This study has first tried to explore the extent to which the principles and rules of the UNIDROIT Principles have found application as the law governing international commercial transactions. It then went on to analyze what the foundations or justifications are, based on which such application has been—and should be—made; and finally, it has reached the conclusion that the potential of the UNIDROIT Principles' application in practice may be broader than it is generally acknowledged, in particular as regards the court (as opposed to the arbitration) setting.

An analysis of both arbitral and court precedents has shown a considerable number of arbitral awards and court decisions that in some way or another referred to the UNIDROIT Principles. Many of these awards or decisions did not, however, apply the Principles as the governing law. The main reason for this is that they did not deal with clauses that designated the UNIDROIT Principles as the law governing the transaction. Rather, the transactions at dispute were either not subject to principles of transnational law at all, but their jurisprudential entry rested solely on the arbitrators' or judges' attempts to justify their findings by pointing to the international consensus evidenced by the rules in the UNIDROIT Principles, or, in the case of arbitration, they were subject to only vaguely defined concepts or formulae such as "principles of international trade law." Faced with the difficulty of determining the contents of such contractual stipulations, arbitrators welcomed access to a set of rules that claimed to reflect the status of international trade law as of today.

Of these two types of the Principles' application, only the latter falls within the scope of this study. The main difficulty there has been one of determining the extent to which the UNIDROIT
Principles may actually be held to reflect "principles of international trade law" or such other formulation as the parties to the transaction may have used. Arbitral tribunals have undergone different levels of scrutiny, sometimes going as far as simply proceeding on the assumption that the UNIDROIT Principles are the genuine expression of transnational trade law, sometimes entertaining a more in-depth analysis of the various practices found in the various branches of trade and comparing them to the rules and principles of the UNIDROIT Principles.

While the latter approach is certainly theoretically sound, it constitutes an enormous challenge to arbitrators or judges alike. Therefore, it has been proposed in this study that the UNIDROIT Principles should be regarded as prima facie evidence of the international consensus on the law of international commercial contracts, unless one of the parties to the dispute substantiates evidence to the contrary; such a presumption may be justified on the ground that the UNIDROIT Principles are the product of a careful comparison of the existing legal systems that, on balance, generate fair and equitable solutions and thus meet the core expectations parties to an international trade contract have of their choice of law. The prima facie rule would be limited in its scope though, as it would only apply to choice-of-law clauses designating general principles of law or an amalgamation of different national laws ("trone commun" technique).

If the parties have chosen to have their contract governed by the lex mercatoria, the conflicting theoretical foundations of the lex mercatoria and the UNIDROIT Principles—a hybrid body of rules foremost aiming at the hard and fast resolution of a business dispute, on the one hand, and rules and principles that attempt to ensure a certain degree of fairness and equity in the resolution of a business dispute, on the other—preclude a similar assumption. The arbitral tribunal will in that scenario therefore have to undergo an evaluation on a rule-by-rule basis to verify whether or not the Principles reflect the relevant practice of a particular business area in the geographical region concerned and, accordingly, state the reasons for its conclusions. One may hope that over time precedents will emerge that give guidance as to the lex mercatoria character of a particular principle or rule of the UNIDROIT Principles. Beyond that, it may be conceivable that the UNIDROIT Principles will be used