# Legal Theory of International Arbitration

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# INTRODUCTION

1. A legal theory of international arbitration cannot be explored without paying tribute to Henri Batiffol for his now classic essay on the legal theory of private international law.[1] Such tribute is in reality paradoxical. If one were to search for a legacy, Berthold Goldman would come to mind first for his fundamental Course at The Hague Academy of International Law in 1963 on conflict of laws in international arbitration, which laid the foundation for the renewal of the vision of international arbitration. Breaking with the dominant view at the time,[2] he proposed the powerful idea that "arbitrators do not have a forum" or, if one were to attribute one to them, it would be the entire world;[3] in terms of legal theory, this meant questioning the relationship between international arbitration and national legal orders. Further tribute must be paid to Phocion Francescakis' analysis – conducted in 1960 with his usual finesse – on the relationship between natural law and private international law.[4] As Henri Batiffol, he endeavored to show how a field as technical as private international law could, on such issues as characterization or international public policy, be enriched by borrowing from universalist concepts that he considered to stem from natural law.

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1 See H. Batiffol, *Aspects philosophiques du droit international privé*, Paris, Dalloz, 1956.

2 In 1957, the Institute of International Law had adopted the Amsterdam Resolution, based on the Report by G. Sauser-Hall, suggesting the application by arbitrators of the rules of conflict of the seat of the arbitration "as *lex fori*" (Institute of International Law, *Yearbook*, 1952, vol. 44, part I, p. 469, at p. 571). On the evolution of the views on this subject, see *infra*, §§ 89 *et seq*.

3 B. Goldman, "Les conflits de lois dans l'arbitrage international de droit privé", *Collected Courses*, volume 109 (1963), p. 347, at p. 374. See also Comité français de droit international privé, Session of November 23, 1985, *Travaux du Comité français de droit international privé*, *Journée du cinquantenaire*, 1988, p. 117.

4 Ph. Francescakis, "Droit naturel et Droit international privé", *Mélanges offerts à Jacques Maury*. Volume I, *Droit international privé et public*, Paris, Dalloz, 1960, p. 113.

2. International arbitration law lends itself even more to a legal theory analysis than private international law. The fundamentally philosophical notions of autonomy and freedom are at the heart of this field of study. Similarly essential are the questions of legitimacy raised by the freedom of the parties to favor a private form of dispute resolution over national courts, to choose their judges, to tailor the procedure as they deem appropriate, to determine the rules of law that will govern the dispute even where the chosen rules are not those of a given legal system. No less essential is the arbitrators' freedom to determine their own jurisdiction, to shape the conduct of the proceedings and, in the absence of an agreement among the parties, to choose the rules applicable to the merits of the dispute. More significantly still, the arbitrators' power to render a decision, which is private in nature, on the basis of an equally private agreement of the parties, begs a fundamental question. Where does the source of such power and the legal nature of the process and of the ensuing decision stem from? This question may be referred to as that of the 'juridicity' of international arbitration. Because the question of the sources – if not *the* source, the "basic norm" for some,[5] the "rule of recognition" for others[6] – is one of the most complex in legal theory, international arbitration should be considered a privileged field of interest for legal theorists. If indeed "the fruitfulness or sterility of a legal theory is measured against its broad ability to resolve the question of the sources in positive law",[7] international arbitration can hardly leave legal theorists indifferent.

3. To date, interactions between international arbitration and legal theory have, nevertheless, remained limited.

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[5] H. Kelsen, *Pure Theory of Law*, Union, N.J., Lawbook Exchange, transl. Max Knight, 2002, p. 193.

[6] H. L. A. Hart, *The Concept of Law*, Oxford, Oxford University Press, 2nd ed., 1994, p. 95.

[7] G. Gurvitch, *L'expérience juridique et la philosophie pluraliste du droit*, Paris, Pedone, 1935, p. 138, author's translation. On the distinction between philosophy of law and legal theory, see, *e.g.*, F. Rigaux, *Introduction à la science du droit*, Brussels, Ed. Vie ouvrière, 1974, p. 137.

With the exception of Bruno Oppetit, who authored an important study on the theory of arbitration,[8] and a number of scholars in the younger generation who have increasingly displayed an interest in the discipline,[9] international arbitration scholars have essentially focused on the description and critical assessment of positive law solutions. It is only in relation to the quarrel over *lex mercatoria*, presented as a body of rules specific to the 'society of merchants', which dominated most of the theoretical debates in the second half of the twentieth century,[10] that international arbitration specialists and legal theorists exchanged views. As the founders of the *lex mercatoria* theory appeared – at least

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[8] B. Oppetit, *Théorie de l'arbitrage*, Paris, PUF, 1998; see also by the same author, "Philosophie de l'arbitrage commercial international", *JDI*, 1993, p. 811.

[9] See, *e.g.*, S. Bollée, *Les méthodes du droit international privé à l'épreuve des sentences arbitrales*, Paris, Economica, 2004; Homayoon Arfazadeh, *Ordre public et arbitrage international à l'épreuve de la mondialisation*, Geneva, Schulthess, 2nd ed., 2006.

[10] The controversy finds its origins in the works of B. Goldman in 1964 ("Frontières du droit et 'lex mercatoria'", *Archives de philosophie du droit*. No. 9, *Le droit subjectif en question*, 1964, p. 177) and, from a different perspective, those of C. Schmitthoff ("The Law of International Trade, its Growth, Formulation and Operation", *The Sources of the Law of International Trade*, London, Stevens & Sons, 1964, p. 3). Its culminating point can be situated at the time of the publication of the Essays in B. Goldman's honor (*Etudes offertes à Berthold Goldman*) in 1982: see in particular the contributions of Ph. Kahn, "Droit international économique, droit du développement, *lex mercatoria*: concept unique ou pluralisme des ordres juridiques?", p. 97, of M. Virally, "Un tiers droit? Réflexions théoriques", p. 373, and the critical analysis of P. Lagarde, "Approche critique de la *lex mercatoria*", p. 125. The controversy continued in the 1990s, in particular with the works of F. Osman, *Les principes généraux de la lex mercatoria. Contribution à l'étude d'un ordre juridique anational*, Paris, LGDJ, 1992, and F. de Ly, *International Business Law and Lex Mercatoria*, Amsterdam, North-Holland, 1992. At the end of the twentieth century, the publications on the subject, be they laudatory or critical, were countless. On this question in general, see *infra*, §§ 52 *et seq.*

implicitly[11] – to refer to the institutional conceptions of a legal order so as to justify the existence of norms other than those originating from national legal orders, one of the authors most unfavorable to *lex mercatoria*, Professor Paul Lagarde, tested the concept against the criteria defining a legal order set out by Santi Romano. Unlike the views of Maurice Hauriou, whose institution theory[12] seemed somewhat dated in the second half of the twentieth century, Santi Romano's work, which was also based on an institution theory and dated back to 1918 but had only been translated into French in 1975,[13] was still considered new and appealing.[14] The purpose of the exercise was to establish that, even in light of an institutionalist conception rejecting the coincidence between law and State, *lex mercatoria* could by no means accede to the dignity of a legal order.[15] Subsequently, most of the studies on this subject by international arbitration specialists referred to Santi Romano's definition of a legal order, be it to justify the existence of transnational rules or to deny the legal nature of transnational rules without their recognition as such by a national legal order. This shows how Santi Romano, at least in this context, acquired a belated reputation in the circles of positive law scholars in France.

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[11] B. Goldman, "Frontières du droit et 'lex mercatoria'", *op. cit.* footnote 10, p. 190.

[12] M. Hauriou, *La théorie de l'institution et de la fondation*, Paris, Coll. Cahiers de la nouvelle journée, Bloud & Gay, 1925.

[13] See S. Romano, *L'ordinamento giuridico*, Pisa, Spoerri, 1st ed., 1918 and, in French, *L'ordre juridique*, translation by Lucien François and Pierre Gothot, with an introduction by Phocion Francescakis, Paris, Dalloz, 1975. A second edition was published in French in 2002, with a foreword by Pierre Mayer.

[14] On the connections between the two theories, see in particular G. Fassò, *Histoire de la philosophie du droit. XIX^e^ et XX^e^ siècles*, Paris, LGDJ, 1976, translated from the third edition, *Storia della filosofia del diritto*. Volume III, *Ottocento e Novecento*, Bologna, Società editrice il Mulino, 1974.

[15] P. Lagarde, "Approche critique de la *lex mercatoria*", *op. cit.* footnote 10, pp. 133-134 and footnote 31. See also in 2005, P. Lagarde's foreword to A. Kassis' book, *L'autonomie de l'arbitrage commercial international. Le droit français en question*, Paris, L'Harmattan, 2005.

As far as legal theorists are concerned, unlike sociologists who have started exploring international arbitration as a subject of analysis,[16] they have not expressed an interest in international arbitration any more than international arbitration specialists have shown an interest in legal theory. At best, some have recently referred to *lex mercatoria* in support of a theory seeking to substitute the pyramidal model of law inspired by Hans Kelsen with a competing model based on a relative understanding of the notion of juridicity and on the plurality of legal systems interrelated in a network.[17] One may observe, however, that through this reference to *lex mercatoria*, international arbitration is not apprehended as such, namely as a private form of dispute resolution, but rather for its ability to create norms other than those originating from national legal orders. Yet, this aspect of the phenomenon is far from exhausting the philosophical questions raised by international arbitration.

4. This does not mean that international arbitration experts display no interest in values and that they have no views on the manner in which the discipline is structured and relates to other fields of law. Obviously, legal scholarship does not exclusively focus on a description of the solutions adopted in a given legal system in relation to international arbitration or by the arbitrators. Authors frequently take a stance on what the solution ought to be and fervent controversies often arise on the most significant issues of arbitration law. They are not indifferent to moral norms and the manner in which international arbitration should draw its inspiration from and ensure the respect of moral principles through notions such as contractual good faith, public policy or *amiable composition*.[18] The underlying philosophical postulate, however, often remains implicit.

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[16] The precursors in this field are Y. Dezalay and B.G. Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*, Chicago, The University of Chicago Press, 1996 (foreword by P. Bourdieu).

[17] See F. Ost and M. van de Kerchove, *De la pyramide au réseau? Pour une théorie dialectique du droit*, Brussels, Publications des Facultés universitaires Saint-Louis, 2002, for example at pp. 14 and 111.

[18] See in particular P. Mayer, "La règle morale dans l'arbitrage international", *Etudes offertes à Pierre Bellet*, Paris, Litec, 1991, p. 379; V. Heuzé, "La morale, l'arbitre et le juge", *Rev. arb.*, 1993, p. 179.

5. Even where arbitration scholars rely on the works of legal theorists in support of their views, their reasoning presents a high risk of subjectivity. It is indeed tempting, if not a natural flow of the mind, to find in legal theory the vision that is best suited to support the correctness of one's argument. The benefit that is consciously or unconsciously expected is to provide solid theoretical support to a positive law solution or to a proposition to change positive law. Several examples come to mind.

An author opposed to the recognition of the legal nature of "truly international public policy" other than through its adoption by a national legal system will refer to the theories developed by Kelsen or Hart, rather than the works of Santi Romano or Ost and van de Kerchove. The reasoning conducted in this respect in a doctoral thesis entitled "The Arbitrator, the Judge and Illegal Practices of International Commerce", reads as follows:

> "According to the most traditional doctrine represented by Hart, a complete system of law is based on two types of rules. First, there must exist *primary rules*. These rules prescribe the types of conduct among individuals, they are rules of obligation among subjects of law. Second, there must exist so-called *secondary rules*. These norms have three functions: they permit the creation, modification and adjudication of primary rules, which includes the structuring of sanctions in the event of a breach. *Lex mercatoria*, however, cruelly lacks such secondary rules. More precisely, in order to meet this triple function, it must borrow from the rules of State-to-State international law and of national law systems that govern international commerce. As a result, if a truly international public policy rule prohibits a conduct, it does not have the ability to sanction it. This final function is indeed a feature of the applicable national or State-to-State rule of law."[19]

The reasoning here is intended to establish that truly international public policy is incapable of sanctioning unlawfulness. Taken as a simple assumption, this proposition would raise a host of questions. Dressed up in the legitimacy of Hart's powerful thinking, it becomes a conclusion from which legal consequences may in turn be drawn. It nonetheless remains

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[19] A. Court de Fontmichel, *L'arbitre, le juge et les pratiques illicites du commerce international*, Paris, Editions Panthéon-Assas, 2004, p. 102, author's translation.

a mere assumption; simply, the assumption lies in the choice of the supporting philosophy rather than in the presentation of the concept that is being promoted. The resulting benefit is to present a mere allegation as the inescapable conclusion of a compelling reasoning. The statement remains a pure argument by authority. It would suffice to change the philosophical postulate to reach the exact opposite result. For example, were the name of Hart somehow be replaced with that of Holmes – another American philosopher – one would easily reach the opposite conclusion. For Holmes, law is nothing more than the "prophecies of what courts will do in fact".[20] As international arbitrators readily refer to "truly international public policy" requirements, they grant them, following Holmes' definition of law, undeniable legal nature in their awards. The consequences arbitrators draw from international public policy considerations – for example the possibility to disregard mandatory rules which do not correspond to genuinely international public policy,[21] or to declare null and void a secret agreement the performance of which would result in an abuse of power[22] – demonstrate, in reality, the aptitude of truly international public policy rules to sanction unlawfulness.[23] Given its predictability, this aptitude to sanction unlawfulness undeniably suggests a system of law were one to accept Holmes' philosophical postulate.

Another example can be found in the quarrel over *lex mercatoria*. The strategic choice of philosophical references to address the legal nature of *lex mercatoria* has already been alluded to.[24] Authors favoring this concept found implicit support in the works of Maurice Hauriou or

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[20] O. W. Holmes, "The Path of the Law", *Harvard Law Review*, 1897, p. 457, at p. 461. Holmes' famous definition of the law is summarized in the following phrase: "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law."

[21] See, for example, the Award rendered in ICC Case No. 6379, cited in A. Court de Fontmichel, *L'arbitre, le juge et les pratiques illicites du commerce international*, *op. cit.* footnote 19, § 314 and footnote 94.

[22] See, for example, the Award rendered in ICC Case No. 6248, cited in A. Court de Fontmichel, *L'arbitre, le juge et les pratiques illicites du commerce international*, *op. cit.* footnote 19, § 215 and footnote 100.

[23] On this question in general, see *infra*, §§ 115 *et seq.*

[24] See *supra*, footnote 15.

more open support in those of Santi Romano.[25] Today, they naturally turn to the legal thinking of authors such as François Ost and Michel van de Kerchove.[26] For these legal theorists, the validity of a norm, defined as its aptitude to produce legal effects, rests on the three criteria of formal, empirical and axiological validity. The three corresponding poles of legality, effectiveness and legitimacy necessarily interact, either by reinforcing or by countering one another.[27] In this model, which is inspired by the tri-dimensional theory of law that had been developed in previous works, in particular those of the Brazilian philosopher Miguel Reale, all sorts of combinations are possible.[28] For example, a norm that is legitimate but neither effective nor legal is only a value that can be taken into account by lawmakers or judges; a norm that is legal but that has no effectiveness or legitimacy is a norm that will sink into desuetude; a norm that is effective but that is neither legal nor legitimate can be that of an occupying power; a norm that is both legitimate and effective characterizes the traditional notion of natural law; and in yet another example, a norm that is legal and effective but that is not legitimate is an unjust norm. This conception purports to be a synthesis between the legalist approach (pole of legality), the doctrine of realism, the proponents of which include Holmes and Ross[29] (pole of effectiveness), and the doctrine of natural law (pole of legitimacy). Its contribution to legal philosophy

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[25] For an example of in-depth analysis of *lex mercatoria* on the basis of the concepts developed by S. Romano, see F. Osman, *Les principes généraux de la lex mercatoria. Contribution à l'étude d'un ordre juridique anational*, *op. cit.* footnote 10.

[26] See, for example, J.-B. Racine, "Réflexions sur l'autonomie de l'arbitrage commercial international", *Rev. arb.*, 2005, p. 305, at p. 341.

[27] F. Ost and M. van de Kerchove, *De la pyramide au réseau? Pour une théorie dialectique du droit*, *op. cit.* footnote 17, at p. 309.

[28] M. Reale, *Teoria Tridimensional do Direito: preliminares históricas et sistemáticas*, São Paulo, Saraiva ed., 4th ed., 1986; in French, see M. Reale, "La situation actuelle de la théorie tridimensionnelle du droit", *Archives de philosophie du droit*. No. 32, *Le droit international*, 1987, p. 369. For a more exhaustive bibliography, see F. Ost et M. van de Kerchove, *De la pyramide au réseau? Pour une théorie dialectique du droit*, *op. cit.* footnote 17, at p. 310, footnote 2 and p. 364.

[29] A. Ross, *On Law and Justice*, London, Stevens & Sons Ltd., 1958.

goes way beyond the mental games it lends itself to. It provides a dynamic view of the law by emphasizing the fact that "norms and legal systems are living realities, driven by specific movements"[30] such that there is permanent shifting from one position to another amongst the three poles. In this framework, which views juridicity – or the aptitude to be within the realm of law – as being variable by nature, the legal nature of *lex mercatoria* is unquestionable. This conclusion is not surprising given that these scholars refer to the "self-regulation phenomenon set up by certain powerful economic sectors (one would in particular refer to *lex mercatoria* …)" in support of the demonstration that there is a necessity to "shift from the paradigm of the pyramid to that of a network". The demonstration is in reality somewhat circular: the phenomenon of *lex mercatoria*, taken as a reality, provides support for a certain conception of the law, and it is this conception of the law that, in turn, justifies the juridicity of *lex mercatoria* for its proponents.

6. The above considerations are only a reminder that legal theory is not concerned with a scientific truth that would set apart right from wrong or proven fact from hypothesis; rather, it simply proposes a reflection on the ways in which social relationships are organized.

The more or less conscious or manipulative nature of the proposed justifications is captured by the notion of ideology. In this respect, Bruno Oppetit, quoting Jean Baechler,[31] observed that:

> "if it is true that ideology 'is a biased discourse in which a passion seeks to be carried out through a value' and that passions and values are arbitrary because they are not grounded in reason, then a major consequence flows from this proposition: an ideology can be neither proven nor refuted; therefore, it cannot be true or false, it can only be efficient or inefficient, internally consistent or inconsistent".[32]

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30 F. Ost and M. van de Kerchove, *De la pyramide au réseau? Pour une théorie dialectique du droit*, *op. cit.* footnote 17, p. 354, author's translation.

31 J. Baechler, *Qu'est-ce que l'idéologie?*, Paris, NRF coll. Idées, Gallimard, 1976, p. 60.

32 B. Oppetit, "La notion de source du droit et le droit du commerce international", *Archives de philosophie du droit*. No. 27, *"Sources" du droit*, 1982, p. 43, at p. 45, author's translation.

Accusations of ideology have been formulated in profusion in the debate over *lex mercatoria*. In 1982, Wilhem Wengler, who was strongly opposed to this concept, characterized general principles of law as a "pseudo-legal caprice, incidentally not always a candid one".[33] The point made was that national courts should not support any such approach by ordering the enforcement of an award based on such fantasy.[34] Presenting a doctrine as an ideology is a way to advocate that it pursues an end different from the one proclaimed. In reality, as far as ideas are concerned, what matters is not to be deceived by the evocative power of a wording or a mental representation; in other words, not to lose sight of the meaning and true purpose of the construct at hand.

Those who are reluctant to use a terminology that may have been used too often during the second half of the twentieth century will refer more readily to 'myth' rather than to 'ideology'. Certain authors have emphasized that it is inaccurate to state that "everything that is not apparent is unutterable or perverse", and that legal myths are an "indirect assistance to knowledge". They are not to be condemned; rather, the phenomenon should be analyzed and explained, "even if its deviations should be carefully uncovered".[35]

7. The present Course precisely seeks to examine arbitration law from the angle of the visions, philosophies or, more accurately, mental representations that underlie the discipline. In positive law, even if the 'representations' of international arbitration have not been in the foreground, they undeniably structure the field. It is thus natural for certain authors to always agree with some and disagree with others. Such federations of thought are not fortuitous. For example, on questions as fundamental as the determination of the law applicable to the merits, the acceptance of the concept of *lis pendens* between arbitral tribunals and

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[33] W. Wengler, "Les principes généraux du droit en tant que loi du contrat", *Rev. crit. DIP*, 1982, p. 467, at p. 501, author's translation.

[34] W. Wengler severely criticizes legal counsel who "insist on the inclusion of an arbitration agreement" in a contract and "make the parties believe that general principles of law are a complete system of legal rules equating to national private law systems", *ibid*., at p. 500, author's translation.

[35] Ch. Atias, *Philosophie du droit*, Paris, PUF, 2nd ed., 2004, pp. 317-318, author's translation.

national courts, or the recognition of awards set aside in the State of the seat, the solutions recommended by Jean-François Poudret and Sébastien Besson in their remarkable study on comparative law of international arbitration[36] will often diverge from those proposed by the author of the present Course in the treatise co-authored on international commercial arbitration.[37] Although there always will – or should be – a scientific convergence on the description of positive law in a given national system or arbitral case law, there is room for divergence on the systematization of the discipline, the appreciation of solutions, or propositions as to the trend of the evolution in the field.[38] Such divergence has no bearing on the intrinsic value of a given thought. It merely illustrates the fact that, in each case, the thinking is structured around a given representation of international arbitration and that, fundamentally, this is the reason for the quasi-systematic difference of opinion between each group.

This Course thus seeks to bring to light the representations which form part of the backdrop of international arbitration and yet are crucial, as well as to illustrate their consequences in positive law.[39]

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[36] J.-F. Poudret and S. Besson, *Comparative Law of International Arbitration*, London, Sweet & Maxwell, 2007.

[37] See E. Gaillard and J. Savage (eds.), *Fouchard Gaillard Goldman On International Commercial Arbitration*, The Hague, Kluwer, 1999. On the internal consistency of these respective visions of international arbitration, see in particular O. Sandrock, "To Continue Nationalizing or to De-nationalize? That is Now the Question in International Arbitration", *The American Review of International Arbitration*, 2001, p. 301.

[38] See, *e.g.*, E. Gaillard, "La reconnaissance, en droit suisse, de la seconde moitié du principe d'effet négatif de la compétence-compétence", *Global Reflections on International Law, Commerce and Dispute Resolution. Liber Amicorum in honour of Robert Briner* (G. Aksen, K.-H. Böckstiegel, M. J. Mustill, P. M. Patocchi, A. M. Whitesell eds.), Paris, ICC Publishing, 2005, p. 311, and J.-F. Poudret, "Exception d'arbitrage et litispendance en droit suisse. Comment départager le juge et l'arbitre?", *ASA Bull.*, 2007, p. 230. On this question generally, see *infra*, §§ 82 *et seq.*

[39] A first analysis of these representations was the subject of a keynote speech at the 6th Congress of the Brazilian Arbitration Committee in Salvador de Bahia on November 1, 2006. It was later published, in its original version, in the *JDI*, 2007, p. 1182, under the title "Souveraineté et autonomie: réflexions sur les représentations de l'arbitrage international".

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"Le nouveau droit de l'arbitrage international en Suisse", *JDI*, 1989, p. 905 (co-author).

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"La distinction des principes généraux du droit et des usages du commerce international", *Etudes offertes à Pierre Bellet*, 1991, p. 203.

"Trente ans de Lex Mercatoria. Pour une application sélective de la méthode des principes généraux du droit", *JDI*, 1995, p. 5.

"Thirty Years of *Lex Mercatoria*: Towards the Selective Application of Transnational Rules", *ICSID Rev.*, 1995, p. 208.

"Aptitude des personnes publiques à compromettre et disparition de la notion de commercialité en matière internationale", Commentary of Paris Court of Appeal, June 13, 1996, *Société KFTCIC v. société Icori Estero et autre*, *Rev. arb.*, 1997, p. 251.

"L'exécution des sentences annulées dans leur pays d'origine", *JDI*, 1998, p. 645.

"Pour la suppression du contrôle de la contradiction de motifs des sentences arbitrales", Commentary of Paris Court of Appeal, March 5, 1998, *Société Forasol v. société mixte Franco-Kasakh CISTM*, *Rev. arb.*, 1999, p. 86.

"The Enforcement of Awards Set Aside in the Country of Origin", *ICSID Rev.*, 1999, p. 16.

"Un revirement de jurisprudence bienvenu: l'abandon du contrôle de la contradiction de motifs des sentences arbitrales", Commentary of Cass., 1re civ., May 11, 1999, *Société Rivers v. Fabre*, and Paris Court of Appeal, October 26, 1999, *J. Patou Parfumeur v. société Edipar*, *Rev. arb.*, 1999, p. 811.

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# TABLE OF ABBREVIATIONS

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|---|---|
| *AAA* | American Arbitration Association |
| *AC* | The Law Reports, Appeal Cases |
| *ALI* | American Law Institute |
| *All ER* | All England Law Reports |
| *ASA Bull.* | Bulletin ASA (Association Suisse d'Arbitrage) |
| *ATF* | Arrêts du Tribunal Fédéral Suisse |
| *Bull. civ.* | Bulletin des arrêts de la Cour de cassation (chambres civiles) |
| *Cass. com.* | Cour de cassation, chambre commerciale |
| *Cass., 1re civ.* | Cour de cassation, première chambre civile |
| *Cass., 2ème civ.* | Cour de cassation, deuxième chambre civile |
| *Chr.* | Chroniques (Dalloz) |
| *Ed. G* | Edition Générale (JCP) |
| *EU* | European Union |
| *EWCA* | England and Wales Court of Appeal |
| *EWHC* | England and Wales High Court |
| *F. 3d* | Federal Reporter 3d Series |
| *F. Supp.* | Federal Supplement |
| *HKCU* | Hong Kong Cases Unreported |
| *IBA* | International Bar Association |
| *IBLJ* | International Business Law Journal |
| *ICC* | International Chamber of Commerce |
| *ICCA* | International Council for Commercial Arbitration |
| *ICC Bull.* | The ICC International Court of Arbitration Bulletin |
| *ICDR* | International Centre for Dispute Resolution |
| *ICSID* | International Centre for the Settlement of Investment Disputes |
| *ICSID Rev.* | ICSID Review – Foreign Investment Law Journal |

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|---|---|
| *JCP* | Juris-Classeur Périodique (La Semaine Juridique) |
| *JDI* | Journal du droit international |
| *LCIA* | London Court of International Arbitration |
| *Lloyd's Rep.* | Lloyd's Law Reports |
| *OECD* | Organisation of Economic Co-operation and Development |
| *OJEC* | Official Journal of the European Communities |
| *OJEU* | Official Journal of the European Union |
| *PILS* | Swiss Private International Law Statute |
| *QB* | The Law Reports, Queen's Bench |
| *Rev. arb.* | Revue de l'arbitrage |
| *Rev. crit. DIP* | Revue critique de droit international privé |
| *Rev. dr. com. belge* | Revue de droit commercial belge |
| *RTD civ.* | Revue trimestrielle de droit civil |
| *RTD com.* | Revue trimestrielle de droit commercial et de droit économique |
| *UNCITRAL* | United Nations Commission on International Trade Law |
| *UNIDROIT* | International Institute for the Unification of Private Law |
| *Unif. L. Rev.* | Uniform Law Review |

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