



FREIE UNIVERSITÄT BERLIN

Guest Lecture

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Dr. Andreas Respondek:

“The Growing Importance of International Arbitration in Corporate Law and some practical insights”

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COMING FULL CIRCLE...

38 years

**October
1976
FU Berlin**

**October
2014
FU Berlin**



1. Disputes between Companies (contract law)

Example Case:

Floor panels (raisins) sale from a German company to a Chinese company; **Details:** shipment of panels by boat (non A/C); value of contract (USD 18 mio); length of contract (2 pages); authors (sales directors), choice of law (“compromise”: Swiss Law); dispute resolution clause (ICC): consequences etc



Causes of international corporate disputes resulting from commercial contracts:

- ♠ Inadequate legal preparation (contract)
- ♠ Inadequate communication process after problems arise



2. What is arbitration?

Definition and elements:

“Settlement of a dispute (whether of fact, law, or procedure) between parties to a contract by a neutral third party (the Arbitrator) without resorting to court action. Arbitration is usually voluntary but sometimes it is required by law. The exact procedure to be followed (if not included in the contract under dispute) is governed usually by a country’s arbitration laws, or by the arbitration rules prescribed by an arbitration organization (e.g the International Chamber of Commerce(ICC).”



- > Flexibility of proceedings
- > Appointment of Arbitrators
- > Size of arbitration panels: 1 vs 3 (case of the “disappearing arbitrators”)
- > Arbitration Model Clause (SIAC):

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The Tribunal shall consist of _____* arbitrator(s) to be appointed by the Chairman of the SIAC.

The language of the arbitration shall be _____”



“Institutional” vs “ad hoc” arbitration

- ▶ Tasks of an arbitration institution (support regarding all matters of the proceedings; hearing arrangement; fee collection, hearing rooms etc)
- ▶ Some of the major institutions: ICC (*Paris*), LICA (*London*), HKIAC (*Hong Kong*) etc, DIS (*Cologne*)
- ▶ Recent new features of some institutional arbitration rules: emergency arbitrator; joinder of proceedings etc.
- ▶ “Ad hoc” arbitration: parties determine & arrange “everything”, no back-up



“Institutional” vs “ad hoc” arbitration

Advantages, disadvantages of institutional vs ‘ad hoc’ proceedings, example of recent oil arbitration between a VN and a Malaysian party (*flexibility; focus on dispute, not on administrative matters etc*)



Importance of the New York Convention

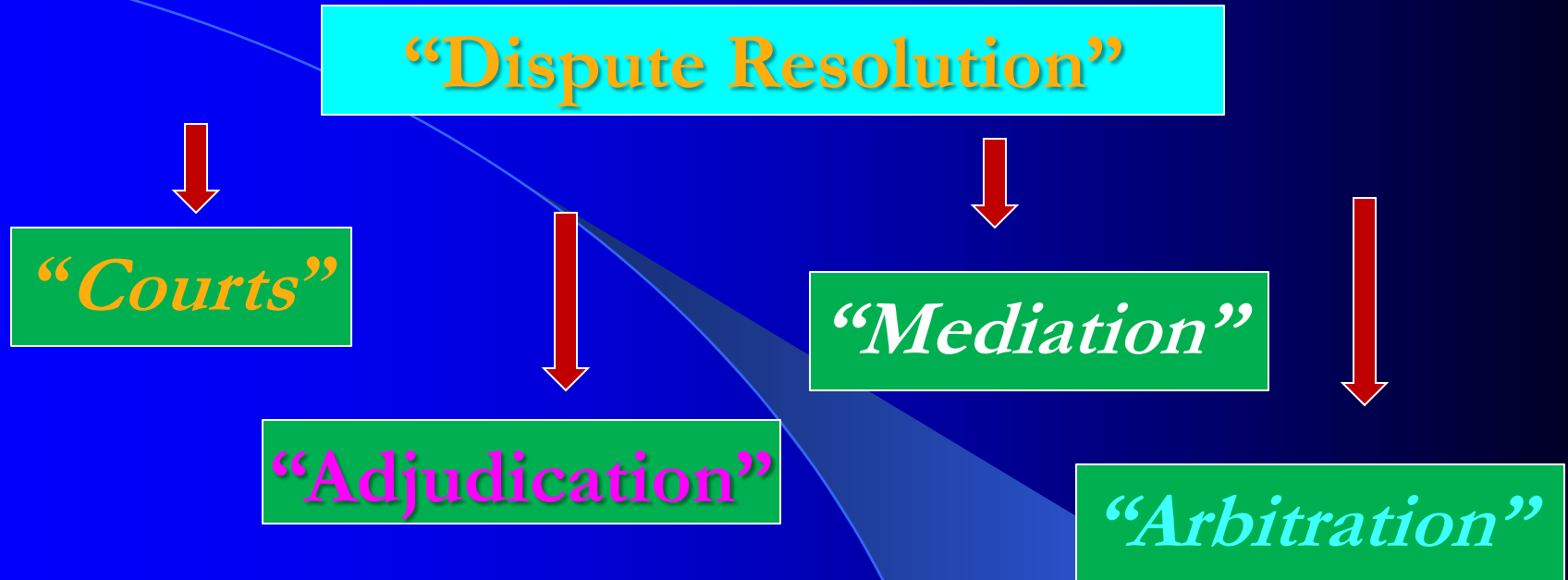
- **What does the NY Convention address and how is it increasing the importance of arbitration**

- > 150 member states**

Example case: enforcement of a German court judgment in Thailand;



3. Arbitration among different possibilities of dispute resolution





- ☀ **Pros** (confidentiality; speed (no appeal); flexibility; specific knowledge of arbitrators) and **Cons** (costly, “old boys network”)
- ☀ Statistical growth of international arbitration in international business relationships



4. Current status of arbitration

- Domination of Anglo-American law firms; stronger than necessary common law influence (“adversarial” vs “inquisitorial approach”); length of proceedings; costs etc
- “Old boys network”



- **5 Ways to improve international arbitration (JOIA 31, No. 4 (2014), p. 507 - 514);**
 - **Piercing the arbitral veil (example case)**
 - **Introduction of new parameters for international arbitral institutions**
 - **Creating incentives to speed up proceedings**
 - **More balanced approach of arbitrator appointment**
 - **Performance evaluation for international arbitrators**



5. How to become an international arbitrator?

- ❖ Experience; track record; languages
- ❖ Importance of professional network
- ❖ Chartered Institute of Arbitrators
- ❖ Participation in Mock arbitrations (Vienna; LawAsia etc)



6. Legal training and education – practical aspects

- PhD vs no PhD (ex: SGP situation; topic of own thesis)
- The changing market for legal services (e.g.: beauty contests / cost pressure, time pressure; fixed budgets vs hourly rates; legal panels; long-term hire vs project hire;)



- Increased importance of marketing (*website, Linked-In, twitter, SEO etc*)
- Importance of finding your own niche / specialty
- Changes imposed by IT (*The Economist, 04.10.14, Special Report: "The third great wave"*)



7. Five personal suggestions

- ✓ Focus on the law, but broaden your horizons during studies
- ✓ Listen to suggestions from others carefully, but follow only your **own** path and goals (*Dieckmann's warnings example*)
- ✓ Don't be turned down by obstacles along the way (*Example: La. Bar exam*)
- ✓ Correct wrong decisions fast (*Example: Vietnam presence*)



Last not least:

Example of the “first class” arbitrator

**Be focused and successful, but stay human, humble and compassionate
(and have some fun along the way)!**



**THANK YOU FOR
YOUR ATTENTION!**

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