The "Stickiness" of the UNIDROIT Principles of International Commercial Contracts: A Behavioral Analysis

Introduction

The UNIDROIT Principles of International Commercial Contracts (PICC) have entered the legal arena as soft law principles[1]. Soft law, which differs from conventions like the CISG, does not require mandatory application unless the parties expressly choose to do so[2]. Therefore, the system works as an opt-in mechanism[3]. Despite its non-mandatory nature, the principles may also be considered as a reflection of the *lex mercatoria*, which extends its application further away from an ordinary soft law[4].

This article suggests a different point of view to examine the effects of the PICC in practice. With behavioral analysis, the main focus will be the psychological effects of the PICC on the parties to a contract and, if possible, on lawmakers[5]. According to behavioral analysis, it is accepted the default rules are "*sticky*", as they give a psychological effect of being binding on

[1] Geneviève Saumier, 'Designating the UNIDROIT Principles in International Dispute Resolution' (2012) 17 (3) *Unif L Rev*, 534; Christine M. Whited, 'The Unidroit Principles of International Commercial Contracts: An Overview of Their Utility and The Role They Have Played in Reforming Domestic Contract Law Around the World' (2011) 18 (1) *ILSA Journal of International & Comparative Law*, 181; Henry D. Gabriel, 'The Use of Soft Law in the Creation of Legal Norms in International Commercial Law: How Successful Has It Been? ', (2019) 40 *MICH. J. INT'L L*., 414.

[2] For further explanation on soft law, see Gabriel, 413 ff.

[3] Michael J. Dennis, 'Modernizing and harmonizing international contract law: the CISG and the UNIDROIT Principles continue to provide the best way forward' (2014) 19 (1) *Unif L Rev*, 115.

[4] Micheal Joachim Bonell, 'Unification of Law by Non-Legislative Means: The UNIDROIT Draft Principles for International Commercial Contracts' (1992), 40 (3) *The American Journal of Comparative Law*, 629; Eckart Brödermann, 'Overcoming Obstacles to the Application of the UNIDROIT Principles: Proposal for a Descriptive Choice of the UNIDROIT Principles Clause' (2021) 26 (3) *Unif L Rev*,461; Élise Charpentier, 'Les Principes d'Unidroit: une codification de la lex mercatoria?' (2005) 46 (1-2), *Les Cahiers de droit*, 198; Rodríguez Alejandro Garro& José A. Moreno Rodríguez, 'Use of the UNIDROIT Principles to Interpret and Supplement Domestic Contract Law', (2021) 50 *Ius Comparatum– Global Studies in Comparative Law*, Springer, 54; For possible effects see Jürgen Basedow, Lex Mercatoria and the Private International Law of Contracts in Economic Perspective, (2007) 12 (4) *Unif L Rev* 2007, 705-706. Arbitral tribunals from different legal backgrounds tend to accept the PICC as l*ex mercatoria* see Alexander S. Komarov, 'Reference to the UNIDROIT Principles in International Commercial Arbitration Practice in the Russian Federation' (2011) 16 (3) *Unif L Review*, 661; however, there are also different views, see Charpentier 201 ff.; For a different approach see Ralf Michaels, 'The UNIDROIT Principles as Global Background Law' (2014) 19 (4) *Unif L Rev*, 658. For possible harms to mention *lex mercatoria* and the PICC together see Zdeněk Nový, 'The Role of the UNIDROIT in the Unification of International Commercial Law with a Specific Focus on the Principles of International Commercial Contracts' (2014) 5 *Czech Yearbook of International Law*, 357.

[5] Unification and harmonization of private law requires more than a comparative study between legal systems. The goal is not just to find a balance between civil and common law systems. In order to create rules that can be used on an international level, we should also take into consideration multidisciplinary approaches. While I chose to use behavioral analysis, that is not the only available option. For example, the Cape Town Convention, which was prepared with the use of law and economics techniques, reflects the importance of a multidisciplinary approach. For a detailed explanation on the technique and its success, see Jeffrey Wool, Economic Analysis and Harmonised Modernisation of Private Law (2003) 1/2 *Unif L Rev*, 390 ff. Also see José Angelo Estrella Faria, 'Future Directions of Legal Harmonisation and Law Reform: Stormy Seas or Prosperous Voyage? ' (2009) 14 (1-2) *Unif L Rev*, 15-17.

the parties despite their non-mandatory nature. As such, people tend to stick with the default rules rather than negotiate new terms. The aim of this article is to examine whether or not this "stickiness" of the default rules can also be applicable to a soft law, i.e. the PICC.

I. The Stickiness of Rules

1. Default Rules

According to the prospect theory, people need a reference point for making a decision and cannot decide independently[6]. This reference point is important to weigh the impact of the decision, which is considered to be either a loss or a gain. The question then arises: how do we decide a reference point?

In general, the *status quo* is considered as a reference point[7]. The *status quo* does not solely constitute a reference point but also affects the way people act. People tend to stay in the status quo and not change it with their decisions. This phenomenon is called *status quo* bias[8]. This tendency for inaction can also stem from another phenomenon called inertia bias. A negative result arising from a person's actions rather than their inaction is considered worse. Thus, inaction is preferred to action[9].

When we apply those biases to contract law, it can be observed that parties tend to see default rules as *status quo*, and they consequently stick with them rather than negotiate new terms[10]. Moreover, in contrast to the Coase theorem, even in cases where parties negotiate, the existence of these default rules creates an endowment effect on the negotiation[11]. This means that the party who is willing to let go of the advantage gained from a default rule requires a higher price

[6] Klaus Mathis & Philipp Anton Burri, 'Nudging in Swiss Contract Law? An Analysis of Non-mandatory Default Rules from a Legal, Economic and Behavioural Perspective' (2016). In: Mathis, K., Tor, A. (eds) *Nudging - Possibilities, Limitations and Applications in European Law and Economics. Economic Analysis of Law in European Legal Scholarship*, vol 3. Springer, 134.
[7] Eyal Zamir, 'Default Rules: Theoretical Foundations' (2021) *Hebrew University of Jerusalem Legal Research Paper* No.21-19, 11.
[8] Mathis&Burri,137; Russell Korobkin, 'The Status Quo Bias and Contract Default Rules' (1998) 83 *Cornell Law Review*, 625.
[9] Mathis&Burri,138; Zamir, 11.
[10] Russell Korobkin, 'Inertia and Preference in Contract Negotiation: The Psychological Power of Default Rules and Form Terms' (1998) 51 *Vanderbilt Law Review*, 1605; Mathis&Burri,139; Antonios Karampatzos, Private Law, Nudging and Behavioural Economic Analysis the Mandated-Choice Model (2020) Routledge, 54.
[11] Korobkin, 1584.

in return than what is expected as market price[12]. For these reasons, default rules are known as "*sticky default rules*"[13] despite their non-mandatory nature[14].

2. Soft Law

The above explanations are only applicable to default rules which provide an opt-out system. In other words, unless parties expressly choose other terms, the default rules will apply to their contract. However, the PICC, being an example of soft law, does not work as an opt-out system. Parties should expressly agree on the application of the PICC. Therefore, the PICC provides an opt-in system for its application. Due to this difference, one may think prima facie that a soft law cannot be sticky, since it may not have a *status quo* function with its opt-in nature.

However, it is suggested that standard form contracts can also constitute reference points[15] and become sticky[16]. What is important here is the parties' belief of its value as a reference point. Especially for standard form contracts that are widely used in the market, parties may start negotiations using such contracts as the basis for negotiations[17]. It is also suggested that such contracts may have more effect on parties than default rules[18]. For example, one may argue that FIDIC Contracts have a higher importance to parties as a reference point than default rules for construction contracts.

The acceptance of standard form contracts as a reference point is also important for the PICC. Standard form contracts do not operate as default rules; parties should actively choose to integrate them into their contracts. Thus, standard form contracts work with an opt-in system. This means that, at least theoretically, we can accept that the stickiness of rules does not only apply to default rules but also to soft law.

While the PICC is a soft law, it is more similar to default rules than standard form contracts due to its nature and purpose. However, it is neither a default rule, nor a standard form contract. Therefore, the PICC should be examined separately to determine whether or not it has a sticky effect on parties and on lawmakers.

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[12] Mathis&Burri, 137.
[13] Omri Ben-Shahar& John A. E Pottow, 'On the Stickiness of Default Rules' (2006) 33 *Florida State University Law Review*, 667; Mathis&Burri, 139; Zamir,15.
[14] Karampatzos, 53.
[15] Ben-Shahar&Pottow, 652; Korobkin, 1609; Zamir, 12.
[16] For detailed explanations on the reasons of this stickiness, see Giuseppe Dari-Mattiacci, Florencia Marotta-Wurgler, 'Learning in Standard-Form Contracts: Theory and Evidence' (2022) 14 (1) *Journal of Legal Analysis*, 250-252.
[17] Korobkin, 1609.
[18] Zamir, 12.

II. The Stickiness of the PICC for Parties

1. Practice During Contract Negotiations

The practical importance of the PICC[19] is seen as relatively low[20]. The reason behind this is the parties' lack of choice regarding the application of the PICC[21]. Only in a few cases was the PICC the *lex contractus*[22]. However, when it comes to dispute resolution, the numbers increase as more parties tend to choose the PICC after the commencement of a trial[23].

One of the main reasons behind this lack of choice is due to doubts concerning the validity of choosing a soft law as the applicable law, since many legal systems do not accept this as valid[24]. Another important reason is the lack of time during negotiations to think carefully about a choice of law[25].

In light of the above, it must now be determined whether or not the PICC has a stickiness during contract negotiations. At first glance, the low rate of choice regarding the application of the PICC may be considered as evidence of no stickiness. It is possible to attribute this low application rate to the opt-in nature of the PICC as it requires an action from the parties. However, parties tend to not act because of status quo bias, thereby choosing not to apply the PICC. Nevertheless, the opt-in nature is not, in and of itself, an impediment to creating a reference point. However, it may not create the exact same type of stickiness as a default rule.

This is the case for the PICC. Surveys show that the PICC has been used as a guide for contract negotiations[26]. In a questionnaire conducted by UNIDROIT, two-thirds of the participants said

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[19] For detailed empiric explanations on the usage of the PICC on an international level, see Aldo Mascareño& Elina Mereminskaya 'The making of world society through private commercial law: the case of the UNIDROIT Principles' (2013) 18 (3-4) *Unif L Rev*, 454 ff.

[20] Ingeborg Schwenzer, 'Global unification of contract law' (2016) 21 (1) *Unif L Review*, 47.

[21] Michaels, 646; Garro& Moreno Rodríguez 59; International Bar Association (IBA), Perspectives in Practice of the UNIDROIT Principles 2016 Views of the IBA Working Group on the practice of the UNIDROIT Principles 2016 (2019), 4. For a detailed explanation of the reasons regarding the low impact of PICC see Gabriel, 422-424.

[22] In a recent non-representative survey made in 2021, 79% of US counsels with an international practice said that they had never chosen the PICC as an applicable law. For detailed explanations on the survey, see Brödermann (Descriptive), 463.

[23]IBA,4; For an opposing view, see Michaels, 646.

[24] Saumier, 533; Garro& Moreno Rodríguez, 59. Of course this hesitation can be removed with the aid of foreign counsel, however constrained timelines during contract negotiations may be the reason to not opt for this solution, see Whited, 172. Is it also possible for a country to enable the use of soft law as a choice of law by way of a legislation, as in the case of Paraguay, see Michael Joachim Bonell, 'The law governing international commercial contracts and the actual role of the UNIDROIT Principles' (2018) 23 (1) *Unif L Rev*, 27.

[25] Brödermann (Descriptive), 473.

[26] See Whited, 179: As the author explained, we also believe that it would be difficult to detect the true extent of this kind of usage. The first reason for this is that when there is no direct reference to the PICC, a third party observer may easily miss the application of the PICC as a guide for negotiation in a present case. The second reason is that since the application of the PICC as a guide can often have a reducing effect on disputes, we may not encounter as many of those kinds of contracts during the dispute resolution phase. For information about other

that they used the PICC while negotiating and drafting international commercial contracts[27]. In another survey, 59% of the participants stated that they use the PICC as guidelines in contract negotiations[28]. In the ICSID Case of "*Lemire v. Ukraine*", the parties were unable to choose between Ukrainian law or US law as the applicable law to their settlement agreement[29]. For this reason, they choose to include parts of the PICC in their settlement agreement with small amendments, but without fully choosing the PICC the applicable law. In another survey, the international response to the usage of the PICC as a drafting guide was "sometimes" for 27%, "rarely" for 18%, "once" for 4% and "all the time" for 2%[30]. In that survey, participants though that neutral legal terminology and coherent and clear rules make the PICC advantageous as a guide for contract drafting[31].

The only empirical study that was made among British lawyers was against this usage. 96% of participants stated that they had never seen or used the PICC as a guide for contract negotiations[32]. The reasons behind this were also examined in the study[33]. Although the reasons were, in general, related to the choice of law, some can be applicable to the PICC being a guidance for negotiation. For example, some articles within the PICC are not compatible with the common law perspective. This unfamiliarity can create a hesitance to use the PICC as guidance. Moreover, since the PICC does not provide rules regarding specific contract types, it may be seen as difficult to use them as guidance. This particular result may be related to the UK's practice of contract formation which considers all details concerning the case at hand while drafting.

surveys, see Sarah Lake, 'An Empirical Study of the UNIDROIT Principles - International and British Responses' (2011) 16 (3) *Unif L Rev*, 670. For Russian experience, see Komarov 657.

[27] Whited, 179.

[28] Whited, 179.

[29] Joseph Charles Lemire vs. Ukraine, ICSID Case No. ARB/06/18 p.25 par.108-111. (https://www.trans-lex.org/290100/_/joseph-charles-lemire-vs-ukraine-icsid-case-no-arb-06-18/)

[30] Lake, 676.

[31] Lake, 677.

[32] Lake, 676.

[33] For detailed explanations on the reasons, see Lake 677 ff.

2. Behavioral Analysis on the use of the PICC During Contract Negotiation

Apart from the British example[34], empirical studies show us the key role of the PICC while drafting international commercial contracts[35]. Despite the low rate of choice as an applicable law, the PICC cannot be regarded as having a low impact on practice during the contract formation phase[36].

This result is compatible with behavioral analysis. It means that parties tend to accept the PICC as a reference point and start their negotiations using the PICC as an example. This can also mean that, with the endowment effect, any major deviation from the PICC may need an "explanation", and the party who gives up the advantage gained from the PICC should be "compensated".

However, to get those results, the PICC must be proposed by at least one party during the contract negotiations[37]. This is the main difference between a default rule and a soft law in terms of stickiness. To create status quo bias, no action is needed for a default rule. However, this approach does not work for soft law since, in general, it does not have this status quo effect by itself. A soft law, in our case the PICC, can gain this status quo power only by being proposed by one of the parties as a guide for drafting at the beginning of negotiations. This will create a bargaining advantage for that party. People mostly tend to stick with the rules that were presented as guide at the beginning of negotiations and not make major changes as a result of a status quo bias[38].

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[34]There is a general belief of low usage of the PICC during negotiations on a country basis (without a survey result). For Brazil, see Karina Goldberg, 'Brazil', Perspectives in Practice of the UNIDROIT Principles 2016 Views of the IBA Working Group on the practice of the UNIDROIT Principles 2016 (2019), 30. One reason behind this may be the lack of knowledge. As in Germany and Italy, the more lawyers that have knowledge about this kind of usage, the bigger impact we will see; for Germany, see Eckart Brödermann, 'Germany', Perspectives in Practice of the UNIDROIT Principles 2016 Views of the IBA Working Group on the practice of the UNIDROIT Principles 2016 (2019) 66. For Italy see Pietro Galizzi&Cristina Martinetti& Giacomo Rojas Elgueta, 'Italy', Perspectives in Practice of the UNIDROIT Principles 2016 Views of the IBA Working Group on the practice of the UNIDROIT Principles 2016 (2019), 75. However, another reason behind this belief is the confidentiality; it would be difficult to see the real impact of this kind of usage. See Sanjeev Kapoor&Rabindra Jhunjhunwala, 'India' Perspectives in Practice of the UNIDROIT Principles 2016 Views of the IBA Working Group on the practice of the UNIDROIT Principles 2016 (2019), 69. For other potential reasons, see supra note 26.

[35] For an opposing view, see Michaels, 646. For examples of the ways that the PICC can be used as guide for drafting, see Brödermann (Descriptive), 488-490.

[36] For the importance of the PICC as a tool for drafting efficient contracts, see Eckart Brödermann, 'The Impact of the UNIDROIT Principles on International Contract and Arbitration Practice – the Experience of a German Lawyer' (2011) 16 (3) *Unif L Rev*, 592. The possible usage of the PICC during negotiations is not limited to the use of the principles as a contract provision. It can also be used to facilitate communication between parties from different legal backgrounds especially regarding terminology. Another usage is to identify the possible legal issues that may arise in a contract and provide a solution. For detailed explanations on the usage of the PICC during negotiations, see Bonell, 628-629.

[37] Korobkin, 1609.

[38] Korobkin, 1608.

It is possible to think of another cognitive feature that may help the usage of the PICC as a guide for drafting. Despite the expectations of economic analysis, people do not act selfishly; they care about fairness[39]. This phenomenon is called bounded self-interest[40]. The PICC represents one of the fair balances[41] and a neutral legal framework.[42] Therefore, it is harder to reject when one party proposes it as a guide for drafting. The *Lemire v. Ukraine* case mentioned above can be seen as an example[43]. The parties were unable to choose between Ukrainian and US laws and could not decide on any applicable law. However, once the usage of the PICC as a guide was suggested, the parties considered this a fair balance which reflects the status quo and adopted the provisions with only slight changes[44]. From that point, the arbitral tribunal was able to choose the PICC as the applicable law more easily because the parties had already used it as a contract provision. Therefore, I believe that the status quo effect of the PICC is higher than a regular standard form contract unless such contract also considers creating a fair balance between different legal cultures.

The only impediment ahead is the lack of knowledge of parties, especially lawyers, regarding the PICC[45]. Unless one party knows about the usage of the PICC as a guide for drafting, it cannot be presented at the beginning of negotiations and therefore cannot create a status quo effect. I believe the main reason for the increase in the usage of the PICC after a dispute arises, is related to dispute resolution lawyers and courts having more knowledge about international commercial law. It is this knowledge that leads them to present the PICC to the parties and, as we have seen above, when it is presented, parties are more likely to accept its application because of its stickiness.

III. The Stickiness of the PICC for Legislators

There are many purposes of the PICC, one of which is mentioned in the Preamble of the PICC, namely the possible usage of the principles as a model for national and international legislators.

[39] Christine Jolls&Cass R Sunstein&Richard H. Thaler 'A Behavioral Approach to Law and Economics' (1998) 50 *Stanford Law Rev*, 1479.
[40] Jolls&Sunstein&Thaler, 1479
[41] Nový, 359.
[42] Whited 174.
[43] For the importance of this case, see also Lake, 677.
[44] For a similar situation, see Brödermann, 593: In that case, the choice of law of the Contracting State could not be avoided, however in order to neutralise this choice of law, the author used the PICC as a guide for drafting some clauses such as force majeure.
[45] Gabriel, 422. For detailed explanations on this problem and other related problems regarding the usage of the PICC, see Brödermann (Descriptive), 469 ff.

The question for our article is to determine whether the stickiness of the PICC is also applicable to legislators.

Two points should be examined separately to decide the stickiness for legislators. The first is the possible usage of the PICC as a reference point. The second is the possible endowment effect.

1. A Reference Point for Legislators

If a national legislator decides to prepare a contract law from scratch, it is possible for the usage of the PICC to be used as a reference point[46]. However, if the only objective is to change some provisions within existing domestic contract law, at least theoretically, there may be some obstacles for the national legislator to use the PICC as a reference point. Since the PICC reflects different legal backgrounds, it may be difficult for a legislator to adapt a specific provision unless it is coherent with the existing legal system[47]. However, if it is coherent, legislators may easily choose to use it without making any changes. Moreover, status quo bias may also be applied to legislators when they do not want to change existing provisions with the PICC.[48]

This obstacle does not exist for international legislators. In general, they prepare one specific legal text that is meant to be used by different legal systems. Therefore, with respect to the PICC, its usage as a reference point may be stickier[49]. As with the example of OHADA[50], international legislators would probably use the PICC as a reference point with only slight changes[51].

It is important to note that when a national legislator uses the PICC as a reference point and adapts it, the stickiness of the PICC is increased indirectly since the use of default rules as an opt-out system can be stickier on contract parties.

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[46] Bonell 626. Lithuania can be a perfect example of this. After they gained their independence, for the preparation of civil code, they wanted to stick with the PICC as much as possible. For detailed explanations, see Whited 183-184. For other examples such as Russia, Estonia, Spain, see also Whited 182 ff; Garro& Moreno Rodríguez 56 ff.. However, in general PICC is not adopted entirely by legislators. See Michaels, 652.

[47] For the Australian example, see Michaels, 653-654. The drafting system of the PICC is similar to civil law systems, see Bonell (Principles), 22. It may be difficult for a case law system to adopt the PICC as a code but this does not reduce the possibility of the PICC from being used as a guide for judge-made contract law, see Whited 187.

[48] As with the German example, the older the legal tradition, the higher the possibility of hesitating to implement the PICC as it is. On the bright side, the German legislator was still concerned with the PICC and made some references to it to support their articles in their final report. See Whited 185.

[49] The importance of the PICC will be higher as a reference at an international level, see Bonell 626.

[50] Michaels, 656-657.

[51] Estrella Faria,13. For the importance of this preparation technique, see Luca G. Castellani, 'Ensuring Harmonisation of Contract Law at Regional and Global Level: The United Nations Convention on Contracts for the International Sale of Goods and the Role of UNCITRAL' (2008) 13 (1-2) *Unif L Rev*, 119.

2. A Possible Endowment Effect

Prima facie one might consider that the endowment effect is only possible when there is a contract, i.e. a *synallagmatic* relationship. Legislators do not enter into such relationships. They use their sovereignty when creating law. Therefore, no endowment effect may cause them to stick with the PICC.

In reality, especially when a country tries to attract foreign investors, it has to show the reliability of domestic law[52]. For a foreign investor, having the PICC as a reference point may create an endowment effect. However, this endowment effect may not create the same results as previously mentioned since it is not possible for an investor to intervene in the preparation of domestic law; it is rather a more abstract endowment effect. One investor cannot demand to stick with the PICC as a domestic law, however, the idea of foreign investors as an abstract concept can create pressure on domestic legislators similar to an endowment effect while creating domestic law[53]. Therefore, the legislator may feel pressure to adapt a contract law similar to the PICC.

Conclusion

It is generally accepted today that the desired results can also be achieved via soft law instead of a convention[54]. Yet, we have another difficulty: the fact that the PICC is, in general, not chosen as the law to be applied by parties is still considered a failure. However, just as we removed the pressure of convention, we also need to remove the pressure of using the PICC as the applicable law. This article does not deny that it would be a great achievement if more parties used the PICC as an applicable law. Nevertheless, due to the uncertainty regarding the use of the PICC as applicable law in domestic laws, it would be more appropriate to shift our focus on the use of the PICC as a guide for drafting. Moreover, if one of the parties uses the PICC as a reference point at the beginning of negotiations, the probability of the parties sticking to it without making any change is quite high, as explained above. Furthermore, if this can be

[52] For the general promoting effect of the PICC on economies to attract foreign investments, see Whited 175.

[53] However, one should always keep in mind the possibility of the usage of the PICC as an applicable law or as contract terms in an investment contract as a result of pressures from foreign investors arising from an endowment effect. This can happen even where the legislator has not adopted the PICC as a domestic law. The only important factor is the negotiation power that investor has. For example, The World Bank refers to the FIDIC Contracts for the projects they finance and the FIDIC Contracts are used as part of standard bidding documents. Therefore, the same logic may apply to the PICC when the investor has enough negotiation power.

[54] For more explanations on the advantages of soft law over hard law, see Gabriel, 415 ff.; Dennis, 121 ff.¸ Estrella Faria, 8-9.

achieved, it will pave the way for judges/arbitrators to apply the PICC as a tool of applicable law or interpretation during the dispute stage.

For this, a comprehensive survey should first be carried out in order to determine the current usage of the PICC as a guide for negotiations. Second it should be considered how the existing stickiness of the PICC can be increased[55]. The first step should be to add the purpose of the usage of the PICC as guidance for drafting into the Preamble. In its current form, this possibility is only mentioned in the commentary to Preamble, under the heading "*8. Other possible uses of the Principles*". However, this is not enough to catch attention. For the second step, education for lawyers regarding the usage of the PICC, especially for drafting contracts, might be useful since they play a central role in increasing the stickiness of the PICC by presenting it at the beginning of negotiations. Thirdly, since stickiness will indirectly increase thanks to the adaptation of the legislator as a default rule, political efforts in this direction should also be increased. Once the desired level of stickiness is achieved, we can then focus more on the usage of the PICC as a nudge towards the general goals of UNIDROIT[56]. This does not have to be paternalistic. One example of this is the usage of the PICC in a way to reduce disputes by increasing communication between parties, as in the case of article 6.2.3 regarding the renegotiation in case of hardship.

In order to increase the impact of the PICC in practice, a multidisciplinary approach, especially the use of behavioral analysis on a broader scale, is crucial. This will allow a practical way and will create a solid path for achieving the main goals of harmonization of private law.

[55] For other recommendations on this subject, see Dennis, 147 ff.
[56] For the usage of default rules as a nudge, see Zamir, 16, for detailed explanations, see Mathis&Burri, 139 ff.

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