

The Future of Transnational Civil Litigation

English Responses to the ALI/UNIDROIT
Draft Principles and Rules of Transnational
Civil Procedure

Edited by
Mads Andenas

Neil Andrews

Renato Nazzini

Consultant American Editor
Antonio Gidi

Assistant Editor
Hugo Warner

With Forewords by
The Rt Hon Lord Goff of Chieveley
Professor Michael Traynor

BIICL
BRITISH INSTITUTE OF
INTERNATIONAL AND
COMPARATIVE LAW
www.biicl.org

Table of Contents

<i>Foreword by The Rt Hon Lord Goff of Chieveley</i>	ix
<i>Foreword by Professor Michael Traynor, President of the American Law Institute</i>	xi
<i>Editors' Preface</i>	xiii
<i>List of Contributors</i>	xv
<i>Table of Cases</i>	xvii
<i>Table of Legislation</i>	xxiii
<i>Table of ALI/UNIDROIT Principles and Rules of Transnational Civil Procedure: Discussion Draft No 3 (8 April 2002)</i>	xxvii

Part I: Prefaces to the Discussion

1. The ALI/UNIDROIT Project
Geoffrey Hazard Jr 3
2. Anglo-American and Continental Civil Procedure:
The English Reform as a Model for Further Harmonization?
Rolf Stürmer 9
3. Do we need a Transnational Civil Procedure Code?
A Critical Comment
Cyril Glasser 13
4. Comparative Reflections
Sir Jeremy Lever KCMG QC 17

Part II: A General Perspective

5. Embracing the Noble Quest for Transnational Procedural
Principles
Neil Andrews 21

Part III: Four Judicial Perspectives

6. The ALI/UNIDROIT Rules of Transnational Civil Procedure
in the Perspective of the New English and Welsh Rules
Sir Anthony May 43

- | | |
|--|----|
| 7. The ‘Overriding Objective’, Procedural Sanctions, and Appeals
<i>Sir Henry Brooke</i> | 51 |
| 8. First Instance and Appellate Proceedings in Commercial Matters
<i>Sir Bernard Rix</i> | 65 |
| 9. The Proactive Judge and the Provision of a Single Transnational
Case Management System and its Associated Procedures
<i>Robert Turner</i> | 73 |

Part IV: Fundamental Procedural Institutions

- | | |
|--|-----|
| 10. Transnational Litigation and ADR: The Philosophy of the CPR
<i>Renato Nazzini</i> | 91 |
| 11. Interim Measures Under the Draft Principles and Rules of
Transnational Civil Procedure: Some Reflections from the
English Perspective
<i>Adam Johnson</i> | 109 |
| 12. Compliance with Process Obligations and Fair Trial
<i>Adrian Zuckerman</i> | 127 |
| 13. Documentary Disclosure: Lessons from the English Experience
<i>Charles Hollander QC</i> | 151 |
| 14. Admission and Presentation of Evidence
<i>Michele Taruffo</i> | 161 |

Part V

- | | |
|---|-----|
| <i>ALI/UNIDROIT Principles of Transnational Civil Procedure:
Proposed Final Draft (9 March 2004)*</i> | 175 |
| Foreword | 191 |
| Preface | 193 |
| Table of Contents | 195 |
| Introduction | 201 |
| Principles of Transnational Civil Procedure (with commentary) | 217 |
| Rules of Transnational Civil Procedure (with commentary) | 247 |
| Appendix 1: Principles (without commentary) | 299 |
| Appendix 2: Rules (without commentary) | 315 |

* This final Draft is reproduced here with the kind permission of the American Law Institute (see iv for full details) for reference.

Part VI

<i>ALI/UNIDROIT Principles and Rules of Transnational Civil Procedure with Commentary: Discussion Draft No 3 (8 April 2002)**</i>	339
Principles of Transnational Civil Procedure (with commentary)	341
Rules of Transnational Civil Procedure (with commentary)	359

** The chapters in this book refer to this draft of the ALI/UNIDROIT Principles and Rules of Transnational Civil Procedure and not to the Proposed Final Draft of 9 March 2004.