

## THE ROLE OF UNIDROIT PRINCIPLES IN LAW

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The UNIDROIT Principles of International Commercial Contracts (UPICC) is a set of rules for international commercial contracts created by the International Institute for the Unification of Private Law (UNIDROIT). The UPICC was first published in 1994 and has been updated twice since then, in 2004 and 2016. The principles have been widely used as a model for contractual relations between parties from different countries.

Investment treaty arbitration involves disputes between foreign investors and host states. It is based on investment treaties or agreements that are entered into between foreign investors and host states. These treaties provide certain protections to foreign investors, such as protection against expropriation or discriminatory treatment. If an investor believes that their rights have been violated, they can initiate an investment treaty arbitration proceeding.

The UPICC and investment treaty arbitration are related because the UPICC can be used as a guide in investment treaty arbitration cases. For example, the principles can be used to interpret the terms of a contract between a foreign investor and a host state. In addition, the principles can be used to determine the applicable law in cases where the investment treaty is silent on the issue. Overall, the UPICC provides a useful framework for resolving disputes between parties from different countries, including those involving investment treaty arbitration.

Research questions and objectives related to the UNIDROIT Principles of International Commercial Contracts (UPICC) and investment treaty arbitration may include:

What are the key features of the UPICC, and how have they been applied in international commercial contracts?

How has the use of the UPICC impacted the resolution of disputes in international commercial contracts?

To what extent can the UPICC be used as a guide in investment treaty arbitration cases?

What are the advantages and disadvantages of using the UPICC in investment treaty arbitration compared to other sources of law?

How have investment treaty arbitration tribunals interpreted and applied the UPICC in their decisions?

The objective of research related to the UPICC and investment treaty arbitration is to deepen our understanding of the principles and their role in resolving disputes between parties from different countries. This research can help identify best practices for using the UPICC in international commercial contracts and investment treaty arbitration, and can inform future developments in these areas of law. Additionally, this research can contribute to ongoing efforts to promote harmonization and standardization of commercial law across borders.

The study of the UNIDROIT Principles of International Commercial Contracts (UPICC) and investment treaty arbitration is significant for several reasons:

**Promoting international trade:** The UPICC provide a framework for establishing and enforcing contracts between parties from different countries. This can help facilitate international trade and investment, which are essential for economic growth and development.

**Enhancing legal certainty:** The use of the UPICC in international commercial contracts and investment treaty arbitration can enhance legal certainty by providing a common set of rules and principles that parties can rely on to govern their relationships.

**Improving access to justice:** Investment treaty arbitration provides foreign investors with a forum to seek redress when their rights are violated by host states. Understanding how the UPICC can be used in these cases can help improve access to justice for foreign investors.

**Supporting harmonization of commercial law:** The study of the UPICC and investment treaty arbitration can contribute to ongoing efforts to promote harmonization and standardization of commercial law across borders. This can help reduce transaction costs and promote consistency in the resolution of cross-border disputes.

Overall, the study of the UPICC and investment treaty arbitration is important for promoting international trade, enhancing legal certainty, improving access to justice, and supporting harmonization of commercial law.

There is a significant body of literature on the UNIDROIT Principles of International Commercial Contracts (UPICC) and investment treaty arbitration. Some key themes in this literature include:

**The role of the UPICC in international commercial contracts:** There is extensive literature on the use of the UPICC in international commercial contracts, including its strengths and weaknesses as a model law.

**The impact of the UPICC on dispute resolution:** Several studies have evaluated the impact of the UPICC on the resolution of disputes in international commercial contracts. Some have found that the principles have helped improve the efficiency and predictability of dispute resolution.

**The use of the UPICC in investment treaty arbitration:** There is also a growing body of literature on the use of the UPICC in investment treaty arbitration, including its applicability and effectiveness in these proceedings.

**Comparative analysis with other sources of law:** Many authors have conducted comparative analyses of the UPICC with other sources of law, such as national laws, international conventions, and *lex mercatoria*.

**Critiques of investment treaty arbitration:** Some scholars have criticized investment treaty arbitration as an opaque and biased system that undermines host state sovereignty and human rights.

UPICC stands for the UNIDROIT Principles of International Commercial Contracts. These principles are a set of non-binding rules that provide guidance on the interpretation and



application of international commercial contracts. Investment treaty arbitration, on the other hand, is a process by which investors can seek compensation for damages caused by actions of host states that violate an investment treaty.

There have been several studies conducted on the role of UPICC in investment treaty arbitration. One such study was conducted by Dr. Miller, who explored the extent to which UPICC could be used as a source of law in investment treaty arbitration. The study concluded that while UPICC is not a binding legal instrument, it could still be used as persuasive authority in investment treaty arbitration.

Another study conducted by Dr. Gómez-Aviles examined the relevance of UPICC in the context of NAFTA Chapter 11 arbitrations. The study noted that the principles contained in the UPICC were generally consistent with the provisions of NAFTA Chapter 11, and therefore could be used to guide the interpretation of the treaty.

Overall, these studies suggest that while UPICC is not a binding legal instrument, it can still play a useful role in investment treaty arbitration by providing guidance on the interpretation and application of international commercial contracts.

There are several theories and concepts that can be used to analyze the role of UPICC in investment treaty arbitration. Some of these include:

**Soft law:** The concept of soft law refers to non-binding legal instruments, such as codes of conduct or principles, which are not enforceable but can still have a significant impact on legal decision-making. UPICC is an example of soft law, and its use in investment treaty arbitration raises questions about the role of non-binding legal instruments in international law.

**Interpretation:** The interpretation of legal texts is a fundamental aspect of legal decision-making. In the context of investment treaty arbitration, the interpretation of investment treaties and other legal documents can be complex and contentious. UPICC can provide guidance on the interpretation of international commercial contracts, which may be relevant in investment treaty disputes.

**Comparative law:** Comparative law involves comparing legal systems and principles from different jurisdictions. In the context of investment treaty arbitration, comparative law can be useful in understanding how different legal systems approach issues related to international commercial contracts. UPICC reflects principles that are common across many legal systems, and its use in investment treaty arbitration may reflect a trend towards greater convergence in international contract law.

**International governance:** Investment treaty arbitration is a form of international governance, involving the interaction of multiple actors and legal frameworks. The role of UPICC in this context raises questions about the relationship between different forms of international governance, including the role of soft law in shaping legal decision-making.

Based on the available research and analysis, it can be concluded that the UNIDROIT Principles of International Commercial Contracts (UPICC) can play an important role in investment treaty arbitration. While UPICC is not legally binding, it reflects widely accepted

principles of international contract law and can provide guidance on the interpretation and application of international commercial contracts in investment treaty disputes.

The use of UPICC in investment treaty arbitration can be influenced by a range of factors, including the specific context of the dispute, the legal systems involved, and the particular arbitrator or tribunal hearing the case. However, the systematic review revealed that UPICC was referenced in a significant number of investment treaty arbitration decisions involving international commercial contracts, indicating that it is a relevant source of guidance for legal decision-making in this context.

The findings also suggest that the use of UPICC in investment treaty arbitration can be associated with more favorable outcomes for investors in some cases, although this relationship is not consistent across all cases. Therefore, the use of UPICC should be considered in conjunction with other relevant legal instruments, such as investment treaties and national laws, when interpreting and applying international commercial contracts in investment treaty disputes.

Overall, the thesis that UPICC can play a useful role in investment treaty arbitration by providing guidance on the interpretation and application of international commercial contracts is supported by the available research and analysis.

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