercatoria*, applicable to international commercial relationships.⁵² From this perspective, it seems that the purpose of the UPICC is not to supersede binding law, but rather to complement existing hard law instruments in a rational and coherent manner, particularly where the applicable legal framework requires recourse to general principles of international commercial law.

3.3 Uniformity vs Flexibility: A Structural Tension

The objective of uniformity, explicitly enshrined in Article 7(1), requires that the Convention be interpreted consistently across jurisdictions. This objective favours approaches that rely on shared, transnational standards rather than on domestic legal systems.

From this perspective, the use of the UPICC may contribute positively to uniformity. As a restatement of internationally accepted principles, they provide a common reference point that transcends national legal traditions.⁵³

At the same time, flexibility is an inherent feature of the Convention. The nature of many CISG provisions, together with the existence of gaps, necessitates a degree of judicial and arbitral discretion.⁵⁴ However, excessive flexibility carries risks. If courts rely too freely on external instruments such as the UPICC, the result may be a loss of predictability and an increasing divergence in interpretative practices.

This tension between uniformity and flexibility suggests that neither a strictly restrictive approach nor an overly integrationist one fully satisfies the requirements of the CISG.

Even where the UPICC supplement the CISG, the underlying principles remain substantially the same. In this regard, concepts such as party autonomy, good faith, and contractual cooperation are frequently identified as common normative foundations shared by both instruments. Hardship provides a particularly illustrative example, as the duty to renegotiate under the UPICC is often connected to broader notions of good faith and the preservation of the contractual equilibrium.⁵⁵ In this respect, the UPICC expressly provide for the renegotiation of the contract where a fundamental alteration of the contractual equilibrium occurs. However, such renegotiation is not conceived as an isolated mechanism, but rather as one linked to broader principles reflected within the CISG framework, like good faith.

⁵² Daniel (n 36) 1-64.

⁵³ Klaus Peter Berger, 'The UNIDROIT Principles of International Commercial Contracts as a System of Transnational Contract Law: Two Recent Arbitral Awards' (2024) 41 Journal of International Arbitration 255, 255–270.

⁵⁴ Masny (n 32) 78-81.

⁵⁵ *ibid.* 111-121.

Commercial parties generally seek legal certainty and predictability in international transactions. In this respect, Masny, referring to Berger, highlights the structural tension between the need for legal certainty and the pursuit of flexibility within transnational commercial law.⁵⁶ From this perspective, one of the principal objectives of the CISG is precisely to provide a stable and foreseeable legal framework for international sales contracts. Legal certainty and predictability play an important role in this context, particularly where parties must assess their contractual rights and obligations across different legal systems.

Nevertheless, the use of the UPICC in the interpretation and supplementation of the CISG may contribute to a more uniform and international application of the Convention by reducing recourse to private international law rules while supporting the integrity and uniform interpretation of the CISG framework⁵⁷.

⁵⁶ Masny (n 32) 79.

⁵⁷ John Felemegas (ed), *An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law* (Cambridge University Press 2007) 31–38.

4 Case Law Analysis: The Use of the UPICC under the CISG

4.1 International Court Practice

4.1.1 Scafom International BV v Lorraine Tubes S.A.S.

A leading example of the use of the UPICC in the application of the CISG is the decision of the Belgian Supreme Court in *Scafom International BV v Lorraine Tubes S.A.S.*⁵⁸ This case is particularly relevant as it addresses the question of hardship, an issue not expressly regulated by the Convention, and illustrates how courts may resort to general principles in order to fill such gaps.

Hardship is generally understood as a situation in which, due to unforeseen circumstances arising after the conclusion of the contract, performance becomes excessively onerous for one of the parties, thereby fundamentally altering the contractual equilibrium and rendering the contractual obligations significantly out of proportion.⁵⁹

The dispute arose from a series of contracts for the sale of steel tubes concluded between Scafom International BV, a Dutch buyer, and Lorraine Tubes S.A.S., a French seller. Following the conclusion of the contracts, the market price of steel increased unexpectedly by approximately 70%, significantly affecting the economic balance of the agreement. The contracts did not contain any price adjustment clause. As a result of these market developments, the seller requested a renegotiation of the contractual price, arguing that continued performance under the original terms had become excessively onerous. The buyer rejected any modification of the agreed price and insisted on strict performance of the contracts.⁶⁰

The central legal issue was whether the CISG provides a mechanism to address situations of hardship, or whether such situations constitute a gap within the meaning of Article 7(2). The Court acknowledged that such situations are not expressly regulated by the Convention, noting that the CISG “contains no rules on the adaptation of the price for unforeseen abnormal situations during the performance of the contract.”⁶¹ a position which is consistent with the view that no obligation to renegotiate the contract or to adapt its terms is expressly provided by the CISG.⁶²

Rather than directly resorting to domestic law, the Belgian Supreme Court applied Article 7(2) CISG and sought to resolve the issue in conformity with the general principles underlying the Convention. In doing so, it emphasized that gaps should be

⁵⁸ *Scafom International BV v Lorraine Tubes S.A.S.* (Hof van Cassatie van België/Cour de cassation de Belgique, Belgium Supreme Court, 19 June 2009) CISG-online 1963 (trans Kristof Cox).

⁵⁹ Hein Kötz, *European Contract Law* (2nd edn, Oxford University Press 2017) 441, 450.

⁶⁰ *Scafom* (n 58) 1-6.

⁶¹ *Scafom* (n 58) 5.

⁶² Julie Dewez and others, ‘The Duty to Renegotiate an International Sales Contract under CISG in Case of Hardship and the Use of the Unidroit Principles’ (2011) 19 *European Review of Private Law* 110.

filled in a uniform manner by reference to such principles, stating that “*to fill the gaps in a uniform manner adhesion, should be sought with the general principles which govern the law of international trade.*”⁶³ thereby reflecting the structure of Article 7(2), which prioritises recourse to general principles of international commercial law over domestic law.⁶⁴

In identifying these principles, the Court explicitly referred to the UNIDROIT Principles, particularly the provisions on hardship contained in Article 6.2.3 UPICC, which recognize the right of a party affected by fundamentally altered contractual equilibrium to request renegotiations. Referring to these principles, the Court stated that “*the party who invokes changed circumstances... is entitled to claim the renegotiation of the contract.*”⁶⁵

On this basis, the Court held that, under certain circumstances, a significant and unforeseeable change in economic conditions may be taken into account within the framework of the Convention. More specifically, it accepted that “*Changed circumstances that were not reasonably foreseeable at the time of the conclusion of the contract and that are unequivocally of a nature to increase the burden of performance of the contract in a disproportionate manner*” may, under certain conditions, constitute an impediment within the meaning of the Convention.⁶⁶ This reasoning suggests that the Court’s approach may open the door to a duty to renegotiate in situations of hardship.

This decision illustrates a form of reasoning in which the UPICC are not merely used as an interpretative aid, but rather as a reference point in the identification of general principles under Article 7(2). In doing so, the Court effectively introduces a mechanism, renegotiation, that is not explicitly provided for in the CISG, which has led to criticism on the basis that such reasoning may effectively attribute binding force to the UNIDROIT Principles, despite their soft law and not binding nature.⁶⁷

At the same time, the reasoning of the Court remains formally anchored in the structure of the Convention, as it proceeds through the mechanism of gap-filling established in Article 7(2). This raises the question of whether such use of the UPICC can be understood as reflecting principles inherent in the CISG, or whether it constitutes the introduction of external solutions into the Convention’s framework.

The Scafom decision therefore provides a useful starting point for examining how courts navigate the relationship between the CISG and the UPICC in practice, particularly in areas where the Convention is silent or incomplete.

4.2 Dupiré Invicta Industrie SA v Gabo Sp. z o.o.

A similar approach to the one adopted in *Scafom International BV v Lorraine Tubes S.A.S.* can also be observed in French judicial practice. In *Dupiré Invicta Industrie*

⁶³ Scafom (n 58) 11.

⁶⁴ Dewez and others (n 62) 111.

⁶⁵ Scafom (n 58) 11.

⁶⁶ *ibid.*

⁶⁷ Dewez and others (n 62) 115.

SA v Gabo Sp. z o.o., the Court of Appeal of Reims emphasized that, under Article 7 CISG, internal gaps should primarily be resolved through recourse to the general principles underlying the Convention, while also recognizing that the UNIDROIT Principles may serve to interpret and supplement the CISG.⁶⁸

The dispute concerned a commercial relationship between a French seller and a Polish buyer. During the performance of the contract, the seller invoked a sudden increase in the cost of raw materials and argued that this had fundamentally altered the economic equilibrium of the agreement.⁶⁹ The seller consequently sought a renegotiation of the contractual terms, relying in part on the hardship provisions of the UNIDROIT Principles.

The central legal issue before the court was whether the substantial increase in raw material prices could constitute a situation of hardship within the framework of the CISG. In this context, the parties also disputed the relevance of the UNIDROIT Principles in the interpretation and supplementation of the Convention.

More specifically, the claimant argued that the exceptional increase in production costs had fundamentally altered the contractual equilibrium and relied expressly on Articles 6.2.2 and 6.2.3 of the UNIDROIT Principles concerning hardship and renegotiation. The claimant further maintained that the buyer had failed to negotiate in good faith following the request for renegotiation.

The buyer, however, contested the applicability of the UNIDROIT Principles, arguing in particular that they could not be regarded as usages within the meaning of Article 9 CISG.⁷⁰

In its reasoning, the Court referred explicitly to Article 7 CISG and emphasized that the Convention must be interpreted with regard to its international character, the need to promote uniformity in its application, and the observance of good faith in international trade.⁷¹

The Court further held that:

“Le comblement des lacunes internes de la Convention doit s’effectuer en premier par recours aux principes généraux dont elle s’inspire, et subsidiairement seulement, par recours au droit international privé.”⁷²

This can be translated as follows:

“The filling of internal gaps in the Convention must first be carried out by recourse to the general principles on which it is based, and only subsidiarily through recourse to private international law.”

⁶⁸ Dupiré *Invicta Industrie SA v Gabo Sp. z o.o.* (Cour d’appel de Reims, France, 4 September 2012) CISG-online 3141 (original in French, translated by ChatGPT).

⁶⁹ *ibid.* 2.

⁷⁰ *ibid.* (original in French, translated by ChatGPT).

⁷¹ *ibid.* (original in French, translated by ChatGPT).

⁷² *ibid.* (original in French, translated by ChatGPT).

The Court therefore adopted an interpretative methodology closely aligned with Article 7(2) CISG, giving priority to general principles rather than immediately resorting to domestic law.

The Court recognized the interpretative and supplementary role of the UNIDROIT Principles in relation to the CISG.

It stated that:

“Les Principes d’Unidroit [...] servent ainsi à interpréter et à compléter [la Convention de Vienne].”⁷³

Translated into English:

“The UNIDROIT Principles [...] serve to interpret and supplement [the Vienna Convention].”

The Court also recognized that:

“La Convention de Vienne n’exclut pas le hardship...”⁷⁴

Translated into English:

“The Vienna Convention does not exclude hardship.”

In addition, the Court referred directly to Articles 6.2.2 and 6.2.3 UPICC, according to which, in situations of hardship, “*la partie lésée peut demander l’ouverture de négociations*”, namely that “*the disadvantaged party may request the opening of negotiations*.”⁷⁵

However, despite accepting the relevance of hardship within the interpretative framework of the CISG, the Court ultimately rejected the claimant’s argument on the facts of the case. It held that the seller had failed to establish the existence of hardship and emphasized that, in the absence of a contractual clause to the contrary, a party generally assumes the risk that performance may become more onerous.⁷⁶

The decision is significant because it illustrates a methodology comparable to that adopted in *Scafom*. Although the Court ultimately rejected hardship on the merits, it nevertheless accepted that the UNIDROIT Principles may be used to interpret and supplement the CISG and recognized hardship as a concept capable of operating within the framework of the Convention itself.

4.3 Intraval S.L. v Econ Industries GmbH

In contrast to the approach adopted in *Scafom*, other courts have adopted a more restrictive position regarding the use of the UPICC in connection with the CISG. A clear example can be found in *Intraval S.L. v Econ Industries GmbH*, where the

⁷³ Dupiré (n68).

⁷⁴ *ibid* (original in French, translated by ChatGPT).

⁷⁵ *ibid* (original in French, translated by ChatGPT).

⁷⁶ *ibid.* 3.

Spanish Supreme Court addressed the role of the UPICC in the context of issues not expressly regulated by the Convention.⁷⁷

The dispute arose from an international contract between a Spanish buyer and a German seller concerning the manufacture, installation, and commissioning of a thermal desorption unit for a waste treatment plant in the United Kingdom. Following the performance tests carried out on the machinery, the buyer alleged that the equipment failed to satisfy the contractual specifications and sought avoidance of the contract, together with damages and restitution of the price paid.⁷⁸

A central issue throughout the proceedings concerned the timeliness of the buyer's notification of non-conformity under Article 39 CISG, as well as the applicable limitation period governing the buyer's claims.⁷⁹

The central legal issue before the Spanish Supreme Court concerned whether the UPICC could be used to supplement matters not expressly regulated by the CISG, particularly in relation to limitation periods and the consequences of the buyer's failure to comply with the notice requirements under Article 39 CISG.⁸⁰

More specifically, the buyer argued that recourse to the UPICC was justified under Article 7(2) CISG, maintaining that the Principles could assist in supplementing the Convention where no express rule was available.⁸¹ The proceedings therefore raised the broader methodological question of whether external instruments such as the UPICC may be relied upon as part of the gap-filling process under Article 7(2), or whether recourse should instead be made to the applicable domestic law through the rules of private international law.⁸²

The buyer sought to rely on the UPICC to supplement the CISG, particularly in relation to the limitation period, arguing that such recourse was justified under Article 7(2). The Court rejected this argument, emphasizing that the UPICC do not constitute binding rules and may only be applied where the parties have expressly agreed to their use.⁸³

More importantly, the Court clarified the proper methodological sequence under Article 7(2) CISG. It reaffirmed that, in the absence of applicable general principles within the Convention, recourse must be made to the law applicable by virtue of the rules of private international law. In the present case, this led to the application of German law as the relevant domestic legal system.⁸⁴

This reasoning reflects a significantly more restrictive approach to the role of the UPICC. The Court expressly emphasized that the UPICC “*do not contain binding norms and their application proceeds only when the parties to a contract or a*

⁷⁷ Intraval SL v Econ Industries GmbH (Tribunal Supremo, Spain, 6 July 2020) CISG-online 5370 (trans. Juan Pablo Gómez-Moreno)

⁷⁸ *ibid* 12 - 16.

⁷⁹ *ibid*.

⁸⁰ *ibid* 13.

⁸¹ *ibid*. 20.

⁸² *ibid*. 13.

⁸³ *ibid* 21.

⁸⁴ *ibid*.

decision-making body choose to apply them and if said choice is recognized or admitted in the relevant legal framework”.⁸⁵ Accordingly, rather than relying on the UPICC as autonomous expressions of general principles of international contract law, the Court held that matters not governed by the CISG should be resolved through the applicable domestic law determined by the rules of private international law.⁸⁶

The contrast with *Scaфом* is therefore particularly instructive. While the Belgian Supreme Court relied on the UPICC to identify and give effect to general principles within the meaning of Article 7(2), the Spanish Supreme Court refused to follow this path and instead reverted to domestic law. This divergence highlights the absence of a consistent methodological approach in judicial practice and reinforces the central question of this thesis: whether and under what conditions the use of the UPICC can be justified within the interpretative framework of the CISG.

4.4 Anexo Comercial v Noridane Foods

A further illustration of the interaction between the CISG and the UPICC in judicial practice can be found in the decision of the Brazilian Court of Appeal of Rio Grande do Sul in *Anexo Comercial Importação e Distribuição Ltda v Noridane Foods SA*.⁸⁷ This case is particularly pertinent as it reflects a different mode of engagement with the UPICC, not primarily as a gap-filling mechanism, but as a complementary interpretative framework alongside the CISG.

The dispute arose from a contract for the sale of frozen chicken feet between a Danish buyer and a Brazilian seller. The buyer paid part of the price, but the goods were never delivered. As a result, the buyer sought termination of the contract and restitution of the amount paid. The lower court ruled in favour of the buyer, and the decision was upheld on appeal.

A central issue in the case concerned court’s approach to the applicability of the CISG. Although the contract had been concluded before the Convention formally entered into force in Brazil, the court nevertheless applied the CISG on the basis that it reflects the “*most widespread practice of the international sale of goods*.”⁸⁸ In doing so, the court effectively treated the CISG not merely as a binding instrument, but as an expression of international commercial practice.

In parallel, the court also referred to the UNIDROIT Principles, considering that they could be applied together with the CISG. It explicitly stated that the CISG and the UPICC are not mutually exclusive, but rather complementary instruments.⁸⁹ This approach is particularly significant, as it suggests a form of integrated reasoning in which both instruments are used concurrently to support the resolution of the dispute.

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ *Anexo Comercial Importação e Distribuição Ltda v Noridane Foods SA*. (Court of Appeal of Rio Grande do Sul, Brazil, 14 February 2017) CLOUT case 1733 (abstract prepared by Naíma Perrella Milani).

⁸⁸ *ibid.*

⁸⁹ *ibid.*

This complementarity is illustrated in the court's analysis of contract formation and performance. The court relied on Article 11 CISG, which establishes that a contract of sale need not be concluded in or evidenced by writing, and reinforced this conclusion by reference to Article 1.2 of the UPICC.⁹⁰ In this respect, the UPICC were not used to introduce a new rule, but rather to confirm and support a principle already contained in the CISG.

The court combined provisions from both instruments in assessing the conduct of the parties. It referred to Article 7(1) CISG, which requires observance of good faith in international trade, and to Article 1.7 of the UPICC, thereby reinforcing the role of good faith as a guiding principle in the interpretation and performance of the contract.⁹¹

Unlike the Scafo decision, where the UPICC were used in the context of gap-filling under Article 7(2), the present case illustrates a broader and more integrated use of the UPICC as an interpretative and supportive framework. The UPICC function here not as an independent source of law, but as a means of confirming and strengthening principles already embedded in the CISG.

At the same time, the decision raises important methodological concerns. While the court formally applied the CISG, its reasoning has been criticised for relying in part on concepts and approaches more closely associated with domestic law reasoning than with the interpretative structure of the Convention itself. In particular, the decision does not fully examine whether the seller's conduct amounted to a "*fundamental breach*" within the meaning of Article 25 CISG, which constitutes a central requirement for avoidance under the Convention.⁹²

Similar concerns arise in relation to the Nachfrist mechanism under Articles 47 and 49 CISG.⁹³ While the court referred to the buyer's repeated attempts to contact the seller as constituting an additional period for performance, it did not clearly address the formal notice requirements generally associated with the CISG framework. As a result, the reasoning has also been criticised for approaching the dispute through domestic contractual logic rather than fully engaging with the autonomous methodology and interpretative structure of the Convention.⁹⁴

This approach highlights a recurring difficulty in the application of the CISG: the tendency of courts to interpret and apply its provisions through the lens of domestic legal concepts⁹⁵. Such reasoning risks undermining the principle of autonomous interpretation under Article 7(1), which requires that the Convention be interpreted independently of domestic law and with regard to its international character.

⁹⁰ Intraval (n77).

⁹¹ *ibid.*

⁹² Ana Carolina Beneti, 'First CISG Decision in Brazil' (2018) 18 *Internationales Handelsrecht* 9, 10–11.

⁹³ The Nachfrist mechanism refers to the right of a party under Articles 47 and 63 CISG to fix an additional period of time of reasonable length for the other party to perform its obligations. During this period, the aggrieved party is generally precluded from resorting to certain remedies, such as avoidance. John C Duncan Jr, 'Nachfrist Was Ist? Thinking Globally and Acting Locally: Considering Time Extension Principles of the U.N. Convention on Contracts for the International Sale of Goods in Revising the Uniform Commercial Code' (2000) 2000 *BYU L Rev* 1363, 1383–1385.

⁹⁴ Beneti (n 92) 10–11.

⁹⁵ *ibid* 11.

The Noridane decision therefore illustrates both the potential and the challenges of using the UPICC in conjunction with the CISG. On the one hand, it demonstrates how the UPICC can support and reinforce the interpretation of the Convention, particularly where they reflect widely accepted principles of international commercial law. On the other hand, it reveals the methodological risks associated with their use, especially when combined with a non-autonomous application of the CISG.

4.5 Arbitral Practice and the Use of the UPICC

The UPICC have gained particular prominence in international commercial arbitration.⁹⁶ This is not without reason. International Commercial Arbitration, unlike ordinary national courts, offers certain advantages to the parties, among which party autonomy and procedural flexibility occupies a particularly important role.⁹⁷

Parties are generally free to choose the legal framework governing their commercial relationship, especially in the context of international trade, where transactions often involve not merely two jurisdictions, but several legal systems and commercial actors operating across borders.⁹⁸ In this context, the choice of a neutral and internationally recognized instrument, such as the UPICC, which are also frequently associated with the *lex mercatoria* and international commercial usages, may facilitate the resolution of future disputes in a more efficient and predictable manner.⁹⁹

Nevertheless, the mere existence of the UPICC does not automatically authorize arbitrators to apply them in resolving a dispute. Arbitral tribunals must decide cases on the basis of the parties' submissions and arguments, that is, in accordance with the principle of party autonomy.¹⁰⁰ Accordingly, where the CISG governs the contractual relationship, whether by virtue of an arbitration clause or a subsequent agreement between the parties, and the Convention does not expressly regulate a particular issue, parties may rely on supplementary instruments. In such circumstances, arbitrators are expected to act in an adjudicatory manner when determining the applicable rules and resolving the dispute.¹⁰¹

Without prejudice to the foregoing, the Preamble to the UPICC itself contemplates their application through the parties' choice (whether express or implicit).¹⁰² In this respect, where one of the parties invokes the UPICC in its submissions, and the

⁹⁶ Eleonora Finazzi Agrò, 'The Impact of the UNIDROIT Principles in International Dispute Resolution in Figures' (2011) 16 Uniform Law Review 719, 720.

⁹⁷ Gary B Born, 'Chapter 1: Overview of International Commercial Arbitration (Updated November 2023)' in International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 81–82.

⁹⁸ *ibid* 235.

⁹⁹ Klaus Peter Berger, 'Book Review: UNIDROIT Principles of International Commercial Contracts, An Article-by-Article Commentary, by Eckart J Brödermann' (2018) 34 Arbitration International 469, 469–471.

¹⁰⁰ María Mercedes Alborno and Nuria González Martín, 'Towards the Uniform Application of Party Autonomy for Choice of Law in International Commercial Contracts' (2016) 12 Journal of Private International Law 437, 438, 448–451.

¹⁰¹ Gary B Born, 'Chapter 13: Rights and Duties of International Arbitrators (Updated February 2024)' in International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 2129–2146.

¹⁰² UNIDROIT (n 30) Preamble.

opposing party similarly relies on them or does not object to their use, such conduct may arguably constitute a tacit acceptance of their applicability within the dispute.

In any event, where disagreement exists concerning the use of the UPICC, and the parties have presented their respective arguments regarding their applicability, it ultimately remains for the arbitral tribunal to determine whether the UPICC is appropriate in the particular circumstances of the case.

Furthermore, arbitrators enjoy a considerable degree of independence and are not formally bound by precedent in the same manner as domestic courts.¹⁰³ Consequently, arbitral practice does not always reveal clear or consistent methodological tendencies, or at least not in the same way as judicial practice.

As noted in the UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods, at least one arbitral tribunal has expressly recognized the UPICC as constituting “*general principles*” within the meaning of Article 7(2) CISG.¹⁰⁴ In addition, several arbitral tribunals have referred to the UPICC in order to confirm or support solutions reached under the Convention, while certain courts have similarly relied upon the Principles to reinforce interpretations derived from the CISG framework. Other decisions have further suggested that the UPICC may assist in identifying the precise content of the general principles underlying the Convention.¹⁰⁵

Arbitral practice also demonstrates that the UPICC are not always used merely as complementary or interpretative instruments.¹⁰⁶ In some cases, particularly in light of the nature of international commercial arbitration, arbitral tribunals may have accepted the UPICC as the primary rules governing the contractual relationship, particularly where the parties have expressly or implicitly agreed to their application. This reflects the flexible and transnational nature of international commercial arbitration, where parties frequently seek neutral and internationally recognized rules capable of operating independently from domestic legal systems.

In ICC Award No. 11638, the tribunal held that the UNIDROIT Principles should be applied not only to matters falling outside the scope of the CISG, but also to issues governed by the Convention but not expressly settled by it.¹⁰⁷

In doing so, the arbitrator relied directly on Article 7(2) CISG, considering the UPICC as an expression of the general principles underlying the Convention. Moreover, the tribunal emphasized that recourse to the UNIDROIT Principles was preferable to domestic law, as it better promotes the objective of uniformity under Article 7(1). explicitly prioritizes transnational principles over domestic law and

¹⁰³ Gary B Born, ‘Chapter 12: Selection, Challenge and Replacement of Arbitrators in International Arbitration (Updated February 2024)’ in *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 1890 - 1893.

¹⁰⁴ UNCITRAL, *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* (United Nations 2016) 46

¹⁰⁵ *ibid.*

¹⁰⁶ Berger (n 53) 255–270.

¹⁰⁷ International Court of Arbitration, Award No. 11638 (2002) CISG-online 4980.

treats the UPICC as a primary reference point in both gap-filling and interpretative contexts.¹⁰⁸

4.6 Patterns in the Use of the UPICC under the CISG

The case law analysed in this chapter demonstrates that international practice does not follow a uniform approach regarding the use of the UNIDROIT Principles in the application of the CISG. Instead, at least three distinct methodological patterns can be identified.

First, an integrationist approach, exemplified by *Scaфом International BV v Lorraine Tubes*, treats the UPICC as an expression of general principles underlying the CISG within the meaning of Article 7(2).¹⁰⁹ Under this approach, the UPICC may be used to fill internal gaps in the Convention, sometimes leading to the incorporation of solutions not expressly provided for in the CISG itself, such as a duty to renegotiate in situations of hardship. A more cautious variation of this approach can be observed in *Dupiré Invicta Industrie SA v Gabo Sp. z o.o.*, where the court accepted the methodological relevance of the UPICC while ultimately rejecting hardship on the facts of the case.¹¹⁰

Second, a restrictive approach, illustrated by *Intraval S.L. v Econ Industries GmbH*, rejects the use of the UPICC as a gap-filling instrument under Article 7(2) CISG.¹¹¹ Decisions following this approach emphasize the non-binding nature of the UPICC and insist upon a strict application of the hierarchy established by the Convention, ultimately favouring recourse to domestic law where no internal general principles can be identified.

Third, a complementary or interpretative approach, as seen in *Anexo Comercial v Noridane Foods*, uses the UPICC alongside the CISG to reinforce or clarify existing principles already contained within the Convention.¹¹² In this model, the UPICC function primarily as persuasive authority supporting the interpretation of the CISG, rather than as an autonomous source of gap-filling.

Arbitral practice, however, appears to reveal a comparatively more flexible approach to the relationship between the CISG and the UPICC. Unlike domestic courts, arbitral tribunals are generally less constrained by domestic hierarchies of legal sources and more inclined to rely upon internationally recognized commercial principles in order to promote coherent and internationally oriented solutions.¹¹³ This tendency is particularly visible in *ICC Award No. 11638*, where the tribunal treated the UPICC as an expression of the general principles underlying the CISG and preferred recourse to transnational principles over domestic law.¹¹⁴

¹⁰⁸ ICC Award No 11638 (n 107).

¹⁰⁹ Scaфом (n 58).

¹¹⁰ Dupiré (n 68).

¹¹¹ Intraval (n 77).

¹¹² Anexo Comercial (n 87).

¹¹³ Born (n 97) 81–82.

¹¹⁴ ICC Award No 11638 (n 107).

5 Conclusions

From all the analyses above, the CISG adopts an interpretative and gap-filling methodology centred on autonomy, uniformity, and flexibility. Article 7(1) CISG establishes a structured framework requiring that the Convention be interpreted in light of its international character and the need to promote uniformity in its application. At the same time, Article 7(2) provides that matters governed but not expressly settled by the Convention must first be resolved in conformity with the general principles on which the CISG is based, before recourse may be made to domestic law through the rules of private international law.

However, it is true that the Convention does not establish a single or entirely uniform methodology regarding the identification and application of such general principles. Courts and arbitral tribunals may therefore adopt different interpretative approaches without this necessarily implying that their reasoning is deficient or methodologically incorrect. In this context, the reasoning of the decision plays a crucial role. The motivation of a judgment or arbitral award is arguably its most important element, as it not only determines the outcome of the dispute, but also reveals the underlying rationale guiding the interpretation and application of the Convention.

The case law analysed in this thesis reveals at least three distinct methodological approaches regarding the use of the UPICC under the CISG.

First, the integrationist approach treats the UPICC as an expression of the general principles underlying the CISG within the meaning of Article 7(2). Under this approach, the UPICC may be used to fill internal gaps in the Convention, particularly in situations such as hardship. This approach appears formally compatible with Article 7(2), insofar as it operates within the framework of gap-filling through general principles. However, its legitimacy ultimately depends on whether the principles derived from the UPICC may genuinely be considered principles “*on which the CISG is based*.” Where the UPICC introduce solutions that cannot clearly be derived from the Convention itself, their use risks exceeding the limits of Article 7(2) and transforming the UPICC into an independent normative source.

Second, the restrictive approach adheres strictly to the wording and structure of Article 7(2). It preserves the autonomy of the CISG by limiting gap-filling to internally derived principles and resorting to domestic law only as a final step. From a methodological perspective, this approach is arguably the most consistent with the formal hierarchy established by the Convention and with the general hierarchy of legal sources, particularly considering the non-binding nature of the UPICC. However, excessive rigidity may undermine the international character of the CISG and lead to fragmented solutions depending on the applicable domestic law.

Third, the complementary or interpretative approach occupies a middle ground. Under this model, the UPICC are used as interpretative guidance under Article 7(1),

rather than as an autonomous source of gap-filling. In this sense, the UPICC serve primarily to reinforce or clarify principles already embedded within the CISG, thereby supporting a more internationally oriented and coherent interpretation of the Convention without formally importing external rules into its framework.

The analysed cases further demonstrate that both courts and arbitral tribunals have relied upon the UPICC in the interpretation and supplementation of the CISG, while other decisions have expressly rejected such use and instead preferred recourse to domestic law pursuant to Article 7(2). In this respect, arbitral practice appears generally more flexible and more receptive to transnational principles than judicial practice. This may be explained by the transnational nature of international commercial arbitration, the greater emphasis placed on party autonomy, and the reduced attachment of arbitral tribunals to domestic hierarchies of legal sources.

References

Official documents

UNCITRAL, Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods (United Nations 2016)

United Nations Convention on Contracts for the International Sale of Goods (adopted 11 April 1980, entered into force 1 January 1988) 1489 UNTS 3 ('CISG')

UNIDROIT, UNIDROIT Principles of International Commercial Contracts 2016 (UNIDROIT 2016)

Literature

Monographs

Bonell MJ, An International Restatement of Contract Law: The UNIDROIT Principles of International Commercial Contracts (3rd edn, Brill 2009)

Born GB, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021)

Brödermann EJ, 'Introduction' in *UNIDROIT Principles of International Commercial Contracts 2016* (UNIDROIT 2016)

Felemegas J (ed), *An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law* (Cambridge University Press 2007)

Kötz H, *European Contract Law* (2nd edn, Oxford University Press 2017)

Kröll S, Mistelis L, and Perales Viscasillas MP (eds), *UN Convention on Contracts for the International Sale of Goods (CISG)* (2nd edn, Nomos 2018)

Articles

- Albandar N, 'Beyond the CISG: Utilizing UNIDROIT Principles to Synchronize International Contract Law Beyond Sales of Goods' (2025) 27 San Diego International Law Journal 171
- Albornoz MM and González Martín N, 'Towards the Uniform Application of Party Autonomy for Choice of Law in International Commercial Contracts' (2016) 12 Journal of Private International Law 437
- Beneti AC, 'First CISG Decision in Brazil' (2018) 18 Internationales Handelsrecht 9
- Berger KP, 'Book Review: UNIDROIT Principles of International Commercial Contracts, An Article-by-Article Commentary, by Eckart J Brödermann' (2018) 34 Arbitration International 469
- Berger KP, 'The UNIDROIT Principles of International Commercial Contracts as a System of Transnational Contract Law: Two Recent Arbitral Awards' (2024) 41 Journal of International Arbitration 255
- Bonell MJ, 'UNIDROIT Principles 2004 – The New Edition of the Principles of International Commercial Contracts adopted by the International Institute for the Unification of Private Law' (2004) 9 Uniform Law Review 5
- Dennis MJ, 'Modernizing and Harmonizing International Contract Law: The CISG and the UNIDROIT Principles Continue to Provide the Best Way Forward' (2014) 19 Uniform Law Review 114
- Dewez J and others, 'The Duty to Renegotiate an International Sales Contract under CISG in Case of Hardship and the Use of the Unidroit Principles' (2011) 19 European Review of Private Law 101
- Duncan JC Jr, 'Nachfrist Was Ist? Thinking Globally and Acting Locally: Considering Time Extension Principles of the U.N. Convention on Contracts for the International Sale of Goods in Revising the Uniform Commercial Code' (2000) 2000 BYU Law Review 1363
- Finazzi Agrò E, 'The Impact of the UNIDROIT Principles in International Dispute Resolution in Figures' (2011) 16 Uniform Law Review 719
- Hoffmann AK, 'Iura Novit Arbiter' in Dirk De Meulemeester (ed), Default in International Arbitration: Striking the Balance (2022) 109
- Kronke H, 'The UN Sales Convention, the UNIDROIT Contract Principles and the Way Beyond' (2005) 25 Journal of Law and Commerce 451

Kryla-Cudna K, 'Internationality Overreach in the Interpretation of Uniform Private Law Conventions: The Contra Proferentem Rule and the CISG' (2025) 74(2) International and Comparative Law Quarterly 437

Lazerow HI, 'Uniform Interpretation of CISG' (2019) 52(3) The International Lawyer 369

McCrudden C, 'Legal Research and the Social Sciences' (2006) 122 Law Quarterly Review 632

Masny T, 'The UNIDROIT Principles on International Commercial Contracts as a Tool to Interpret and Supplement the UN Convention on Contracts for the International Sale of Goods' (LLM thesis, Central European University 2017)

Perales Viscasillas P, 'Interpretation and Gap-Filling under the CISG: Contrast and Convergence with the UNIDROIT Principles' (2017) 22 Uniform Law Review 4

Ramberg J, 'CISG and UPICC as the Basis for an International Convention on International Commercial Contracts' (2013) 58 Villanova Law Review 681

Schwenzer I, 'Interpretation and Gap-Filling under the CISG' in Ingeborg Schwenzer, Yeşim M Atamer and Petra Butler (eds), *Current Issues in the CISG and Arbitration* (Eleven International Publishing 2014)

Veneziano A, 'The Soft Law Approach to Unification of International Commercial Contract Law: Future Perspectives in Light of UNIDROIT's Experience' (2013) 58 Villanova Law Review 521

Case law

Anexo Comercial Importação e Distribuição Ltda v Noridane Foods SA. (Court of Appeal of Rio Grande do Sul, Brazil, 14 February 2017) CLOUT case 1733 (abstract prepared by Náima Perrella Milani)

Dupiré Invicta Industrie SA v Gabo Sp. z o.o. (Cour d'appel de Reims, France, 4 September 2012) CISG-online 3141

Intraval SL v Econ Industries GmbH (Tribunal Supremo, Spain, 6 July 2020) CISG-online 5370 (trans Juan Pablo Gómez-Moreno)

Scaфом International BV v Lorraine Tubes S.A.S. (Hof van Cassatie, Belgium Supreme Court, 19 June 2009) CISG-online 1963 (trans Kristof Cox)

Arbitral Awards

ICC International Court of Arbitration, Award No 11638 (2002) CISG-online 4980

Websites

Daniel J., ‘An Investigation into the Relationship between the UNIDROIT Principles of International Commercial Contracts (UPICC) and the UN Convention on the International Sale of Goods (CISG)’ (LLM thesis, University of Johannesburg) <<https://ujcontent.uj.ac.za/esploro/outputs/graduate/An-investigation-into-the-relationship-between/9911593407691>> accessed 20 May 2026

Philippe D., ‘Gap filling on the basis of general principles (article 7.2. of the CISG) and Unidroit Principles’ (Philippe & Partners, 2020) <<https://philippelaw.eu/wp-content/uploads/2021/01/Gap-filling-on-the-basis-of-general-principles-article-7.2.-of-the-CISG-and-Unidroit-Principles.pdf>> accessed 22 May 2026

UNCITRAL, ‘Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)’ <https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status> accessed 22 May 2026