"THE IMPACT OF UNIFORM LAW ON NATIONAL LAW: LIMITS AND POSSIBILITIES"

The following questionnaire was submitted to me, as the National Raporteur for Greece, by Professor Horacio A. Grigera Naón, General Raporteur on the Arbitration Session.

Question 1: From your national law perspective, would it be proper to include within the notion of "Uniform Law" usages of the trade or "customs", general principles of law, general principles of contract law or of the law of obligations, transnational law, lex mercatoria, general rules of procedure? Uniform Law below shall mean Uniform Law according to the meaning assigned to this expression in your reply to this Question 1.

Question 2: To what extent has your country incorporated Uniform Law as national law through treaty ratification, other enactments or court decisions?

Question 3: To what extent should your national law be considered as including Uniform Law when designated as proper law of the contract? When your country is designated as place (seat) of the arbitration?

Question 4: To what extent will legal notions in your country applicable in the process of deciding a dispute by courts or arbitrators (including public policy and international mandatory rules or *lois de police* (national or foreign)) accept Uniform Law incorporated in the foreign law (substantive or procedural) applicable, as the case may be, to the contract giving rise to the dispute/at the foreign arbitral place or seat?

Question 5:

To what extent are arbitral awards officially published or informally disseminated in business and legal circles in your country? Is your country a stare decisis country? If so, to which extent stare decisis applies to arbitral determinations/awards?

To what extent is issue preclusion or collateral estoppel (if accepted in your legal system) applicable in arbitration (from court of law to arbitral tribunal and vice versa / between arbitral tribunals)?

Question 6: To what extent are national laws and state courts in your country "arbitration friendly"? Does your answer change depending on whether a state party or a state interest are directly involved in or affected by the resolution of the dispute or the contract may be labelled as "a public" or as an "administrative" contract under your legal system? Whether the arbitration is "international or domestic"? Whether its seat/place is within/outside your country?

Question 7: To what extent are arbitral awards subject to control on the merits (including from the outlook of private international law or choice-of-law methodologies, rules or principles applicable or accepted in your country) or in respect of procedural notions or matters (e.g., due process) when rendered in your country or (if rendered abroad) when brought for enforcement/recognition in your country?

Question 8: What is the notion of and role played by public policy in the recognition or enforcement of arbitral awards rendered abroad? Of lack of arbitrability? international mandatory rules or lois de police (national or foreign)? To what extent do any of these reservations/notions serve the purpose of advancing primarily local or domestic notions regarding both substantive law and procedural law matters?

Question 9: Bearing in mind your answers to questions 3-8 above, to which extent arbitral awards or determinations influence, or may be considered as possibly influencing state court decisions or legislative change in your country? To what extent do courts of law in your country defer to determinations made by local or international arbitral institutions in charge of administering arbitrations? If no experience at hand, what would be the prospective answer to these questions? Please differentiate the areas of the law in which this influence exists or may potentially exist in the future

Question 10: Bearing in mind your answers to questions 1-9 above, to what extent do arbitral awards rendered in your country, enforced or enforceable in your country or concerning nationals of or residents in your country, apply or may be deemed as based on Uniform Law? If no experience at hand, what would be your prospective answer to this question?

Question 11: Bearing in mind your answers to questions 1-10 above, what has been the impact of arbitral awards and determinations in introducing, firming up or applying Uniform Law, including through legislative change or the action of the courts, in your

country? Of foreign court decisions regarding arbitral awards or determinations referring to or based on Uniform Law? If no experience at hand, what would be the prospective answers to these questions?

Question 12: Bearing in mind your answers to questions 1-9 above what has been the impact on the fashioning of your national legislation on arbitration – domestic or international – or on arbitral awards rendered in your country or concerning nationals of or residents in your country of: (a) the action and rules of international arbitral institutions (e.g. the International Court of Arbitration of the International Chamber of Commerce (ICC), the American Arbitration Association (AAA) and its International Centre for Dispute Resolution (ICDR), the London Court of International Arbitration (LCIA)); (b) the works of international organizations (e.g., UNCITRAL, UNIDROIT, the European Union, NAFTA, the Organization of American States); and (c) foreign court decisions or legislation reflecting the influence of the action or works of institutions or organizations like the ones mentioned in subparagraphs (a) or (b) above? If no experience at hand, what would be your prospective answers to these questions?

ANSWERS:

Many of the questions in the above questionnaire are closely interlinked and thus difficult to address separately. Therefore, the 12 questions will be dealt with in 3 different groups:

First, questions 1 to 4 on Uniform Substantive Rules

Second, questions 5 to 8 on Uniform Rules and International Arbitration

Third, questions 9 to 12 Prospective answers and prognosis on the impact of Uniform Rules on Greek legislation, jurisprudence[1] and arbitration practice

QUESTIONS 1 TO 4 ON UNIFORM SUBSTANTIVE RULES

Question 1: From your national law perspective, would it be proper to include within the notion of "Uniform Law" usages of the trade or "customs", general principles of law, general principles of contract law or of the law of obligations, transnational law, lex

[1] The Greek judiciary is organised in the following hierarchy:
"Areios Pagos": Supreme Court of Ordinary Jurisdiction (SC)
"Efeteion": Court of Appeal (CA)
"Protodikeion": Court of First Instance (FI)

mercatoria, general rules of procedure? Uniform Law below shall mean Uniform Law according to the meaning assigned to this expression in your reply to this Question 1.

Question 2: To what extent has your country incorporated Uniform Law as national law through treaty ratification, other enactments or court decisions?

Question 3: To what extent should your national law be considered as including Uniform Law when designated as proper law of the contract? the law governing the tort? When your country is designated as place (seat) of the arbitration?

Question 4:To what extent will legal notions in your country applicable in the process of deciding a dispute by courts or arbitrators (including public policy and international mandatory rules or lois de police (national or foreign)) accept Uniform Law incorporated in the foreign law (substantive or procedural) applicable, as the case may be, to the contract giving rise to the dispute/at the foreign arbitral place or seat?

Answer

First, when a contract contains an express reference to a Uniform Law: Greek courts faced with a contract containing an express reference to "Uniform Law", or more likely to an aspect of "Uniform Law", such as, for example, the ICC Uniform Custom and Practice (UCP) rules, will not consider this reference as a choice of law reference. Indeed, Greek courts will treat this contract as having no choice of law clause and they will then apply Greek conflict of laws rules to identify the national law applicable apply to the contract before them.[2] From a Greek private international law perspective, any reference to "Uniform Law", or an aspect of it, is considered a *non-choice of law*, as it lacks national identity. As the following paragraphs show, the jurisprudence of Greek courts does not recognise "Uniform Law" as an autonomous non-national (or a-national) source of legal rights and duties.

Second, when a contract with foreign element does not contain any reference to Uniform Law or any choice of law clause. Greek courts faced with a international contract with no

[2] See for example, Athens CA, case 7470 of 2003, in (2005) *Dikaiosini*, p. 606; Athens Court FI, case 10862 of 1995, in (1996) *Dikaio Epixeiriseon Etaireion*, p. 395; Piraeus CA, 1323 of 1995, (1996) *Dikaio Epixeiriseon Etaireion*, p. 284.

choice of law clause will try to identify the law applicable to the contractual relationship at hand, by reference to the applicable conflict of laws rules, namely the Rome Convention on the Law Applicable to Contractual Obligations, signed and ratified by Greece (now the new Rome I Regulation[3] directly application by Greek Courts), or Greek Civil Code (CC) Art. 25. However, both the Rome Convention and the Greek CC Art. 25 expressly refer to "national laws", rather than "rules of law". Accordingly, conflict of law rules applicable by Greek Courts can only lead to the law of a particular country (national law) rather than Uniform Law, which is a set of a-national rules. Therefore, not even a *voie indirect* application of Uniform Law as such is possible under Greek Law.

It has been argued by some Greek scholars[4] that International Uniform Law, such as *lex mercatoria* or INCOTERMS, will directly apply to a contractual relationship with a foreign element as Substantive Rules of Private International Law (direct application of Uniform Law). However, this view has not been adopted by Greek courts.[5] Furthermore, it must be noted that there is no substantive provision of private international law in the Greek Civil Code that can be relied upon to have Uniform Law directly applicable by Greek Courts.

Thus, the only possible way for Greek Courts to apply rules of Uniform Law would be to apply them as part of a specific national law. This could be either Greek or a foreign national. Thus, we would need to examine:

First, whether and to what extent uniform rules are indeed accepted and applied by Greek courts as part of a foreign law

Second, whether Uniform rules are part of Greek national law.

First, whether and to what extent uniform rules are applied by Greek courts as part of a foreign law. Here it is submitted that Greek courts will first examine whether uniform rules are part of the foreign law applicable to the dispute before them. If they find that the foreign applicable law includes uniform rules, Greek courts will then apply the relevant uniform rules as part of the foreign applicable law.

For example, in case 87 of 1993, the Greek Supreme Court (Areios Pagos) held that; by reference to the Greek conflict of laws rules (CC Art.25) the law of the US Carriage of

[3] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

[4] See A. Grammaticaki-Alexiou, Z. Papasiopi-Pasia, E. Vasilakakis, *Idiotiko Diethnes Dikaio* (*Private International Law*) [in Greek], (2nd ed) (Sakkoulas Thessalonica 1998), p. 20 et seq.

[5] See *supra* note 2.

Goods by Sea Act 1936 would be the proper applicable law to the dispute at hand.[6] However, the Greek Supreme Court added that uniform rules (general principles of law in particular) as these uniform rules are applied by the US law must also be taken into account to determine whether the reference of the crucial bill of lading to a charterparty was valid or not.

Similarly, in case 5415 of 2003[7] the Piraeus Court FI, found that English law (the Marine Insurance Act in particular) was applicable law to the contract at hand, but also noted that:

"in addition, commercial usages have an important role [in English Law], and they govern simple issues for which the enacted law contains no express provision."

Thus, the Court applied commercial practice and usages prevailing in the yacht insurance industry, as they were codified in the "Institute Yacht Clauses". The same approach has been taken by Greek Courts in other cases too.[8]

Uniform rules incorporated in a foreign law are generally accepted and applied by Greek courts, even if this Uniform rule would lead to a result that would be different if Greek law were applicable. Thus, for example, in the above case 5415 of 2003, the Piraeus Court of FI accepted that, in accordance with the applicable English law, commercial usages would govern a business transaction, as implied contractual terms, even when the parties have failed to refer to them in their contract. This would never be accepted in Greek law: according to fundamental Greek legal principles, if the parties failed to expressly refer to commercial practice and usages, the latter may only be used as interpretation tools to reveal the real meaning of the contract and the parties intentions. Commercial usages can never be part of the contract as implied clauses, unless the parties have expressly referred to them. Nevertheless, Greek courts in this case had no objection to treat commercial usages in accordance with the applicable English Law, even if Greek law would have treated them differently.

Of course, if the meaning given to uniform rules in accordance with the applicable foreign law violates Greek mandatory rules or public policy, Greek Courts will not apply these uniform rules. However, there is no reported case where the application of uniform rules has been rejected on the basis of violation of mandatory rules and public policy.

[6] (1993) *Epitheorisi Emporikou Dikaiou*, p. 259.
[7] (2004) *Epitheorisi Emporikou Dikaiou*, p. 340.
[8] See for example, Thessalonica CA, case 2541 of 1983; Piraeus FI, case 2421 of 1992; Piraeus FI, case 336 of 1990.

Second: whether Uniform rules are part of Greek national law. This is a more complicated question, which is closely related to the hierarchy of the legal sources in the Greek legal system. It is, therefore, necessary to briefly explain the structure of the Greek legal system, before attempting to define the impact of Uniform Law on Greek national law.

Heavily influenced by the Romano-Germanic legal tradition, the hierarchy of legal sources in the Greek legal system is as follows:

First comes the Constitution. Thus, the constitutional rules will override any other provision of enacted or customary law, either domestic or international (although there is still ambiguity over whether European Community Law may override Greek Constitutional rules).[9]

Second is the so-called "laws with high legal authority". These are rules and provisions included in International Conventions signed and ratified by Greece, and in European legislation (i.e. provisions of the European Treaty, Regulations and Directives).[10] More specifically, in accordance with the Greek Constitution Art. 28, international law as well as international treaties ratified by Greece constitute an integral part of Greek law, prevailing over any contrary statutory provisions. However, it should be noted that, while general rules and principles of international law apply directly, international treaties need to be first ratified by Greek parliament to become part of Greek legal system.

Third, rules set out by Greek National legislation (called "enacted law") and Customary rules. Customary rules are listed in the Greek Civil Code Art.1 as an equal legal source to enacted law. However, it is generally accepted in Greece that customary rules cannot abolish or override statutory law.[11] Therefore, customary rules cannot have an *adversus legem* effect.[12] As is explained below, this observation has a significant importance in relation to the role of Uniform Law in the Greek legal system.

Fourth comes commercial practices, trade usages and general principles of law. As opposed to enacted law or customary rules, commercial practices or usages and general principles of law are not considered primary sources of law. Therefore, unless the parties have expressly referred to them, commercial practices or usages and general principle of law cannot

[9] See V. Christianos, "Application of Community Law in Greece", in K. Kerameus- P. Kozyris (eds), *Introduction to Greek Law*, (3rd ed) (Kluwer Law International 2007), p. 66.
[10] *Ibid*, p. 68-69.
[11] See A. Grammaticaki-Alexiou, Z. Papasiopi-Pasia, E. Vasilakakis, *Idiotiko Diethnes Dikaio* (*Private International Law*) [in Greek], (2nd ed) (Sakkoulas Thessalonica 1998), p 10 et seq.
[12] See also, Areios Pagos (SC), case 435 of 1994, in (1995) *Dikaiosini* (1995), p. 154 for a definition of "general conditions" and the meaning of "customary rules".

regulate a contractual relationship between parties (i.e. they have no autonomous regulatory power). In Greece, commercial practices or usages are not considered legal rules, and thus naturally, no point of law appeal is permitted against a court judgment that wrongfully applied them.[13] However, practices or usages and general principles of law have *interpretative power*: judges or arbitrators commercial can rely on them to reveal the true meaning of a contract, even if the parties have not referred to them in their contract. Indeed, Greek courts employ them as interpretative tools by reference to specific articles of the Greek Civil Code (see for example, CC Art. 200 and 288). In effect whether commercial practices and usages will apply depends on the specific conditions provided in the CC Art. 200 and 288. Thus, commercial practices and usages apply indirectly through Greek enacted law, rather than *ad hoc* as a-national rules. As explained below, this observation has also important significance in relation to the effect of Uniform Law on Greek law.

Lastly comes contracts and party autonomy. Contractual terms and clauses agreed by parties are at the lowest level of the hierarchy of legal sources. As opposed to statutory law, customary rules and general principles of law, contractual terms have no self-standing regulatory or interpretative power: they will apply only if parties agree on them. However, once agreed by parties, contractual terms and clauses will override any conflicting default national legal rule (either enacted or customary) or any commercial practice or usage and general principle of law.

Binding legal rights and duties may only derive from one of the above legal sources. Therefore, Uniform law will be applied by Greek courts only if and to the extent that it is part of one of the above legal sources.

The following analysis shows that Greek Courts treat Uniform Rules either as contractual terms or commercial practices and trade usages. In the former case, Uniform Rules will only apply if the parties have agreed on them. In the latter case, Uniform Rules will apply to a contract even when the parties have failed to agree on them; however they will apply as interpretative guidelines only, in order for the court to reveal the true meaning of a contractual term or the intention of the contractual parties.

Parties rarely use in their contracts the term "Uniform Law" or even "*lex mercatoria*". Thus, the following review of the jurisprudence of Greek courts focuses on different parts

[13] *Ibid*.

(groups of rules) of Uniform Law. In particular, the following groups of Uniform Rules are examined:

Uniform Law codified in international conventions, such as the United Nations Convention on Contracts for the International Sale of Goods (CISG) or the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (known as the Hague-Visby rules)

Uniform Rules codified in soft law documents, such as the ICC UCP or the INCOTERMS.

First, Uniform Law codified in international conventions. As mentioned above, international conventions ratified by Greece constitute an integral part of Greek law, prevailing over any contrary statutory provision. Thus Greek Courts apply Uniform Law codified in:

The United Nations Convention on Contracts for the International Sale of Goods (CISG) has been ratified in Greece by Act no 2532 of 1997 and applied since 1-2-1999.

The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Hague-Visby rules), a codification of general practice with regard to bills of lading, has been signed and ratified by Act no 2107 of 1992.[14]

The 1956 Convention on Contracts for the International Carriage of Goods by Road (CMR) has been signed and ratified by the Act no 559 of 1977, and the Act no 1533 of 1985.

The International Convention on Carriage by Air (originally signed in Warsaw in 1929) was signed and ratified by Greece by the Decree no 596 of 1937.

Second, Uniform Rules codified in soft law documents. Here, the analysis will focus in particular on the Uniform Law applicable to banking transactions: mainly on the ICC Uniform Custom and Practice Rules for Documentary Credit Transactions, but also on the ICC Uniform Rules for Collection. These rules have been the subject matter of extensive discussion in Greek legal discourse and court jurisprudence.[15] Nevertheless, no generally

[14] See also Piraeus CA, case 240 of 2006.

[15] See for example, Kaisis, *Diethnis Emporiki Diaitisia kai Symvasi Vryxellon* (*International Commercial Arbitration and Brussels Convention*) [in Greek] (Sakkoulas Thessalonica 1995), p. 99 et seq; A. Aigyptiadis, *Omoiomorfoi Kanones kai Synitheies Diethnous Emporikou Epimelitiriou gia Eneggyes Pistoseis* (*Uniform Customs and Practice of International Chambers of Commerce for Documentary Credit Transactions*) [in Greek], (Sakkoulas Athens-Thessalonica 2002); H. Pampoukis, *I Lex Mercatoria os Efarmosteo Dikaio stis Diethneis Symvatikes Enoxes* (*Lex Mercatoria as Law Applicable to International Contractual Relationships*) [in Greek], (Sakkoulas Athens 1996), para 36 et seq; S. Psyxomanis, *Trapezikes Drastiriotites- Amfisvitisimi Nomimotita* (*Banking Transactions- Questionable Legitimacy*) [in Greek], (Sakkoulas Athens-Thessaloniki 2002); S. Psyxomanis, *Pistoseis Enanti Eggrafwn* (*Documentary Credit*) [in Greek], (Sakkoulas Athens-Thessalonica 2001); S. Psyxomanis, *Trapeziko Dikaio kai Dikaio Trapezikwn Symvasewn* (*Banking Law and Law of Banking Transactions*) [in Greek] (Sakkoulas Athens-Thessalonica 2001); A. Kiantou-Pampouki, *Dikaio Trapezikwn Ergasiwn* (*Law of Banking Transactions*) [in Greek] (Sakkoulas Thessalonica); C. Chrysanthi, "I Ektasi tou Elegxou sta Eggrafa tis Trapezikis Eneggyas Pistosis" ("The Extent of Review Over Documents in Documentary Credit") [in Greek], (1995) *Epitheorisi Emporikou Dikaiou*, p.190.

accepted view exists on the legal nature of those rules. Thus, it is not clear where UCP rank in the hierarchy of Greek sources of law. In particular the following views have been argued:

First, UCP rules are merely contractual rules with contractual power.[16] Thus, they will apply only when the parties refer to and incorporate them in their contract, in which case UCP rules will regulate the contractual relationship of the parties, overriding any contrary default national provision, apart from the mandatory ones. However, according to this view, if the parties fail to agree on them, UCP rules can have no effect, regulatory or interpretative, on a documentary credit transaction.

Another view argues that UCP rules are different from other ordinary contractual terms, because they are *a priori* (codified and promulgated by ICC) and they are issued in order to apply to a large number of documentary contract transactions. Thus, according to this view, UCP should be classified as *standard contractual terms and conditions*.[17] In essence, this view is very similar to the one arguing that UCP are only contractual terms, as under both views UCP will apply to a documentary credit transaction only if the parties have agreed on them; otherwise, they cannot be taken into account by courts to govern the contract or interpret the parties intention.[18]

According to a third view, UCP should be classified as *commercial usages and practices*.[19] As noted above, commercial usages and practices are ranked higher than contractual terms in the hierarchy of Greek sources of law. This in practice would mean that Greek Courts would have to look into UCP by reference to Greek Civil Code Art. 200 and 288, even when the parties failed to agree (either expressly or impliedly) on them. In other words, according to this view UCP have a self-standing power that is independent from the parties' intention. However, in such a case, UCP would not apply to regulate the contractual relations (no regulatory power). Courts would only rely upon them to as general guidelines to properly reveal the true intention of the contracting parties, and the contractual terms (interpretative power only).

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[16] See for example, Kiantou- Pampouki, *ibid*, p. 63.
[17] See Psyxomanis, *Pistoseis Enanti Eggrafwn* (*Documentary Credit*), *supra* n. 15, p. 101.
[18] Psyxomanis, *Trapeziko Dikaio kai Dikaio Trapezikwn Symvasewn* (*Banking Law and Law of Banking Transactions*), p. 17; he even argues that "UCP (500) Rules 15, 16 and 18 are in conflict with basic provisions of Greek law (Greek CC. Art. 288, 332 and 334 and Art.2 of the Act no 2251 of 1994" see *Trapezikes Drastiriotites- Amfisvitisimi Nomimotita* (*Banking Transactions- Questionable Legitimacy*), para 8.
[19] See Aigyptiadis, *supra* note 15, p. l52 et seq and P. Mazis, *Empragmati Exasfalisi Trapezwn kai A.E.* (*Real Security of Banks and Companies*) [in Greek], (Sakkoula Athina 1983) p. 293.

A fourth view argues that UCP are customary rules.[20] However, this view seems not to be widely supported. As is generally accepted in Greek law, customary rules are accepted only if two rather stringent conditions are met: first, long-term uniform application of a specific practice (*longa consuetudo*); second, belief that this practice is actually a legal rule (*opinio juris*).[21] While the first condition (*longa consuetudo*) seems to be met in relation to UCP rules, it is rather doubtful that commercial parties apply the UCP rules because they believe that they constitute legal rules irrespective of whether they provide them in their contract or not (*opinio juris*).[22] Of course, seasoned businessmen are aware of the UCP rules but they follow them if they are incorporated in their contracts as contractual terms rather than as self-standing legal rules.

Finally, it has been argued that UCP should not be examined *in globo*, since not all of the UCP rules come from the same source or have the same purpose.[23] Rather, UCP rules should be distinguished between those rules that codify commercial usages and practices and those that do not. It is argued, for example, that those UCP rules that regulate the relationships between the banks can qualify as commercial practices or even customary rules, and therefore they should apply to a documentary transaction between two banks even if the banks did not agree on them.[24]

As opposed to the extensive discussion in Greek literature, Greek courts have not addressed the legal nature of the UCP rules in much detail. As already mentioned, a reference to UCP by the parties does not qualify as a choice of law, according to the jurisprudence of the Greek courts.[25] Consequently, Greek courts will apply Greek conflict of laws rules, even when the parties expressly refer to UCP in their contract.[26]

As regards the nature of the UCP rules Greek courts have held that: "UCP rules, the legal nature of which is disputed, are not according to the prevailing view *enacted or customary law*, but *general terms and conditions*" (emphasis added). The above is a set phrase repeated in the jurisprudence of the Greek courts almost verbatim in every case on documentary credit transactions of the last twenty years. Some decisions have even referred

[20] See Tsimikalis, *Meletai ek tou Dikaiou ton Trapezwn* (*Studies of Banking Law*) [in Greek], (Athina 1949), p.114; A. Dimolitsa has also adopted the same view, with regard to the INCOTERMS though, see "Ta Pleonektimata tis Diethnous Emporikis Diaitisias" ("Advantages of International Commercial Arbitration") [in Greek], 29 (1981), *Nomiko Vima*, p.232.
[21] See Areios Pagos, case 435 of 1994, (1995) *Dikaiosini*, p. 154 for the definition and meaning of custom as opposed to general practice.
[22] See Aigyptiadis, *supra* note 15, p. I58.
[23] *Ibid*, p.170 et seq.
[24] *Ibid*.
[25] See *supra* note 2.
[26] If they find that Greek law is proper law to the contract, Greek courts will apply then Art. 25 to 34 of the Statutory Decree of the 27.6/13.8.1923 on "Special Provisions on Corporations".

to the non-governmental nature of the ICC, which promulgates the UCP rules, noting: "by no means these rules can be taken as legal rules with normative power (not even default legal provisions), since they are promulgated by an organization that has no legislative power".[27] However, the courts have also added that UCP "apply in the interpretation of the documentary credit transaction by virtue of Greek C.C. Art. 200 and 288, *especially when the parties have expressly referred to them in their contract*." (emphasis added).[28]

In the light of the relevant case law and in particular by reference to the above standard phrase in the Greek jurisprudence, the following can be argued:

First, it is clear that despite some early decisions holding that the UCP are customary rules,[29] the currently prevailing view taken by Greek courts is that these terms are neither enacted nor customary law. Thus, UCP can have no normative power to regulate a contractual relationship when the parties have failed to refer to them in their contract. Indeed, this was confirmed by the judgment of Athens CA no 7470 of 2003.[30] Here the Greek seller (claimant) concluded a sale with a Belgian buyer and agreed to open a documentary credit. The credit was opened by a Belgium bank; however the announcing bank (defendant) in Greece did not announce the credit to the seller, on the basis that the seller had, in the meantime, revoked the credit. The Greek seller sued the Greek announcing bank for damages both on contractual and tortious basis. The Court of Appeal rejected the claim, holding that first, there was no contractual relationship between the seller and the announcing bank since the documentary transaction was not completed (as the credit was revoked by the seller) and second, the violation of UCP could not support a tortious claim, since the UCP rules are neither enacted law nor customary rules, and thus their violation cannot give rise to tortious claims.

Second, although Greek courts expressly refer to UCP as "general terms and conditions" (i.e. as purely contractual terms), in essence they treat UCP as *commercial practices and*

[27] Athens CA, case 7470 of 2003, (2005) *Dikaiosini*, p. 606.

[28] See for example, Athens CA, *ibid*; Athens CA, case 2134 of 2001, 43 *Elliniki Dikaiosini*, p. 507; Athens CA, case 6953 of 1995, 44 *Nomiko Vima*, p. 651; Athens CA, case 2396 of 1989, (1990) *Dikaiosini*, p. 874; Athens CA, case 2396 of 1989, (1989) *Epitheorisi Emporikou Dikaiou*, p. 210; Athens CA, case 9188 of 1984, 27 *Elliniki Dikaiosini*, p. 107; Thessalonica CA, case 2541 of 1983, (1985) *Armenopoulos*, p. 514; Athens CA, case 2134 of 2001, (2002) *Dikaiosini*, p. 510; Piraeus CA, case 1323 of 1995, (1996) *Dikaio Epixeiriseon Eraireion*, p. 284; Thessalonica FI, case 12604 of 1995, (1997) *Armenopoulos* p. 62; Athens FI, case 3019 of 1995, (1996) *Nomiki Δikaiosini*, p. 102; Kavala FI, case 220 of 1997; Athens FI, case 10862 of 1995, (1996) DEE p. 395; Halkida FI, case 3007 of 2005, (2006) *Epitheorisi Emporikou Dikaiou*, p.386; the same in Athens FI, case 2967 of 2007 (2007) *Dikaio Epixeiriseon Eraireion*, p. 957 (although omitting the ambiguous phrase "in particular when the parties have expressly referred to the them"). The same in the Areos Pagos, case 1160 of 1998, (1999) *Dikaio Epixeiriseon Eraireion*, p. 424, which seems to limit the scope of the UCP holding that they will "only apply when the parties have provided for them in their contractual relationship".

[29] See Piraeus FI, case 3038 of 1959, (1959) *Epitheorisi Emporikou Dikaiou*, p. 405 holding "these rules even if they are not customary rules they reflect usages and principles which in accordance with art. 200 and 281 must govern documentary credit transactions"

[30] (2005) *Dikaiosini*, p. 606.

usages, rather than just contractual terms and conditions. This view, supported also in literature,[31] can be based on the following:

First, Greek courts have been consistently referring to Civil Code Arts. 200 and 288, which are normally used as "gateways" to incorporate a-national *commercial practices and usages* into Greek law.[32] If Greek Courts considered UCP merely as general terms and conditions, rather than commercial practices and usages, the express and consistent reference to C.C Arts. 200 and 288 would be superfluous, if not wrong.

Second, in many of their decisions, Greek courts point out that the "UCP rules are applied by international banks and have also been accepted by the Union of Greek Banks."[33] This reference shows that Greek courts, in fact, recognize that the UCP have acquired wide recognition and are generally applied by banks in an international context. Therefore, the legal status of the UCP goes further than that of contractual terms.

Third, as mentioned above, the Greek courts will always look into and apply UCP to a documentary credit transaction in addition to the applicable national law. Indeed, they typically note that: "UCP are applicable *in particular* when the parties have expressly referred to them", (emphasis added) which is a standard phrase consistently found in the jurisprudence of the Greek courts. On the basis of a grammatical interpretation of the above language and especially on the phrase "in particular", it can be argued that the UCP rules would be applicable by Greek courts even *when the parties did not refer to them in their contract*. It would make no sense to argue that the above phrase means that "UCP are applicable even when the parties have *implicitly* referred to them", since this would be a tautology: UCP would be applicable whenever the parties refer to them, either expressly or implicitly.[34] Thus, the standard phrase "UCP are applicable in particular when the parties have expressly referred to them", must mean that the courts will take the UCP rules into account, for interpretation purposes, even when the parties failed to refer to them in their contract. This would clearly bring the legal status of the UCP rules to that of "commercial practices and trade usages", rather than that of ordinary contractual terms.

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[31] See H. Pampoukis, *supra* note 15, p. 260 and Aigyptiadis, *supra* note 15, p. l67 et seq.

[32] See *supra* para 12.

[33] See for example, Athens CA, case 7470 of 2003, (2005) *Dikaiosini*, p. 606; *cf* also Athens FI, case 10862 of 1995, (1996) *Dikaio Epixeiriseon Eraireion*, p. 395, which takes expressly into account the international practices followed by the banks in documentary credit transactions pointing out that "the rights of the beneficiary of the credit depends on the whether this is revocable or irrevocable and on any special terms that are agreed in accordance with the international practice".

[34] H. Pampoukis agrees with this interpretation, see *supra* note 15, p. 260. Note however that the recent Athens FI, case 2967 of 2007, (2007) *Dikaio Epixeiriseon Eraireion*, p. 957 omitted the ambiguous phrase "in particular when the parties have expressly referred to the them".

To conclude, the legal status of the UCP rules in Greece remains under discussion both in legal literature and jurisprudence. It seems that the prevailing view is to give UCP rules a contractual status (as general contractual terms and conditions). However, in the light of the above analysis it can also be argued that UCP rules are, in essence, treated more as "commercial practices and trade usages". If this view is accepted, the role of the UCP rules will be two-fold: first they will apply to regulate/govern the documentary transaction when the parties expressly or implicitly agreed on them (regulatory power); second, they will also apply to documentary transactions even when the parties have failed to incorporate them in their contract. However, in the latter case the UCP rules will only be used (by reference to C.C Art. 200 and 288) as interpretative guidelines for the Greek courts to reveal the true meaning of the contract (interpretative power), rather than to regulate the contract.

As regards the ICC Uniform Rules for Collection (URC), it seems that Greek courts would have fewer objections than those regarding the UCP rules, to accepting and applying them as *general principles and practices*, not just contractual terms. In case 6025 of 1994, the Athens Court of First Instance cumulatively applied Greek law and the URC, and pointed out that the latter would apply as *general principles with regard to the interpretation and execution of the contracts providing for delivery of documents by the bank against acceptance or payment*.[35]

Turning to INCOTERMS, Greek courts have a clearer view of their legal nature, expressly according them the status of commercial practices and usages. This particularly applies to the CIF, FOB and C+F. For example, the Thessalonica Court of Appeal, in case 49 of 1953,[36] held that "in accordance with the internationally prevailing meaning of FOB that has been developed *by commercial practices and customs*, it is the seller's duty to pay the cost of freight/carriage".

Similarly, the Athens Three-member Court of First Instance, in case 645 of 1991,[37] pointed out that "in carriage of goods by sea transactions the content of CIF terms is uniformly accepted at an international level and it is specified in the INCOTERMS of the ICC". Therefore, Greek Courts seem to accept ICC INCOTERMS as uniform codified rules, not just contractual rules.

[35] See also Athens CA, case 2396 of 1989, 31 *Elliniki Dikaiosini* p.875; Athens CA, case 9188 of 1984, 27 *Elliniki Dikaiosini*, p. 107; Thessalonica CA, case 2541 of 1983, 36 *Epitheorisi Emporikou Dikaiou* p. 630; Athens CA, case 8183 of 1989, 32 *Elliniki Dikaiosini* p. 210; Athens CA, case 10148 of 1987, 29 *Elliniki Dikaiosini* p. 353; Areios Pagos, case 860 of 1987, *Epitheorisi Emporikou Dikaiou*, p. 214.
[36] (1953) *Armenopoulos*, p. 276.
[37] (1994) *Armenopoulos*, p. 1056.

The Piraeus Three-member Court of First Instance, in case 1530 of 1996,[38] even went a step further bringing their legal status closer to legal rules. In particular the court held that "the carriage of goods by sea transactions is so well defined and internationally accepted in the CIF, FOB, FAS C + F, that they are interpreted, by reference to the INCOTERMS issued by ICC, in a uniform and objective way *as if they were legal rules*" (emphasis added).

Equally, the Piraeus Court of Appeal (a court specialising in maritime disputes) in case 1105 of 2006[39] noted that "in transnational sales, especially in the context of maritime (carriage of goods by sea) transactions, the duty to dispatch the goods is governed by standard commercial terms such as FOB (Free On Board) or C + F (Cost And Freight) or CIF (Cost Insurance and Freight). These clauses have a standard content largely accepted internationally so that they are subject to uniform and objective interpretation as *if they were rules of law*; moreover their content is clarified in the INCOTERMS published by the ICC" (emphasis added).[40]

Therefore, it can be argued that Greek courts give ICC INCOTERMS a higher legal status than that of the UCP rules; in fact they rank ICC INCOTERMS certainly above contractual terms (or general terms and conditions). It follows that the ICC INCOTERMS will apply to specify the meaning of a CIF or an FOB contract, even if the parties have failed to refer to the rules (self-standing interpretative power).

In some cases, as seen above, Greek courts have even accorded ICC INCOTERMS a status that *borders on* customary *legal rules*.[41] Eventually though, this view should be rejected: INCOTERMS do not actually have the status of legal rules. Indeed, Areios Pagos in case 178 of 1998[42] refused to overturn the Court of Appeal judgment on the basis that the Court Appeal erred in applying the CIF terms of a carriage of goods contract. According to the Greek Supreme Court, even if the Court of Appeal had violated or had wrongly applied a rule governing the CIF contract at hand, this would not constitute a violation of *a legal rule* and, therefore, there would be no ground to overturn the Court of Appeal judgment on the

[38] (1997) *Dikaio Epixeiriseon Etaireion*, p. 304.
[39] (2007) *Dikaio Epixeiriseon Etaireion*, p. 412.
[40] In the same vein also, Athens CA, case 1292 of 1993; Athens CA, case 1069 of 1994; Athens CA, case 773 of 1999, (1999) *Dikaio Epixeiriseon Etaireion*, p. 1043; Athens CA, case 3613 of 1999, (1999) *Dikaio Epixeiriseon Etaireion*, p. 1160.
[41] The same view is accepted by Greek scholars: see for A. Argyriadi, "Diethneis Emporikoi Kanones 1992 Ekdoseos ICC kai Enoseos Ellinikon Trapezon" ("International Commercial Rules 1992 or the ICC and the Greek Bank Association") [in Greek], (1988) *Epitheorisi Emporikou Dikaiou*, p. 105; Tsirintanis, *I agoropolisia en to Thalassio Emporio* (*Sale and Purchase in Maritime Commerce*) [in Greek], (1934), p. 67, 160 et seq, 184 et seq, 191 et seq.
[42] (1998) *Dikaio Epixeiriseon Etaireion*, p. 1227.

basis of error on point of law.[43] Similarly, other decisions have held that the reference to INCOTERMS does not qualify as a choice of law clause. Thus, when the parties provide for the application of INCOTERMS in their contract Greek courts would still have to ascertain the applicable law.[44]

Uniform law, in the form of international commercial practices and trade usages, has also been taken into account by Greek courts in the context of a typical situation in maritime transactions: whether the holder of a bill of lading is bound by an arbitration agreement included in a charter-party to which the bill of lading (b/l) holder is not a signatory party. Here, Greek courts have been consistently holding that for the third party (holder of the bill of lading) to be bound by the arbitration agreement in a charter party, there must be "an express and unambiguous reference in the b/l to the specific terms of the charter-party."[45] Moreover, according to consistent jurisprudence of the Greek courts, the question of whether there is "an express and unambiguous reference in the b/l to the specific terms of the charter-party" will be determined in accordance with objective standards set out by commercial practices and trade usages, not just the intention of the parties.[46]

In this context, the Areios Pagos upheld the decision of the Piraeus Court of Appeal, holding that the holder of a b/l is bound by an arbitration agreement contained in charter-party of the standard form CENTROCON, on the basis that the inclusion of an arbitration agreement in this charter-party standard form is so well known to those involved in the shipping industry that constitutes a *general commercial practice*. Therefore, the reference in the b/l to this particular form of charter-party must be considered an express and unambiguous reference to the arbitration agreement too.[47]

International commercial practices and trade usages have also been taken into account in other cases by Greek courts in the same context. For example, the Piraeus Court of Appeal, in case 200 of 1997,[48] held, with regard to a charter-party of CONGENBILL type, that: "in

[43] See Greek Civil Code of Civil Procedure Art. 559 (1).
[44] See for example, Thessalonica Court of Appeal, case 1318 of 2003, (2004) *Epitheorisi Emporikou Dikaiou*, p. 299.
[45] Areios Pagos (*in plenum*), case 236 of 1966, (14) *Nomiko Vima*, p. 1111; Areios Pagos, case 568 of 1968, (17) *Nomiko Vima*, p.175; Areios Pagos, case 1127 of 1980, (29) *Nomiko Vima*, p. 519.
[46] *Ibid*.
[47] See Areios Pagos, case 1436 of 1998, (1999) *Dikaio Epixeiriseon Etaireion*, p. 1, which upheld the Piraeus Court of Appeal, case 399 of 1987 (unpublished).
[48] (1997) *Efimerida Nautikou Dikaiou*, p. 76.

accordance with international maritime practice a presumption is established that the holder of a b/l has access to the terms of the charter-party".[49]

As regards *lex mercatoria*, it has only been the subject matter of limited discussion in Greek legal literature.[50] Moreover, there is no Greek national judgment addressing the topic or even referring to the term. This is hardly surprising, as commercial parties more often refer to "general principles of commercial law" or other aspects of *lex mercatoria*, such as the UCP rules or standard forms of contracts, than to *lex mercatoria* as such. However, in the light of the above discussion it can safely be argued that, if ever Greek courts are faced with the term *Lex Mercatoria* in a contract, it is very unlikely that they will uphold the reference as a valid choice of law clause. Greek courts will consider the reference as a non-choice of law clause and try to ascertain the applicable national law. At best, the reference to *lex mercatoria* could be taken by Greek Courts as a reference to international commercial practices and usages incorporated to Greek law through C.C. Art. 200 and 288.

QUESTIONS 5 TO 8: ON UNIFORM RULES AND INTERNATIONAL ARBITRATION

Question 5 (a): To what extent are arbitral awards officially published or informally disseminated in business and legal circles in your country? Is your country a stare decisis country? If so, to what extent does stare decisis apply to arbitral determinations/awards?

Answer 5 (a):

Arbitral awards are not officially published in Greece. No Greek legal journal or any other journal of a professional organisation (for example, the Greek Chamber of Commerce or the Athens Bar Association) publishes arbitral awards. Legal journals and reviews frequently publish cases of Greek national courts relevant to arbitration, especially case law on challenge or enforcement of arbitral awards. However, it seems that the content of some

[49] However, the court held that it was a reputable presumption, which in this particular case had in fact been rebutted. See also Piraeus CA, case 832 of 1979, (1980) *Efimerida Nautikou Dikaiou*, p. 139, with regard to charterparty type of "CONTINENT"; see also the Piraeus CA, 78 of 1989, (1989) Epitheorisi Emporikou Dikaiou, p. 277 with regard to an arbitration agreement contained in a charterparty of the type "CENTROCON". Here the court wrongfully looked only into the commercial practices prevailing in Greece, refusing to take into account international commercial practices, despite the fact that the dispute at hand had arisen in an international context. The argument of the court that only Greek commercial practices should be taken into account when Greek law is applicable is not convincing, since international commercial practices may well be taken into account even when Greek law applies through C.C. Art 200 and 288 (see for example Areios Pagos, case 1436 of 1998, (1999) *Dikaio Epixeiriseon Etaireion*, p. 1.

[50] Kaisis, *supra* note 15, p. 99 et seq; Pampoukis, *supra* note 15, para 36 et seq; A. Foustoukos "Lex Mercatoria" [in Greek], (1994) *Epitheorisi Emporikou Dikaiou*, p. 67 et seq.; Dimolitsa, *supra* note 20. p. 230 et seq.

awards are informally disseminated within specific industry circles, and in particular within the shipping and the construction industry.

The reasons for the lack of official publication of awards can be explained by reference to the "arbitration environment" in Greece. Roughly, there are three types of arbitration usually take place in Greece: first, *ad hoc* arbitration; second, institutional arbitration under the auspices of an international institution (mainly ICC which has an active national committee in Greece); third, institutional arbitration under the auspices of a Greek organisation or association, such as the Athens Bar Association or Greek Chamber of Commerce and Industry or the newly founded Piraeus Association for Maritime Arbitration.

Ad hoc arbitral awards seldom become publicly known, with the exception of awards in *ad hoc* arbitrations in which the Greek state participates, so that the dispute has political relevance. In this context, there have been cases where extracts of awards were published in Greek newspapers, but this was a publication for political rather than legal purposes (for example, the focus was on the dispositive part of the award rather than the reasoning or any other legal issue).

As regards ICC arbitrations taking place in Greece, it is for the ICC to decide whether or not to publish the award in their well-known series, namely "Collection of ICC Arbitral Awards" or the "ICC Bulletin".

Finally, Greek organisations or associations that administrate arbitrations do not publish their awards. It is understood that the recently founded (2005) Institution of PAMA (Piraeus Association for Maritime Arbitration) intends to start publishing awards for arbitrations taking place under its auspices. However, this has not happened so far.

Stare decisis: the remit of the power of the Greek judiciary is to identify, interpret and apply rather than create legal rules. This is fundamental principle of Greek legal order in accordance with Greek Constitution Art. 26 that provides for the separation of powers between the legislature and the judiciary. Consequently, unlike the case in some common law countries, the jurisprudence of Greek courts is not considered a source of legal rules.[51] Thus, *stare decisis*, in the strict meaning of the sense where the lower courts have to follow the dicta of the higher courts and the higher courts cannot easily depart from a line of

[51] A. Grammaricaki-Alexiou, "Sources and Materials", in K. Kerameus- P. Kozyris (eds), *Introduction to Greek Law*, (3rd ed) (Kluwer Law International 2007), p. 16.

previous decisions, is not applicable in Greece. Nevertheless, the principle of precedent, which is less strict than the principle of *stare decisis*, applies to some extent in Greece, as there is a clear tendency of the lower Greek courts to refer to previous decisions and follow general principles set out in previous judgements of the Greek Supreme Court (Areios Pagos) and the Athens or Thessalonica or Piraeus Court of Appeal, in particular. Thus, although not technically binding, in the sense of *stare decisis*, the jurisprudence of Areios Pagos is certainly influential, in the form of precedent, to the decisions of the lower courts.

Question 5 (b): To what extent is issue preclusion or collateral estoppel (if accepted in your legal system) applicable in arbitration (from court of law to arbitral tribunal and vice versa / between arbitral tribunals)?

Answer 5(b):

The principles of issue preclusion or collateral estoppel are not recognised in the Greek legal system, as they are not recognised in general in Civil law jurisdictions influenced by the Roman-German legal tradition. More specifically, *res judicata* is confined to the *claims* rather than the *factual issues* determined in the judgement.[52] This is because the prevailing view in Greece is that a judicial determination is fallible by nature and in that sense can only determine the *legal consequences* of what *seems* to have happened rather than determine what *actually* happened, that is, the facts. Accordingly, in Greece, the parties are free to re-litigate facts determined in a previous judgement, simply because *res judicata* bears no evidentiary significance and has no binding effect on factual issues.

The question that arises here is whether the effects (including the *res judicata* effect) of a foreign arbitral award enforced in Greece will be determined by reference to the Greek law or a foreign law. If the effects of a foreign arbitral award are to be determined by Greek law, issue preclusion or collateral estoppel will not apply; as was explained in the previous paragraph, Greek Law does not provide for these legal consequences. If however the effects of a foreign arbitral award enforced in Greece are to be determined by a foreign law (for example, the law of the seat of arbitration), which happens to recognise the principles of

[52] Kerameus-Kondylis-Nikas, *Ernimeia Kodika Politikis Dikonomias* (*Commentary of Greek Code of Civil Procedure*) [in Greek] (Sakkoulas Athens-Thessalonica 2000), Art. 321-334; See also S. Brekoulakis, "The Effect Of An International Arbitral Award And Third Parties: Res Judicata Revisited", 16 (2005) *Amer. Rev. Int'l Arb.* page 177 et seq.

issue preclusion and collateral estoppel, then it has to be examined to whether these principles are compatible and thus acceptable by Greek public policy.

There has been scholarly writing in Greece arguing that the legal effects of a foreign arbitral award enforced in Greece should be determined in accordance with the procedural law applied to the arbitration.[53] After they are recognised by a Greek court, foreign arbitral awards are equated to a domestic judgment in terms of the *res judicata* effect. According to this view, the foreign *res judicata* effect will apply only to the extent that it is compatible with Greek public policy.[54] However, this view is questionable, especially under the light of the new Greek Arbitration Act 2735 of 1999 applicable to international arbitration only. Art. 35(2) of the 2735/1999 Arbitration Act expressly provides that: "the [foreign] arbitral award acquires from the time it is rendered the effect of *res judicata* in accordance with Art. 869 of the Greek Code of Civil Procedure." GCCP Art. 869, which applies to domestic arbitral awards, provides that the *res judicata* effect of an arbitral award is equated to that of a domestic judgment. Therefore, the foreign arbitral award is clearly equated to Greek domestic judgments in terms of *res judicata*. It follows, once it is recognised and enforced in Greece, an foreign arbitral award can only produce a *res judicata* effect which is determined by the Greek law rather than with the law of the seat of the arbitration.[55]

Thus, in the light of the above analysis it can be concluded that foreign arbitral awards, enforced in Greece, will not be able to produce issue preclusion or collateral estoppel effect binding on Greek Courts or arbitral tribunals sitting in Greece. When faced with the same factual issues, already determined in another arbitral award (domestic or foreign), national courts or arbitral tribunals sitting in Greece will be free to re-litigate the same issues. Equally, a national judgment cannot produce any collateral effect or issue preclusion effect upon an arbitral tribunal.

QUESTIONS 6-8

[53] D. Tsikrikas, *I Dimosia Taxi os Metro Elegxou Allodapon Diaititikon Apofaseon* (*Public Policy as the Benchmark of Reviewing Foreign Arbitral Awards*) [in Greek], (Sakkoulas Athens 1992), p. 33 et seq. and A. Kaisis, *Ekfanseis tis Dimosias Taxis stin Anagnorisi kai Ektelesi Allodapon Dikastikon kai Diaititikon Apofason* (*Aspects of Public Policy in the Recognition and Enforcement Foreign Judgments and Arbitral Awards*) [in Greek], (Sakkoulas Athens -Thessalonica), p. 173.

[54] Tsirikas, *ibid*, p. 36.

[55] See also Areios Pagos, case 448 of 1969, (1970) *Nomiko Vima*, p. 36 and S. Brekoulakis, "The Effect of an International Arbitral Award and Third Parties: Res Judicata Revisited", 16 (2005) *Amer. Rev. Int'l Arb.* page 180; S. Kousoulis, *Diaitisia* (*Arbitration*), (Sakkoulas Athens-Thessalonica 2004), p. 274 seems to agree with this view.

Question 6: To what extent are national laws and state courts in your country "arbitration friendly"? Does your answer change depending on whether a state party or a state interest are directly involved in or affected by the resolution of the dispute or the contract may be labelled as "a public" or as an "administrative" contract under your legal system? Whether the arbitration is "international or domestic"? Whether its seat/place is within/outside your country?

Question 7: To what extent are arbitral awards subject to control on the merits (including from the outlook of private international law or choice-of-law methodologies, rules or principles applicable or accepted in your country) or in respect of procedural notions or matters (e.g., due process) when rendered in your country or (if rendered abroad) when brought for enforcement/recognition in your country?

Question 8: What is the notion of and role played by public policy in the recognition or enforcement of arbitral awards rendered abroad? Of lack of arbitrability, international mandatory rules or lois de police (national or foreign)? To what extent do any of these reservations/notions serve the purpose of advancing primarily local or domestic notions regarding both substantive law and procedural law matters?

Answer to questions 6-8:

In order to assess the extent to which Greek national law and state courts are "arbitration friendly" the following areas will be examined:

First, whether international arbitration legal standards have been incorporated into Greek legal system.

Second, the notion of Greek public policy as has been developed by the jurisprudence of Greek courts with regard to proceedings on challenge and enforcement of international arbitral awards.

Third, the extent to which Greek mandatory rules apply to an international arbitration, taking place in Greece, limiting the mandate of arbitrators.

Fourth, the notion of arbitrability accepted in Greece and to what extent this notion is compatible with the latest international developments on the subject.

Fifth, the extent of intervention or intrusion of Greek national courts to arbitration proceedings taking place in Greece.

Sixth, the means of recourse against an international award made in Greece available under the Greek legislation.

First: the incorporation of international arbitration standards into Greek national law. As is evidenced from the following, Greek national law has, to a large extent, incorporated international arbitration standards. In particular, Greece:

is a signatory member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1961 (Decree 4220 of 19th September 1961). Previously, Greece was also a signatory member of the 1927 Geneva Convention on the Enforcement of Foreign Arbitral Awards (see the 5013/1931 Act).

is a signatory member of the ICSID Convention (Decree 608 of the 11 November 1968).

is a Model Law country: Greece incorporated, with only a few changes, the UNCITRAL Model Law by virtue of the 2735 of 1999 Act, which applies to any commercial arbitration that takes place in Greece, with an international character in accordance with the criteria set out in Art. 1(2-3); for example, if the parties have their places of business in different countries, or the performance of the contract is in a country other than Greece. In fact, the 2735 of 1999 Act has incorporated Model Law art. 1(2-3) verbatim and thus the criteria used to determine whether an arbitration is international or domestic are wide.[56]

Second: the notion of public policy developed by the jurisprudence if Greek courts with regard to proceedings on challenge and enforcement of arbitral awards.

At the challenge stage: Although the issue has attracted significant debate, the prevailing view in Greek legal discourse was, even before the introduction of the new 2735 of 1999 Arbitration Act, that the notion of Greek public policy applied to international arbitral awards taking place in Greece at the stage of challenge is much narrower than that applied to domestic arbitral awards.[57]

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[56] See in general Kousoulis, *supra* note 55, p. 146. Domestic arbitrations are excluded from the scope 2735 of 1999 Act and they are still governed by the previous legal framework, as this is set out in the Greek Code of Civil Procedure, provisions 867-903.

[57] This is accepted by the majority of scholars, many of which have criticised the different standards applied to domestic and international awards as being unjustified; see for example, K. Kerameus, "Provlimata tou Ellinikou Dikaiou tis Diaitisias apo Sigkritiki Apopsi" ("Problems of the Greek Arbitration Law from a Comparative Perspective") [in Greek], in *Νομικές Μελέτες ΙΙ* (Legal Studies), (Sakkoulas Athens 1984) p. 435; Foustoukos in Kerameus-Kondylis-Nikas, *supra* note 52, Art. 897; Also *de lege ferenda*, Kaisis, *supra* note 53, p. 157; K. Mpeis, *Diaitisia* (*Arbitration*) [in Greek], (Sakkoulas Athens 1995), Art. 897, p.530; Nikas, "I Akyrosi tis Diaititikis Apofasis" ("Annulment of Arbitral Award"), in *Elliniki Dikaiosini*, p. 352; Marinos, "Paratiriseis stin Apofasi *Eco Swiss v. Benetton*" ("Note on the *Eco Swiss Benetton* case"), (2001) *Chronika Idiotikou Dikaiou*, p. 457-461; *contra* S. Kousoulis, *Themeliodi B* (*Fundamentals B*), p. 231 et seq, and S. Kousoulis, *supra* note 53, Art. 897, p. 118.

After the enactment of the 2735 of 1999 Arbitration Act the issue is now absolutely clear. As is expressly provided in Art. 34(2)(b)(bb) the narrow version of Greek public policy will be applied to international awards taking place in Greece, by reference to Greek C.C. Art. 33 (which does not include Greek mandatory rules) as opposed to Greek public policy applied to purely domestic awards that will be determined by reference to Greek C.C. Art. 3 (which includes Greek mandatory rules).

At the enforcement stage: Before turning to the analysis of the case law on public policy and enforcement, we should make note of the criterion applied by Greek courts to determine whether an award is foreign or not. Here two different standards are applicable by Greek Courts: in order to decide whether an award is domestic or foreign in the context of the New York Convention in general, Greek Courts will apply the territorial criterion.[58] Thus, they will apply the New York Convention if the seat of the award was in a country other than Greece. However, in order to determine whether an award is domestic or foreign for public policy purposes in particular, Greek Courts will rely on the procedural law applicable to the award.[59] This also seems to be the prevailing view among Greek legal scholars.[60] Thus, in theory the following paradoxical result seems possible: for example, an award issued in France, but determined by reference to Greek procedural law, would be enforced by reference to the provisions of the New York Convention but it would be considered domestic for the purposes of public policy review by Greek courts.

Now, as regards the notion of Greek public policy applied to foreign awards at the enforcement stage, the issue remains debatable. Although the prevailing view in literature is that the narrower notion of Greek public policy must be applied at the enforcement stage,[61] the jurisprudence of Greek courts seems divided.[62] However, the main bulk of court decisions on this issue refers to the period before the enactment of the new Arbitration Act

[58] See for example, Areios Pagos (in plenum), case 899 of 1985, (1985) *Nomiko Vima*, p. 1399; Areios Pagos, case 1670 of 1980, (1981) *Diki*, p. 207; Athens CA, case 2712 of 1978, 27 *Nomiko Vima,* p. 421.
[59] *Ibid*.
[60] See Kaisis, *supra* note 53, page 180 and note 154 for more references to Greek legal scholars. Tsikrikas, *supra* note 53, p. 17 et seq. argues for the substantive law as the most relevant criterion to determine the nationality of an award.
[61] See *supra* note 52.
[62] See for example decisions of Greek courts, holding that Greek mandatory rules were part of the notion of Greek public policy applied to international awards: Areios Pagos (in plenum), case 13 of 1995, (1995) *Efimerida Ellinon Nomikon*, p. 14; Areios Pagos, case 906 of 1993, (1994) *Efimerida Ellinon Nomikon*, p. 554; Areios Pagos, case 1490 of 1991, (1993) *Elliniki Dikaiosini*, p. 1073; Areios Pagos, case 1726 of 1991, (1993) *Elliniki Dikaiosini*, p. 558; on the other hand see the following cases where Greek courts held that the challenge of an award can be successful only when the dispositive part is in conflict with the international aspect of Greek public policy, rather than the Greek mandatory rules, Athens CA, case 11066 of 1990, (1991) 22 *Diki*, p. 1210; Areios Pagos (in plenum), case 6 of 1990, (1990) *Nomiko Vima,* p. 1321; Areios Pagos (in plenum), case 1572 of 1981, (1982) *Nomiko Vima*, p. 1053; Athens CA, case 1072 of 1991, (1993) *Elliniki Dikaiosini*, p. 1531; Athens CA, case 2948 of 1994, (1994) *Nomiko Vima* p. 1179.

2735/1999. Thus, there is room to argue that the new Act and in particular the express reference of Art.34 (applicable to challenge) to the narrow notion of public policy will -by analogy- support the argument in favour of the application of the narrower notion of Greek public policy at the enforcement stage too. There is no reason any more to differentiate between the standards used at the stage of challenge of an international award and the standards used at the stage of enforcement of an international award.[63]

More generally, the following points can be made with regard to the enforcement of foreign awards by Greek courts and public policy:

As Areios Pagos have noted, Greek public policy comprises "the fundamental rules and principles that prevail at a particular time in the country [ie Greece] and reflect the social, economic, political, religious, moral and other perceptions that apply to the social life of this country, and which prevent the application to Greece of rules of a foreign country that may disturb the balance of the social life of this country"[64]

As is generally accepted in the jurisprudence of the Greek courts, in accordance with New York Convention Art. V(2)(b) the review of the award in public policy terms will be made *ex officio*.[65]

As regards the substantive public policy, it is well accepted that Greek courts cannot review the merits of the case in the context of a public policy defence. The purpose of the public policy control is not to review whether the award has rightly applied the law or rightly assessed the legal and factual issues at hand, but to examine whether the effects of an award are compatible with the Greek public policy. [66]

According to the prevailing view in Greece, the application of a-national rules or l*ex mercatoria* by the arbitrators does not *per se* violate the international aspect of Greek public policy, and, thus, it is not a valid reason for the Greek courts to refuse the recognition or enforcement of a foreign arbitral award, which was based on a-national rules.[67] This is because the outcome of the award, rather than the provisions or that rules on which the award was based would be relevant and reviewed by Greek courts for the purposes of

[63] See Kousoulis, *supra* note 55, p. 308
[64] See Areios Pagos (in plenum), case 6 of 1990, (1990) *Nomiko Vima*, p. 1321; Areios Pagos (in plenum), case 1572 of 1981, (1982) *Nomiko Vima*, p.1053; Athens CA, case 2135 of 1987, (1987) *Nomiko Vima*, p. 1406; Kousoulis, supra note 55, Art.5, p. 308; and Kaisis, *supra* note 53, page 187; the same Tsikrikas, supra note 53, p. 63 and Kerameus, *supra* note 57, p. 542.
[65] See for example, Areios Pagos, case 88 of 1977, (1977) 25 *Nomiko Vima*, 1126 and Athens CA, case 5364 of 1987, (1988) 29 *Elliniki Dikaiosini*, p. 1222.
[66] See Kaisis, *supra* note 53, p. 186.
[67] See Kousoulis, supra note 55, p. 308; *cf* Pampoukis, supra note 15, pp. 275-274 and Areios Pagos, case 350 of 1979, (1979) Diki, p. 278; the same Kaisis, *supra* note 53, p. 198.

public policy.[68] For example, it was held that an award setting interest at a level exceeding the lawful level in Greece as set out by Greek mandatory rules, was not against public policy.[69]

As is the case in challenging proceedings, Greek courts will not review the merits of the dispute at the stage of the enforcement. [70] Thus an error of law is not a valid ground to resist enforcement of an arbitral award.

Only exceptional circumstances will prevent the recognition and enforcement of a foreign arbitral award by Greek courts, on the public policy grounds.[71] Thus, it was held by the Areios Pagos that the fact that a foreign award that awarded punitive damages in accordance with the applicable to the arbitration law would not violate the international aspect of Greek public policy, unless punitive damages were excessive.[72]

It is generally accepted by Greek courts that lack of reasoning in the foreign arbitral award does not violate the Greek public policy, unless the lack of reasoning has, in essence, been used to conceal a violation of due process.[73]

It has been held, by the Areios Pagos that an arbitral award that upheld an insurance policy that had over-valuated the insured vessel (twice as much as the real value of the vessel), was against the international aspect of Greek public policy. According to the Greek Supreme Court, this award violated the fundamental principle that insurance policies may only be agreed to cover the loss of the goods; insurance policies cannot be a valid means for enrichment.[74]

As regards *procedural public policy,* it has been held that an award that violates due process, and in particular the right of the party to be heard, would be against Greek public policy, as well as against the Constitutional principle promulgated in Art. 20 of the Greek constitution.[75] However, the fact that the defaulted respondent was notified by post, rather

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[68] See also K. Kerameus, "Arbitrage International et Ordre Juridique Helleénique," in *Studia Iuridca* III (Sakkoulas 1995) p. 562.
[69] Areios Pagos, case 1710 of 1997, (1998) 4 *Dikaio Epixeiriseon Etaireion*, p. 1214 with note A. Dimolitsa.
[70] Areios Pagos, case 1273 of 2003, (2004) *Elliniki Dikaiosini*, p. 415; Areios Pagos 906 of 1993, (1994) *Efimerida Ellinon Nomikon* p. 554; Areios Pagos, case 1561 of 1998, available at electronic legal database "*Nomos*"; Areios Pagos, case 1661 of 1980, 29 *Nomiko Vima* p. 1074; Athens CA, case 8495 of 2000, electronic legal database "*Nomos*"; see also N. Nikas, Expert Opinion published at (2001) *Elliniki Dikaiosini*, p. 352.
[71] Kousoulis, supra note 55, p. 308 et seq.
[72] Areios Pagos (in plenum), case 17 of 1990, (2000) *Nomiko Vima* p. 461 and Areios Pagos, case 1260 of 2002, (2002) *Xronika Idiwtika Dikaiou*, p. 922.
[73] Areios Pagos, case 250 of 1979, 27 *Nomiko Vima*, p. 1425; Athens CA, case 6886 of 84, (1985) *Elliniki Dikaiosini*, p. 234; Thessalonica CA, case 451 of 2000, (2002) *Armenopoulos* p. 915; Thessalonica CA, case 7 of 1987, (1989) *Nomiko Vima*, p. 450; Areios Pagos 1134 of 1975, *Nomiko Vima*, page 419; Athens CA, case 1107 of 2007, (2007) *Elliniki Dikaiosini*, p. 876.
[74] Areios Pagos (in plenum), case 6 of 1990, published in K. Kalavros, *Syllogi Ellinikis Nomothesias gia Diaitisia* (*Collection of Greek case law on Arbitration*), (2nd ed) (Sakkoulas 2002), p. 1110; however, the decision has been criticised as being too harsh by Kousoulis, supra note 55, p. 308; Kaisis, supra note 53, p. 197 agrees on the basis that damages can only be awarded to rectify loss rather than as an investment reward.
[75] Areios Pagos, case 1670 of 1980, 12 *Diki* 1, p. 207; Patra CA, case 426 of 1982, (1983) *Nomiko Vima*, p. 252.

than by the service system provided by the relevant Hague Convention, would not be against Greek public policy.[76]

In an interesting case, the parties to an arbitration taking place in England were not allowed, in accordance with the applicable arbitration rules, to be present during the arbitral proceedings (neither in person nor through a counsel). The applicable arbitral rules were providing the party-appointed arbitrators were to be acting as counsels for the parties. The Areios Pagos held that the ensuing award did not violate the procedural Greek public policy.[77]

Similarly, it was held that the fact that an arbitral award, with a seat in England, had to be issued only by one arbitrator (the one appointed by one of the parties, since the other party had failed to appoint its own arbitrator) did not violate procedural Greek public policy.[78]

Finally, according to the right view in legal literature,[79] an award obtained by fraud will not be recognised or enforced in Greece, as this would violate procedural public policy.

Third: the extent to which mandatory policy provisions apply to arbitration taking place in Greece. Art. 28 of the 2735 of 1999 Arbitration Act gives parties the right to agree on the application of rules of law to their contractual relationship. Thus, it is accepted that in arbitration taking place in Greece, the parties are free to provide for any applicable rules they think fit for their arbitration, even if these rules are not Greek law or even if they have no connection with the dispute at hand. Parties are even free to agree for the application of a-national rules.[80] However, it is noted that the discretion of the parties with regard to the applicable law is limited by the international aspect of Greek public policy, which will prohibit the application of any contrary rule agreed by the parties.[81] However, Greek mandatory rules would not be applicable to an international arbitration, taking place in Greece, since only the narrower notion of Greek public policy[82] would apply. The same will apply when the parties have agreed that the arbitrators can determine the dispute *ex aequo et bono*.

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[76] Patra CA, case 426 of 1982, (1983) *Nomiko Vima*, p. 252.
[77] Areios Pagos (in plenum), case 1572 of 1981, (1982) *Nomiko Vima*, p. 1053l; Kaisis, supra note 53, p. 193-194 criticises the decision arguing that the party appointed arbitrators can never act as counsels.
[78] Areios Pagos, case 219 of 1973, (1973) *Nomiko Vima*, p.1140 and Areios Pagos, case 329 of 1977, (1977) *Nomiko Vima*, p. 1340.
[79] Tsikrikas, supra note 53, p. 28.
[80] Stefanidis, "To Efarmosteo Dikaio apo tous Diatitites" ("The Law Applicable by Arbitrators") [in Greek], (2000) *Epist.Epet.Arm.*, p.167 argues that the parties may agree that commercial usages of a particular industry may apply.
[81] Kousoulis, supra note 55, pp. 93-94 and 246.
[82] The international aspect as provided in art.33 AK

If the parties have failed to provide for the applicable rules, then, in accordance with Art. 28 of the 2735 of 1999 Act, the arbitrators will have to ascertain the applicable rules. Here again, the arbitrators are not obliged to apply Greek conflict of laws rules, the application of which is not considered mandatory for the arbitrators taking place in Greece.[83] Therefore, it can be argued, that unless the parties have agreed on the application of Greek law, Greek mandatory rules will not normally apply either directly or indirectly to an arbitration taking place in Greece.

Fourth, notion of arbitrability. The 2735 of 1999 Arbitration Act applicable to foreign arbitrations taking place in Greece does not provide for the notion of arbitrability (Model Law does not provide for it either). Thus, the notion of arbitrability in the context of an international arbitration will be determined by reference to the relevant provision of the Greek Code of Civil Procedure applicable to domestic arbitration.

Thus, according to Greek Code of Civil Procedure Art. 867 any dispute which the parties can get disposed of may be the subject matter of arbitration. As is generally accepted, the criterion of "disputes that the parties are free to dispose of" used by Greek law is narrower than the criterion of "disputes involving property" used for example by the Swiss PILA Art. 177 or "any claim involving an economic interest" used by the German ZPO. Nevertheless, it seems that Greek courts and literature have adopted a liberal approach to objective arbitrability. Thus, for example it has been held that intra-company disputes (for example, a dispute between a shareholder and the company or disputes arising out of the dissolution of the company) are arbitrable.[84] Equally, it has been held that disputes regarding the invalidity of a contract on the basis of fraud or duress are arbitrable.[85]

Similarly, tax disputes have also been held by the Special Supreme Court as arbitrable;[86] while according to the express provision of the Greek Code of Civil Procedure Art. 871A (5), disputes arising out of an administrative contract can be subject to arbitration.[87]

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[83] Kousoulis, *supra* note 15, p. 248.
[84] Areios Pagos, case 255 of 1996, (1996) *Elliniki Dikaiosini*, p. 1559; and Thessalonica CA, case 1950 of 1993, (1994) *Elliniki Dikaiosini*, p. 684.
[85] Areios Pagos (in plenum), case 16 of 2002, (2002) *Elliniki Dikaiosini*, p. 1006.
[86] See the decision of the Special Supreme Court (which decides upon a disagreement between the Supreme Civil Court and the Supreme Administrative Court) 24 of 1993, (1994) *Diki*, p. 12.
[87] See Areios Pagos, case 159 of 1996, (1996) *Epitheorisi Emporikou Dikaiou*, p. 491 and in general Fortsakis, *Diaitisia kai Diaititikes Apofaseis* (*Arbitration and Arbitral Awards*) [in Greek] (Sakkoulas Athens 1998).

However, disputes on the validity of marriage or the relationships between parents and children are considered not arbitrable.[88] The same applies to labour disputes which are expressly excluded from arbitration by the Greek Code of Civil Procedure Art. 663 on public policy grounds. [89]

With regard to subjective arbitrability, Greek Code of Civil Procedure (Introductory) Art. 49 I sets out some additional formal requirements for the Greek State to be bound by an arbitration agreement.[90] However these additional requirements do not apply to arbitration agreements concluded in the context of international commerce.[91]

Fifth: whether Greek courts unduly intervene in arbitrations taking place in Greece. The new 2735 of 1999 Arbitration Act established a framework for foreign arbitrations taking place in Greece that prevents undue intervention of Greek courts.

Thus, Art. 5 of the 2735 of 1999, which mirrors Art. 5 of the UNCITRAL Model law, expressly provides that Greek courts may not intervene in an international arbitration taking place in Greece, save for the instances exclusively provided in the 2735 of 1999 Act. As is accepted by the majority of Greek scholars this is one of the fundamental provisions in the Act establishing the general principle of non-intervention except from the cases where the courts are required to assist or to supervise the arbitral proceedings.[92] This approach enhances predictability as regards the extent of court intervention, which is especially necessary in the context of international transactions.

Art. 5 of the 2735 of 1999 is complemented by Art. 6, which sets out the limited cases where courts can intervene. Thus, Art. 889 of the Greek Code of Civil Procedure, which gives *exclusive jurisdiction* to Greek courts to order interim measures, is now replaced, regarding international arbitrations, by Art. 17 of the 2735 of 1999 Act, which expressly provides arbitrators with the power to grant "any interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute". Thus, the unnecessary intervention of the Greek courts is prevented.

[88] Kousoulis *supra* note 55, p. 8.
[89] Kousoulis, *ibid* p. 9.
[90] These additional formalities are first, a positive opinion of the State Legal Council and second, the decision of the chancellor of exchequer.
[91] Kousoulis, *supra* note 55, p. 152 and Areios Pagos (in plenum), case 8 of 1996, according to which "this is justified by the principle of simplicity and expenditure that apply to the conclusion and performance of commercial contracts, in particular in the context of international commercial transactions".
[92] Kousoulis, *supra* note 55, p. 165.

Finally, Art. 27 of the 2735 of 1999 grants national courts the power to intervene, only after the application of one of the parties, in order to provide help in the taking of evidence. Other circumstances where Greek courts may intervene is after an application by the parties to appoint an arbitrator (Art.11) or determine upon a challenge against an arbitrator (Art.13-14).

In conclusion, it is submitted that Greek courts, in accordance with Act 2735 of 1999, may intervene only in limited cases that are expressly set out in the Act, and in particular, in order to either assist or to supervise the proceedings (mainly at the stage of challenging proceedings in accordance with Art. 34).

Sixth: recourse against the award. Again here, the implementation of Model Law into Greek law has promoted finality of international awards taking place in Greece. Thus, international awards can only be challenged on the basis of the exclusive grounds listed in Art. 34 of the 2735 of 1999 which replaced Art. 897 of Code of Civil Procedure.

Moreover, the application of the 2735 of 1999 Act insulates international awards from other means of recourses that were applicable under the old regime. For example, the special nullity recourse against awards provided in Art. 901 Code of Civil Procedure is not applicable to international awards. Similarly, the possibility for third parties to have recourse against an award issued between two other parties, which is accepted in Greece for domestic awards,[93] is not permitted for international awards.

Conclusion on questions 5-8: in light of the above analysis and on the basis of the six criteria set out above for the determination of whether Greek courts and laws are arbitration friendly, it is submitted that Greece can be considered a arbitration-friendly country particularly for international awards.

QUESTIONS 9-12

Question 9: Bearing in mind your answers to questions 3-8 above, to which extent arbitral awards or determinations influence, or may be considered as possibly influencing state court decisions or legislative change in your country? To what extent do courts of law in your country defer to determinations made by local or international arbitral institutions in

[93] It is also accepted that third parties may have recourse against arbitral awards either on the basis of Code of Civil Procedure Art. 583, see Pantazopoulos, "I Tiritanakopi Kata tis Diaititikis Apofasis" ("Third Party Opposition against Arbitral Awards"), (1988) *Armenopoulos*, p. 513, or on the basis of Code of Civil Procedure Art. 899, see Kousoulis, supra note 55, p. 125.

charge of administering arbitrations? If no experience at hand, what would be the prospective answer to these questions? Please differentiate the areas of the law in which this influence exists or may potentially exist in the future.

Answer to question 9: There is nothing in the literature or in the jurisprudence of the Greek courts to suggest that any arbitral award has been influential to state court decisions or legislative change in Greece. Changes in the jurisprudence of Greek courts are usually triggered by legal discourse[94] or international developments, as reflected in international conventions, or international and regional fora in which Greece participates.

Attempting a prospective answer, one could argue that there is nothing to indicate that in the future arbitral awards would influence state court decision or legislative chance in Greece. This is submitted on the basis of the following two reasons:

First, in Greece interaction between judiciary and legislature is very limited, as expressly provided in the Constitution (Art. 26). Thus, in general, it is accepted that the determinations of national courts cannot have any impact on the law, either directly or indirectly.[95] This view would *a fortiori* apply to arbitration, which is a private dispute resolution mechanism, subject to the power of national legislation and the supervision of national courts. Thus, only national law or national courts may have an impact on the arbitral awards -indeed many domestic arbitral awards very often make references to Greek national case law- but the converse would not apply.

Second, as noted at the beginning of this report, arbitral awards are rarely made public. Thus, it is inherently difficult for a consistent and coherent jurisprudential approach to evolve out of arbitral awards.

Question 10: Bearing in mind your answers to questions 1-9 above, to what extent do arbitral awards rendered in your country, enforced or enforceable in your country or concerning nationals of or residents in your country, apply or may be deemed as based on Uniform Law? If no experience at hand, what would be your prospective answer to this question?

[94] A. Grammatikaki-Alexiou, "Sources and Materials" in K. Kerameus- P. Kozyris (eds), *Introduction to Greek Law*, (3rd ed) (Kluwer Law International 2007), p. 16.
[95] *Ibid*, p. 15.

Answer to Question 10: It would be very difficult to make such an assessment, as there is no such information available. This is, firstly, because arbitral awards rendered in Greece are rarely published. Secondly, because national courts will not generally review the merits of an arbitral awards even if the latter are based on Uniform Law. Thus, it is difficult to have a clear view of how many awards based on Uniform Law are challenged or refused enforcement. Finally, to the best of my knowledge, there is no any empirical research in Greece assessing the extent of arbitral awards based on Uniform Law that are rendered or enforced.

Question 11: Bearing in mind your answers to questions 1-10 above, what has been the impact of arbitral awards and determinations on introducing, firming up or applying Uniform Law, including through legislative change or the action of the courts, in your country? Of foreign court decisions regarding arbitral awards or determinations referring to or based on Uniform Law? If no experience at hand, what would be the prospective answers to these questions?

Answer Question 11: Again, no safe assessment can be made here, for the same reasons set out under the last two questions.

Attempting a speculative answer, I would argue that there has been a very limited impact, if any, of arbitral awards and determination in introducing Uniform law in Greece mainly because of the limited interaction between Greek legislature and judiciary (as explained above), which applies in particular in the case between Greek legislature and arbitration, i.e. private dispute resolution mechanism.

Question 12: Bearing in mind your answers to questions 1-9 above what has been the impact on the fashioning of your national legislation on arbitration – domestic or international – or on arbitral awards rendered in your country or concerning nationals of or residents in your country of: (a) the action and rules of international arbitral institutions (e.g. the International Court of Arbitration of the International Chamber of Commerce (ICC), the American Arbitration Association (AAA) and its International Centre for

Dispute Resolution (ICDR), the London Court of International Arbitration (LCIA)); (b) the works of international organizations (e.g., UNCITRAL, UNIDROIT, the European Union, NAFTA, the Organization of American States); and (c) foreign court decisions or legislation reflecting the influence of the action or works of institutions or organizations like the ones mentioned in subparagraphs (a) or (b) above? If no experience at hand, what would be your prospective answers to these questions?

Answer to Question 12:

As regards the impact of the *international arbitral institutions* on the fashioning of national legislation: here, there is no actual experience, but it could be argued that there is a very limited impact of the rules or determinations of ICC court, AAA/ICDR or LCIA. Again, this is due to the fact that in Greece it is institutionally impossible for private organisations, irrespective of how widely are accepted internationally, to have any direct or indirect impact upon Greek legislation.

As regards, the impact of works of *international organisations*. Here, the work of international organisations has undoubtedly had a significant impact on Greek law. This applies in particular to the case of UNCITRAL, Word Bank and of course the European Union. On the contrary the UNIDROIT has not had the same effect on Greek legislation. As was mentioned above, Greece has adopted the UNCITRAL Model Law (Act 2735/1999, has signed and ratified the CISG and ICSID Convention. Finally community law has had a big impact on Greek law: European Directives and Regulations apply directly (no need to be implemented by Greek law).[96]

[96] V. Christianos, "Application of Community Law in Greece" K. Kerameus- P. Kozyris (eds), *Introduction to Greek Law*, (3rd ed) (Kluwer Law International 2007), p. 65.