

The Principles Applicable to The Determination of The Law Applicable to The Merits

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Abstract— When it comes to understanding the complex systems that regulate dispute resolution in a globalised business landscape, the introduction to the notion of choice of law in the realm of international commercial arbitration is of the utmost importance. In the context of arbitration, the term "choice of law" refers to the crucial determination process that takes place when parties involved in cross-border business transactions select which legal system's rules and principles will govern the substantive problems, often known as the "merits," of their dispute. Its significance reverberates throughout the entirety of the arbitration process, exerting a significant amount of influence over the outcomes and rights of the parties involved. The structure that will be utilised for the analysis, adjudication, and resolution of disputes is largely outlined by this ruling. Notably, the repercussions of this decision can be seen in a variety of different areas, including the interpretation of contracts, the admissibility of evidence, and the distribution of rights and obligations among the parties who are in dispute. It is possible to trace the development of this idea back through the course of history by examining the key legal precedents and customs that have influenced its implementation in the present day. Understanding and using the principle of choice of law in international commercial arbitration is a cornerstone for achieving predictability, consistency, and fairness in the resolution of disputes in the modern setting, which is characterised by an interconnected and dynamic global economic environment. This fundamental comprehension of choice of law lays the groundwork for a full investigation into the intricate criteria, procedures, and obstacles that are involved in deciding the law that is applicable to the merits within the context of international commercial arbitration.

I. INTRODUCTION

When it comes to understanding the complex systems that regulate dispute resolution in a globalised business landscape, the introduction to the notion of choice of law in the realm of international commercial arbitration is of the utmost importance. In the context of arbitration, the term "choice of law" refers to the crucial determination process that takes place when parties involved in cross-border business transactions

select which legal system's rules and principles will govern the substantive problems, often known as the "merits," of their dispute. Its significance reverberates throughout the entirety of the arbitration process, exerting a significant amount of influence over the outcomes and rights of the parties involved. The structure that will be utilised for the analysis, adjudication, and resolution of disputes is largely outlined by this ruling. Notably, the repercussions of this decision can be seen in a variety of different areas, including the interpretation of contracts, the admissibility of evidence, and the distribution of rights and obligations among the parties who are in dispute. It is possible to trace the development of this idea back through the course of history by examining the key legal precedents and customs that have influenced its implementation in the present day¹. Understanding and using the principle of choice of law in international commercial arbitration is a cornerstone for achieving predictability, consistency, and fairness in the resolution of disputes in the modern setting, which is characterised by an interconnected and dynamic global economic environment. This fundamental comprehension of choice of law lays the groundwork for a full investigation into the intricate criteria, procedures, and obstacles that are involved in deciding the law that is applicable to the merits within the context of international commercial arbitration.

Methods of Determining Applicable Law

Comparative Analysis:

- *Party Autonomy*: The importance of party autonomy should be investigated. This means that the parties involved in the arbitration process should be given the opportunity to choose the law that will govern the procedure, either through clear contractual conditions or inferred preferences.
- *Conflict of Laws Rule*: It is important to investigate the utilisation of conflict of laws rules, which allow for the determination of the jurisdiction or legal

system that is most suitable for resolving the substantive concerns.

Evaluation Methods: In the context of the arbitration process, do an analysis of the effectiveness of these procedures and the implications they have. Discuss the ways in which each approach affects the clarity, predictability, and justice of the decisions made in the resolution of disputes.

Case Studies and Practical Applications: The incorporation of case studies or real-life scenarios that demonstrate the use of these methodologies into the resolution of actual international economic conflicts is highly recommended. Examine the ways in which the outcomes were altered by the various techniques.

Emerging Trends and Critiques:

- *Identifying Trends:* When determining the appropriate legislation in arbitration, it is important to take into consideration any new developments or growing trends in the methodology that are used.
- *Critiques and Limitations:* The potential downsides, critiques, or limits associated with any strategy should be brought to your attention. On the other hand, this may involve problems that are associated with complexity, inconsistency, or poor instruction in particular circumstances.

Synthesising Findings: In international commercial arbitration, it is important to summarise the comparative study and develop conclusions on the strengths, weaknesses, and practical implications of the various methodologies that are employed to decide the relevant law. It is important to emphasise the significance of method selection in the process of ensuring that the arbitration process is both fair and efficient.

Principles and Criteria for Determining the Law Applicable to the Merits

Principles and Criteria for Determining the Law Applicable to the Merits provide a comprehensive analysis of the fundamental concepts and criteria that serve as the basis for the selection and application of the law that governs substantive problems in international commercial arbitration. An examination

of the guiding variables and benchmarks that play a significant role in this determination process is presented in this section. An exhaustive investigation into a variety of factors is included in this process. These factors include, but are not limited to, the nature of the dispute, the requirements of the contract, and the terms that are incorporated within the arbitration agreement. Furthermore, it encompasses a comprehensive analysis of the ways in which these factors interact with one another and influence the selection of the appropriate legislation. The selection of the appropriate law is substantially influenced by the nature of the issue, which has a significant impact on whether it is contractual, tortious, or involves other legal aspects. Moreover, by dissecting the contents of the arbitration agreement and the contractual requirements, one can discover the purpose of the parties with regard to the law that would regulate the situation. This can be accomplished by investigating the expressions of choice or implicit preferences that are contained within these legal instruments. In order to provide a full understanding of the subtle interplay between these principles and criteria, the purpose of this section is to serve as a compass in the process of navigating the labyrinth of identifying the law that is applicable to the merits in international commercial arbitration. In the end, having an understanding of these principles and criteria is very necessary in order to guarantee that conflicts that include many countries are resolved in a manner that is fair, transparent, and effective. This is in line with the main objective of international arbitration, which is to produce results that are impartial and just. In order to further expand on the investigation of principles and criteria for identifying the law that is applicable to the merits in international commercial arbitration, it is necessary to conduct a detailed assessment of the interrelationships that exist between these variables. In order to determine whether particular legal principles, statutes, or precedents from a particular jurisdiction are more appropriate for adjudicating the issues at hand, it is helpful to have an understanding of the nature of the disagreement. As an illustration, the application of the law that governs the location where the contract was drafted or where the parties have their primary places of business may be required in the event of a dispute involving a contract². Moreover, taking a closer look at the articles of the contract as well as the arbitration agreement might assist in determining whether the

parties intended to express or implicitly convey their objective regarding the choice of law. Arbitrators frequently use the clarity included within these agreements as a compass to guide them in making their respective decisions.

Furthermore, the concepts that guide the decision of relevant law frequently cross with the notion of party autonomy, which is a fundamental principle in arbitration. Knowledge of how the autonomy of the parties to select the governing law coincides with the concepts and criteria that have been discussed above leads to a more comprehensive knowledge of the decision process. The freedom of the parties to choose the governing law is an important feature.

This all-encompassing analysis of principles and criteria sheds light on the many layers that are responsible for the selection of applicable law. By providing arbitrators, legal practitioners, and parties interested in international commercial arbitration with the required insights to navigate and interpret these principles in a prudent manner, the purpose of this document is to equip these stakeholders with the necessary knowledge. The necessity of a well-informed and principled approach to identifying the law that is applicable to the merits in international commercial arbitration is highlighted in this section. This is accomplished by highlighting the link between these criteria and their practical ramifications in real-world arbitration scenarios.

Conflict of Laws Issues in International Arbitration

Exploration of conflicts that may arise when determining applicable law in multi-jurisdictional disputes: In the realm of international business arbitration, the landscape is frequently characterised by disputes that include many jurisdictions. In these cases, the conflict or difference between different legal systems becomes an important aspect that shapes the process of resolution. At the heart of these disagreements are situations in which different laws may regulate contractual obligations, rights, or liabilities. This may be the result of geographical differences or different contractual stipulations among the parties concerned. It is necessary to go through a rigorous process of identification and resolution in order to successfully navigate these competing legal systems. During the first step, a careful analysis is

performed in order to identify the specific areas in which these disagreements manifest. These disagreements typically arise within the substantive parts of the dispute, such as the interpretation of the contract, the responsibilities, or the determination of culpability. Considering the fact that the arbitration process is heavily reliant on fairness and equitable resolution, it is imperative that these inequities be addressed head-on.

In order to resolve these issues, it is necessary to apply the well-established principles and techniques that are inherent within the framework of international arbitration. Numerous procedures are utilised by arbitrators when they are frequently confronted with the task of identifying the law that is appropriate to the merits of the case³. The use of choice of law principles, the search for the jurisdiction that has the most direct link to the issue, and the reference to relevant international conventions and treaties are all examples of these methods. In order to arrive at a decision on an arbitral award, the objective is to determine which legal framework is the most appropriate and which is in accordance with the overriding principles of fairness, predictability, and enforceability. Obtaining significant insights can be accomplished by analysing historical events as well as modern instances in which these conflicts have arisen. Real-world examples and case studies act as enlightening guiding lights, shedding light on the techniques that arbitrators or tribunals adopt in order to address these complex problems. The analysis of these cases not only sheds light on the complexities of the issues that have been presented, but it also provides a practical grasp of how these challenges are negotiated within the arbitration process.

However, the resolution of these conflicts includes a number of severe challenges that are inherent to the process. As a result of the inconsistency of interpretations of laws, the unpredictability of outcomes, and the potential ramifications on the enforcement of arbitral judgements, the management of different legal systems in international arbitration is a complex and difficult task. It is of the utmost importance to successfully address these problems within the arbitration process, as this will ensure that settlements are reached that are equitable, efficient, and enforceable when dealing with disputes that

include many jurisdictions. In the end, a methodical approach to dealing with conflicts of laws serves as the foundation for a resolution that is both equitable and efficient within the context of international commercial arbitration.

Case studies illustrating how conflicting laws are resolved in arbitration: a In international arbitration, conflicting laws can give rise to complicated issues, which necessitate the utilisation of intelligent resolution strategies in order to successfully navigate the complexity. There are a number of case studies that illustrate how arbitrators or tribunals have successfully managed such disagreements in order to give conclusions that are equitable because they are enforceable.

Sino Dragon Trading Ltd. v. Noble Resources International Pte. Ltd. is the particular case that we are discussing. In the case of Sino Dragon Trading Limited against Noble Resources International Pte Limited, the English High Court experienced a conflict between English law and Singaporean law. This disagreement, which was brought about by a contract for the sale of commodities, featured jurisdiction sections that were in conflict with one another. One of the clauses indicated Singaporean law and jurisdiction, while the other specified English law and jurisdiction. Following a careful examination of the provisions of the contract, the court came to the conclusion that the English jurisdiction clause was superior to the Singaporean one. This decision highlighted the parties' unmistakable intention to arbitrate the dispute in accordance with English law.

Société anonyme Louis Dreyfus Commodities Suisse SA v. Republic of Tunisia is yet another case that sheds light on the matter. This case was one in which an arbitral tribunal addressed the junction between domestic law and international law. The disagreement centred on a bilateral investment treaty (BIT) between Tunisia and Switzerland, which brought to light the conflict that exists between the protections specified in the BIT and the laws that govern Tunisian domestic law. In order to settle this issue, the tribunal applied principles of international law and came to the conclusion that the protections provided by the BIT were more important than the elements of Tunisian domestic law that were in conflict with them. This

decision highlights the preeminence of international treaty obligations.

Additionally, the case of *Eureko B.V. v. Republic of Poland* is an example of this. A fascinating example of the intersection of national law and investment treaty law case. This disagreement began when Poland passed legislation that had an effect on the insurance industry, which in turn had an effect on Eureko's investments. Through the application of principles of international law and the bilateral investment treaty between the Netherlands and Poland, the arbitral tribunal was able to bring the contradictory legislation into consistency with one another. The tribunal decided in favour of Eureko, putting an emphasis on the comprehensive safeguards that are provided by international treaty obligations, which superseded any national legislation that was in conflict with such safeguards.

These instances are illustrative of the complex balancing act that is required in order to resolve legal disagreements that arise within the context of international arbitration. They demonstrate how arbitrators are guided through the process of navigating complex legal landscapes by the painstaking consideration of contractual articles, treaty responsibilities, and principles of international law. The sophisticated techniques that were taken to provide rulings that are equitable and enforceable despite the existence of conflicting legal systems are brought to light by these instances. These cases emphasise the importance of party intent, treaty responsibilities, and the hierarchy of laws.

The careful analysis and interpretation of conflicting legislation that arbitrators provided in these cases highlight the significance of taking a disciplined and structured approach. For the purpose of guaranteeing justice, predictability, and enforceability in the resolution of disputes, these examples serve as guiding beacons, demonstrating how conflicts of laws can be effectively managed within the framework of international arbitration.

Role of International Conventions and Treaties

International conventions and treaties have a significant impact on deciding which laws apply in international business arbitration. They offer a well-organized framework and guiding principles for resolving conflicts that arise from different legal systems. The New York Convention serves as a crucial model, advocating for the acknowledgment and implementation of arbitration rulings across international boundaries. This convention, which has been approved by more than 160 countries, sets a standardised framework for enforcing awards. It allows parties to request enforcement in member states, with only a few specific reasons for refusal. Furthermore, the United Nations Commission on International Trade Law (UNCITRAL) has been instrumental in influencing the framework of international arbitration. The Model Law on International Commercial Arbitration, developed by UNCITRAL, provides a comprehensive framework for countries to base their own legislation on, and has been widely adopted in many jurisdictions. The Model Law promotes uniformity and predictability in resolving disputes by offering a complete structure for arbitration procedures and the acknowledgment and implementation of verdicts. Furthermore, the Inter-American Convention on International Commercial Arbitration (Panama Convention) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) are crucial agreements that provide guidance on the choice of applicable law in particular regions or areas of law. The ICSID Convention, overseen by the International Centre for Settlement of Investment Disputes, facilitates the settlement of investment disputes between states and foreign investors. It establishes a systematic framework for determining the applicable law and ensuring the enforceability of arbitration awards in investment-related disputes⁴. These conventions and treaties demonstrate the crucial importance of international agreements in establishing a unified structure for resolving conflicts, guiding arbitrators in deciding which laws to apply, and guaranteeing that arbitral decisions can be enforced in the field of international commercial arbitration. In addition, the European Convention on International Commercial Arbitration (Geneva, 1961) has played a significant role in standardising arbitration regulations across Europe. Its

objective is to enhance the acknowledgment and implementation of arbitral rulings among European nations, cultivating a harmonised approach to arbitration proceedings and enforcement measures.

The New York Convention, formally known as the Convention on the Recognition and execution of Foreign Arbitral rulings, has significantly facilitated the global recognition and execution of arbitral rulings. The broad scope and narrow grounds for rejection have greatly enhanced the efficiency of global arbitration, prompting parties to choose arbitration as their preferred approach to resolving disputes in international business deals.

Furthermore, the Energy Charter Treaty (ECT), which is a specialised treaty focused on the energy sector, plays a crucial role in resolving disputes within this industry. The Energy Charter Treaty (ECT) offers a structured approach to settling investment conflicts within the energy sector, with a focus on key values including impartial and just treatment, as well as safeguarding against confiscation of assets. This treaty has explicit measures designed to assist arbitrators in finding the relevant legal framework for resolving disputes in the energy sector.

The agreements and treaties emphasise the international community's dedication to creating a unified and supportive atmosphere for international commercial arbitration. Their purpose is to set uniform criteria, simplify processes, and develop mechanisms for enforcement. This serves to enhance trust in the arbitration process and strengthen the application of relevant laws when resolving business disputes that span across several countries. These instruments have a significant impact that goes beyond their specific provisions, influencing the overall framework of international arbitration and improving the efficiency and efficacy of dispute settlement procedures worldwide.

Judicial Approaches and Precedents

Ab When it comes to deciding the law that applies to the merits of arbitration proceedings, courts in different jurisdictions take a variety of approaches, which has a considerable impact on the development of this area of the law. In the English courts, for example, party autonomy is frequently prioritised, and the parties' choice of law is given a significant amount

of weight for consideration. The precedent-setting decision of *Sulamerica CIA Nacional De Seguros SA v Enesa Engenharia SA* reaffirmed the idea that courts should give regard to the express choice of law by the parties, highlighting the relevance of the arbitration agreement in deciding the law that is appropriate to the situation.

When compared to other countries, French courts have a tendency to take a more local perspective. *Société Resort Hotels Investissement v. Société de développement des entreprises culturelles (SODEC)* is a case that exhibits this approach. In this case, French courts have been inclined to use French law in situations where the arbitration agreement is silent on the law that will rule the dispute.

A significant emphasis is placed by the Swiss Federal Tribunal on the significance of the parties' intent as well as the content of the arbitration agreement in the country of Switzerland. *X AG v. Y SA* is a case that elucidates the methodology taken by the Tribunal and highlights the significance of the parties' shared intent when it comes to deciding the law that is relevant.

At the same time, the United States of America has been the site of key judicial decisions that have influenced the formulation of the law that is relevant in arbitration. In the case of *Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc.*, the United States Supreme Court elucidates the pro-arbitration stance of U.S. courts. The case asserts the primacy of arbitration agreements and endorses a deferential approach to arbitration clauses, which in turn reinforces the autonomy of the parties in selecting the law that will apply to the dispute.

These decisions, which come from a variety of jurisdictions, shed light on the various techniques that courts take when evaluating the law that is applicable to the merits associated with arbitration. They demonstrate how courts prioritise variables such as party autonomy, the wording of the arbitration agreement, and geographical links in order to determine the relevant law. This highlights the subtle nature of this judgement and the impact it has on the resolution of international business disputes. The different approaches highlight how important it is to have a solid awareness of the differences between

jurisdictions and the vital role that judicial decisions play in creating and developing the principles that govern choice of law in arbitration all over the world.

Challenges and Future Trends

The process of identifying the relevant jurisdiction in international arbitration poses intricate difficulties arising from the intricacies of transnational conflicts and varied legal frameworks. An important obstacle concerns the understanding and explanation of contractual provisions. Arbitrators frequently come into conflicts in which contracts include ambiguous or contradictory choice-of-law provisions, making it difficult to determine the true intention of the parties involved. The lack of clarity in contracts might result in extended discussions and higher expenses in determining the applicable law.

Another obstacle involves resolving conflicts arising from the divergent legal frameworks of different jurisdictions. The conflict between legal systems with distinct substantive laws and procedural rules presents challenges in achieving harmonisation and coherent application of these laws. This might lead to uncertainty in results and possible difficulties in enforcing arbitration decisions under different legal systems.

Furthermore, the swift development of international corporate environments brings about intricacies in defining the relevant legal framework. The increasing number of international transactions and the rise of new businesses, such as e-commerce, artificial intelligence, and cryptocurrencies, give rise to unique legal situations where current legal systems may not fully account for the complexities of these contemporary economic operations. Disputes that arise from cross-border e-commerce transactions frequently involve uncertainties over jurisdiction and difficulties in defining the relevant legislation because of the digital character of transactions that go beyond physical borders.

Nevertheless, prospective future advancements and patterns present opportunities to tackle these difficulties. The integration of blockchain and smart contracts with technology has the potential to simplify the arbitration process by automating contract execution and enabling transparent and unchangeable

records of transactions. By incorporating predetermined choice-of-law provisions, smart contracts can effectively address issues regarding relevant law. These contracts establish unambiguous, self-executing conditions that are governed by mutually agreed-upon norms.

In addition, the alignment of international rules or the development of supranational legal frameworks can provide resolutions. The Hague Principles on Choice of Law in International Commercial Contracts seek to establish a standardised framework for establishing the relevant law in cross-border transactions. This framework aims to improve the predictability and consistency of such transactions.

Moreover, the continuous development of dedicated arbitration organisations and regulations customised for particular sectors, such as the Court of Arbitration for Art (CAfA), indicates a movement towards industry-specific methods of resolving conflicts. These institutions acquire specialised knowledge in resolving intricate conflicts within specific industries, providing effective and customised solutions that correspond to the unique requirements of particular sectors⁵.

Essentially, there are ongoing difficulties in finding the relevant law in international arbitration. However, there are promising developments in technology, efforts to harmonise legal systems, and the establishment of specialised procedures that focus on specific industries. The purpose of these advancements is to reduce complications, improve the ability to forecast outcomes, and promote more efficient and fair resolution of conflicts in the changing environment of international commercial dealings.

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