

# **Blog Survey (No. 2): The Use of Soft Law Instruments in International Arbitration**

## **Kluwer Arbitration Blog**

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A uniform regulation of substantive, procedural or ethical aspects of international commercial disputes through intergovernmental cooperation has proven to be an unachievable goal or hardly a goal at all. Nonetheless, while national laws are widely used as framework for international arbitration, a number of initiatives have emerged aiming at creating intrinsically international rules (soft law instruments).

A recently published empirical and theoretical assessment of the UNIDROIT Principles of International Commercial Contracts as a case study of the *lex mercatoria*, suggests that the Principles offer a “synthesis of normative expectations arising from delocalized and denationalized commercial operations (practices, customs, patterns), they incorporate the possibility of accessing ‘the world of commerce’ by means of an increasingly extended applicability of their provisions, regardless of the geographical, national, or cultural differences of the parties to the contract and the topics with which they deal” (Aldo Mascareño/Elina Mereminskaya, “The making of world society through private commercial law: the case of the UNIDROIT Principles”, *Unif. L. Rev.*, 2013, 1–26, 3).

The practical application of the UNIDROIT Principles shows certain patterns that, following basic premises of the Social System Theory by Niklas Luhmann, allow for them to be characterized as part of the law of world society. Being juridical norms that can be applied by international arbitral tribunals and national courts, they serve the function of counterfactually protecting normative expectations.

The assumption the following survey is based upon is that the UNIDROIT Principles share these features with other soft law instruments frequently used in international arbitration. Going further, if the internationally acceptable legal framework is scarce, the need for the stabilization of normative expectations through soft law instruments should be even bigger.

To test this thesis, the following brief survey look into the practical relevance of non-binding non-national concepts and instruments. It consists of 8 questions and takes no longer than 5 minutes to respond.

The survey is conducted within the Fondecyt (National Foundation for Scientific and Technological Development, Chile) Project No. 1110437.

[SURVEYS 3]