The Impact of Mandatory Rules of Law in International Arbitration

(Seen from an Arbitrator’s Perspective)

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Structure of the Presentation

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- III. Embargoes / Sanctions
  - A Critical Look on Today’s Sanctions
  - Legal Assessment by Arbitral Tribunals
- IV. Exchange Control and IMF, Corruption, Money Laundering, Extorsions
- V. Insolvency of a Party
- VI. Acts of State / State Intervention
- VII. Competition Laws / Antitrust
I would describe MR as follows:

Mandatory rules are provisions set out or enacted in a (perceived) public interest which want to be compulsorily applied to all relationships which have a connection with a particular state, or party of that state, or that legal system, and which are aimed to prevail over any conflicting contractual provision or any provision of the applicable substantive law.

All rules pertaining to the narrow notion of public policy are of a mandatory character, but only a few mandatory rules rise to the level of public policy.

Distinguish between national and international public policy, respectively "truly international or transnational public policy"!
II. Legal Framework

- 1 When applying under this Convention the law of a country, effect may be given to the mandatory rules of the law of another country [1] with which the situation has a close connection, [2] if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their [3] nature and [4] purpose and to [5] the consequences of their application or non-application.

- 2 Nothing in this Convention shall restrict the application of the rules of the law [6] of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract.

Art. 19 of the Swiss Private International Law

- Article 19:


Four Swiss Cases of the Swiss Federal Tribunal

- BGE 118 II 348, 352: the mandatory provision under the Laws of Cuba aiming at freezing credits of the Chilean Central Bank, was disregarded in the framework of a contractual relationship governed by the Laws of Chile.

- BGE 80 II 49, 52: the violation of currency regulations of a State was not deemed to amount to a violation of the notion of "good faith" under Swiss law, and thus was disregarded and did not invalidate the contractual claim.

- BGE 80 II 45: the violation of French customs law does not invalidate the contract which, under Swiss law, was valid.

- Decision of 31 October 2005, where a Turkish party argued that the waiver of appeal in respect of an arbitral award violates provisions of the Turkish Constitution, pleading the case under Article 19 PIL Act (cited above). – Rejected by the Federal Tribunal.

Regulation EC No 593/2008 of 17 June 2008 on The Law Applicable to Contractual Obligations:

Articles 12 and 9

- Article 12: Scope of the law is applicable to:
  - Interpretation
  - Performance
  - Consequences of breach and assessment of damages
  - Ways of extinguishing obligations, prescription and limitation
  - Consequences of nullity of contract

- Article 9: text on next slide:
  - Overriding Mandatory Provisions
Article 9 of Rome I (17 June 2008)

- Article 9: [= the 10 most salient elements, numbers inserted by the author]

1. Overriding mandatory provisions are provisions the respect for which is [1] regarded as crucial by a country [2] for safeguarding its public interests, [3] such as its political, social or economic organisation, [4] to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.


3. Effect may be given to the [6] overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, [7] in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their [8] nature and [9] purpose and to the [10] consequences of their application or non-application.

ILA Resolution 2/2002:
Recommendations on the Application of Public Policy as a Ground for Refusing Recognition or Enforcement of International Arbitral Awards

- Article 1 (d):
  The international public policy of any State includes: (i) fundamental principles, pertaining to justice or morality, that the State wishes to protect even when it is not directly concerned (ii) rules designed to serve the essential political, social or economic interests of the State, these being known as "lois de police" or "public policy rules" and (iii) the duty of the State to respect its obligations towards other States or international organisations.

- Article 3: Public Policy Rules
  3(a) An award's violation of a mere "mandatory rule" (i.e. a rule that is mandatory but does not form part of the State's international public policy so as to compel its application in the case under consideration) should not bar its recognition or enforcement, even when said rule forms part of the law of the forum, the law governing the contract, the law of the place of performance of the contract or the law of the seat of the arbitration.

3(b) A court should only refuse recognition or enforcement of an award giving effect to a solution prohibited by a rule of public policy forming part of its own legal system when: (i) the scope of the said rule is intended to encompass the situation under consideration; and (ii) recognition or enforcement of the award would manifestly disrupt the essential political, social or economic interests protected by the rule.

3(c) When the violation of a public policy rule of the forum alleged by a party cannot be established from a mere review of the award and could only become apparent upon a scrutiny of the facts of the case, the court should be allowed to undertake such reassessment of the facts.

3(d) When a public policy rule of the forum enacted after the rendering of the award prohibits the solution implemented by said award, a court should only refuse the award's recognition or enforcement if it is plain that the legislator intended the said rule to have effect as regards awards rendered prior to its enactment.
Significance of Trade Usages

- According to most institutional arbitration rules, an arbitral tribunal – in addition to the law or rules of law chosen by the parties – shall have to take into account not only the provisions of the relevant contract, but also "any relevant trade usage"

- See e.g.: ICC Art. 21(2); UNCITRAL Arb Rules Art. 35(3); AAA Art. 28(2); Swiss Rules Art. 33(3); DIS Art. 23(4)

- However:
  - no reference to trade usage can be found in LCIA Art. 22.3; ICSID Convention Art. 42; Stockholm Chamber of Commerce Art. 22
  - I consider this to be a significant weakness of those Rules;
  - The reference to trade usage is a safety net!

III. Embargoes / Sanctions

III. Embargoes / Sanctions
"Sanctionitis ....!!"

The **USA** continue to have more than 100 sanctions in place, more than after the Second World War!

- Embargoes were designed to cut vital imports as a **means in cold war times**
- Currently there are **13 UN** sanctions (most of them re weapons; also re drugs and blood diamonds ...)
- The **EU** currently has 17 sanctions in place ....
- **Embargoes** against political elite groups, dictators and terrorist networks (en vogue: so-called "**smart sanctions**") - but are they really "smart"???
- **Are sanctions** really the answer for the 21st century ....????????


Cuba Sanctions

- Embargoes for political reasons: Cuba
  - the 7 Feb 1962 embargo against Cuba (still in place, with slight moderations!)
  - The sanction caused (and still causes) significant suffering for the Cuban population
  - Yet: the Castro regime is still in place, after 50 years!

- Should an arbitral tribunal lend its "blessing" to such sanctions?

- Practice:
  I am aware of an unpublished arbitral award which disregarded the Cuba sanctions in a contract subject to the laws of Brazil, on the argument that the US Government's policies underlying the sanctions against Cuba do not meet the "application-worthiness test" (see below)

Irak Sanctions

- Irak sanctions
  - The sanctions imposed after the Kuweiti invasion aimed at destroying Saddam Hussein's regime
  - However: The 1995 Oil-for-Food Program made many people immensely rich, and the normal people continued to suffer, also because the UN established a huge and inefficient (!!) bureaucracy
  - In fact: the programme during 1997 to 2003 provided food and medicine in a value of ONLY 51 cents per day to each of the 23 mio Irakis, hence in no way sufficient!
  - The UN bureaucracy was much blamed for being either inefficient or corrupt when administering the Program!!! (Mark Pieth, mandated by Kofi Annan, called the administration of the program a scandal, and US$ 2 billion were paid to Saddam ....!!)
Irak continued

- **And yet:** Saddam did not suffer at all, and he even succeeded to sell his oil at a price up to 30% higher than agreed, and 2'000 out of 2'500 buyers had no problem with that!
- **AND:** the sanctions caused immense suffering among the civil population, for instance: many children died
- **and** the sanctions in effect but fortified Saddam's position;
- he could only be removed through military intervention.

- Violations of the sanctions were, for instance, heavily sanctioned in Germany, but not in Austria (which did not even pursue any proceedings!)

- **Quid for an arbitral tribunal:**

  to my knowledge, arbitral tribunals honoured and respected the UN sanctions (as doubtful as they may be).

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Iran Sanctions

- **Iran sanctions**
  - Since 1978 partial embargo; general embargo since 1995 (ordered by Clinton) („ISA“ – Iran Sanctions Act of 1996, prohibiting investments in Iran's energy sector)
  - 23 Dec 2003: UN Sec Council embargo for equipment which could be used for Iran's nuclear - and rocket programmes
  - 18 May 2010: UN Sec Council tightens sanctions against Iran
  - 1 July 2010: President Obama sign the «CISADA» (Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010")
    - New sanctions against banks and financial institutions
    - Increases criminal penalties
    - Requires divestments
    - Measures to prohibit diversions of goods
    - $ 20 mio threshold
    - Parent company responsibility for subs and affiliates
    - Import ban and export ban
    - $ 1 mio fine and 20 years of imprisonment

- **Yet:** Iran continues to build up its nuclear programme, but the sanctions are now really tight!! AND: Iran's influence in the Middle-East is **growing** continuously!
North Korea Sanctions

- **North Korea:**
  - Heavy violations of human rights, and nuclear threats
  - 12 June 2009: UN Sec Council tightens sanctions against North Korea
  - Yet: North Korea (with the World’s proportionately biggest army) does not seem to be impressed at all.

South Africa Sanctions

- **South Africa**
  - Human rights ignored through apartheid
  - In the 1960s: weapon-embargoes of the UN Sec Council against the apartheid-regime
  - Yet: the embargo was circumvented and even caused the building up of SA’s own weapon industry,
  - and the oil-embargoe was ineffective!
  - Decisive for the combatting of apartheid was the collapse of the Soviet Union which encouraged Frederik de Klerks and paved the way for charismatic Nelson Mandela
  - AND: was there „hypocrisie“ in directing these sanctions for essentially protecting the US agricultural surplus market from undesired SA- agrar-products?
  - And Europe happily followed, so as to protect its suffering montan- and steel-sector from undesired South African competing imports!!
**Myanmar Sanctions**

- **Myanmar:**
  - Human rights violations
  - The embargo aimed at de-stabilizing the suppressive military regime
  - Yet: the civil population suffers immensely, and the admiralty and military dictators gained an even a stronger grip on the population

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**Serbia, Montenegro // PR China**

- **Serbia and Montenegro:**
  - UN Sanctions were enacted
  - Nevertheless, immense quantities of weapon were sold and bought through secret channels
  - Classified equipment were imported by Serbia through clandestine transports via Russia, Moldawia, Bulgaria, Hungary, and maffiosi organisations and corruption flourished
  - Macedonia suffered particularly, although it was not responsible for the civil war ...

- **China's invasion in Tibet:**
  - No sanctions were declared ...
  - Obviously for political and economic reasons ....!!!
Assessment: quid .....?

- General economic sanctions: How to assess them???
  - The assessment – on balance – is *negative* in most cases, because the effects do not hit those who should be targeted
  - And, in all cases: *some got immensely rich*, and the rest suffers!

- Internationally coordinated sanctions for combatting drug traffic, money laundering and weapon proliferation:
  - These are assessed more positively;
  - Normally less suffering for the population than in the case of general economic sanctions
  - Such sanctions respond to a vital public interest
  - But implementation is immensely difficult; too many loopholes

.... Are they Effective, at all ...???

Effects: increased corruption

- What is the effectiveness of these sanctions?
- Wherever embargoes are installed, ways were found to circumvent them!

- Effect:
  - *increased corruption*, and
  - the *civil* population *suffers*, and
  - the *admiralty* and Heads of State always found ways to protect their interests and circumvent the effects of the sanctions....!!!
Embargoes cont: Critical assessment

- Often, sanctions and embargoes are but "theatralische Gebärden" and threats
- Partial embargoes for reasons of security: e.g. restrictions: e.g. for the export of military equipment and technology (eg. The CoCom export control during the cold war times), any war-materials, nuclear materials and technology proliferation
- Partial embargoes for reasons of internal security: drugs, "blood diamonds"
- Restrictions regarding money transfers and other financial transactions for combatting terror organisations
- Are they effective, reasonable? = an ideological „Streitfrage"
Categories of MR as to Origin

- The arbitral tribunal should be clear about the origin of the mandatory rules which claim to be applied, i.e. whether they form part of:
  - of lex causae: scrutiny - or no scrutiny?
  - of lex fori / lex arbitri: NO applic.
  - of third country: = typical case
  - of a supranational order: UN / EU / US sanctions
  - of international public policy
  - of the place of most likely enforcement

Excursus: Application of Article 418u CO?

- Case:
  - A German manufacturer of electronic chips [Principal] (the chips are needed for the production, in China, of TV-sets) appoints a Hongkong agent [Agent], who shall be the sole agent for the entire territory of Mainland China.
  - The contract provided for Swiss law to govern the agency, in case of dispute arbitration in Zürich (chamber of Commerce)
  - The Agency Contract consists of some 12 pages, whereof about 2 pages were devoted to determine the rights and obligations of the parties in case of early termination.
- The Principal terminated the Agency Contract.
- In the arbitration, the agent (through its Swiss counsel) invoked the mandatory provision of Article 418u CO, alleging that those rights of the agent were not respected.
- What should the Tribunal decide? Apply the contractual termination provisions, or the mandatory provision of CO 418u?
Decision of the Tribunal: No application of the mandatory provision of the chosen Swiss Law

- The dilemma for the tribunal: either apply the contract, or apply mandatory Swiss Law.
- The Tribunal clearly reached the decision that the clearly negotiated provisions of the Agency Contract must be honoured in such international context, irrespective of the mandatory Swiss law. [I served as the chairman]
- **Why?**
  1. Requirements of acting in **good faith** -- none of the Parties invoked, during contract negotiations, that those provisions do not live up to the standard of 418 u CO.
  2. **Pacta sunt servanda** as an overriding principle in international business and trade.
  3. Teleology of 418u, introduced by the Swiss parliament in 1947 was to protect the (smallish) Swiss agent helping a (foreign/strong) principal to penetrate the Swiss market; he should not suffer upon termination and loose the fruits of his efforts.
  4. Hence, the Swiss parliament in no way had in mind to protect a Hongkong agent becoming active on the territory of China!

- Other arbitral tribunal’s have decided in the same way regarding agency protection under Belgian law, and Canadian courts have recently (in 2010) refused to vacate an award on the ground that mandatory EU agency protection regulations were not applied.

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Categories as to the Policies, Values

- As to policies, values, interests which are aimed to be protected by the MR, their recognition by Tribunals are different:

- Generally, arbitral tribunals tend **NOT TO APPLY MR**:
  - If the MR only aims at protecting **monetary** values of a State (such as exchange control measures)
  - or only some **policing** interests
  - or only some **fiscal** interest
  - or some other general economical goals
**Categories of MR which may receive a favorable assessment:**

- A tribunal may make a more favorable assessment:
  - If the MR aim to protect the **general public welfare**, i.e. where there is a genuine important public interest which deserves overriding protection
  - In case of important political interests
  - Or significant military interests (such as non-proliferation of nuclear materials and equipment)
  - Important environmental protection issues
  - Free and fair trade, if of overriding importance

**important distinctions to be made**

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**Trade Sanctions / Embargos**

*(different types to be distinguished by arbitral tribunals)*

- **diplomatic, military and economic sanctions**
  - unilateral / multilateral sanctions
  - specific or general focus of the sanction (very important distinction ...!!)
  - Art. 2 (4) and 2 (7) UN Charter
  - A difficult question:
    - Is economic coercion legal?

- Legal justification of sanctions to be examined!
7 Criteria on Substance - the Tribunal’s Decision Tree:

1. Is there a “real” mandatory character of the norm?
2. Do the MR claim to be applied irrespective of applicable law?
3. Are the conditions as per the wording of the MR really met as to ratione personae?
   as to ratione materiae?
   [you must study the text meticulously!]
4. Is there a close connection to the substance matter of the dispute?
5. The Tribunal must do its own “application-worthiness test”
   o shared values test
   o weighing all interests
6. The “appropriate result - test” what is the end result?
7. “transnational public policy test”

The Application-Worthiness - Test

- The test is inevitable
- The test is desirable
- It provides more (and not less!!) certainty and foreseeability
Legal Effects, where the Tribunal reaches the conclusion that the MR are to be recognized

- Impact on substance
  - if the MR were already in existence, and if recognizable:
    - nullity, or partial nullity of the deal
  - if supervening: ev. force majeure
  - what is the impact on performance?

- Actual case: - how to decide?
  - partial delivery of a production facility by a UK seller to Serbia;
  - Serbia sanctions lead to a suspension of the contractual deliveries
  - After the lifting, most of what had been delivered was either destroyed or stolen,
  - But the Serbian buyer required completion of the facility and acceptance tests, requiring the UK seller to practically re-deliver most of the factory equipment, at very high costs .... Quid??

Should a Tribunal Respect MR ex officio?

- Does the AT merely have the authority - or a duty ex officio - to apply MR, or to take them into consideration?
  - There is no general answer
  - many affirm ex officio application for instance in the field of competition laws
  - there is no short answer
  - no “cooking recipee” for all seasons
  - each case to be valued against its own dynamics!
  - Important: is there a PUBLIC INTEREST at stake?
The Tribunal’s Mission and Authority

- The arbitrator is not the guardian of interests of foreign states
- He is likewise not the obedient servant of the parties
- He has to apply a broader perspective: transnational public policy

The impact of mandatory rules of law is one of the most burning issues in international arbitration, in different areas; see the following Parts

III. Exchange Control and IMF

IV. Exchange Control, Money Laundering, Corruption, Extortions
Exchange Control Regulations

- Arb Tribunals hesitate to consider them "application-worthy"
- Hence: pragmatic approach based on individual analysis
  - What is the background, rationale?
  - What are the intended effects behind them?
  - Of a general nature or only of a specific nature?
  - close connection to the matter in dispute?
  - what impact and inter partes effect?
  - admissible or inadmissible interference?

The IMF Agreement

- applicable in over 160 states
- Article VIII Sec. 2 (b) as a widely acceptable standard
- The provisions of the IMF Agreement pertain to a supranational legal order, and are widely/generally accepted by arbitral tribunals
Money Laundering, Bribes, Corruption, Extorsions

- How does an international arbitral tribunal deal with a case when it discovers that bribes were paid?
  - Issues of jurisdiction
  - Issues of procedure
  - Issues regarding the substance
- How does it deal with claims of certain corrupt State agencies?
- What does an arbitral tribunal do when it discovers that the dispute before it is in fact between "mafiosi groups", or where a criminal organisation is involved?
- Should an arbitral tribunal be sceptical when parties settle their dispute and require the delivery of an Award on Agreed Terms?
- How to deal with the multiple aspects of illegal extorsions
  - See the ICC Paper on RESIST (Resisting Extorsion and solicitation in International Transactions, of 2010)
  - OECD Recommendations for Combatting Bribery, of 26 Nov 2009

V. Insolvency of a Party
Two Typical Issues (which always arise)

1. Does the insolvent party still have standing (capacity) to act in arbitration, or to be sued?

2. Or will the liquidator (in his personal name) become the right party (yes, e.g. in Germany and Austria) (or the estate in CH)

3. Will the arbitration agreement lose its validity (as e.g. under the Polish Bankruptcy Act, Article 152 - which was recognized by the Swiss Federal Supreme Court in the Vivendi case, but not by the UK courts)?

4. If the arbitration continues: can the Tribunal render a binding and enforceable Award, or will it only be authorized to render an opinion as to the amount of the monetary claim (this is so in most European countries) -- as a matter of public policy (respect for the rights of other creditors)

Some References re: Insolvency

- James Hargrove/Vanessa Liborio: Arbitration and Insolvency: English and Swiss Perspectives, "Arbitration" Vol 75, Feb 2009, 47 ss


VI. Acts of State; State Intervention

Acts of State: General or Individual Nature?

- acts of individual character (e.g. aiming at rescuing one particular state-controlled enterprise: these are NOT recognized, and will not free the state-controlled entity!
- acts of a general character may be recognized under the Böckstiegel – Test (but not acts of an individual nature)

  - Many difficult questions arise, however:
    - the Party will plead force majeure; but force majeure operates only ex nunc!
    - many difficult questions arise
    - how to resume performance, once the force majeure situation ended?
Examples

- **Poland 1981:**
  - the Decree of General Jaruszelski in December 1981 prohibiting the import of goods and equipment (valued in total more than USD 10 Billion), in a situation where Poland faced its total bankruptcy

- **UAE/Sarjah 1986:**
  - Arbitration claim of a US Oil Company against the State-controlled General Petroleum Company of the UAE.
  - At the first Hearing, the Tribunal received a prohibition of the supreme Ruler, through a council of Minister's Decree stating that “there shall be no arbitration on this matter”
  - Seat of the Tribunal: in the UAE; applicable law: UAE laws and general principles of law
  - Arb Tribunal's Decision: the Tribunal, in a 150 page Jurisdictional award, discarded the intervention of the Council of Ministers, by referring to the corrective function of general principles of law.

Nationalisation: Libya, Venezuela

- Famous example: the nationalisation of the oil refineries in **Libya** by General Kaddhafi in the 1970s, which gave rise to 2 famous arbitrations

- Recent example: the partial nationalisation by **Venezuela** in the oilfield services sector

- Generally on State Responsibility, and some recent cases:
  - **Marc Blessing:** State Arbitrations – Predictably Unpredictable Solutions?
  - **Oliver R Jones/Chido Dunn:** Consent, forced Renegotiation and Expropriation in International Law, Arb Int Vol 26/2010, 391-408
State Intervention Through Its Own Courts

- Indonesia! Pertamina case!
- National courts - possibly rather dependent from their own Government - issuing an anti-suit injunction against a foreign party, designed to cause the foreign party to abandon its arbitration case
  - IAI series: Anti-Suit Injunctions in International Arbitration, Juris 2005
  - Injunctions also against the arbitrators (e.g. against Judge St. Schwebel, threatening a penalty of USD 600 mio. for the arbitrators (!))
- Compare also the Yukos enforcement proceedings in the Dutch courts, seeking to enforce 4 arbitral awards which, however, were annulled by the Russian courts (which were considered to be rather dependent).
- Albert Jan van den Berg: Enforcement of Arbitral Awards Annulled in Russia; Journal of Int Arb Vol 27, April 2010, 179-198
- Query: Do we see national courts used by the State's Government to protect its own interests against the private party ...??

VI. Impact of Competition Laws/Antitrust

VII. Competition Laws
**Competition Laws (1)**

- Basically, an arbitral tribunal must respect - over and above the applicable law - the basic/essential rules of competition laws, specifically in horizontal situations between competitors, but also in relation to unilateral conduct and abuse of dominance.
- This is so whether the arbitrator is confronted with European Competition Law, US Competition Law, Russian or Chinese Competition laws.
- Particularly so when there is a public interest at stake which deserves an overriding protection.
- Hence, the arbitrator must ascertain the effects of anti-competitive behaviour and practices.
- Hence, he must - where parties remain silent - raise the issues *ex officio*.
- I apply the test of the French courts in Thalès/Euromissile decision: *flagrant, effective et concrète*
  - If this has to be affirmed, a Tribunal must raise issue *ex officio*.

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**Ex officio ...? Conclusion and Recommendation**

- **In short:**
  - The Tribunal should in my view raise its concerns *ex officio* – and ask the parties to brief the Tribunal on its antitrust concerns - where a potential infringement is manifest, i.e.:
  - if it seems to be “*flagrant, effective and concrete*”
  - *In eventu:*
    - A Tribunal may in addition consider/reflect whether a public interest is at stake.
Some Topical Publications/Books on Arbitrating Competition Law Issues

- Phillip Landolt: Modernised EC Competition Law in International Arbitration, Kluwer 2006, 365 pages

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- University of Zürich; Lic.Iur. 1969; Dr.Iuris 1973 (Ph.D); post-graduate studies, City of London Polytechnic

Professional Experience:
- Since 1974 with the Lawfirm Bär & Karrer; Partner from 1979 to 31 December 2007; regular lecturer in the LL.M. and Executive M.B.L. programs of the Universities of Zürich and St. Gallen, and the MBA program at the University of St. Gallen, teaching the subjects of international arbitration and teaching EU Competition Law (since 1996); regular lecturer in the arbitration programs of the Chartered Institute of Arbitrators (in Oxford), and at conferences and workshops of WIPO (since 1994)

Areas of Specialization:
- Handling of arbitrations cases under the ICC Rules, LCIA Rules, WIPO Rules, AAA Rules, Swiss Rules, the Vienna Centre, the German Institution DIS, the Singapore Arbitration Centre, Stockholm Arbitration Institute, CIETAC Beijing/China, as well as on ad hoc basis and the UNCITRAL Rules.
- Disputes on matters of international commerce, EC - and US competition law, mergers & acquisitions, finance, joint ventures, large construction projects, oil and gas, IP matters (licenses, technology transfer, infringements); disputes between private companies/parties and States or State-controlled entities; BIT and ECT disputes.

Professional Associations:
- Honorary President of ASA (past President from 1991 to 1997); Member of the ICC Commission on Arbitration, and past Chair of ICC Taskforce on Competition Law Arbitrations; Court Member of the LCIA (1992-2004); Member of the WIPO Arbitration Council (1994-2001); Vice-President of IFCAI (1991-2001); Chartered Arbitrator CIArb (Chartered Institute of Arbitrators, London)
- IBA, UIA, ILA, AIPPI
- Dr. Marc Blessing, of counsel Baer & Karrer AG, Zurich – 11 Nov 2010

Arbitration Experience:
- Handled some 220 international arbitration cases; about 100 assignments as presiding arbitrator; in addition, nominations as sole arbitrator or party - nominated arbitrator; counsel work representing (mostly non-Swiss-) parties in arbitration disputes.
- Nominations to serve as legal expert on Swiss law and on the law and practice of international arbitration. - Extensive mediation experience from several large disputes (antitrust -, commercial -, industrial -, political - and BIT disputes). Speaker at numerous conferences.

Panels of Arbitrators:
- ICC, LCIA, AAA, WIPO, AAA, Vienna Centre, CIETAC - Beijing, Korean Board, Hongkong Center, Stockholm Arbitration Institute, Arbitration Chambers of Poland, Bulgaria, Hungary, Czech Republic, Croatia, Slovenia etc.
- Swiss Chambers of Commerce, Zürich Chamber of Commerce. Mediator (formerly on the CPR Panel).

Publications:
- “Arbitrating Antitrust and Merger Control Issues” (Helbing & Lichtenhahn), 2003 (215 pages)
- „EG/US Kartellrecht in internationalen Schiedsverfahren, 77 aktuelle Fragen aus der Praxis“, Helbing, 2002
- “Introduction to Arbitration – Swiss and International Perspectives“, Helbing, 1999 (320 pages)
- and about 65 further publications and conference reports.

Languages:
- English, German, French, Italian, basic knowledge in Russian.

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Marc Blessing cont.
Your Notes ..... 

Thank you ...!

Thank you for your attention!