Chapter 10
Harmonisation in a Global Context: The ALI/UNIDROIT Principles

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Abstract This chapter stresses the growing problem of transnational disputes due to commercial globalisation, and the difficulties arising from the application of the rule of the procedural *lex fori*. A procedural unification of national systems being impossible for various reasons, the only viable solution would be the harmonisation of such systems, at least when transnational litigation is involved. Harmonisation is a matter of degree, and the main issue is to determine what could be harmonised. The ALI/UNIDROIT Principles could be taken as a sort of 'model law' providing standards and rules for the harmonisation of national procedures. They are specific and general enough to represent a model for the harmonisation of the most important structural and functional elements of procedural systems.

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10.1 Introduction

As is well known, the most important facet of the complex phenomenon that is usually labelled as 'globalisation' deals with the tendency of economics, commerce and finance to cover the whole area of the globe. Among the wide variety of problems arising from such a tendency is the increase in cross-border litigation, that is, the growing number of cases involving parties that belong—to use a non-technical word—to different jurisdictions. Transnational disputes are now very common, but the procedural regulations existing in the various national legal systems are not adequate to deal efficiently with such a peculiar kind of litigation.

Just to mention a few of the problems, there are at least two main issues that are still unresolved and that represent serious hurdles in the management of transnational disputes. The first of these problems deals with the choice of the court having jurisdiction in the specific disputes: in Europe there are special rules guiding this choice, but in the rest of the world it is open to a variety of even conflicting solutions, especially after the failure of The Hague conference that attempted to establish common patterns aimed at simplifying the choice of jurisdiction. The second problem derives from the traditional principle of the 'procedural *lex fori*,' according to which any national court applies its own domestic procedural rules even when it has to decide a transnational dispute. While international practice has *de facto* created some relatively common standards for the choice of jurisdiction, the problem of managing from abroad litigation that takes place in substantially different and possibly too 'distant' procedural systems, in which courts follow their own domestic rules, still remains unsolved.

Dealing with such a problem one has to consider that there is a wide variety of procedural systems that are basically different, not only in the structure of the proceeding and in the details of the procedural regulations, but even at the level of the fundamental guarantees of civil justice. Within Europe there are several models of civil proceedings that can be reduced to a homogeneous model of *civil law* only by setting aside England and not considering the important differences still existing among the Franco-Italian, the Austro-German, and the Spanish models and all the variations that such basic models have produced all around Europe, and in the so-called civil law countries of Latin America. Outside Europe, moreover, the landscape is even more complicated for a number of reasons: the fundamental guarantees of the administration of justice (such as the independence and impartiality of the judiciary, the due process of law and the right to be heard) are not always actually ensured, or they are ensured in different ways and to varying degrees. The procedural models may be different (also because after the English reforms of 1999 it is extremely difficult to think of a single *common law* model of civil procedure), especially if one takes into consideration the peculiar features of many 'mixed' systems, such as those of Japan and Israel, and the rapidly evolving procedural regulations in important countries like the People's Republic of China.

In this complex situation, and taking into account the frequency and the practical importance of transnational litigation, a first intellectual temptation could be to imagine a sort of unification of all the procedural regulations into a single and uniform procedural code that should be applied by any court in any country, especially when dealing with transnational disputes (but perhaps even when dealing with domestic disputes). This was the leading idea of a group of European scholars that attempted to draft a text aimed at providing a basis for the unification of at least some aspects of the procedural regulations existing in European countries.[1] However, notwithstanding the theoretical interest of such a project, it was doomed to failure. The main reason is that a procedural code is not a mere set of more or less complex rules of thumb, but above all is a 'cultural product,' the form, structure and contents of which are the product of historical, political, institutional, ethical and economic developments. This is also true within the borders of Europe and is the main reason why a unification of procedural regulations into a single and uniform code of civil procedure appears to be an impossible enterprise. *A fortiori* this is true if one considers the global dimension that civil and commercial litigation have, since many cultural factors have led the various procedural systems into very different paths: thinking of a uniform code of civil procedure that should be applied in each jurisdiction of the world is clearly pure fantasy, if not an illusion. Moreover, one could say that even if such unification were possible (which it clearly is not), it would not be beneficial and useful: the attempt to force every court of every country to apply the same code of civil procedure would be culturally and politically unacceptable.

Furthermore, one might think that although procedure is essential for the enforcement of substantive rules, this does not imply that 'the same procedure' is required in order to have a consistent application of such rules in different national jurisdictions. For instance, the same rules concerning a specific contract that are used in different national contexts may or may not be interpreted and applied in the same way independently of the kind of procedural rules that are applied by different national courts. In this sense, harmonising the substantive rules, and even harmonising their interpretation, is a specific problem that is not directly connected with the kind of procedure that is used in order to apply such rules. Different interpretations of the same rules may be given, as it actually happens, within the same national jurisdictions and—on the opposite side—the same interpretation may be adopted by different national jurisdictions. In a sense, therefore, procedural differences could be considered as not necessarily relevant in the perspective of harmonising substantive rules and their actual interpretation.

The diversity of procedural devices may be relevant from a different standpoint: actually, procedures are more or less slow and inefficient in various countries. For instance, statistics show that Italy is by far the most inefficient European country in the protection and in the enforcement of civil rights, and that it has one of the most inefficient systems in the world due to the abnormal and exceedingly long delays

[1] See Storme 1994.

both in the declaratory and in the enforcement phases of the proceeding. It means that litigating a case in Italy, or seeking enforcement of a foreign judgment in Italy, is a very long and ineffective enterprise. Once again, however, this does not mean that Italian civil procedure should necessarily be made identical to any other European or non-European procedural system. Actually, it means that the Italian system is badly in need of a deep and complete reform, which could or could not be inspired by other models existing in Europe or outside Europe. It cannot be denied that in figuring out such a reform the examples offered by other procedural systems may be extremely useful, although transplants between different systems are often dangerous. However, the task of transforming the Italian procedural machinery into an efficient system for the protection of rights is not equivalent to adopting 'another' procedural system, supposedly common to other countries or even to all the other countries.

A further argument is that no national procedural system can be considered as a sort of homogeneous whole, based upon a single procedural model. Actually, all the systems include an 'ordinary' or 'general' type of proceeding that is normally applied in whatever kind of case, unless special provisions require that, in particular disputes concerning specific matters, some different and 'special' proceedings should be applied. It is hardly a novelty: at least as far back as the fourteenth century the European Romano-canonical system of procedure was based on the distinction between the ordinary 'formal' procedure and the theoretically exceptional—but practically largely prevailing—'summary' procedure; such a distinction was still present in most of the procedural codes of the nineteenth century. On the other hand, all modern procedural systems have to deal with pressures to provide special proceedings for particular matters or particular kinds of disputes, mainly when the 'ordinary' proceeding is long and inefficient. Therefore, everywhere there is a trend to articulate the procedural system with the aim of meeting different and varying requests originating from specific areas of the administration of civil justice. The various procedural systems react in different ways to such pressures: the domain of special proceedings has become the most important factor of variety and difference among the procedural systems.

10.2 The Impossible Unification and a Possible Harmonisation of Procedural Systems

If all the above-mentioned aspects of the situation concerning the systems of civil procedure are taken into account, it is easy to understand that the issue of a possible unification of the regulation of civil proceedings is a very complex and puzzling one. In order to deal with such an issue in a reasonable way, however, a distinction has to be made between 'unification' and 'harmonisation' of procedural systems. Unifying the several systems of civil procedure would require setting aside all the existing differences and adopting one common regulation that should

be used in all the national systems and applied by all domestic courts. On the contrary, harmonising the existing regulations would be much less difficult and would imply focusing on some common features that should be present in all the national systems or on some common points of reference that should be taken into account while shaping these systems.

If a real unification of procedural regulations is impossible, unnecessary and undesirable, a harmonisation of procedural regulations may be possible, useful and desirable. Actually, one may reasonably believe that the differences existing among the various national systems of civil procedure, and even within some national systems, are too many and too deep, and that significant advantages could derive from a substantial reduction of these differences. If the European and extra-European landscape of procedures were to some extent simplified and clarified—one might say—judicial resolution of transnational disputes would become easier, less complicated, less expensive and much more efficient. Such considerations are very obvious and may be shared by anyone involved in the administration of civil justice. However, after having said that a fair degree of harmonisation among the national systems of civil procedure would be desirable, the problem arises of determining 'which' harmonisation and 'what' could and should be conceived and possibly implemented.

Harmonisation is clearly a matter of degree. Moreover, since we are thinking of extremely complex sets of rules, and the idea of unification is discarded, the other side of the coin is to decide which rules, or which procedural devices, should be harmonised. Finally, a further problem would concern the technique that should be used to implement such a harmonisation.

Thinking of a possible harmonisation of the current procedural systems in terms of degree, the two extremes of the scale could be immediately set aside. The top extreme would include a narrow set of extremely general principles, such as: independence of the judiciary, fair trial, right to be heard, reasonable delay and effective protection of rights. Such principles are very important but have become so obvious and so 'common sense' that they should be assumed as valid in each modern system of civil litigation. They may not be effectively implemented—and actually they are not—in every procedural system all around the world, but they are recognised without difficulty in any system of procedure. They are also expressly stated by several national constitutions and in Article 6 of the European Convention on Human Rights as well as in other international conventions. It does not mean that these principles are stated and interpreted in the same ways in every country, and some uncertainties may arise about which principles should be included and which may not be included in this short list. However, roughly speaking it may be said that there is a general agreement about a group of principles concerning the fundamental guarantees of the administration of justice in civil matters. At this level of generality, therefore, there is no problem for a future harmonisation: to a large extent, actually, such principles are already harmonised. A further problem may be one of building up a general consensus about which principles deserve to be included in the list, and also of fostering a uniform or at least a consistent interpretation of these principles by the various national courts

(mainly at the level of constitutional review, but also in the application of procedural guarantees in ordinary jurisdictions). However, it may be said that a 'substantial' convergence, if not a complete harmonisation, already exists at the level of the fundamental guarantees of civil litigation.

At the bottom extreme of procedural regulations we find a broad and chaotic array of very specific and detailed rules concerning a number of procedural devices regulating the peculiar features of judicial practice in each national system. It is well known that all the procedural codes include several hundreds of rules, many of which include a number of subsections. Moreover, a huge number of additional technical norms are necessary for the functioning of the procedural machinery. Perhaps the harmonisation of some of these rules (for instance: how to serve the notice of complaint) may be useful, but when we think of harmonising procedural systems we cannot realistically believe that it should concern all the hundreds of technical rules regulating the functioning of the proceedings in all the jurisdictions involved. In other terms: at this level the problem of harmonisation cannot be raised in general terms, although harmonising 'some' technical mechanisms could be useful.

Between these two extremes of procedural regulations there is a broad intermediate area in which several degrees can be distinguished by taking into consideration differences and similarities concerning the subject matter, the importance, the form and the structure of procedural provisions. Somewhere in this area there is a level at which a possible and fruitful harmonisation might be achieved. Setting aside both extremely general and abstract principles and the analytically detailed provisions, one might think of a set of principles and rules that could be conceived with the aim of representing a reference point for different and perhaps more specific, particular regulations. It is the level where the so-called *Model Laws*, as for instance those drafted by the United Nations Commission on International Trade Law (UNCITRAL), can be placed. It is also the level to which sets of procedural rules actually in force, such as the American *Federal Rules of Civil Procedure* or the *Federal Rules of Evidence*, may belong. These sets of rules are specific enough not to be confused with abstract principles, but general enough not to include excessively detailed regulations of procedural devices. This is just the level at which a substantial harmonisation of procedural regulations may be imagined.

10.3 The ALI/UNIDROIT Text

An interesting example of procedural harmonisation at the intermediate level defined above is the set of principles and rules that were drafted and published by the *American Law Institute* (ALI) and by the *Institut international pour l'unification du droit privé* (UNIDROIT).[2] This text includes 31 Principles and 36 Rules;

[2] See ALI/UNIDROIT 2006.

each Principle and each Rule includes several subsections. The Principles are stated in rather general terms and cover a rather long and detailed list of procedural problems such as jurisdiction, the procedural equality of the parties, due notice, provisional and protective measures, the structure of the proceeding, the obligations of the parties and of the lawyers, the direction of the proceeding, evidence, the presentation of evidence, the roles of the parties and of the court, decision, settlement, enforcement, appeals and the recognition of judgments.

The Rules are somewhat more specific and detailed, although they are also stated in rather general terms, and provide an example of how the Principles could be implemented. The Rules deal with various topics including jurisdiction, joinder and venue, the composition of the court, the contents of the pleadings, the role and powers of the court, the law of evidence and disclosure and the presentation of evidence, the final hearing and decision-making, appeals and the enforcement of judgments. If taken together,[3] the Principles and Rules represent a consistent set of provisions that are much less general than abstract principles and much less detailed than a procedural code; however, they cover a rather broad number of procedural topics and for each of these topics they provide a model of regulation

It has to be underlined that the Principles and the Rules were not initially conceived and were not proposed as a model for the procedural regulation of domestic disputes. Actually, their declared purpose is narrower and more modest: the inspiring idea was of drafting a set of procedural rules that could be applied by national courts while trying and deciding transnational commercial disputes.[4] As a rule, and as mentioned above, domestic procedures are also applied by national courts when they deal with transnational disputes, and this is exactly the point that triggered the beginning of the ALI/UNIDROIT project: the variety of domestic procedures applied by national courts to transnational commercial disputes is provoking an incredible number of problems due to the practical impossibility of controlling proceedings occurring everywhere, and under different procedural systems, in the world of the globalised economy. Ideally, then, the Principles and Rules could be applied by *any national court all around the world* when a transnational commercial dispute has to be decided. To the extent that it may happen, the proceedings and the decisions concerning transnational commercial disputes could follow the same procedural pattern, on the basis of the application of the same standards. Of course the Principles and Rules should be connected and combined with the existing domestic procedures, since such procedures should remain applicable to all the subject matters not directly regulated by the Principles and Rules. However, they could create an interesting degree of uniformity in the

[3] The project initially sponsored by the *American Law Institute* was aimed at drafting a group of Rules, with Geoffrey C. Hazard and Michele Taruffo serving as co-reporters. When UNIDROIT joined the project, the project shifted to a drafting of Principles, which finally were approved by both of the sponsoring institutions. The Rules are then—so to say—a work product that may be referred only to the *American Law Institute*. However, the two texts are the outcomes of the same project and may be read as a homogeneous system of provisions.

[4] See Hazard 2006, xlvii.

proceedings concerning transnational disputes, since they could be able to overcome, at least to some extent, the diversity of national procedures. In such a sense, the adoption of the Principles and Rules (by means of international conventions or by adoption by national lawgivers) could be a powerful factor of harmonisation in the treatment of transnational disputes by different national jurisdictions.

Although the ALI/UNIDROIT Principles and Rules were drafted with specific and explicit reference to transnational commercial disputes, it seems clear that they might also be read and used beyond the original intent of their drafters. Actually, just by setting aside a few provisions specifically concerning the transnational and commercial character of the disputes to which they refer, most of the Principles and Rules may be read as a sort of *Model Law*, i.e. as a set of rules that could also be used as a frame of reference for procedural provisions concerning domestic disputes. Provisions concerning pleadings, provisional measures, settlements, the presentation of evidence, the role of the court in managing the proceeding, the form and contents of judgments, appeals, enforcement, and so forth, could be easily taken as 'models' for domestic regulations concerning several relevant aspects of civil litigation. Of course each national lawgiver could conceive more specific and detailed regulations of these topics, but different particular regulations could be 'harmonised' just by the fact of being partially different variations based upon the same *Leitmotiv*.

For instance, Principle 16.1 ensures the free access by any party to any relevant information and Principle 16.2 provides that the court should order the disclosure of any relevant evidence not disclosed voluntarily. National lawgivers could specify with much more detailed rules, in their domestic procedural codes, how these principles should be enacted and enforced, but such codes would be 'harmonised' by being referred, on this topic, to the same basic standards. Again: Rule 12.1 adopts the so-called 'fact pleading model' by requiring that the statement of claim 'must state the facts on which the claim is based' and 'describe the evidence to support those statements.' Any national code may specify such a rule by means of more precise norms, for instance by determining the consequences of the lack of specification of the facts and of the evidence, but national regulations would be 'harmonised' by the fact of adopting the same 'fact pleading' system.

The examples of this 'use' of the Principles and Rules could be in the dozens, but the fundamental idea seems to be rather clear. They represent, as previously stated, a consistent set of provisions covering the most important aspects of civil proceedings. This set is articulated but is not exceedingly detailed, and is stated in rather general but not vague and abstract terms. Moreover, it is internally consistent, in the sense that the drafters had a basic procedural model in mind: such a basic model emerges very clearly, for instance, from Principles 9 (Structure of the proceeding), 10 (Party initiative and scope of the proceeding), 14 (Court responsibility for direction of the proceeding), 16 (Access to information and evidence), 19 (Oral and written presentations), 22 (Responsibility for determinations of fact and law), 23 (Decision and reasoned explanation), 29 (Effective enforcement) and from many of the Rules.

If one imagines that some procedural codes are reformed by making reference to this set of provisions, the possible outcome would be a group of national codes, each including a lot of detailed and specific rules but all being based upon a sort of 'common core' that would be determined by the set of provisions that were used as 'models' in drafting the various domestic rules. Since the Principles and the Rules cover a rather wide range of procedural topics, this 'common core' could represent a powerful factor of harmonisation of national procedural codes.

10.4 Problems of Harmonisation

The ALI/UNIDROIT Principles and Rules have been drafted following the principal idea of imagining a set of procedural rules that could eventually be applied all around the world, wherever a transnational commercial dispute has to be tried and decided. Actually, the final text is the outcome of a complex scientific enterprise that lasted several years with the cooperation of dozens of experts from a variety of countries, including several European countries but also China, Japan, Brazil, Argentina, and the United States among others. The experience of drafting several versions of the text, and discussing them in a number of meetings in various countries and with many experts, has been extremely significant[5]: on the one hand, each participant offered the results of his or her own specific experience from the perspective of his or her own legal and general culture; on the other hand, however, it was relatively easy to find a common language and to understand each other, overcoming the differences determined by one's own origins. Cultural differences were present and relevant at every step of the discussions and of the redrafting, but such differences did not prevent the participants from finding a widely shared conceptual and cultural basis: such a basis allowed a fruitful effort realistically oriented to the aim of designing a set of principles and rules that could be generally approved. This did not mean setting aside cultural differences. Rather, it meant that cultural differences were not perceived as impossible hurdles in the attempt to imagine viable solutions for a number of relevant procedural problems. The ALI/UNIDROIT text received positive reception in several countries as a possible point of reference for reforms of national procedural systems. In this perspective one could infer that this text could well be used as a model in order to achieve a significant degree of harmonisation of the various procedural regulations existing in many countries. There are good reasons to believe this, mainly considering that the text has a fair degree of generality/specificity, and thus it could allow a reasonable amount of harmonisation without imposing an impossible uniformity on such diverse regulations.

[5] About the way in which the project was performed, see Introduction, in ALI/UNIDROIT 2006, 3, 12.

However, some further problems should be taken into due consideration. Some ALI/UNIDROIT principles are commonly acknowledged, and upon these principles it would be possible to reach a general agreement and—therefore—a rather high degree of harmonisation. For instance, Principle 1.1 says that 'the court and the judges should have judicial independence … including freedom from improper internal and external influence,' and Principle 1.3 says that 'the court should be impartial.' There is no doubt that the principles of independence and impartiality of the court are generally acknowledged by all systems. In a similar way, all systems acknowledge the principle of the procedural equality of parties (stated in Principle 3.1), the principles of due notice and right to be heard (stated in Principles 5.1, 5.3 and 5.4), the principle that a proceeding may be started only by a party and not *ex officio* (stated in Principle 10.1), the principle of good faith (stated in Principle 11.1) and several other principles that are included in the ALI/UNIDROIT Principles.

The same may be said about several Rules that are also included in the ALI/UNIDROIT text. However, a general agreement upon these principles and rules may be easily reached provided they are taken in a very general form, but the agreement may be very difficult to reach if they are taken literally in the specific terms in which they are stated in the ALI/UNIDROIT text. Actually, in order to use this text as a model law for procedural reforms, several national systems should introduce relevant changes in their own current procedural regulations. Taking again the example of the principles of independence and impartiality of courts and judges: the other statements included in Principle 1 are detailed enough to require a specific implementation that may not be easy in some systems. In a similar way, the other statements included in Principle 3 are also specific enough to require significant adaptations in several existing systems. The same may be said about the other statements included in Principle 5, in Principle 10 and in Principle 11. So far, however, the problem may be one of enacting specific uniform rules according to the model provided by the ALI/UNIDROIT text, but on the basis of a general consensus on the fundamental core of those principles.

But in this text there are some Principles that in order to be implemented would require structural changes at least in some of the existing procedural systems. Two examples may illustrate this point adequately. The first example is Principle 13, in which the so-called '*amicus curiae* brief' is admitted. Here the problem is that the '*amicus curiae* brief' is well known in common law jurisdictions, and particularly in the United States, but it is not allowed in most civil law jurisdictions. Introducing the 'brief' would certainly lead to a significant improvement in many procedural systems, but it would probably raise a lot of objections and difficulties. The second example is even more important and is offered by a group of statements included in the ten subsections of Principle 9 concerning the structure of the proceeding. The structure of the proceeding that is defined by Principle 9 corresponds to a specific and clear model of proceeding based upon three phases: a pleading phase, an interim phase and a final phase. In particular, subsections 9.3.1 to 9.3.6 include a rather detailed regulation on the interim phase of the proceeding. Here the problem is that while such a procedural model corresponds rather well to

the structure of some proceedings existing in Europe, as for instance in Germany and in Spain, the structure of other systems—in Europe and elsewhere—is not based upon the same general model. Adopting the ALI/UNIDROIT Principles would mean, for such systems, not only introducing adaptations of their specific provisions but also adopting a different system of litigation. Similar remarks could be made about several other Principles that cannot be taken into specific consideration here.

A fortiori, such remarks may be made about most of the Rules included in the ALI/UNIDROIT text. The Rules are more specific than the Principles, and to adopt many of them would require relevant structural changes in the current regulation of civil proceedings in several countries. A significant example is offered by the Rules concerning the role of the court in the presentation of evidence (Rule 28.3.1) or the technique for the examination of witnesses (Rule 29.4). Other examples are offered by Rule 22 with its ten subsections concerning evidence, by Rule 21 concerning the disclosure of evidence and by the eleven subsections of Rule 18 about case management.

10.5 An Open Conclusion

Some conclusions may be drawn from the above remarks. A point that should be clear enough is that a complete unification of procedural regulations on a world-wide level would be impossible, unnecessary and—at any rate—culturally undesirable. Another clear point, however, is that a significant degree of harmonisation among such procedural regulations may be possible, useful and culturally acceptable. A third point is that this kind of harmonisation could possibly be achieved at an 'intermediate' degree, that is, by adopting—in each national system—provisions that should be similar enough to reduce the differences at least to some extent, but general and flexible enough to allow each national system to maintain a relevant amount of its own specific peculiarities. In this perspective a tension may emerge between the trends that are in favour of harmonising the various systems of litigation and the cultural and historical factors that determined the characters of each national system and still explain the current existence of different models of litigation, as well as of different specific procedural provisions.

In such a situation, the ALI/UNIDROIT text could probably be used as a viable and acceptable frame of reference for changes that could be introduced into all the existing procedural systems with the aim of achieving a relevant degree of harmonisation, still leaving enough room for national peculiarities and for specific procedural rules. Actually, this text seems to be at the right level of generality/specificity that makes a partial harmonisation possible without requiring a complete unification and covers a number of relevant procedural issues, although it is far from providing the basis for the drafting of a full-fledged Code of Civil Procedure. Moreover, such a text sounds substantially acceptable in several areas

of the world, notwithstanding the different legal, political and general cultures existing in some of these areas.

Referring to the ALI/UNIDROIT Principles and Rules may be a good starting point (*rectius*: the only starting point available so far) for a harmonisation of the systems of civil litigation, but they cannot be taken as a sort of ready-made panacea for all the problems concerning the administration of justice in Europe and all around the world. After all, they were not originally conceived and drafted as a model law to be used for the reform of domestic systems of procedure, but only as a set of rules possibly applicable in transnational commercial litigation.

At least three groups of problems would arise in the perspective of using the ALI/UNIDROIT text as a frame of reference for a harmonisation of national systems of procedure:

1. The text does not deal with the plurality and the fragmentation of 'special' proceedings existing in several systems. Therefore, the text may well be used for the harmonisation of different national 'ordinary' proceedings. It could also be used as a reference for an 'internal' harmonisation of particular systems, that is, with the aim of reducing the number and the variety of special proceedings. However, this is a further issue that involves policy choices about whether such a variety should or should not be maintained. It seems clear that the harmonisation of several national systems could be achieved at a higher level if those systems were based on one general procedural model with just a few exceptions;
2. Even when accepted as a basis of harmonisation, the ALI/UNIDROIT provisions should be 'translated' and inserted into the much broader sets of procedural norms represented by the codes of civil procedure existing in each specific country. This may require an extremely complicated and sophisticated work of transcultural adaptation of the same basic set of provisions to different systems of procedural rules, and a no less difficult and sophisticated work of making different sets of provisions globally consistent with each other;
3. However, the problem is not only one of adapting the existing procedural regulations by 'transplanting' into them a group of widely accepted provisions. The problem is also that the ALI/UNIDROIT text includes a model of proceedings in a set of Principles and Rules that does not coincide with any already existing procedural system. Some of these provisions may be considered similar to some provisions existing in some systems, while others may be similar to provisions existing in another system, and many provisions do not correspond to any provision already existing in any system. This means that a national lawgiver may be inclined to accept only the parts of the text that sound more familiar in his or her own culture and tradition, but will be inclined to reject the parts that are, or sound, strange and 'foreign' if compared with the domestic regulation. Such reactions would lead to a misunderstanding and to a substantial opposition to any attempt to achieve even a partial harmonisation of the existing forms of civil litigation.

Actually, this is the core of the problem: harmonising the systems of litigation is not going to be a matter of adjusting details; it is going to be a matter of deep changes and structural reforms in many of the current national systems. Probably the moment has come and the way is open for such an undertaking, but it will probably be a long and difficult enterprise.

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