French Public Order as Restriction of Arbitration Clause in the Contracts of International Commerce

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Abstract. The article describes a new observation over the role of French public order in international arbitration. Based on the fact that France is well known as a privileged venue for arbitration. It has aided deliver international arbitration with the means to become a reliable dispute resolution mechanism and to form itself as an alternative dispute mechanism to local courts. France adopted a new arbitration law in 2011, modernizing the rules applicable to both national and international arbitration. This new law organizes the principles established in case law and aims to have the trust of international arbitration actors in the French legal system.
Enabling to analytical observing, we found that the French law has approved international arbitration extensive autonomy. However, this autonomy is not entire: it finds its limit in public order. Recent progresses lead to a failure in public order in the arbitration clause. Jurisprudence has not only authorized arbitrators to apply rules and principles of public order, but it has also gave them the power to sanction their violation. The French law has even adopted a material rule of general scope where public order plays a particular role: it has become the sole cause of nullity of the international arbitration clause.
The French public order don't allow violation of its perspective of international public order, even in the international commerce contracts. It recalls that it is up to it, not to verify whether the arbitral decisions were or were not taken legally, but to determine whether the recognition or the execution of the award is likely to hinder the legal objective of certain actions, as defined by the international commercial contract. It rightly holds that such research, conducted for the defense of international public order, is neither limited to the evidence produced before the arbitrators nor bound by the findings, assessments and qualifications made by them, its only in this respect consisting of ensuring that the production of evidence before it respects the principle of adversarial and equality of arms.

Keywords: French law, International Public Order, Arbitration, International commerce.

1 INTRODUCTION

Calling the principles which are considered fundamental in a given legal order, and compliance with which is therefore imperative, public order appears as a safeguard the settlement by arbitration of international commerce disputes. However, it is noted that there is a kind of decline in public order in French international arbitration law. The field of arbitrarily is in permanent extension while the control of the respect by the award of the public order is more and more lightened to the point that one can wonder if it still exists. International arbitration seems to become a sanctuary where the autonomy of the will can flourish without

limit. It is an opportunity to take stock of such crucial issues for the future of arbitration at a time of history where the liberalization of international commerce is called into question (Credimi, 2013).

The public order may have the effect of limiting the effectiveness of the arbitration clause in international commercial contracts, as the arbitration clause is the prevailing form of settling disputes arising from such a contract, and there is no substitute for recognizing the free will of the parties to include such a clause in their international contracts (Mousseron, 2003), but this is conditional on that the arbitration clause is legally valid (CA Paris, 17 janvier 2002), and does not contradict public order, so how can the validity or invalidity of the arbitration clause be evaluated? And will the arbitration clause be subject to the control of the national public order or the international public order?

The answers to these questions are found in French law, where the validity of an arbitration clause in an international contract is evaluated with reference to the standards of the international public order (Niboyet et Geoffre, 2007), that is, to what is known as the substantive rules of private international law, which have been largely freed from internal standards in favor of international standards, these substantive rules allow by resorting to arbitration to resolve international contract disputes, and even provide the opportunity to create neutral international institutions, on the basis of the free will of individuals, and with a special system and rules compatible with the requirements of international commerce.

According to the French jurisprudence in the case AD Trade, the judge of the annulment is the judge of the sentence to admit or refuse its insertion in the French public order and not judge of the case for which the parties entered into an arbitration clause. The purpose of its control is therefore not to verify that contractual stipulations have been correctly executed or legal provisions correctly applied, but only to ensure, within the framework of the control of compliance with article 1520-5 of the Code of Civil Procedure, that the recognition or execution of the award does not result in a manifest, effective and concrete violation of international public order (AD Trade, Paris, 5-16, 13 avril. 2021).

There are three issues that need to be addressed by the research treatment in this context: the first issue is the law applicable on the international arbitration; the second issue is the actual extent of free will and the independence of the arbitration clause, with respect to national law; the third issue is whether state public institutions can include an arbitration clause in their international contracts.

Since the amendment of the French Arbitration Law in 2011 (Décret n° 2011-48 du 13 janvier 2011), the chances of resorting to arbitration at the national and international levels have been enhanced, as procedures have been simplified at all levels, particularly with regard to international arbitration, and with regard to enhancing the effectiveness of the arbitral award, French law has emphasized the independence of international arbitration proceedings from national law, and therefore national courts are obliged to declare their inability to consider a dispute which, according to the terms of the international contract, is assumed to be settled by arbitration, and parallel to this obligation, the law allows the ordinary judge to adjudicate a dispute relating to the establishment of the arbitral tribunal. This clear construction for dealing with the international arbitration clause in French law qualifies France as a destination for settling disputes arising from international commercial contracts.

2 THE PUBLIC ORDER AND LAW APPLICABLE TO ARBITRATION

The limitations of public order on the subject of disputes in the field of international arbitration are reflected during the arbitration process and in the execution of its decisions under the supervision of the national judge, even with the independence of the arbitration clause, the arbitrator cannot ignore the law applicable to the subject matter of the dispute , and the laws which may be specific to the international dispute are: (i) the law of the country where protection of the right to conflict is sought; (ii) the law of the judge before whom the lawsuit is

brought in parallel with arbitration, and the law of the country in which the arbitration award will be executed.

It would not be useful to make national laws the starting point in addressing the approach between international public order and the law applicable to the subject of the dispute, but rather, we will resort to approaching the international public order with the requirements and rules of international commerce, because the latter is the link between international disputes and arbitration at the international level, therefore, if we discuss this relationship in the light of the rights of the parties to the International commercial contract as subjects of dispute, then we will be able to clarify the relationship between international public order and the subject matter of the dispute , and will do so again during the arbitration process and in the implementation of the arbitral award. The Rotana judgment was the opportunity to return to the question of extending the arbitration clause to a non-signatory third party. The court states that, "according to the usages of international commerce, the arbitration clause inserted in an international contract has its own validity and effectiveness which requires its application".

The principle is that the determination of the law applicable to disputes involving a foreign element is made by reference to the rules of private international law, in which the general system of monitoring the application of foreign law referred to in the attribution rule intervenes. In the event of recourse to a foreign arbitrator, it applies international arbitration rules to resolve a dispute over obligations under an international contract, in which public order does not interfere in the same manner, even the intervention by public order will not result in the exclusion of the foreign law, as the international arbitration is not bound to national law, and the international arbitrator's decisions are not linked to the concepts of morality, economics and politics of a particular country, in order to be defended by public order.

However, the international arbitrator must respect public order to the minimum extent possible, for example, if the arbitrator is in WIPO's Centre, in which it does not revert to a specific public system, he must take into account the public order of the country in which the award must be enforced, the violation of public order in the country of implementation may result from a failure to respect the requirements of public order in the freedom of administration, for example, some disputes do not accept arbitration under national laws because they relate primarily to inalienable rights, it is the arbitrator's duty to bring this to the attention of the parties, namely that, the arbitrator in this case will take into account the practical need rather than the legal value of national public order, in addition, international arbitration has created for itself a more flexible public order than national public order, so-called public order of the convention, which has an international dimension recognized by states and international commerce organizations.

National public order sets limits to recourse to international arbitration, as it is difficult for foreign parties to the dispute to always be aware of the limits of the national public order of the country participating in the arbitration process, either because it interferes with the law applicable to arbitration or it interferes with the implementation of the arbitrator's awards, therefore, the arbitrator must place the arbitral parties in the light of specific information on national public order , his role here is similar to that of a lawyer with a duty to advise, which is at least what the French judiciary adopts.

The arbitrator plays a role in a contractual relationship in which the parties' will is essential , so that if the parties choose to apply a particular law to the dispute, the arbitrator must satisfy their wish, which is often the case, in this case we must highlight the interference of national public order in the law that the parties choose to apply to the dispute, then, in order to brief the topic, we should define the role of foreign public order applicable to the law chosen by the parties. In most cases, the parties choose the law applicable to the dispute, and in fewer cases, they don't choose or do not agree on a chosen law, in which case the arbitrator will apply the law of his place of residence or his homeland.

2.1 The Public Order Applicable to the Law Chosen by the Parties

Originally, the parties to the dispute in an arbitration relationship have a role in choosing the law applicable to their dispute and arbitral proceedings, declare their choice in advance in the arbitration clause or later in the arbitration agreement, and French law recognizes this freedom to choose the applicable law, Article (1 - 1496) of the French Civil Procedure Law provides that: "The arbitrator shall consider the dispute under the law chosen by the parties", but their free will is not absolute, as there are restrictions on it when their interests conflict with the public interest, as public order and rules do not sometimes recognize the parties' choice of law, such limit was clear in the decision of the case Ukravtodor and other classic cases.

Another limitation on the parties' choice of the law applicable to the dispute was that the arbitrator excluded the law chosen on the basis of international public order, in exception to their free will to choose one or the other law. On the other hand, the arbitrator is obliged to apply national public order to the law which the parties have chosen to apply to the dispute, so if they choose Swiss law, for example, the arbitrator must consider Swiss public order to ensure that it allows the dispute to be subject to international arbitration, Mr. "Racine" believes that the arbitrator is obliged to respect the public order of the law chosen "from the moment the law is declared competent to consider the dispute (according to the law chosen by the parties in this case), the arbitrator is obliged to apply this law in all its optional and mandatory rules, including public order". If we see the validity of Mr. "Racine's" opinion, but we see no room for its practical application, so what is the aim of the (WIPO) Arbitration Centre which makes an award that does not apply due to the incompatibility with public order in the country of enforcement, we therefore conclude that the arbitrator must respect the public order associated with the law chosen by the parties to apply to the conflict and the public order associated with the law of the country of implementation.

We catch great merit in Mr. "Racine's" view, but we find no coherent basis for that in French law, the French Legislative Council states that the arbitrator "controls the arbitration process in all areas of commercial use". This means that the French legislature is pushing for the free will of the parties in their legal choices without restrictions on public order as long as it relate to international commerce, the result being that under French law, international contract disputes would depart from their preventive national character when they were linked to international commerce and would be liberalized from national public order. In view of the French law position, its reservation to the absolute liberalization of arbitration from the determinants of public order is due to its desire to keep arbitration possible in the international sphere, since the liberalization of arbitration from any restriction of national public order would render it unenforceable in the country whose system is subject to award.

In this context, we have a decision by the International Chamber of Commerce of France. (ICC), where the arbitrator determined that "the rules of the contractual agreement are acceptable for enforcement and effect as long as they do not conflict with the rules of jus cogens in French national law" and adopted the new rules of the International Chamber of Commerce in Paris in the event that the parties to the dispute do not choose a law applicable to the dispute , taking into account the terms of the original contract, the arbitration agreement and the rules of international commerce , this content of Article (172) of the rules of the International Chamber approaches the position of the UNCITRAL Model Law, which affirms that the arbitrator is not bound to apply national law as long as it relates to international commerce, this position is not inconsistent with the position of French national law mentioned above but extends the arbitrator's powers to choose a particular law by the parties to apply to the dispute, and if the arbitrator finds that the application of the law chosen by the parties would be contrary to international commerce rules, he would exceptionally go beyond their choice. Is this not a liberalization of international arbitration from national public order in favour of an international public order, whose reference is the rules of international commerce? The rules of the International Chamber support "the direct determination of the law applicable to the dispute,

without reference to the national legal system or to rules of conflict in the private international law".

Similarly, Article (1-35) of the UNCITRAL Model Law provides that: "The arbitrator shall apply the rules of law chosen by the parties to apply to the object of the dispute and, if this is not established, the arbitrator shall apply the law which he deems appropriate.", the third paragraph of the same Article would then clarify "In any event, the arbitrator who considers the dispute based on law chosen by the parties contractually or if they do not, must take into account the international commercial implications of the arbitration process." Despite of that, in the Oschadbank case, the applicant criticized the court of arbitration for having sullied the public order and violated its mission by spending only one minute per page on the 9,500 pages of the file, the French jurisprudence annulled the arbitral award.

In summary, the position is as follows: the international arbitrator is not linked to any particular national law and not even to the law of the location of the center in which he operates, but by the law chosen by the parties or by what he deems appropriate to apply to the dispute, the power of the arbitrator does not come from national law, but from the consensus of the laws of States that recognize international arbitration, the only limitation in which the arbitrator is compelled to comply is the international public order associated with international commerce, and his consideration of the national public order comes in a practical context to ensure that his decisions could be implemented, not because he was legally obliged to do so. Article (4) of the (1981) Rome Convention provides that "In the application of a country's law, the rules of this Convention shall not violate the rules of the law of the judge considering the dispute, whatever the law applicable to the contract", this restriction applies narrowly in French law, where the international public order is more independent of the national determinants, including police rules, when the international contract disputes are resolved through the international arbitration.

"Foreign public order" means international public order approved by national law, and this is what passed in French law, which established national rules of international arbitration and provides it with a separate space from the traditional determinants of national law, as a result, it is French law that will examine whether the settlement of international contract disputes by arbitration does not conflict with the international public order recognized in French national law, and the French law would not do so in accordance with national public order, which meant that French law allows a huge deal of scope for international contractual disputes to be subject to the international arbitration.

Going beyond the national public order does not mean going beyond jus cogens rules, the determinants of which are imposed even on the international arbitration , therefore, the arbitrator of the WIPO, the arbitrator of the International Chamber of Commerce, or any other arbitrator must take into account a country's police laws, in order to avoid an unenforceable international arbitral award, the restriction of police rules generally limits the independence of the international arbitration, as the national judge has discretion in assessing foreign police laws, which is internationally recognized.

It is important to precise that the French jurisprudence verifies that the foreign police law incorporates international public order. It recalls that “mere disregard of a foreign overriding law cannot in itself lead to the annulment of an arbitral award. It can only lead to this if this mandatory law protects a value or a principle which French public order itself cannot tolerate being disregarded, even in an international context. It is only to this extent that foreign police laws can be regarded as falling within French international public order. As a result, foreign police law is not included in French international public order public order.

2.2 The Public Order and the Law Chosen by the Arbitrator

The arbitrator's power to choose a law to by applied to the dispute in the event that the parties disagree in a chosen law is one of the gains of international arbitration, and if the arbitrator chooses to apply the law of the country of the center in which he operates, which often happens, then he will not apply the national rules of conflict of laws in the private

international law of the center country, but he will choose it in direct method, which is the ideal method to choose the law applicable to a dispute related to obligations arising from the contract International, because it rises above all protection barriers in national laws, facilitates the arbitration and takes into account the international commerce rules , contrary to the function of a judge, who will review conflict-of-laws rules to determine the relevant law to apply to the dispute, the arbitrator will choose the applicable law if the parties do not choose it by means, and at the arbitrator's discretion.

The French law wanted to uphold the power of the arbitrator, so it was determined in article (1518) of the French Law of Civil Procedure that "an arbitral award rendered in France in the field of international arbitration can only be appealed before French law if it is invalidated, and without discussing its details and procedures". In adhesion, the party who, knowingly and without legitimate reason, refrains from invoking an irregularity in due time before the arbitral tribunal is deemed to have waived the right to invoke it. The article 1466 of the code of civil procedure "does not cover only procedural irregularities but all grievances which constitute cases of opening of the appeal for annulment of awards, with the exception of pleas based on article 1520-5, of the code of civil procedure and alleging that recognition or execution of the award would violate international public order", the point is: the parties are liable to waive any case of opening, except international public order.

3 AVOIDING THE PUBLIC ORDER THROUGH THE INDEPENDENCE OF THE ARBITRATION CLAUSE

In international contracts there is a foreign element or economic values that transcend the borders of states, which causes many foreign and national laws to interfere in the settlement and regulation of disputes related to them, and this traditionally calls for the intervention of the rules of private international law, but the rules of conflict of laws are not the same in international law. There are no national rules of international jurisdiction in French law in the case of international disputes, but the French judiciary has filled this gap by using the rules of national jurisdiction that determine the competent courts within France to determine the competent courts in international disputes, however, we emphasize that the parties' freedom of will in international contracts is the basis for determining international jurisdiction, in which case the parties shall establish a clause in the contract predetermining the competent court or arbitral tribunal in case of dispute.

Undoubtedly, allowing the will of the parties to the international contract to determine the competent court leads to avoiding falling into the labyrinth of the traditional rules of private international law with regard to applicable law and the competent court, so the parties resort to including in the contract the clause jurisdiction in the event of a dispute, or to create an arbitration clause if they wish, it should be noted here that the invalidity or loss of validity of the original contract will not necessarily affect the validity of the arbitration clause.

Explaining the origin of the invalidity of the arbitration clause, Mr. "Thara" says: "The reason for the invalidity of the arbitration clause in the invalid contract is not that it is part of the invalid contract, but the invalidity of the arbitration clause is the dispute's inability to arbitrate which means that the arbitration clause is in any case independent of the original contract, even if both happen to be invalid on the same occasion, because the reason for the invalidity of the former is different from the reason for the invalidity of the latter " .

It is believed that the independence of the arbitration clause should not be limited to its independence from the original contract, but should extend to its independence from national law whatsoever, this drives towards international public order, not national public order, it is therefore necessary to broaden the definition of the concept of independence of the requirement to resort to arbitration.

The French judiciary has defined the concept of independence of the arbitration clause, and we will address here two important rules that established the principle of independence of the arbitration clause, namely, the "Gosset" rule and the "Hecht" rule, where the "Gosset" rule

expressly declared the independence of arbitration from the original contract , as Mr. "Robert" believes that the rule leaves no doubt as to the independence of the arbitration clause , while the "Hecht" rule extends the independence of the clause from the original contract and considers that it is also independent of any national law , in the same context, the court decided in the "DaLico" case at (20/12/1993) that "the condition is independent according to the will of the parties, and without reference to any national law. ", it is clear here that the judgment of the "DaLico" case implicitly encourages recourse to objective rules devoted to international conflicts.

French jurisprudence spoke in the same vein, as Mr. "Jodne Talon" spoke of actual international law as a reference for the international arbitration clause, or on substantive rules of private international law, devoid from sovereign national considerations , therefore, the independence of the clause is necessary for the commencement of international legal transactions, in order to separate private law from sovereignty of internal law and to allow it to be subject to the arbitration clause.

In Mr. "Cordonnier's" view, "These rules governing the arbitration clause were found by the initiative of individuals from international commerce or as result of arbitration at the national level, but ultimately differed from the national rules of French law, as the arbitration clause concluded in the international sphere depends on rules not related to national law." , such independence would not lead to an international legal relationship without law but to an international legal relationship without relapsing, in the event of a dispute to the traditional rules of attribution in private international law, in any case, this independence is not absolute, and there are still limits set by jus cogens in national laws and international public order. The French jurisprudence stated in the same context that certain disputes could not be the subject of an arbitration agreement because of the matter and that the arbitration tribunal could not retain its jurisdiction without running up against the rule of jurisdiction of public order resulting from the provisions of the national law.

4. Public Order and Arbitration in International Contracts Concluded by Public Institutions

The French Conseil d'Etat prohibits public institutions from resorting to arbitration, as the public institution is not subject to individuals' private law, and if the other party invokes the signature of an arbitration clause by the public institution, the clause is null and void because of its violation of public order and the inability of the subject of the dispute to arbitrate, since the public institution is subject only to judicial authority.

Article (2060) of the French Civil Law provides that "Arbitration cannot be agreed as a condition or as a condition for participation in disputes concerning public institutions", Article (2060) continues that it is possible to "grant public institutions a licence to resort to arbitration if they have a business or industrial activity", for example, this article grants the Director of the French Institute for Marine Research (INFRE MER) the right to conclude arbitration agreements on behalf of the Institute.

Public institutions associated with private law must be able to resort to international arbitration and believing that public institutions should be allowed to resort to arbitration in the field of international commerce and contracts, where what is meant here is arbitration from (a subjective) point of view, not (an objective) point of view, so as a result of this subjective criterion, the arbitration agreement cannot be applied, not because of the subject matter of the arbitration, but because of the ability of one of the parties to the arbitration this time (Zamzam, 2003).

French public institutions associated with private law transactions can have recourse to ordinary courts, arbitral tribunals or international tribunals, to settle disputes arising from international contracts to which they are a party (Blaizot-Hazard, 1991), while French public institutions linked to public law, as in the case of traditional administrative contracts, will not

be able to resort to arbitration to settle their disputes unless they wish to depart from the principle of sovereignty.

However, since the beginning of the twentieth century, French law allows the public institution associated with public law to resort to alternative means, but on specific topics, namely, the business and supply market, Article (69) of Act of (7/4/1960) provides those public institutions may resort to arbitration in this field.

Referring to of the text of Article (2060) of the Civil Law, the first reading of the text prevents public institutions from resorting to international arbitration, but in the international field this Article retracts in favour of an objective rule approved by the Paris Court of Appeal in the case of (Myrtoon Steamship) dated (10/4/1957) (CA de Paris, arrêt Myrtoon Steamship, 10 avril 1957), confirmed by the French Court of Cassation in the case of (GaLakis) dated (2/5/1966), where the Court in the first case allowed the state and its institutions to resort to arbitration in international commercial disputes, and in the second case, the Court considered the validity of the arbitration agreement concluded with the public institution, where the Court recognized the existence of an objective rule in international commercial arbitration law (Cass. civ., 2 mai 1966), the judgment of (GaLakis) case refers not to traditional national law but to rules dedicated to international legal transactions, and in all cases, public institutions must resort to arbitration within the framework permitted by international public order (Goldman, 1966).

In short, French law allows public institutions to resort to arbitration only as an exception, so does this prohibition include international arbitration? The French judiciary has a clear view on this issue, as the Court of Appeal of Paris affirmed in (24/2/1994) that "the prohibition on State institutions to resort to arbitration is limited to internal contracts without international contracts, so that the arbitration clause is valid if a party proves that the contract is international in the course of international commerce " (CA Paris, 24 février 1994).

But there is a French point of order that must be highlighted, as French law distinguishes between the attitude of the ordinary judiciary mentioned above and that of the administrative judiciary, with regard to public institutions' recourse to arbitration, in the case of the Court of Appeal, the powers of the public institution to resort to arbitration are not limited to private law contracts entered into by the institution, rather these powers cover all types of contracts that may be entered into by the institution insofar as the subject matter of these contracts relates to international commerce , which is Mr. "Lucan's" point of view (CA Paris, 13 juin 1996), however, the French Conseil d'Etat distinguishes between an international contract and an administrative contract. And the consequence is that State institutions are prohibited from resorting to arbitration if the contract in dispute is an administrative contract, unless such institution grants special permission (CE, avis Eurodisney, 1986).

In conclusion, public order prohibits recourse by public institutions to national arbitration, but it does not prohibit international arbitration, for this reason, the French Court of Cassation permitted in (26/1/2011) the arbitration clause in the international contract, the subject of which was the financing of the research programme {Neurobiologie}, despite the contract was concluded between private institution of (INSEREM), and a Norwegian formal institution, which states that "it is necessary to consider carefully the arbitration clause of an international contract in which one of the parties is a foreign" (Arbitrage Infos, 2011).

Conclusion:

The French law has granted international arbitration considerable autonomy. However, this autonomy is not total: it finds its limit in public order. Contemporary developments lead to a decline in public order in the arbitration clause. Jurisprudence has not only authorized arbitrators to apply rules and principles of public order, but it has also conferred on them the power to sanction their violation. The French law has even adopted a material rule of general scope where public order plays a particular role: it has become the sole cause of nullity of the international arbitration clause. The ability to compromise of the State and legal persons governed by public law also comes under the method of the substantive rules of private

international law. It is today the ability to compromise which, by virtue of the principle of good faith, is considered to be of international public order. Public order has gradually withdrawn from the scope of the arbitration clause. The arbitrator must normally respect the public order of the France. He must, first of all, respect the public order belonging to the lex causae. Secondly, in the name of the effectiveness of his award and the durability of the arbitration, the arbitrator must respect public order unrelated to the lex causae. In addition to French public order. Finally, French jurisprudence controls is exercised over an award when it is presented for exequatur or when it is the subject of an action for annulment. On this occasion, the French judges will verify the compliance of the arbitration decision with public order. If it is out of the question to call into question the autonomy of arbitration by reintroducing the review on the merits, it is necessary for the judge to control, in law and in fact, the conformity of the award with international public order.

References :

1. BLAIZOT-HAZARD, C., (1991), Les droits de propriété intellectuelle des personnes publiques en droit français, P.U.R, n°170, LGDJ.
2. COIPEL-CORDONNIER, N., (1999), Les conventions d'arbitrage et d'élection de fort en droit international privé, Paris, LGDJ, t. 314.
3. CORNU, G., (1987), Vocabulaire juridique, Association H. Capitant, PUF.
4. CREDIMI, (2013), The Public order and arbitration, Dijon, March 15 and 16.
5. DUBARRY J.-C. et Loquin E., (1994), Rev. arb. 116.
6. FOUCHARD, Ph., GAILLARD, E. and GOLDMAN, B., (1996), Traité de l'arbitrage commercial international, Litec.
7. GAUDEMET-TALLON, H., (1994), Autonomie, validité, et existence en la forme de la clause compromissoire internationale, note sous Dalico, Rev. arb.
8. GOLDMAN, B., (1967), note sous Cass, 2 mai 1966, Rev. crit. DIP, p. 557.
9. GUTMANN, D., (2004), Le droit international privé, Dalloz, 4ème éd.
10. IMHOOS, Ch., (1998), Le nouveau règlement d'arbitrage de la CCI, p. 17, consultable sur l'adresse : http://www.imhoos-law.ch/doc/RCCI98.pdf
11. JACQUET, J-M. and DELEBECQUE, Ph., (2002), Droit du commerce international, Dalloz, Cours, 3e éd.
12. JARROSON, Ch., (1996), Arbitrabilité: Présentation méthodologique, RJC, p.1.
13. JOBARD-BACHELLIER M-N, (1992), Ordre public international, J.Class. Fasc. 534-2, éd. techniques.
14. KASSIS, A., (1984), Théorie générale des usages du commerce, LGDJ.
15. KATZ, C., (2011), Les contrats internationaux de cession de marque : quelles lois appliquer?, 24 mai 2011, consultable sur l'adresse : http://lemondedudroit.fr/decryptages-profession-avocat/91976-les-contrats-internationaux-de-cession-de-marque-quelles-lois-appliquer-.html
16. MAYER, P., (1984), Le contrat illicite », Rev. arb.
17. MEGERLIN, F., (2002), Ordre public transnational et arbitrage international de droit privé, Essai critique sur la méthode.
18. MOUSSERON, J-M. and RAYNARD J., Régis Fabre, Jean-Luc Pierre, (2003), Droit du commerce international, Litec, Manuel, 3e éd., n° 307, p. 189.
19. NIBOYET M-L. and GEOFFRE, (2007), Droit International Privé ; L.G.D.J, n.307.
20. OUERGHI, H., (2006), L'autonomie de la clause compromissoire en matière d'arbitrage international, étude de l'Université de Montréal.
21. PIOTRAUT, J-L., (2007), La propriété intellectuelle en droit international et comparé, Université Paul, Verlaine-Metz, Juillet.
22. ROBERT, J., (1983), L'arbitrage: droit interne, droit international privé, Paris, Dalloz, 5e éd.

23. ZAMZAM, A., (2003), Les lois de police dans la jurisprudence étatique et arbitrale: étude comparée franco-égyptienne, ANRT thèse à la carte.