THE USE OF THE UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS IN PR CHINA
Present and Future

Tao, Yang[1]
Esq., Associate, Hogan Lovells International LLP. LL.B.

Fan,Jianhong[2]
Full Professor, Faculty of Law, University of Macau

A. Introductory Remarks: The Contractual Legal Framework in China

The UNIDROIT Principles[3] and the Choice-of-Law Autonomy in Private International Law

Taking into account the transnational and non-governmental nature of the UNIDROIT Principles, the effectiveness of their adoption stems primarily from the choice of the parties. Therefore, to a great extent, their adoption depends on the degree of contractual freedom, more precisely on whether the parties are entitled to substantially determine the contents of their transaction, or to choose the law applicable to their agreement. Considering the former from a substantive or material perspective, if the parties choose to incorporate the UNIDROIT Principles into an international contract, directly or by mere reference, the interpretation,

---

1 Huazhong University of Science and Technology, China, LL.M., University of Macau and LL.M., Paul M Hebert Law Center, Louisiana State University, the U.S. Private Email: toptoto@hotmail.com

2 Doctor of Law at Freiburg University in Germany, International Advisory Board of IEL (International Encyclopaedia of Laws) Email: jhfan@umac.mo

3 INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW, *UNIDROIT Principles of International Commercial Contracts, Rome, UNIDROIT,* 2004. For a general overview of the Principles, selected bibliography and jurisprudence, and of the unification work performed by the UNIDROIT, consult the following homepage: <http:// www.unidroit.org > (2 March 2008).

content, performance and non-performance of the contract shall be ruled by the UNIDROIT Principles; for the latter, from a conflict-of-laws perspective, if the parties choose the UNIDROIT Principles as the applicable law, the interpretation of, and the governing law for the transaction should be determined by the UNIDROIT Principles. This is already a five-centuries-old rule, first elaborated by the French Jurist Charles Dumoulin, and subsequently adopted in Europe by several doctrinal schools, before spreading to other continents.[4]

Practically speaking, even in countries where the rules regarding the conflict of laws traditionally embrace the choice-of-law autonomy principles, there is a strong resistance towards accepting the UNIDROIT Principles as the law applicable to contracts. The reason is simple: the UNIDROIT Principles are a non-legislative system, and thus a contract cannot exist entirely disconnected from a national or state legal system. In other words, a "contract without law" cannot be valid. Therefore, generally speaking, domestic laws continue to represent solid pillars for the application of international law. Just as an eminent Brazilian scholar once stated:

When in Private International Law the parties' will choose the applicable law, it is because another law, that of Private International Law, authorized it to proceed in such way, offering it such freedom.[5]

In order to discuss the use of the UNIDROIT Principles in China, we must examine the fundamental problem of whether the contractual legal framework in China does or does not impede the freedom of contracts, which consists mainly of the freedom to substantially determine the contents of an agreement, and the freedom to choose the law applicable to such agreement.

I. Postulates for the Applicability of the UNIDROIT Principles in the Court in China.

Under the Chinese contractual system prior to 1999, contracts were governed primarily by the General Principles of Civil Law (GPCL), Economic Contract Law, Foreign Economic Contract Law and Technological Contract Law. Each of these branches of contract law had its own scope of application. [6] The new

---

4 On this subject, see Nadia de ARAUJO, *Contratos Internacionais: Autonomia da Vontade, Mercosul e Convenções Internacionais*, 2nd ed.

5 Haroldo VALLADÃO, *Direito International Privado*, 5 ed., RJ, Freitas Bastos, 1980, v.1, p.111, at 363.

6 Accordingly, contracts are classified as either "economic contracts", "foreign economic contracts" or "technological contracts". The first branch of contract law deals with domestic contracts in the economic field, the second with such contracts having foreign elements, which are very similar to "international commercial contracts", and the third with technological contracts ,see Huang Danhan, "China report", M.J.Bonell (ed.), *A New Approach to International Commercial Contracts,* Kluwer Law International, 1999, 66.

unified Contract Law of the People's Republic of China was adopted at the Second Session of the Ninth National People's Congress on 15 March 1999 and came into force on 1 October 1999. Simultaneously, the Economic Contract Law of the People's Republic of China, as well as the Chinese laws on Economic Contracts Involving Foreign Interests and on Technology Contracts were abrogated.

Under the principle of judicial sovereignty, a court may only apply the law of the forum.[7] However, the emergence and development of conflict-of-law principles has provided situations where foreign law can be applied in a domestic court. China is no exception. Even though there is no unified conflict-of-law[8] legislation in China, the choice-of-law rules are scattered throughout several laws and regulations. The most important choice-of-law rules are found in the GPCL of 1986 and the Contract Law of 1999.[9] These two laws are the major pieces of legislation regulating civil and commercial matters in China and they contain special provisions dealing with choice-of-law in civil cases with foreign elements.[10] The Supreme People's Court's "Opinions on Several Questions Concerning Implementation of the General Principles of Civil Law (Provisional)" from 1988 were another major source of the choice-of-law rules applied by the people's courts.[11]

Similar to most other countries, China has adopted the "Party Autonomy" doctrine that allows parties to choose the governing law for their contracts.[12] Both the GPCL of 1986 and the Contract Law of 1999 provide that the parties to a foreign contract may choose the law applicable to settling disputes arising out of contracts, except as otherwise stipulated by law. [13]In the absence of

---

7 E. Lorenzen, Selected Articles on the Conflicts of Laws 163–64 (1947).

8 Commonly called "private international law" in China.

9 See GPCL of 1986, supra note 65, art. 135. In addition, the Maritime Law of China, the Negotiable Instruments Law of China, and Civil Aviation Law of China also contain choice of law rules applicable to the specific matters involving maritime, negotiable instruments, and civil aviation, respectively. See generally, Maritime Law of China 1992 art. 269, available at< http://publishing.eur.nl/ir/repub/asset/6943/14.pdf> (2 March 2008);
Negotiable Instruments Law of China 1995 ch. 6, available at < http://www.lawinfochina.com/law/display.asp?id=462 > (2 March 2008)

10 See GPCL of 1986, *supra* note 65, ch. 8; Contract Law, *supra* note 133, art. 126. Article 126 of the Contract Law provides choice of law rules applying to contract matters.

11 Supreme People's Court, *Opinions on Several Questions Concerning Implementation of the General Principles of Civil Law (Provisional)*, 14 Zuigao Renmin Fayuan Gongbao 16 (1988) *also* Legislative Working Committee of the Standing Committee of the National People's Congress of China, Compilation of Civil and Commercial Laws of the People's Republic of China 508–12 (1999).

12 Law of Civil Procedures of the People's Republic of China, *supra* note 2, art. 25.

13 See GPCL 1986, *supra* note 65, art. 145.

such choice, the law of the country to which the contract is most closely related shall apply.[14] Nevertheless, choice-of-law rules in China emphasize an actual connection or relationship between the applicable law and the nature of the case involved. A closer look at the choice-of-law provisions in the GPCL of 1986 and the 1988 Supreme People's Court "Opinions" clearly reveals that the "closest relationship" is the most determinative factor in the choice of law. Furthermore, in China, even where the parties expressly refer to the UNIDROIT Principles as the law governing their contract, state courts, which are bound to apply their own national law including the relevant conflict-of-law rules, are likely to consider such a reference as a mere agreement to incorporate them into the contract, while the proper law of the contract still has to be determined separately on the basis of the rules of the private international law of the forum.[15]

Though conditions for the applicability of the UNIDROIT Principles in the Court in China already exist, we have to admit that there are still many problems with, and limitations to the choice-of-law in court.[16]

Postulates for the Applicability of the UNIDROIT Principles in Arbitration Proceedings in China

The situation is different if the parties agree to submit disputes arising from their contact to arbitration. In a number of countries, recent legislation on arbitration, when sanctioning the parties' right to choose the law applicable to the substance of the dispute, employs the term "rule of law" instead of "law", in order to make it clearly that the parties' freedom of choice is not restricted to national laws, but that it also includes the rules of law of an a-national or supranational character.[17]

Chinese special culture has fostered the fine tradition of resolving disputes through arbitration. The Chinese law endorses arbitration as a useful method for resolving international commercial and investment disputes. Practice also shows a strong preference for arbitrating disputes arising out of business transactions.

The Arbitration Act of the People's Republic of China, the first arbitration act in the history of the PRC, was enacted on 31 August 1994 by the National People's Congress. The Act came into effect on 1 September 1995 (hereinafter the CAA 1994). The CAA 1994 applies to both domestic and international

---

14 Ibid.

15 For further reference, Michael Joachim Bonell, *An International Restatement of Contract Law,* 2nd ed, Transnational Publishers, 184-192 and 214-221.

16 Some limitations of the choice-of-law are suitable for China, but some of them are not. We will study this in the following sections.

17 See for further reference, Michael Joachim Bonell, *An International Restatement of Contract Law,* 2nd ed, Transnational Publishers, 192-214 and 214-221.

arbitration in China. According to the CCA 1994, arbitrators must decide the case in accordance with the rules of law. In light of Chinese arbitration practice, arbitrators shall, under the precondition that the decision is in compliance with law, fairly and reasonably make the award on the basis of respecting the contractual agreement of the parties, and with reference to the international practice.

Thus, it is clear that parties who agree to submit to arbitration their contractual disputes may choose the UNIDROIT Principles as the rules of law applicable to the substance of such disputes, excluding thus any particular Chinese domestic law.

International Law: UN Convention for the International Sale of goods-Vienna, 1980

The Convention on Contracts for the International Sale of Goods (CISG), unanimously adopted in 1980 by a diplomatic Conference with the participation of representatives from 62 States and 8 international organizations, has been ratified by 60 countries from the five continents, including almost all the major trading nations.[18]

China is a party -state and the tenth signatory to the Vienna Convention\ . CISG became effective in China on January 1, 1988, pursuant to Article 99(1).[19] As a matter of fact, CISG only regulates the formation of contracts and the rights and obligations of both seller and purchaser. The matters not governed by the CISG rules are under the authority of the general principles of the law applicable by virtue of the conflict rules in force in the forum.

Under Article 1 of CISG, the uniform contractual law applies when the contracting parties are domiciled on the territory of the Convention member-states or, when the conflict rules applicable to the contract determine the application of the law of one of CISG' s signatory states.[20] However, according to Article 6, the parties to the contract can agree to circumvent, wholly or in part, the applicability of the uniform convention law stipulated in the 1980 Vienna Convention.

Because the role of CISG in China is important,[21] it is necessary to compare

---

18 For the list of the Contracting States, as well as more than 500 cases and an exhaustive bibliography on CISG and the UNIDROIT Principles, see <http://www.unilex.info>.

19 Shen Jianming, "The Remedy of Requiring Performance under the CISG and the Relevance of Domestic Rules", in: Arizona Journal of International and Comparative Law (Tucson, AZ) 13.2 (1996) 255-306 [257].

20 China made a declaration to exclude Article 1(1)(b), and make a reservation on the Article 11 and 29.

21 In principle, as China is a Contracting State, the CISG overrides domestic law. Of course, some scholars feel that the words "to override and replace" are far too positive and final, and not sufficiently fluid, and should use the words "to modify or replace". For further comments on relation between CISG and China see, Bruno Zeller, *CISG and China,*< http://www.cisg.law.pace.edu/cisg/text/cisg-toc.html> (10 April 2004).

the UNIDROIT Principles with CISG, in order to see clearly the characteristics of the UNIDROIT Principles and their applicability in China.

II. Comparing CISG and the UNIDROIT Principles[22]

1. The UNIDROIT Principles: a totally new approach to International Trade Law

The twentieth century trend towards the unification of the laws in multinational treaties that govern transnational commerce has its origin in the Middle Ages and the development of *lex mercatoria.* The modern day CISG has its origins in international attempts to create a uniform law for the international sale of goods dating back to the 1930s[23].

As said above, CISG was adopted in a diplomatic conference, and is binding on the contracting states. Due to the differences in legal tradition and, at times even more significantly, in the social and economic structure, some issue had to be excluded at the outside from the scope of CISG, while with respect to a number of other items the conflicting views could only be overcome by compromise, which left matters more or less undecided. Different from CISG, the UNIDROIT Principles are prepared by a private group of experts, and they do not have any legislative power, but are just restating the existing international contract law. Accordingly, the scope of the UNIDROIT Principles is able to cover the general part of contract law, which is different from the scope of the CISG.[24] Finally, during the preparation of the UNIDROIT Principles, the decisive criterion was not which rule had been adopted by the majority of countries, but also which of the rules under consideration had the most persuasive value and/or appeared to be particularly well suited for cross-broader transactions.[25]

---

22 This section is based, in part, on Michael Joachim Bonell, "The UNIDROIT Principles of International Commercial Contracts and the harmonization of international sales law", In: FLETCHER, I. ,MISTELIS, L. ,CREMONA, M. (Eds.), Foundations and Perspectives of International Trade Law, London, Sweet and Maxwell, 2001, pp.298-309.

23 Franco Ferrari, "Uniform Interpretation of the 1980 Uniform Sales Law" (1994) 24 *The Georgia Journal of International and Comparative Law 183, 184.* A comparison of the CISG and the *lex mercatoria* from the perspective of harmonizing international law is also interesting as they represent different approaches to harmonization. The CISG being harmonization by multi-national treaty developed by nation states and administered by the courts (and arbitrators) whereas the lex *mercatoria* was based on mercantile customs, was administered by merchants and had an informal procedure.

24 On the possibility of the UNIDROIT Principles playing the role of general contract law otherwise allotted to a national law, see M.BRIDGE, *The international Sale of Goods: Law and Practice,* 54 et seq. (1999).

25 The former approach is called "common core approach", and the later approach is called "better rule approach". See Michael Joachim Bonell, "The UNIDROIT Principles of International

Generally speaking, due to the difference in nature between the two, their content, scope, and decisive criteria can obviously differ. However, it does not mean the two exclude each other.

CISG and the UNIDROIT Principles: Two Complementary Instrument

First of all, from the preamble of the UNIDROIT Principles, we can determine that their purposes is not to replace CISG or other international uniform law instrument, but just to interpret or supplement them. Secondly, CISG does allow interpretation or supplementation, as stated by Article 7(1) CISG, and Article 7(2) CISG.

Article(1) [I]n the interpretation of this Convention regard is to be had to its international character and to the need to promote uniformity in its application[...]

Article(2) [Q]uestions 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[...][26]

In principle, the UNIDROIT Principles can be used to interpret and supplement CISG. Additional individual provisions can be used to further fill gaps in CISG,[27] so long as they conform with the general principles underlying CISG.[28]

Secondly, if the parties to international sales contracts not governed by CISG stipulate that their contracts are governed by "general principles of law", "*lex mercatoria*" or the like, the UNIDROIT Principles may still be applied as an alternative set of internationally uniform rules. In actual practice, more and more cases are being reported in which the UNIDROIT Principles have been applied as the *lex contractus* of international sales contracts which do not fall within the scope of CISG.[29]

Thirdly, if the parties to the international sales contracts that are governed by CISG state that their contract is governed by the UNIDROIT Principles, we may ask then what is the relationship between the CISG and the UNIDROIT Principles.

Commercial Contracts and the Harmonization of International Sales Law", (2002)36 R.J.T 335.

26 Only in the absence of such general principles does the same article permit as a last resort the reference to the domestic law applicable by virtue of the rules of the private international law.

27 There are also opinions that do not set eye to eye with the fact that CISG can be interpreted on the basis of the UNIDROIT Principles . Such scholars invoke the rather formalistic and not necessary convincing argument that, as the UNIDROIT Principles were adopted later in time than CISG, theis cannot be of any relevance, see: F.SABOURIN (Quebec), in M.J.Bonell (ed.), *A New Approach to International Commercial Contracts,* (Kluwer Law International, 1999), 245.

28 See also, for further reference: M.J.Bonell, *op.cit.*,note 3, p.75-82.

29 Michael Joachim Bonell, "The UNIDROIT Principles of International Commercial Contracts and the Harmonization of International Sales Law",(2002) 36 R.J.T.335,.343.

Essentially we must take into account two situations. In the first one, the parties exclude CISG wholly or in part, in favor of the UNIDROIT Principles. The other situation is when the parties refer to the UNIDROIT Principles as the applicable law, without expressly excluding CISG. Furthermore, we have to always keep in mind that, because of the binding nature of CISG, this set of rules will normally take precedence over the UNIDROIT Principles whenever the requirements for its application are met. In practice, both mentioned situations are unlikely to occur in China. First of all, the majority of Chinese contracting parties prefer to use a certain law, but not a law as particular as the UNIDROIT Principles. Secondly, Chinese parties do quite often exclude CISG, for the same reason, this set of rules being as well regarded as more or less uncertain in China.

Thus, we can conclude that for the contracts governed, and for those not governed by CISG, the UNIDROIT Principles represent not an alternative instrument, but one which is complementary to CISG. As professor Michael Joachim Bonell said:

In conclusion it may well be said that both CISG and the UNIDROIT Principles are the rights instruments at the right time: each one has its own raisond'ĕtre.[30]

B. The UNIDROIT Principles and the Contract Law of China: Shared Values?

The comparison of these systems on one hand reveals numerous similarities among the values that are promoted, notwithstanding the sometimes considerable differences that arise in the deployment of these values.[31] On the other hand, the comparison reveals that the actual role of the UNIDROIT Principles in China is to serve as model for the national legislators. These similarities and differences in the values reflected in the UNIDROIT Principles and the Contract Law of China 1999, and their actual use may best be seen and understood from the perspective of two fundamental themes: Contractual Freedom and Contractual Justice.[32]

I. The Contractual Freedom

The regimes proposed by the UNIDROIT Principles and the Contract Law of China 1999 endeavor, on the one hand, to emphasize the traditional role of

---

30 Id, p.354.

31 See, on this subject, J.GORDLEY, "Comparative Legal Research: Its Function in the Development of Harmonized Law" (1995) 43 Am.J.Comp.L.555.

32 The structure of the chapter is based, in part, on Paul-A. Crépeau, with the collaboration of Élise M. Charpentier, *The UNIDROIT Principles and the Civil Code of Québec: Shared Values?*, (CARSWELL Thomson Professional Publishing).

voluntarism in the formation of contractual relations and, one the other hand, to foster, as much as possible, the stability of contractual relations in the interest of the parties and also of third parties. This may be examined through a study of the doctrines of Consensualism and *Favor Contractus*.

Consensualism

Consensualism involves three distinct issues: the formation of contracts, the freedom of forms and the binding character of contracts.

Formation of Contracts

The regime of consensualism as related to the closing of contracts is explicitly recognized in both the UNIDROIT Principles and the Contract Law of China 1999. In the UNIDROIT Principles, consensualism is formally established in article 1.1, which provides:

The parties are free to enter into a contract and to determine its content.

In China, article 4 of the Contract Law of China 1999 sets forth the same principle:

The parties shall have the right voluntary to enter into a contract in accordance with the law. No entity or individual may illegally interfere with such right.

In the UNIDROIT Principles and the Contract Law of China 1999, two important aspects relating to the realm of consensualism, and concerning the negotiation of contracts should be highlighted.

The UNIDROIT principles, as well as the Contract Law of China 1999, give express recognition to the rule that parties are free to commence negotiate with whomever they please or, alternatively, to refuse to negotiate with anyone. Article 2.1.15 of the UNIDROIT Principles declares:

A party is free to negotiate and is not liable for failure to reach an agreement.

In China, this same freedom of negotiation is also recognized in the aforementioned Article 4.

Freedom of Forms

Freedom of forms is also recognized in both systems. Article 1.2 of the UNIDROIT Principles expressly states the rule:

Nothing in these Principles requires a contract to be concluded in or evidenced by writing. It may be proved by any means, including witnesses.

And provide in Article 1.11 that

[w]riting' means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form."

In China, the same principle is set forth in unmistakable terms. Article 10 of the Contract Law of China 1999:

The parties may conclude a contract in written, oral or other forms.

But there are some restrictions on the form of contract in the Contract Law of China 1999, Article 10.2 states that:

Where the laws or administrative regulations require a contract to be concluded in written form, the contract shall be in written form. If the parties agree to do so, the contract shall be concluded in written form.

This restriction of the general principle was found necessary on account of the existence, in China, of a number of domestic laws and regulations which specifically require contracts to be made in writing (*e.g.*, the Chinese Guarantee Law in respect of guarantee contracts). In practice, furthermore, sometimes the parties may have difficulties y coping with an oral contract, while the courts for their part may not find it easy to settle disputes arising from a contract not transposed to writing. In this sense, the new Contract Law reflects Chinese reality.[33]

The Binding Character of Contracts

Finally, the two systems convergence with regard to the binding force of contracts. Article 1.3 of the UNIDROIT Principles and article 8 of the Contract Law of China 1999:

Article 1.3 of the UNIDROIT Principles stipulates:

A contract validly entered into is binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or as otherwise provided in these Principles.

Article 8 of the Contract Law of China 1999 on the effectiveness of a contract reads as follows:

A contract established in accordance with the law shall be legally binding on the parties. The parties shall perform their respective obligations in accordance with the terms of the contract. Neither party may unilaterally modify or rescind the contract. The contract established according to law shall be under the protection of law.

Although expressed somewhat differently, the two stipulations are almost the same in content.

1. Favor Contract

A second fundamental value which is given prominence in the UNIDROIT

33 Zhang Yuqing, Huang Danhan, "The New Contract Law in the People's Republic of China and the UNIDROIT Principles of International Commercial Contracts: A Brief Comparison" <http://www.unidroit.org/english/publications/review/articles/2000-3.htm > (15 April 2004).

Principles and, to some extent, in the Contract Law of China 1999 is generally referred to as the principle of favor contract. In essence, this principle is intended to favor the validity and performance of contracts-their very survival-rather than nullity or extinction. In particular, *favor contractus* accomplishes this by limiting or mitigating the grounds of nullity, or of termination of contractual relationships.[34] This could be examined from the phase of the formation, and of performance of a contract.

a) Favor Contractus and the Formation of Contracts

According to the traditional rules, some elements must be present during the formation of contracts, otherwise the contract can not be entered into. Now, various articles related to the formation of contracts clearly reveal a desire to soften the effects of traditional rules in a number of different contexts. This is particular true in both the UNIDROIT Principles and the Contract Law of China 1999. However, China has its own reality, and therefore we should accept that some principles are suited to the Chinese situation, and that some seem too difficult for China right now.

The first are the requirements of offer and acceptance. It is common knowledge that, in the matter of formation of contracts, the traditional rules regarding the very notion of a contract imply the necessary - indeed essential - existence of two material elements of consent: an offer and the acceptance of that offer. In the classic conception, it is generally understood that the acceptance is valid only if it corresponds to the offer such as it was made. Otherwise, it must be characterized either as an outright rejection of the offer or as a counter-proposal.[35] However, in the Article 2.1.1 of the Principles provides the following:

A contract may be concluded either by the acceptance of an offer or by conducts of the parties that is sufficient to show agreement.

From Article 2.1.1, the conclusion of a contract may still result, outside of the traditional offer-acceptance rule, if the "conduct of the parties sufficiently points to their agreement" Thus, the failure to prove an offer and its acceptance does not constitute an absolute obstacle to the formation of a contract.

Even though the Contract Law of China 1999 does not have such a rule, it is believed China will follow the tendency set by Article 36 of the Contract Law of China 1999:

When a contract is required to be in written form in accordance with the law and administrative regulations or with the agreement of the parties, the

---

34 Paul-A. Crépeau, with the collaboration of Élise M. Charpentier, *The UNIDROIT Principles and the Civil Code of Québec: Shared Values?,* (CARSWELL Thomson Professional Publishing) 13.

35 Id, p.15.

contract shall be deemed concluded even though it was not in writing, when one party has performed the principal obligation and the other party has received it.

There are some necessary restrictions on the form of contracts in the Contract Law of China 1999 which, however, still leave room for maneuver in their implementation. This approach of upholding the contract notwithstanding its non-compliance with a formal requirement highlights the substantial progress made by the Contract Law of China 1999 in international practice, in harmony with the general philosophy underlying the UNIDROIT Principles

Considering then the requirement of substantial conformity of the acceptance, it is generally acknowledged that, in the classical theory -the mirror image- , of formation of contracts, the meeting of minds requires that a valid acceptance must be expressed as an unequivocal acceptance of the offer. The absence of such a pure and simple acceptance either leads to rejection of the offer or to its being considered a counter-offer. So, about the meaning and form of acceptance, Article 2.1.6 of the UNIDROIT Principles and Articles 21, 22 and 26 of the new Contract Law are the same in content. Both stipulate that acceptance is a statement made by the offeree indicating assent to an offer. Unless based on usages or if the offer indicates that the offeree may indicate assent by its conduct, acceptance shall be by means of notice.

However, in this regard, the UNIDROIT Principles bring the *favor contractus* into this part, by admitting the idea of "substantial" conformity. Paragraph 2 of article 2.1.11 provides the following exception:

However, a reply to an offer which purposes to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance [...]

China does not bring the favor contractus into this part, it is understandable. The Chinese "legal environment" is leaves quite a few things to be desired. . More preciselly, the legal system is not perfect enough, the legal concepts are not strong enough and, moreover both the legislative process and the quality of judges is not high enough to decide equally the concept of "substantial" conformity.

b) *Favor Contractus and the Performance of Contracts*

The UNIDROIT Principles are inspired by *favor contractus* not only with respect tothe time of formation of contracts, but also at the stage of the performance of contracts. According to the classical theory of the binding force of contracts, which has been adopted explicitly by the UNIDROIT Principles, contractual obligations must be honored according to the terms by which they have been assumed. Consequently, if a debtor fails without justification to perform his or her obligation, the creditor can avail himself or herself of various remedies. Termination is one of the serious ones. Can the remedy of termination be used

freely? The question may, however, be raised as to whether there is any place for *favor contractus*, in the event of non-performance.[36]

The problem has received a solution in the UNIDROIT Principles by introducing the concept of two fundamental, one is in the situation of hardship, and the other one is in the situation of fundamental non-performance of contracts. For the former, article 6.2.3 of the UNIDROIT Principles is inspired by *favor contractus*: In the event of an occurrence of unforeseeable events "that fundamentally alter the equilibrium of the contract", the UNIDROIT Principles allow the injured party to demand, without undue delay, the reopening of negotiations in order to reestablish the equilibrium. For the latter, the UNIDROIT Principles states expressly in the Article 7.3.1(1):

A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.

The drafters of the Contract Law of China 1999 did initially include such a provision for the change in circumstances which was drawn from the definition and effects of hardship provided by the UNIDROIT Principles. It gave the disadvantaged party the right to request the other party to renegotiate the content of the contract and, if an agreement would not be reached, to sue in court for the modification or terminatio of the contract. However, finally, the concept of "change of circumstances" was dropped from the new Contract Law. It was reasonable for such a provision to not be introduced in China, given its vague nature and its aptitude to create uncertainty into the current Chinese system.

The concept of "non-performance" illustrated by Chapter 7 of the UNIDROIT Principles is regarded as "breach of contract" in Chinese legal thinking. Some of the rules set forth in Chapter 7 of the new Contract Law, entitled "Liability for Breach of Contract" (Articles 108-112, 114 and 118-120), closely resemble those set forth in the UNIDROIT Principles, in particular as regards non-performance of monetary obligations, non-performance of non-monetary obligations, anticipatory non-performance, cure and replacement of defective performance, right to damages, agreed payment for non-performance, *force majeure*, mitigation of harm, and harm due in part to aggrieved party.[37]

II. Contractual Justice

As Professor M.J. Bonell said in his book entitled *An International*

---

36 Id, p.33.

37 Zhang Yuqing, Huang Danhan, "The New Contract Law in the People's Republic of China and the UNIDROIT Principles of International Commercial Contracts : A Brief Comparison" <http://www.unidroit.org/english/publications/review/articles/2000-3.htm > (10 April 2004).

Restatement of Contract Law: the UNIDROIT Principles of International Commercial Contracts:

[...]contract between merchants are concluded only by experienced and competent professionals acting in accordance with well-established principles of fair dealing.

On the contrary, he continues:

This assumption is increasingly being questioned, in view of the fact that business people also may have different levels of education and technical skill and are no less likely than the rest of humanity to yield to the temptation to exploit the weakness or needs of others.

These disparities are often even more apparent in the presence of different countries at different stages of development in respect of skill, experience and resources. Hence, it is in the spirit of contractual justice, which aims at establishing a just equilibrium between obligations, that the UNIDROIT Principles have been developed.[38]

Both the UNIDROIT Principles and the Contract Law of China 1999 provide a number of rules inspired by the ideal of contractual justice, as a fundamental value. However, a close examination of relevant articles of the UNIDROIT Principles and the Contract Law of China 1999 reveals a preoccupation with contractual justice,, from three perspectives: Public Order, Good Faith, and the Promotion of Reasonableness.

Public Order

Article 1.5 of the UNIDROIT Principles states that:

The parties may exclude the application of these Principles or derogate from or vary the effect of any of their provisions, except as otherwise provided in the Principles.

Other illustrations of imperative rules are article 1.7 relating to the requirements of good faith; article 3.9 concerning the conditions for the validity of a contract relating to fraud, constraint and excessive advantage; article 5.1.7 (2) affecting the replacement of a manifestly unreasonable price; article 7.1.6 relating to examination clauses that would be "grossly unfair" to invoke; article 7.4.13 concerning the excessive character of a previously agreed upon compensation.

Article 3.1 of the UNIDROIT Principles specifies:
These Principles do not deal with invalidity arising from
lack of capacity;

---

38 See the UNIDROIT Principles, art.1.7 and the Comment.

immorality or illegality

As a result, insofar as these questions affect the parties' freedom to contract, they will be governed by the law applicable to the contract according to the relevant system of conflicts of laws. This follows from article 1.4 of the UNIDROIT Principles:[39]

Nothing in these Principles shall restrict the application of mandatory rules, whether of national, international or supranational origin, which are applicable in accordance with the relevant rules of private international law.

In Contract Law of China 1999, the principle of public order can be found in the general provision, article 7:

In concluding and performing a contract, the parties shall abide by the laws and administrative regulations, observe social ethics. Neither party may disrupt the socio-economic order or damage the public interests.

Good Faith

The principle of good faith constitutes yet another fundamental value that the UNIDROIT Principles and the Contract Law of China 1999 have expressly attempted to promote: Article 6 of the Contract Law of China 1999 states that

[t]he parties must act in accordance with the principle of good faith, whether exercising rights or performing obligations.

while Article 1.7 of the UNIDROIT Principles stipulates that

(1) [e]ach party must act in accordance with good faith and fair dealing in international trade. (2) The parties may not exclude or limit this duty.

Even though the meaning of good faith can be very different from legal system to legal system, the basic principles in the Contract Law of China 1999 and the UNIDROIT Principles are much alike.

Promotion of Reasonableness

Reasonableness is not a concept easy to define. Understandably, no definition of the term is found in legislative texts. However, in dictionaries as well as in common parlance, the term applies as much to the persons as to things. According to the *Oxford University Dictionary,* the term reasonable, as applied to persons, means: "2. Having sound judgment; sensible; sane… " As applied to things, it means: "5.Of such an amount, size, number, etc., as is judged to be appropriate or suitable to the circumstance or purpose"[40]

---

39 An example is to be found in the UNIDROIT Principles regarding the regime of authorizations that may, in some cases, affect the validity or the performance of the contract: see the UNIDROIT Principles, arts.6.1.14 to 6.1.17.

40 See Paul-A. Crépeau, with the collaboration of Élise M. Charpentier, *The UNIDROIT Principles and*

In fact, according to the UNIDROIT Principles, nearly everything and everyone must be reasonable. One might well conclude that, according to the basic philosophy behind the UNIDROIT Principles, an international commercial contract is to be defined as the meeting of reasonable minds concerning reasonable obligations likely to correspond to the reasonable expectations of the parties.[41] An analysis of the provisions of the UNIDROIT Principles reveals that the ideas of reasonableness , which is referred to, 53 times in the UNIDROIT Principles, concerns a wide range of situations that may be grouped into two categories, according to how this notions concerns persons or things.[42]

In the Contract Law of China 1999, the word "reasonable" appear 9 times, the word "unreasonable" once. Article 23 (2) "reasonable period of time", Article 39 "reasonable way", Article 94 "reasonable time", Article 110(3) "reasonable time" Article 118 "reasonable time", Article 119 "reasonable expense", Article 158 "reasonable time", and Article 74 "unreasonable low price".

From the above, we can find that the Contract Law of China 1999 uses the word "reasonable" very carefully. After all, reasonableness adds, undoubtedly, a margin of flexibility, but of course, at the price of uncertainty. At what point might this price be too high?

III. Partial Conclusion

This comparative analysis of the values that serve as a basis of the UNIDROIT Principles and the Contract Law of China 1999 shows indisputably that, despite occasionally important differences in implementation, one find plenty of similarities. The Contract Law of China 1999 has assimilated many of the general rules set forth by the UNIDROIT Principles. Of these, many are new to the Chinese contract system, no equivalent rules having existed in the three former Contract Laws.[43]

Both the UNIDROIT Principles and the Contract Law of China 1999 follow the idea that contract stability necessarily advances the respect for contractual justice. However, on one hand, due to the fact that China has its own situation for the implementation of such values and ideas, the Contract Law of China 1999 can not be entirely the same as the UNIDROIT Principles. The other countries

---

the Civil Code of Québec: Shared Values?,(CARSWELL Thomson Professional Publishing) 133.

41 Id. 135.

42 On this subject see id.135.above.

43 Zhang Yuqing, Huang Danhan, "The New Contract Law in the People's Republic of China and the UNIDROIT Principles of International Commercial Contracts : A Brief Comparison" <http://www.unidroit.org/english/publications/review/articles/2000-3.htm > (25 April 2004).

form no exception. On the other hand, from the above comparison between the UNIDROIT Principles and the Contract Law of China 1999, we can conclude that the UNIDROIT Principles stand for the trend of the international commercial contract and the fact that China will assimilate only what is suitable to its situation.

Of course, we should not ignore that China also contributed and is contributing to the UNIDROIT Principles. The new Contract Law also touches upon some issues such as agency, set-off, third party rights under contracts, assignment of contractual rights and duties, and limitation of action by prescription, all of which are now under the consideration by the UNIDROIT Working Group for the Preparation of a second volume of the Principles of International Commercial Contracts.[44]

This Chinese experience is a convincing example of the UNIDROIT Principles' role as a model for national legislators. This is an actual use of the UNIDROIT Principles in China.

C. Some Extrinsic Elements Influencing the Future Role of UNIDROIT Principles and the Feasible Use in Practice of the UNIDROIT Principles in the near future in China

I. Some Extrinsic Elements Influencing the Future Role of UNIDROIT Principles in China

1. Globalization and the UNIDROIT Principles in China

a) Background

The term "globalization", and even its existence, is contested.[45] But globalization is not new. The emergence of the "global village" or the expression that "the world is becoming smaller and smaller" has vividly reflected peoples' understanding of globalization. Globalization mainly refers to globalization of the economy and information, which is also described as "a transnational and cross-national-boundary force in operation on a global scale-a phenomenon we have already clearly perceived"[46]

Since 1978, China has adopted the as a key guideline the advancement of

---

44 Ibid.

45 For further comment on this subject see Robetson, R., *Globalization: Social Theory and Global Culture,*(London: Sage, 1992); See Hirst, P. and Thompson, G., *Globalization in Question: The International Economy and the Possibilities of Governance.* (Cambridge, England: Polity Press, 1996); See Giddens,A., *The Consequences of Modernity.* (Cambridge, England: Polity Press, 1990). And also see Friedman, L.M., "Erewhon: The coming global legal order", *Stanford Journal of International Law,* 37(2001), 347-364.

46 Li Shenzhi, "Globalization and Chinese Culture" in American Studies, Vol. 4, 1994.

economic development, and has upheld the policy of opening-up to the outside world. A series of economic structural reforms has been carried out. China's economy has gradually blended in with the process of globalization. The process of integration in the world economy has had a great influence upon the realization of objectives and reform and development in China. The Chinese economy has obtained a steady growth rate, and the degree of interdependency on global economy is enhanced constantly. The practice of reform and opening-up to the outside world has proven that the development of the Chinese economy in the past 20 years is closely bound up with the globalization of world economy, and "(China) cannot develop in the future without the world, while further growth of the global economy, to a great extent, also depends on the huge market in China".[47] The merging of China with the whole world has indeed, accelerated the course of globalization.[48]

The harmonization and unification of some areas of international economic law seems to have accelerated in recent years, legal practice is increasingly transnational in scope, international business arbitration is flourishing, and a host of global economic institutions(most prominently, the World Trade Organization) function to provide an emerging legal framework for global economic life. [49]The ongoing process of economic globalization is accompanied by what Martin Shapiro has aptly described as the "globalization of law" according to which "the whole world increasingly lives under a single set of legal rules".[50]

b) Impact of the Globalization on the law of China

Globalization and the development of new legal forms and regimes during the past half century have gone hand-in-hand. The globalization of the economy and information has exerted an unprecedented influence upon the law. In the face of the globalization of the world's economies and the growing importance that foreign investment and international commerce have for the gross national product of virtually all of the countries of the world, the law must evolve into an instrument which facilitates commercial transactions and not remain an obstacle to those transactions. Accordingly, Globalization has sped up international

---

47 "Making use of every civilized achievement to develop a socialism with Chinese characters", *People's Daily*, Aug. 28, 1997.

48 See Li Lin, "Globalization and the Development of Legislation in China" <http://www.iolaw.org.cn/showarticle.asp?id=532 > (2 March 2008).

49 For a conception of the idea of "international economic law", see Herdegen, Matthias, *Internationals Wirtschaftsrecht,* (Munich: C.H.Beck, 1995).

50 See Shapiro Martin . "The Globalization of Law", 1993 *Indiana Journal of Global and Legal Studies1* 37-64.

legislation, particularly legislation in the field of international commerce and trade.[51] While posing a challenge to traditional international law, globalization has made a notable impact on domestic legislation. With regard to legislation in China, the impact of globalization is tremendous. In domestic legislation, China has learned more from some foreign laws incorporating or even transplanting some of these laws, and has gained successful experience in the field of international legislation. In the field of economic legislation, China has paid more attention to the adaptation of China domestic law to international legislation and has been conducting economic affairs according to international practice. [52]

c) The influence on the UNIDROIT Principles in China

As Qiao Shi, President of the National People's Congress has pointed out: in order to expedite the establishment of a socialist legal system of a market economy, it must be "based on the situation in China, and boldly draw on and make use of experience of other countries.... We must be ready to absorb those that are advanced and suitable to our present conditions. Even detours some countries have undergone are worthy of our notice. For some legal provisions suitable to us, we can transplant them directly, and later on, enrich and improve them in practice".[53] , Simply put, if China conforms to the trend of history, the expense should be lower than if China does not .[54]

The future of the UNIDROIT Principles depends to a great extend on their flexibility. We know that UNIDROIT is committed to updating the UNIDROIT Principles on a periodic basis to avoid the risk that they may have the effect of "freezing" the *lex mercatoria*, thus damaging its dynamism and evolution. So if UNIDROIT makes the same effort to update the UNIDROIT Principles as it

---

51 According to statistics, by the end of 1995, there were more than 900 agreements concerning promotion and protection of investments signed by various states, among them, almost 60% were concluded in 1990. In the period between 1994 and 1995 alone, 299 agreements were concluded, a figure exceeding the total number of agreements of this type signed in 1960 and 1970, See Xu Chongli, "Integration of World Economy and Trend of Development of Late International Economic Legislation", In Studies of Law and Commerce, No. 5, 1996.

52 For instance, the principle of presumption of innocence was included in the 1996 revised Criminal Procedure Law of the People's Republic of China; and internationally recognized principles of equality before the law, a prescribed punishment for a specified crime and principle that punishment should fit the crime were confirmed in the 1997 revised Criminal Law of the People's Republic of China. See Li Lin, "Globalization and the Development of Legislation in China" <http://www.iolaw.org.cn/showarticle.asp?id=532 > (2 March 2008).

53 Qiao Shi, "Establishing A Framework of Socialist Legal System of Market Economy", in Laws in China, first issue of 1994.

54 Wang Gui Guo, "Economic Globalization and the preference of the reform of China legal system", in Chen An (ed.) *Tribune of International Economic Law* (Law Press, 2000,8),4.

did drafting them, the UNIDROIT Principles shall be suitable to the time and be suitable for China.

The Policy of Government of China and the UNIDROIT Principles

To date, the Chinese Government has signed bilateral trade agreement or treaties with the governments of 100 countries or regions, and has signed or joined nearly 100 international economic and trade treaties.

As to trade agreements, the Chinese Government has signed government trade and payment agreement with governments of many countries. Under the agreements both sides defined the basic principles on trade relations, that is, contracts on import and export commodities shall be negotiated and signed by trade companies of both sides and loans shall be paid in cash, with settling accounts by charging to accounts done for a few isolated countries.

About multilateral international economic treaties, The Chinese Government has joined many international economic and trade conventions, and recognized and adopted many internationally accepted trade practices, laws and regulations or exemplary methods.[55] Chinese government always actively participates in activities to unify international trade law. Since 1979, China has been engaged in coordinating and unifying trade laws of various countries. In 1983, China became a member country of the United Nations International Trade Law Commission. It has joined a number of governmental international organizations including the International Unified Private Law Association, The Hague International Private Law Conference and the Asia-African Law Consultative Commission. It joined the Chamber of International Commerce in 1994. With the steady growth of China's foreign trade and economic cooperative relations, the Chinese Government decided on July 10, 1986, to apply for restoring China's status as a signatory state in General Agreement on Tariff and Trade (GATT), Now, China has already be a member of the World Trade Organization (WTO). [56]

On the whole, the winds of change, blown by the world globalization and political and economic liberalism, tend to foster a redefinition of the state monopoly on law creation and the administration of justice, opening new fields where the use of non-legislative sources, such as the UNIDROIT Principles, can prove to be more adapted to the governance of transnational contracts.

---

55 Generally speaking, these are commodity, sales contracts, financial institutions and treaties, customs, international transportation, common practices in international trade, and participating in activities to unify international trade law. For further comments on this subject see "International Economic and Trade Treaties China has Signed or Joined", < http://jimzheng.4mg.com/law/treaty.htm> (10 April 2004).

56 Ibid.

II. Some Feasible Use of the UNIDROIT Principles in the near future China

1.The UNIDROIT Principles in Contract Negotiation and Drafting

The application of the UNIDROIT Principles in international contract negotiations and drafting in the near China is possible. From previous analysis, the UNIDROIT Principles-based on limited perception- are not often used as the rules providing the governing law of the contract or as rules incorporated into the contract. This does not mean that the UNIDROIT Principles can not be used in the other way during contractual negotiations and drafting in the near future in China. Right now, the UNIDROIT Principles are quite well known by company lawyers of companies having international operations as well as by lawyers frequently engaged in international transactions. As the quality of judges and lawyers is improved, this trend will be more evident.

The most probable way the UNIDROIT Principles will be applied in China in contract negotiation and drafting is that they will be used as a checklist, or as a source of additional information for finding appropriate wording for contract clauses, or for finding appropriate solutions. Of course, the UNIDROIT Principles will meet some resistances in China. One of the main reasons is the conservatism. Parties in standing business relationships will continue to use the contracts they are used to and will not change these by incorporating the UNIDROIT Principles. Simultaneously, the parties may prefer certainty and predictability by drafting their own clauses based on experience rather than relying on the flexibility and open-ended rules of the UNIDROIT Principles [57]. From another angle, if the parties are in unequal bargaining positions with asymmetric business relationships, the balanced rules of the UNIDROIT Principles may then not be suited to the market conditions of any such deal.

2. The UNIDROIT Principles for Teaching Purpose

The UNIDROIT Principles are not yet taught as compulsory courses in contract law and the law of obligations, but are only mentioned after the CISG in the course of international economic law in most universities. So the UNIDROIT Principles are facing competition from the CISG in China. Based on the limited perception, it is only possible to study the legal nature and the contents of the UNIDROIT Principles in some graduate programs in China. [58]

---

57 See Filip De Ly, "Netherlands" in M.J.Bonell (ed.), *A New Approach to International Commercial Contracts,*(Kluwer Law International, 1999), 213.

58 Until now, China does not have postgraduate programs, but it is very likely that they will be soon introduced

With the development in economics and education, more and more law courses tend to include international perspectives. Meanwhile many universities are providing international exchange programs and legal courses with classes and literature in English. The UNIDROIT Principles can be a good introduction to international contract law. They serve as a starting point for comparing different legal system. UNIDROIT Principles are particularly useful since they focus on functions rather than structures of law, which will influence students' way of thinking in a positive way. [59]

In the future the UNIDROIT Principles and other similar international instruments, such as CISG, will probably cause attention in law education. This in the long run is a means of creating harmonization.

3. The UNIDROIT Principles in Scholarly Writings

Recently, the UNIDROIT Principles have been gradually accepted in Chinese legal research. The pioneer in this respect is Huang Dan Han, Member of the Working Group for the Preparation of the UNIDROIT Principles of International Commercial Contracts. Other scholars have also made further contribution to this field. Jiang Ping pointed out the importance of merging and absorbing some traditions of common law system even though the model of civil code is belonged to the civil law system while discusses the problems of enacting the Civil Code of China. He cited the UNIDROIT Principles as the successful evidence for the conversation between the Civil law system and Common Law system.[60]

A major attention of them was paid to the comparison between the CISG and the UNIDROIT Principles. And almost all the articles conclude that both the CISG and the UNIDROIT Principles are two complementary instruments. [61]

In his comparative research between the UNIDROIT Principles and the Contract Law of China., Huang Dan Han took on the responsibility of comparing General provisions, formation, validity of the contract, performance of the contract and non-performance in June 1998, before the official publication of the new Chinese Contract Law, promulgated on 15 March 1999 and which came into effect on 1 October 1999.[62] Ren Rong Ming did the comparisons between

---

59 See Christina Hultmark, "Sweden", in M.J.Bonell (ed.), *A New Approach to International Commercial Contracts,* (Kluwer Law International, 1999), 308.

60 Jiang Ping, "Some macroscopic considerations on the enacting the Civil Code of China" <http://www.law-thinker.com/detail.asp?id=1010 > (10 April 2004).

61 Zhang Zhao Dong and Ye Yong "The Development of the Unification of International Commercial Contract--Compare the CISG with the UNIDROIT Principles" <http://www.51lw.com/article/law/110.htm > (16 April 2004).

62 Huang Dan Han, "China Report" in M.J.Bonell (ed.), *A New Approach to International Commercial Contracts,* (Kluwer Law International, 1999).

the UNIDROIT Principles and the 3 former Contract Law of China from view of inspiration of the UNIDROIT Principles to make the new contract law. In his article, he comparatively analyzed the shortcomings of the 3 former contract law of China, the advantages of the UNIDROIT Principles mainly from the general provisions of the contract, formation of the contract, validity of the contract especially the invalidation of the contract, interpretation of the contract, and also performance and non-performance of the contract.[63]

However, there is undoubtedly large room for Chinese scholars to study UNIDROIT Principles. Many fields need to be further discussed. For example, scholars seldom discuss the legal nature of the UNIDROIT Principles from the angle of China's legal system, which is a fundamental issue in China. Scholars haven't paid enough attention to the actual use or applicability of the UNIDROIT Principles in China. Further studies need to study the UNIDROIT Principles from different angles, i.e studying the legal nature of the UNIDROIT Principles from a conflict of laws perspective,[64] and not just from a contractual angle. Though many scholars study comparatively the UNIDROIT Principles, CISG and the Contract Law of China, we still have to go deeper with the analysis to understand the reasons of the differences between them.

D. Conclusion: Some suggestions for the potential user of the unidroit principles in China

After comparing the UNIDROIT Principles with United Nations Convention on Contracts for the International Sale of Goods, we can see that both the UNIDROIT Principles and CISG have their own specialties in China. Neither can be substituted. After comparing the UNIDROIT Principles with the Contract Law of China, we can find that some fundamental values are shared between them, and that the UNIDROIT Principles have an actual use in Chinese legislation.

Considering the impact of global economization and the influence of the policy of China's government, we see the feasible use of the UNIDROIT Principles in China, for example, in the field of contract negotiation and drafting, in the field of teaching, and in the field of scholarly writings.

In view of the above, the suggestions for the potential user of the

---

63 Ren Rong Ming, "The Inspiration of the UNIDROIT Principles of the International Commercial Contracts to the Contract Law of China" *Legal Study1998.7, 47-49.*

64 Professor Boele-Woekli pays attention to the legal nature of the UNIDROIT Principles from the point of view of conflict law, see Boele-Woelki, "Principles and Private International Law" (1996) *Unify*. L.Rev. 652-678.

UNIDROIT Principles in China could be: first, China should adjust its attitude to the unification of the international commercial contract. Since the main theories and regulations of the international business are still "western styled", it is to anastomose with these theories and regulations and even receive these for China joins in the WTO. If countries seek to take part in the unification of law, those countries should abandon, more or less, some of their own traditions without exception to anyone. From the other hand, as the development of those developing countries, their legal cultures also affect those western regulations. , Thus, the convergence of different legal theories and different legal systems, , represent the main focus of the unification of law. . But no achievement comes without a cost. If those achievements, such as increased efficiency or a better international exposure are more valuable than their cost for example losing some traditions, we should have the courage to make such changes. We should thus implement what is profitable for the people.

If such changes should occur, China should strive to effectively research them and their consequences. . Some scholars admonish that many Chinese businessman are always in an adverse and passive position during international trade, and sometime is easy to be deceived or to lose cases. The key reason is that China has not understood and managed well enough these western-style regulations China has to better understand such regulations, to use them efficiently during international trade.[65]

Lastly, China should scientifically choose the rules for the contract, and pay attention to economical effectiveness. Even though the UNIDROIT Principlespresent many advantages, they are relatively unfamiliar to many Chinese. Comparatively, CISG is much more well-known. However, its shortcomings are also obvious. Chinese people can choose China's contract law, which belongs to them. Likewise, Chinese people should also realize the shortcomings of the UNIDROIT Principles in the filed of protecting the weak parties, and the fact that many foreigners are not familiar with them. . Accordingly, in the negotiation phase, if Chinese people insist on using the Contract Law of China, it is likely to hinder the final success of the UNIDROIT Principles in this country. Considering the choice of laws, Chinese people have to consider whether such choice is suitable in international trade, and whether their legal interest can be well protected.

References:

Boele-Woelki, "Principles and Private International Law" (1996) Uniform

65 Yang Liang Yi, The Game Regulation of the International Business, (China University of Political Science and Law Press,1998), 1

Law Review 1996, pp. 652-659.

Bruno Zeller, "CISG and China", http://www.cisg.law.pace.edu/cisg/text/cisg-toc.html

Chen Xuebin, "China Enacts a New Contract Law for the New Millennium", http://www.international-relations.com/cm4-1/WbChineseLaw.htm

Christina Hultmark, "Sweden", In: M.J.Bonell (ed.), A New Approach to International Commercial Contracts, Kluwer Law International, 1999, pp.301-330.

E. Lorenzen, Selected Articles on the Conflicts of Laws, Yale University Press, 1947.

Filip De Ly, "Netherlands" In: M.J.Bonell (ed.), *A New Approach to International Commercial Contracts,* Kluwer Law International, 1999, PP.203-235.

Franco Ferrari, "Uniform Interpretation of the 1980 Uniform Sales Law" (1994) 24 The Georgia Journal of International and Comparative Law, pp.183-184.

Friedman, L.M., "Erewhon: The coming global legal order", Stanford Journal of International Law, no. 37, 2001, pp.347-364.

Giddens,A., "The Consequences of Modernity", Cambridge, England: Polity Press, 1990.

Gonzalo Parra-Aranguren, "Conflict of Law Aspects of the UNDIORT Principles of International Commercial Contracts" , Tul.L.Rev., no. 69,1995, pp.1239-1241

H.Patrick GLENN, "Legal Traditions of the World: Sustainable Diversity in Law", Oxford/New York, Oxford University Press, 2000.

Herdegen, Matthias., "Internationals Wirtschaftsrecht", C.H.Beck, 1995.

Hernany Veytia, "The Requirement of Justice and Equity in Contracts", Tul. L. Rev., no. 69, 1995, pp.191-193.

Hirst, P. and Thompson, G., "Globalization in Question: The International Economy and the Possibilities of Governance", Cambridge, England, Polity Press, 1996.

Huang Danhan, "China Report",In: M.J.Bonell (ed.), A New Approach to International Commercial Contracts, Kluwer Law International .1999, pp.65-70.

J. Gordley, "Comparative Legal Research: Its Function in the Development of Harmonized Law", Am. J. Comp. L, no. 43, 1995, p.555.

Jiang Ping, "Some macroscopic considerations on the enacting the Civil Code of China", http://www.law-thinker.com/detail.asp?id=1010

Li Lin, "Globalization and the Development of Legislation in China", http://www.iolaw.org.cn/showarticle.asp?id=532

Li Shenzhi, "Globalization and Chinese Culture", American Studies, no. 4, 1994, pp.126-139.

M.Bridge, "The international Sale of Goods: Law and Practice", Oxford

University Press, 1999.

Michael Joachim Bonell, "An International Restatement of Contract Law", 2nd ed. Irvington-on-Hudson, New York 1997.

Maritime Law of China 1992, http://www.publishing.eur.nl/ir/repub/asset/6943/14.pdf

Michael Joachim Bonell, "The UNIDROIT Principles of International Commercial Contracts and the harmonization of international sales law", In: FLETCHER, I., MISTELIS, L. ,CREMONA, M. (Eds.), Foundations and Perspectives of International Trade Law, London, Sweet and Maxwell, 2001, pp.298-309.

Michael Joachim Bonell, "The UNIDROIT Principles of International Commercial Contracts: Why? What? How?", no.69, 1995, Tul.L.Rev., pp.1121-1124.

Michael Joachim Bonell, "The UNIDROIT Principles of International Commercial Contracts-Nature, Purposes and First Experiences in Practice", http://www.unidroit.org/english/principles/pr-exper.htm

Negotiable Instruments Law of China 1995, http://www.lawinfochina.com/law/display.asp?id=462

Paul-A. Crépeau, with the collaboration of Élise M. Charpentier, "The UNIDROIT Principles and the Civil Code of Québec: Shared Values?", Carswell Thomson Professional Publishing,1998.

Ren Rong Ming, "The Inspiration of the UNIDROIT Principles of the International Commercial Contracts to the Contract Law of China" no 7, 1998, Legal Study, pp. 47-49.

Robetson, R., "Globalization: Social Theory and Global Culture", London: Sage, 1992.

Shapiro Martin. "The Globalization of Law", Indiana Journal of Global and Legal Studies, 1993, pp. 37-64.

Shen Jianming, "The Remedy of Requiring Performance under the CISG and the Relevance of Domestic Rules", Arizona Journal of International and Comparative Law, no. 13, 1996, pp.255-306.

Wang Guiguo, "Economic Globalization and the preference of the reform of China legal system", In: Chen An (ed.), Tribune of International Economic Law, no.3, Law Press, 2000, pp.1-14.

Xu Chongli, "Integration of World Economy and Trend of Development of Late International Economic Legislation", Studies of Law and Commerce, no. 5, 1996, pp.16-21.

Yang Liang Yi," The Game Regulation of the International Business", China University of Political Science and Law Press, 1998.

Zhang Yuqing, Huang Danhan, "The New Contract Law in the People's

Republic of China and the UNIDROIT Principles of International Commercial Contracts: A Brief Comparison" http://www.unidroit.org/english/publications/review/articles/2000-3.htm

Zhang Zhao Dong and Ye Yong "The Development of the Unification of International Commercial Contract--Compare the CISG with the UNIDROIT Principles", http://www.51lw.com/article/law/110.htm