

HOW THE CLASS "INTERNATIONAL ARBITRATION" IS TAUGHT AT LEUVEN LAW SCHOOL

By:

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THE CHALLENGE

The quintessence of international arbitration is that it is not confined to one specific legal system but that the process is governed by several national legal orders,

i.e. the law of the contract containing the arbitration clause, the law of the seat of arbitration, the law of the parties (for the capacity to arbitrate), the law of the place of enforcement.

Of course, there is the UNCITRAL Model Law on Arbitration adopted by many countries. However very often these countries have added and amended some of its rules and they also have their own judicial interpretation of the statutory provisions.

The New York Convention on the Enforcement of Foreign Arbitral Awards, applicable worldwide, would create the impression that at least enforcement of foreign awards is governed by uniform, transnational rules. However, this convention only gives a rather vague framework and leaves it up to the national courts of the respective signatory states to fill in the criteria.

In brief, international arbitration requires a multi-legal system and comparative approach.

THE OPPORTUNITY

The optional arbitration class (26 h. = 2 x 13 classes in one semester) I am teaching at Leuven Law School is yearly attended by some Belgian but mainly by non-Belgian

students (post graduate LL.M. candidates as well as graduate (Erasmus) students) . This year for instance it is attended by 44 students from 22 different countries .¹

This is an ideal platform for a comparative law approach.

THE TEACHING METHOD

The first class is an introduction to mediation with a moot mediation. The students are put in groups of 5 (one is the mediator, two are the respective parties and two are the counsel to these parties). Each student has his own scenario and the mediation moot consists of seeing how these five different people interact in the mediation process. At the end of the moot exercise, all groups are reassembled in the class room for a debriefing and to discuss what they learned from the exercise.

That first week, the students are each allocated to a country – preferably their own. However, as each country can only have 4 students ,if there are more than four students from a particular country, the others will be allocated to a country with the same language (e.g. French students can be allocated to Belgium or Switzerland). Moreover additional students from a country or participants from a country with no accessible arbitration law, are asked to cover ICSID (the International Centre for Investment Disputes). Indeed, ICSID- investment arbitration can be considered as a separate system governed by the 1965 Washington Convention.

The classes thereafter the different aspects of the arbitration process are discussed : The agreement to arbitrate

- Arbitrability ; effect of agreement to arbitrate
- Arbitration Institutions
- The arbitrators: selection; appointment; impartiality; challenges
- The conduct of the arbitral proceedings
- Evidence

¹ Belgium, Brasil, China, Colombia, Czech Republic, Denmark,, Finland, France, Germany, Georgia, Iceland, Ireland, Italy, Japan, Poland, Portugal, Singapore, Slovenia, Spain, Sweden, United Kingdom, United States of America.

- The law applied by arbitrators
- The award and court review
- Enforcement of an award

As a preliminary all students have to have studied a short text (28 pages) , i.e. a chapter on arbitration from my “ The Law of International Trade” (Sweet & Maxwell) to have an overview of the arbitration process. Moreover they can consult the relevant arbitration Conventions etc. on the Toledo – electronic; where also a bibliography of books to be found in the Faculty library is available.

Before each class each student has to prepare a specific question under the rules of ‘his/her’ country and related to the ‘number’ (from 1 to 4) he/she has been given.

For instance, the third assignment was :

Please consult the rules of the most important arbitration institution of "your country" and answer "your" question :

- 1) *Where is the seat of the arbitration when parties have not specified where the arbitration has to take place ?*
- 2) *How many arbitrators will there be when the parties did not indicate whether there would be one sole arbitrator or three arbitrators ?*
- 3) *What is the procedure before the institution when an arbitrator is challenged ? Will the other arbitrators and parties be heard? Is the decision on the challenge motivated ?*
- 4) *Is there a time limit to render an award ?*

And the fifth assignment on evidence was :

- 1) *To what extent do the arbitration RULES of an arbitration institution of "your" country contain rules on evidence ?*
- 2) *To what extent do the arbitration STATUTE of "your" country contain rules on evidence ?*
- 3) *To what extent can a court from "your" country oblige parties to submit a document ? Is it the same for arbitrators ?*
- 4) *Who has to ask the court to order a Party to submit a document : the arbitrator and/or the parties ?*

The questions are so selected that the answers can be found with the documentation available in the library or on internet. If possible, the students are encouraged to have available the leading treaties on arbitration from their country (e.g. purchased or in photocopy).

Each class I pick out some 15 students to answer the question allotted to them. Their selection is based upon the usefulness of their answer for the general development of the discussion and to make sure that at the end of the course all students had an equal change to be involved. Of course, also free interventions are encouraged.

Two weeks before the exam all the answers to the respective questions are submitted in paper form.

The students are graded on the basis of their class participation and their paper for 50 % (10 points). A conversation about the general aspects of arbitration, i.a. from the perspective of 'their 'arbitration system is also graded for 50 % (10 points).

ADVANTAGES

This approach is intended to combine a study of the general principles of arbitration with a more detailed exploration of a specific legal system.

It allows a comparative approach actively involving the students themselves.

By doing the research the students get familiar with their own legal arbitration system which will benefit them once returned to their own country.