New Experiences of International Arbitration *

with special emphasis on legal debates between parties from Western Europe and Central and Eastern Europe

Attila Harmathy

Readers are reminded that this work is protected by copyright. While they are free to use the ideas expressed in it, they may not copy, distribute or publish the work or part of it, in any form, printed, electronic or otherwise, except for reasonable quoting, clearly indicating the source. Readers are permitted to make copies, electronically or printed, for personal and classroom use.

1. Introductory Remarks

1. In 1987 René David wrote in the book on international trade law:

   Le monde d’aujourd’hui n’est plus celui d’autrefois. Les progrès spéctaculaires de la science et de la technologie ont transformé les données matérielles de notre existence. Ils imposent également de remettre en cause les idées reçues et de réformer nos institutions, touchant l’organisation de la société et des exigences de la justice …

   L’élaboration d’un droit international prenant en compte les intérêts du commerce international suppose à l’évidence que l’on connaisse la manière dont ici et là la justice peut être ressentie et mise en œuvre; le rechercher et l’exposer est l’une des tâches essentielles du droit comparé.1

I think that René David was perfectly right. Since the middle of the 20th century there have been tremendous changes in the world and also in the law of international trade. International arbitration has been involved in these changes. Lawyers dealing with problems of international trade and arbitration have recognised the process of important changes and this recognition is reflected by the fact that several international conferences have been organised on different questions of the new phenomena. I refer to only one of these conferences.

* Session IIB2. National Reports received from: France, F.-X. Train; Germany, A. Trunk; Greece, A. Dimolitsa; Spain, J. Pérez Milla; The Netherlands, V. Lazic; USA, Ch. R. Drahozal.

In 1962 at the colloquium held in London on the new sources of international trade Professor Graveson, Dean of the Faculty of Law, King’s College, said in his opening speech that the proceedings were no more than an intermediate chapter in the history of this living phenomenon, the law of international trade.

I cannot but repeat Graveson’s statement and hope that the materials in this Congress organized by the International Academy of Comparative Law will contribute to a better understanding of the living phenomenon, which is in the process of transformation.

New elements can be better recognised and understood by means of comparison. The subject of the new experiences of international arbitration fits well into the programme of the Congress. The aim of the present report is to mention important elements of these changes and trying to understand them on the basis of comparative law.

2. The subject of the new experiences of international arbitration has attracted several eminent lawyers. Excellent national reports have been presented. I have received the following reports:

- Antonias Dimolitsa, *L’arbitrage international en Europe, harmonie et diversité suite à la loi-type CNUDCI* (Grèce);
- Christopher R. Drahozal, *New Experiences of International Arbitration in the United States* (USA);
- Vesna Lazic, *Arbitration Law Reform in the Netherlands: Formal and Substantive Validity of an Arbitration Agreement* (The Netherlands);
- Javier Pérez Milla, *Spanish Law on International Arbitration* (Spain);
- François-Xavier Train, *Nouvelles tendances en matière d’arbitrage international* (France);
- Alexander Trunk, *East-West Arbitration – A View from Germany* (Germany).

3. The subject of new experiences of international arbitration is a vast one. It is different from most topics discussed at the Congress as there are no special national legal solutions. Therefore, some guidelines have been elaborated by the general reporter in order to have some kind of common denominator, but this has not meant anything more than having a starting point for analysis and the authors of the national reports have been free to explain what they consider to be new phenomena. There are considerable differences in the reports, but the way of thinking is a common thread and the national reporters devote attention to very similar questions.

The national reports have underlined the importance of

- a worldwide wave of legislation on international arbitration on the basis of the UNCITRAL Model law and
- a substantially increased role of arbitration (an increased American involvement)

as new phenomena which have appeared during the last few decades.

---

On the basis of the changed circumstances the national reporters have dealt with the following questions which are not exactly new problems, but, nevertheless, they should be reconsidered because of the new conditions:

- the autonomy of an arbitration clause – the validity of an arbitration agreement, Kompetenz-Kompetenz, the State as a party;
- arbitrability (antitrust, competition; multi-party arbitration; intellectual property; corruption; criminal law and civil law claims);
- public policy;
- the flexibility of the procedure (Common Law – Civil Law);
- the investor – State arbitration; electronic commerce; consumer and employment arbitration;
- the relationship with the courts, interim measures, discovery, court intervention, judicial control, enforcement of awards;
- the extension of the arbitration (groups of companies, the litigation is indivisible, sub-contractors, a chain of contracts);
- European Law rules (consumer protection, standard general conditions);
- East-West trade relationships and arbitration (public policy/enforcement/ – time is needed for the proper functioning of arbitration, cooperation);
- differences in arbitration because of political reasons, history, different national methods.

The menu is rich, the list of questions cover the most important problems of international arbitration. The general report does not try to reflect the whole richness and diversity of the excellent national reports. Instead, some points made by the reports and mentioned above will be picked up to demonstrate these new phenomena.

2. The Development of International Trade and its Impact on Arbitration

4. Since the 1960s we have been able to witness the transformation of conditions of international arbitration. The changes have taken place in different domains. Some of them were not directly connected with arbitration, they had much wider dimensions but their effect on arbitration is considerable. In the first place, the political changes of the last few decades must be mentioned. The transformation of the world economy must be referred to in the second place; but the connection with our topic is somewhat closer, though not directly so, in the field of economics. I would also add the legal field in the third place. Here the changes are not so evident as in the other domains, but their importance is not negligible either.

2.1. Changes in the Political Field

5. At the end of the 20th century a spectacular change took place which had its consequences in nearly all fields of life in many countries. The collapse of the Warsaw Pact and of the Soviet Union transformed, first of all, the political life of the world. Several states ceased to exist and many new ones were created; several states regained independence. As a result of the fundamental changes to the political systems of several states, the economic system
of these states was completely transformed. The transition to a market economy started. The artificial international economic system of Comecon disappeared and the states which belonged to it have been integrated into the world economy.

The transformation of the political and economic systems has brought about the transformation of the legal system as well. As a result of the changes, it has become evident that the Soviet bloc had not been a unitary system. Under the political cover there had been fundamental differences in social and economic conditions, history and culture, including legal culture. The differences came to the surface with the transformation of the political system and comparative lawyers analysing the legal system of these countries had to find new answers under new circumstances.

The transition into a new system also required new legal forms for participation in international trade. The role of the state had to be built on a new basis; state enterprises were replaced by commercial undertakings; dispute resolution was reformed and it meant changes to the court systems as well as to the regulation of arbitration. In this respect the differences must be mentioned once again: the states which belonged to the Soviet Union did not have any arbitration system with the exception of the Russian Republic; on the other hand, all other former European socialist states had arbitration courts with some experience in international commercial law disputes.3

6. As a second element of the development of international arbitration a trend can be discerned in the growing interest of developing countries therein since the second part of the 20th century. This can also be attributed, at least to some extent, to the changing international political climate. Although its importance cannot be compared with the disappearance of the Soviet Union, it is not negligible when thinking of the increasing role of international arbitration.

The statistical data of the Court of Arbitration of the International Chamber of Commerce clearly show that until the end of the 1970s it was a rare exception that a lawyer coming from a developing country was chosen. In the first years of the 1980s there was a slow change, and the first signs of a growing participation of developing countries could be seen on the basis of the data concerning the nationality of arbitrators as well as concerning the parties and also the places of arbitration.4 At this time the prevailing opinion in the developing countries was


still that international arbitration served solely the protection of businesses in the Western industrial world. This opinion was expressed by the intervention of Mr. Keba M’baye, at that time President of the Supreme Court of Senegal and later a judge at the International Court of Justice during the 60th anniversary celebration of the ICC Court in 1983. He said that in Africa, Asia and Latin America people saw arbitration as a foreign judicial institution imposed upon them.

The situation has changed. The effect of the change can be confirmed if we take into consideration that in 2002, in ICC arbitration alone, more arbitrators were appointed from developing countries in Asia, Africa and Latin America than ever before. And more venues for ICC international arbitrations were located in the Third World – more than at any time in the past. The growing importance of international arbitration is typical in countries of Latin America, too, where earlier a very sceptical opinion prevailed about arbitration.

7. International trade and by this we mean international arbitration has been enhanced by the process of integration. The establishment of the European Economic Community and its substantial enlargement in the last few years has provided a fresh impetus for trade. The important steps towards creating better conditions for international trade can be found on other continents too: NAFTA, Mercosur and OHADA (Organisation pour harmonisation en Afrique du Droit des Affaires) have the same effect. The activities of the World Trade Organisation should also be mentioned.

2.2. Changes in the Economy

8. Technical development and changes in the structure and methods of economic activity have brought about a dramatic transformation of the world economy. The unprecedented development of communication technology, the creation of global financial markets, the dramatic increase in transnational companies, and the development of transport are among the factors that have created new conditions for world trade. The emergence of new economic powers, like Japan, China and India has transformed the world economy. The new situation has been characterised by Roy Goode as follows:

The last quarter of the 20th century has witnessed change on an unprecedented scale. The advent of global trading, in which national markets are interconnected and modern technology linked to large clearing and

---

7 Berger, *supra* note 2, at 14-16.
settlement systems enables vast amounts of money and securities to be transferred across national boundaries, has led to highly developed settlement arrangements in which the sources of acquisitions and payments are lost through multilateral netting.  

The consequence has been not only the growth in the value and volume of transactions, but the content of economic relationships has changed too, and it has become more complex, more intricate. The danger of uncertainty and unforeseeable legal consequences is growing and so there is a request for the uniform regulation of international economic relations. The disputes arising from these relationships require special expertise for understanding and settling disputes. Consequently, the need for dispute settlement by experts, i.e. mainly by arbitration, is greater than ever.

9. New possibilities offered by technical developments have transformed not only business-to-business relations, but business-to-consumer relations, too. In addition, medium-sized and small companies started to make use of these new possibilities and extended the sphere of their activity. Electronic commerce has opened up new fields of commercial contacts where state frontiers have no meaning. This kind of growth, coupled with economic integration and the increased importance of regional contacts, created new kinds of international trade relations where the value and volume of a single transaction is relatively small, but its overall importance is great. Traditional court proceedings cannot offer the best solution for settling disputes arising from these relations, the role of arbitration is therefore also increasing in this field.

2.3. Legal Changes

10. Elaborating international conventions and their adoption can be considered as the most important change in connection with international arbitration. The first of these conventions is the New York Convention on the Recognition and Enforcement of Foreign Awards of 10 June 1958. By 1982 more than sixty states had ratified the Convention, but most of the ratifications took place in the last quarter of the 20th century. By now, the number of ratifications has reached 160 and it is considered to be the most successful multilateral convention so far adopted by the United Nations. The worldwide acceptance of the New York Convention ensures the effectiveness of arbitration. The recognition and enforcement of an arbitral

---

10 Nariman, supra note 5, at 127.
award rendered in the territory of a state other than the state where its enforcement is sought can only be refused in cases specified by Article V of the Convention. Thus there is a high probability that the award will be enforced.

11. Another important international document is the UNCITRAL Model Law on International Commercial Arbitration. Since the early 1980s there has been a multitude of laws on arbitration. The basis of these laws was in most cases the Model Law adopted in 1985. The Model Law had an important role in transition countries drafting their first code on international commercial arbitration. It was, however, also taken into consideration by countries having extensive experience in commercial arbitration, such as Germany, the United Kingdom, and Sweden.11 The Model Law has achieved a relatively high level of uniformity in understanding arbitration and its practice.

12. The Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 has also gained great importance. The Convention set up the International Centre for the Settlement of Investment Disputes focussing on disputes between contracting states, on the one hand, and investors on the other. The peculiar feature of this widely used arbitration is that a state is a party to the arbitration. On the basis of the Washington Convention several hundred bilateral investment treaties have been signed containing provisions on arbitration. Some multilateral treaties have also been adopted in connection with investment. The most important of them is the Energy Charter Treaty of 1994.12 Energy is one of the key problems in our modern economy, thus cases in this field have a special interest.13

13. The result of the international Conventions mentioned above is a change in attitude towards arbitration. It has been characterised as clear evidence of the fact that even the legislature no longer views arbitration as a second-class method of dispute settlement, but simply an additional one, perhaps more appropriate for certain categories of disputes. Over the course of the last few decades, there has been a growing tendency to submit to arbitration all international commercial disputes of certain importance, with the consequence that it is the arbitral tribunal that is perceived by the international business community as its ‘natural’ judge, rather than the national law courts.14

14. The development of international commercial arbitration has been supported by the harmonisation and unification of the substantive law of trade, which is one of the important characteristics of the last quarter of the 20th century and the beginning of the 21st century. Here only a brief reference is made to a field which seems to be the most important in the practice of international commercial arbitration: the United Nations Convention on Contracts for the International Sale of Goods adopted at a diplomatic conference in April 1980. It is in force in more than 60 countries.

As is well known, the Convention on Contracts for the International Sale of Goods was not the first attempt to unify contract law rules, at least in the limited field of international trade. The Convention was the result of long preparatory work and of several compromises. During the preparation of the Convention another initiative started to aim at achieving uniform contract rules. In 1971 the Governing Council of UNIDROIT decided to include the subject of Principles of International Commercial Contracts in its work programme. However, a working group was only established in 1980. The idea was to create some kind of “soft law” and not to draft the text of an international treaty, a binding instrument. The Principles were published in 1994. The work continued and new chapters were added to the text. The revised and enlarged text was published in 2004.15 The Governing Council of UNIDROIT decided to continue the work on the Principles.

Very similar work started within the framework of the European Economic Communities nearly at the same time as in UNIDROIT. The Commission on European Contract Law held its first meetings in 1980 and 1981. The aim was, among other things, to strengthen the single European Market and to facilitate cross-border trade. The first phase of the work was published in 1995. Revised and enlarged editions of the text have been published since that time.16 In 2003 the Commission issued the communication on a more coherent European contract law, labelled the Action Plan. There is already abundant literature on the topic, but the legal nature of the so-called common frame of reference to be developed is still unknown. The question posed in the title of an editorial comment in the Common Market Law Review is fully justified: European contract law: Quo vadis?17 Ewoud Hondius has cautiously directed attention to an important aspect by stating that with the advent of more harmonised private law, it is important to preserve the rich European tradition by keeping traditional

categories intact. The reminder by Reinhard Zimmermann should not be forgotten in that the unification of European law should not be left to an institutionalised Europe which merely reacts to specific needs and aims at implementing economic policies.

For OHADA (Organisation pour harmonisation en Afrique du Droit des Affaires) a draft of a uniform act on contracts was elaborated by Professor Marcel Fontaine, who was a member of the UNIDROIT working group.

3. Some Consequences of the Changes

3.1. Extending the Use of Arbitration

15. As a result of the transformation of the political situation and of the world economy many persons resorted to international arbitration as newcomers. In several countries where arbitration had previously not existed, organised arbitration had to be established and arbitrators had to study the art of participating in arbitration procedures. It was not the lack of experience that caused problems, but the necessary conditions for the proper functioning of an arbitral tribunal were simply not present at the beginning.

Lawyers from countries having a long history of arbitration were surprised by the situation. It is reflected by the opening remarks at an international conference held on international commercial arbitration in London in 2003. It is characteristic how these remarks were put:

this causes us to examine the conditions under which judges are appointed and act, the adequacy of the funding, buildings and equipment with which they operate, the extent to which they continue to be treated and behave like official functionaries, rather than independent officers, the extent to which their poor conditions may expose them to temptation, or to which their behaviour and connections may create obstacles to their acting truly independently.

Comparative analysis has shown that in the field of the law of procedure there are fundamental differences among the different “families of law” and one cannot understand them without studying their historical development, their general legal culture. One of the crucial problems is the understanding of the role of the judge in the procedure and the concept thereof which is accepted at this point in time has a great effect on several other questions concerning the procedure. Legal culture is the product of a long development. Therefore, a political system which exists in a given country can influence the system of the courts and their functioning, but the influence depends on how long the political system has existed in

19 R. Zimmermann, Roman Law and European Legal Unity, in Hartkamp et al., supra note 18, 39.
the country examined and what kind of socio-economic and cultural conditions were present before the political system started. Therefore, the category of Soviet bloc countries, or pays de l’Est can no longer be accepted. A different basis of categorisation should be found.

16. The much wider application of arbitration raises problems not only in connection with new arbitral tribunals, but with state courts, too. It can be observed in many countries that after a revolutionary political change the judiciary is generally not trusted. This is the case in most countries in transition.23 The question is not simply whether arbitration is preferred to court proceedings. It is also important to know the courts’ way of functioning when the recognition and enforcement of arbitral awards are sought. For inexperienced courts the application of rules concerning arbitration can cause problems and they can even look at awards with suspicion. The New York Convention specifies the conditions for the non-recognition of an award and the refusal of enforcement. These rules are subject to interpretation, however. Particularly problematic can be the interpretation of the rule concerning public policy. On the basis of certain experiences, the Russian court practice concerning this question seems to be rather contradictory.24 This is not the typical situation for all the countries in transition, however, as in several countries there are no signs of such problems.25

3.2. Changes in Connection with the Role of Public Law Elements

17. Public law elements can be important in various aspects of arbitration. One of the questions to be considered when thinking about the possibility of arbitration is whether a public law entity can be a party to arbitration. The widely adopted multilateral and bilateral investment treaties have opened the door to arbitration proceedings with state participation. It is an important step for the protection of certain rights that a state can be sued. An additional question is whether in these procedures public law and private law problems can be intermingled to a great extent. As a result, arbitration becomes even more complicated.

18. Earlier, in many arbitration cases one of the parties used to be a state enterprise or other public law entity. Only twenty years ago Karl-Heinz Böckstiegel wrote the following in the introduction to an important analysis of arbitration:

23 R. Dañino, supra note 6, 331.
Business circles as well as practicing lawyers and university professors suggested that the Institute of International Business Law and Practice initiate a research study into the specific problems arising from the involvement of state enterprises in international commercial arbitration. … Practical importance: for many years, state enterprises have been participating to a growing extent in international trade. In many socialist countries, be they industrialised as in Eastern Europe or still developing as in other parts of the world, a state monopoly on foreign trade is part of the national economic and legal system. State enterprises are then the exclusive instruments by which such states participate in international commerce.26

Since the end of 1980s the world has changed, however. After the revolutionary transformation of the political system, in countries of transition state enterprises were mostly transformed into commercial companies. Foreign trade is no longer a state monopoly.

The process of transformation, the winding up of state enterprises and privatisation has nevertheless resulted in several problems (e.g. the new company was not a signatory to the arbitration agreement). The most serious problems, however, concerned privatisation decisions. Often, the question which had to be considered was whether the state decision to privatise was to be qualified under public law rules and whether it could accordingly be controlled by a court, or whether it was a decision by the owner of an enterprise without any kind of control by the courts.

Privatisation often meant selling all the assets of an enterprise. The contracts regulating such privatisation decisions were not identical to the transactions in cases of mergers and acquisitions. Several complicated problems were to be dealt with in arbitration cases on privatisation, starting from determining the value of a state enterprise, leading up to the enforcement of rights and duties under the contract.

19. In other fields where public law elements have had to be considered there have not been fundamental changes. Public policy raises the same problems as twenty years ago both during the commencement of arbitration in connection with arbitrability and during the phase when arbitral awards have to be recognised and enforced.

As another difference we could mention once again that because of the extension of the use of arbitration in many countries the courts faced unknown situations when the enforcement of foreign arbitral awards was sought. Here I refer once more to a statement by Böckstiegel who said the following at a conference organised by the International Council for Commercial Arbitration in 1986:

> The relevance of national and regional concepts and laws for international arbitration and the possibility of developing independent international standards are the basic policy issues.
> The temptation for national judges to insist on too many of their national standards to the detriment of the advantages of international arbitration and the function of being a net for obvious ultra vires conduct of arbitrators are the major practical issues involved.27

In 2000 Audley Sheppard, the general rapporteur at the International Law Association conference pointed out that the definition of public policy had not markedly changed over the years. The definition reflects the fundamental economic, legal, moral, political, religious and social standards of every state or extranational community.\textsuperscript{28}

20. Recently, international public policy has been more frequently referred to. There is probably a general agreement that it is even more difficult to formulate the definition of international public policy than that of national public policy. In Pierre Lalive’s opinion, the function of international public policy is not simply the exclusion of the application of some national rules. It has a positive function, too. It can influence the decision of arbitrators when fundamental notions of contractual morality or basic interests concerning international trade are involved.\textsuperscript{29}

The author of this report is of Hungarian origin and so he is deeply touched by the fact that the very first line of Professor Lalive’s paper is a quotation from the writings of Lajos Kossuth, the prime minister at the time of the Hungarian Revolution in 1848-1849 saying: “The moral order of the world has its rights just as the material order.” Nevertheless, I do not consider it to be an easy task for an arbitrator to state when international public policy is to be applied.

21. No new ideas seem to have been developed in some other fields of international arbitration where public law elements are to be taken into consideration, although the frequency of cases or the facts may be different in comparison with earlier periods. Thus the problems of corruption and bribery may be faced in contemporary arbitration more often, but the answer is probably the usual one depending on the facts of the case: either denying arbitrability or declaring the contract null and void.\textsuperscript{30}

Another example of taking public law elements into consideration is the restriction on deliveries of goods or payments. Although the state monopoly of foreign trade is no longer of great importance in international commercial arbitration, restrictions due to a particular international political situation may cause problems. I simply refer to the measures taken in connection with the struggle against terrorism. There are no signs of any new solutions to such legal problems.


\textsuperscript{29} P. Lalive, Transnational (or Truly International) Public Policy and International Arbitration, in International Council for Commercial Arbitration, supra note 27, at 312-313.

\textsuperscript{30} Böckstiegel, supra note 27, at 201-202.
22. There are cases of growing importance where arbitrability is denied in some cases not because of a public law character, but because of the effect on third parties. This is the problem concerning some issues of intellectual property rights. In contemporary economic relations intellectual property rights play an important role. This is the reason why a comparative study by the International Association of Industrial Property focussed on the arbitrability of disputes concerning intellectual property in the early 1990s.\(^{31}\) It seems to be generally admitted that there are several issues relating to intellectual property which are not excluded from arbitration. So in cases of licensing agreements or know-how, arbitrability is not denied.

3.3. The Effect of Economic and Legal Changes

23. Economic structure has become much more complicated than it used to be before World War II. International corporations with several entities are typical in the contemporary economy. Company law has developed according to the requirements of the economy. In the field of arbitration two groups of issues are particularly important.

One of these issues is the extension of the arbitration agreement to non-signatories belonging to the same group of companies. The possibility of such an extension has been acknowledged in different typical factual situations.\(^ {32}\) Such cases are, for example, third party beneficiaries and assignees, undisclosed partnerships, and piercing the corporate veil.

The other important group of issues concerns complex business transactions involving companies. These are merger and acquisition transactions. These complicated contracts typically contain arbitration clauses.\(^ {33}\) In disputes surrounding these transactions several complicated legal questions of new kind have to be answered.

24. The new company structures and transactions are often connected with multi-party arbitration and this has been the topic of a great deal of discussion. There are, however, some other commercial law contracts which have gained importance and which usually suppose the participation of more than two parties. Examples of these contractual relations are bank guarantees and suretyships, charter-parties, bills of lading, chains of contracts of different types, and partnerships. Not only substantive law problems, but also questions of procedure require a thorough analysis in this field.


25. Under conditions determined by the modern economy the protection of weaker parties raises new questions which require new solutions. In the field of international arbitration consumer contracts are particularly interesting. There is a tendency to include arbitration clauses in the general conditions prohibiting class actions.\textsuperscript{34} In many respects a new situation was created for Member States of the European Union by Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market adopting the principles of total harmonisation.\textsuperscript{35}

26. In the modern economy one of the most important legal fields is the law of competition. Disputes concerning competition also raise several questions for international arbitration. The starting point here, too, is arbitrability because of the public law element involved. A further problem is the mandatory character of competition rules. Special problems present themselves in disputes where European Community rules are to be applied.\textsuperscript{36}

The European Court of Justice stated in the much discussed \textit{Eco Swiss} case that “provisions of Article 81 (ex Article 85) may be regarded as a matter of public policy within the meaning of the New York Convention.”\textsuperscript{37} The application of EU competition rules poses new questions for arbitration tribunals, and not only in those countries that have recently joined the Union.

27. The last few decades have brought about substantial changes in international commercial arbitration. These changes were closely connected with the expansion of world trade. Under these circumstances a common understanding of the problems and a common approach in finding solutions thereto is an important requirement. Ole Lando recently made a suggestion to carry on with the harmonisation of world trade law by means of discussing and adopting international principles of contract law.\textsuperscript{38} His suggestion was the starting point for the elaboration of the Principles of European Contract Law. Is it possible that this new suggestion will also be followed by new attempts at harmonisation in international commercial arbitration? Anyway, since I was student at the \textit{Faculté Internationionale}


\textsuperscript{37} \textit{Eco Swiss China Time Ltd. v. Benetton International NV.} of 1 June 1999 C-126/97 at 39.

de l’Enseignement de Droit Comparé, Strasbourg, many years ago, I am convinced that comparative law is required for a better understanding problems and for the development of international arbitration as well.