CONFLICT OF LEGAL CULTURES IN INTERNATIONAL COMMERCIAL ARBITRATION

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INTRODUCTION

Relevance of the study. Speed of dispute resolution, privacy, flexibility, efficiency - these are the main distinguishing features that make arbitration attractive to the parties. However, the listed advantages of arbitration may become irrelevant in the case of legal conflicts that can negatively affect the enforcement of arbitral tribunal awards.

The institution of international commercial arbitration has only recently begun to develop in Uzbekistan. In particular, since 1996 Uzbekistan has been a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Uzbekistan's accession to this Convention plays a key role, as it is this Convention that lays the foundation for the recognition and enforcement of international arbitration agreements and awards.

Of particular importance for the development of international commercial arbitration was the establishment of the Tashkent International Arbitration Center (TIC) at the Chamber of Commerce and Industry of the Republic of Uzbekistan with the status of a non-governmental non-profit organization by the Decree of the President of the Republic of Uzbekistan No. PP-4001 dated November 5, 2018.[40]

The object of the study is the existence of conflict of legal cultures in international commercial arbitration, the prerequisites for their occurrence and the applicable methods for resolving the conflict between legal cultures.

The subject of the study is the legal nature of international commercial arbitration and the essence of the conflicts of legal cultures taking place in international commercial arbitration, as well as practical issues of methods for resolving and preventing the conflict of legal cultures.

Purpose of the study. Comprehensive, scientific and theoretical analysis of international commercial arbitration and the conflict of legal cultures within its framework. And also to conduct a comprehensive analysis of significant theoretical and practical problems related to the conflict of cultures in international commercial arbitration.

Objectives of the study. The conducted study determined the necessity of solving the following main tasks:

[40] Resolution of the President of the Republic of Uzbekistan "On Establishment of the Tashkent International Arbitration Center (TIAC) under the Chamber of Commerce and Industry of the Republic of Uzbekistan".

- A study of the concept and essence of international commercial arbitration;

- to study theoretical and practical problems of conflict of legal cultures; to study and generalize existing scientific approaches to the legal nature of international commercial arbitration.

Analysis of scientific articles. Studies of the conflict of legal cultures in international commercial arbitration have been conducted mainly by foreign specialists and have been much more widely developed in the works of Stefen Kroll, Gary Born, Jean Paulson, Maxi Schroer etc.[41]

Methodology. The methodological basis of the study was a wide range of methods of scientific research - comparative-legal, system-legal, structural, logical analysis and others. Study and analysis of literature to identify existing studies and theories.

The scientific and practical significance of the **results of the study** consists of the following aspects:

- Improving Understanding of Legal Cultures: By studying the conflict of legal cultures in international commercial arbitration, scholars can better understand the similarities and differences between legal cultures and how they affect the practice of international arbitration;

- Enhancing the enforceability of arbitral awards: One of the key benefits of international commercial arbitration is the enforceability of arbitral awards. By understanding the conflict of legal cultures, parties and their counsel can develop strategies to ensure that awards can be enforced in different legal systems;

- Promoting Diversity and Inclusion: Exploring the conflict of legal cultures can promote diversity and inclusion in international commercial arbitration. By understanding the impact of legal cultures on cross-cultural disputes, arbitrators and lawyers can ensure that the dispute resolution process is accessible to all parties, regardless of their cultural background.

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Conflict between the common law system and the continental law system

Legal culture is the collective beliefs, values and attitudes towards law and the legal system that exist in a particular society or community. These beliefs and values can be shaped by a variety of factors, including history, religion, politics and social norms. However, when different legal cultures come into contact with each other, conflicts may arise due to differences in beliefs, values and practices. Legal cultures are shaped by a variety of factors including history, politics, religion, and social norms. These factors can influence how legal systems develop, how laws are interpreted and applied, and how legal disputes are resolved. When parties from different legal cultures meet in international commercial arbitration, they may find that their expectations and perceptions of the legal process are very different.

The study of legal culture conflict is an important area of research for scholars and practitioners alike. By deepening our understanding of the impact of legal cultures on cross-border disputes, we can develop more effective and inclusive dispute resolution practices that promote party autonomy, diversity and inclusion.

[41] Cambridge Compendium of International Commercial and Investment Arbitration, Stefan Kroll, Cambridge University Press, 2023; Gary B. Born, International Arbitration: Law and Practice, Kluwer Law International, 2012; Jan Paulsson, "The Idea of Arbitration", Oxford University Press, 2013; International Arbitration and the Covid-19 Revolution, by Maxi Scherer (Author), Niuscha Bassiri (Author), Mohamed S. Abdel Wahab (Author), & 6 more, Wolters Kluwer, 2020.

There are several examples of conflicts that may arise between common law and civil law cultures in international commercial arbitration.

In common law systems, expert witnesses are usually used to testify and analyse technical or scientific issues. Common law parties may be more familiar with the use of expert witnesses, who are usually called to testify and analyze complex technical or scientific issues. In contrast, civil law jurisdictions rely more on documentary evidence, such as contracts, invoices, written reports or other forms of documentation, rather than on the testimony of expert witnesses. When parties from different legal cultures meet in international commercial arbitration, they may have different expectations regarding the use of expert witnesses and documentary evidence. For example, a common law party may expect to call an expert witness to testify on a complex technical issue, while a civil law party may prefer to rely on written documentation to support its position. This can lead to conflicts over the admissibility and weight of evidence presented in arbitration.

Consequences of Conflict of Legal Cultures in International Commercial Arbitration

Bias. Bias in international commercial arbitration can arise from cultural differences and unconscious prejudice. It can manifest itself in various ways, for example, an arbitrator may have a preconceived notion of a particular culture or country, which may influence his or her decision-making. Moreover, the conflict of legal cultures can lead to a kind of stereotyping, in other words, it can lead to arbitrators making decisions based on stereotypes rather than on the facts and evidence presented in the case.

Article V(1)(d) of the New York Convention provides that an award may be set aside if the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the parties' agreement. If bias is found to have influenced the decision-making process or the appointment of the arbitrator, this may be grounds for setting aside the award. Similarly, according to the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration, an arbitrator must disclose any circumstances that may give rise to reasonable doubt as to his or her impartiality or independence. Failure to do so may result in disqualification of the arbitrator.

According to Professor Catherine A. According to Professor Kathryn A. Rogers, a leading scholar of international arbitration, bias can have serious legal consequences for arbitrators and arbitral institutions. In her article, "The Ethics and Conduct of Lawyers in International Arbitration," Professor Rogers notes that arbitrators who are perceived to be biased may face appointment problems, disqualification, and potential liability for breach of contract. In addition, institutions that engage in arbitration may face reputational damage if they are perceived as not taking bias seriously or failing to enforce ethical standards among arbitrators.[42]

Differences in interpretations of norms. Because different legal cultures may approach a dispute differently, arbitrators may reach different results based on the same facts and law. For example, a common law arbitrator may interpret a contract differently than a civil law arbitrator. The different approaches to the interpretation of laws and contracts by civil law and common law lawyers can be attributed to differences in legal systems and traditions.

[42] Ethics in International Arbitration, Catherine A. Rogers, Oxford University Press, 2014 , p 112.

Procedural difficulties. Different legal cultures may have different procedural rules, which can create difficulties in arbitration proceedings. Procedural issues can be particularly difficult in cross-border disputes where parties may be located in different countries and subject to different legal systems. Scholars have written extensively on the problems arising from jurisdictional issues in cross-border disputes. According to Professor Christopher A. Whitock, a specialist in international litigation and arbitration, parties to cross-border transactions can minimize the risk of jurisdictional issues by including choice of law and forum selection clauses in their contracts. In his article "Litigation, Arbitration, and the Transnational Shadow of Law," Whitock notes that such clauses can help clarify the parties' intentions and minimize the risk of jurisdictional disputes.[43] Professor Campbell McLachlan, a leading scholar of international dispute resolution, notes that international conventions can play an important role in resolving jurisdictional issues in cross-border disputes. In his book Private International Law: litigating in the trans-Tasman context and beyond, McLachlan notes that conventions such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards can help enforce arbitral awards in different countries, even in countries with different legal systems.[44]

Effectiveness of enforcement. Conflicting legal cultures may affect the enforceability of an award. Some countries may be more likely to enforce awards that conform to their own legal system, while other countries may not recognize awards that do not conform to their legal culture.

Language barriers. Another common conflict of legal cultures in international commercial arbitration is the language barrier. Parties from different countries may speak different languages, which can create difficulties in understanding and communicating on legal issues. This can be particularly problematic when it comes to interpreting legal documents or testimony.

Conflict of legal cultures in international commercial arbitration has been a topic of debate among scholars and practitioners for many years. Some argue that the clash of legal systems and traditions can create significant problems for parties and arbitrators, while others believe that the conflict of legal cultures is a myth that is largely overblown.

One argument that legal culture conflict is a myth is that, in practice, arbitrators are usually able to navigate different legal systems and traditions with relative ease. In the words of one scholar, "the fact that arbitrators are able to move smoothly between different legal cultures and apply the law neutrally and impartially suggests that the conflict of legal cultures is not as significant as some claim." [45]

Another argument in favor of the view that legal culture conflict is a myth is that, in practice, the use of flexible dispute resolution procedures can help mitigate the impact of cultural differences on the dispute resolution process. According to Glover, "using procedures such as mediation and conciliation, parties can work together to identify their core interests and find common ground, even in the face of significant cultural differences." [46] Despite

[43] Christopher A. Whytock, Litigation, Arbitration, and the Transnational Shadow of Law, 18 Duke Journal of Comparative & International Law 449-475 (2008).
[44] Goddard D, McLachlan CA, Private International Law: litigating in the trans-Tasman context and beyond, New Zealand Law Society, 2012 , p. 45.
[45] Redfern & Hunter, Redfern and Hunter on International Arbitration, Seventh Edition, Oxford University Press, 2009, p. 41.
[46]Glover, Maria, Mass Arbitration. 74 Stan. L. Rev. 1283 (2022), p. 183.

these arguments in favor of the view that legal culture conflict is a myth, there are scholars who argue otherwise. According to Fouchard, "the fact that parties may have different expectations about the role of the arbitrator, the evidence needed to support their case, or the interpretation of legal concepts can lead to misunderstandings and delays, and even disruption of the dispute resolution process."[47] This view is supported by the fact that there have been cases where cultural differences have led to the breakdown of the dispute resolution process, especially in cases where the parties could not reach agreement on key issues.

Resolution of Conflict of Legal Cultures in International Commercial Arbitration

One approach to resolving conflicts of legal cultures in international commercial arbitration is to utilize the principle of party autonomy. Under this principle, parties are free to choose the applicable law and arbitrators who will decide their dispute. In this way, the parties can ensure that their dispute is resolved in accordance with their expectations and their own legal system. However, the principle of party autonomy has its limitations and is not always sufficient to fully address the problems arising from conflicting legal cultures.

Another approach to addressing the problem of conflicting legal cultures in international commercial arbitration is to rely on the principle of flexibility. According to this principle, arbitrators should be able to adapt their procedures and decision-making processes to the specific needs and expectations of the parties involved. This may include allowing parties to present evidence in a manner that is consistent with their own legal system and taking into account cultural differences in the interpretation of legal concepts. By being flexible in the dispute resolution process, arbitrators can help to ensure that the interests of the parties are adequately represented and that the final decision is fair and reasonable.

Glover, on the other hand, emphasizes the importance of cultural sensitivity in international commercial arbitration. In her view, "arbitrators must be aware of cultural differences and take steps to ensure that all parties feel heard and respected in the dispute resolution process".[48] This approach recognizes that cultural differences can pose significant challenges in arbitration and emphasizes the need for arbitrators to be mindful of these differences and take steps to address them.

Finally, Fouchard emphasizes the importance of a flexible and pragmatic approach to conflict resolution in international commercial arbitration. According to this scholar, "arbitrators must be prepared to adapt their procedures and decision-making processes to the specific needs and expectations of the parties involved and must be prepared to make decisions that are fair and reasonable in light of the parties' cultural differences."[49] This approach recognizes that conflicts of legal cultures are complex and multifaceted problems that require a flexible and adaptive approach to resolution.

To address these problems, various approaches have been proposed to resolve conflicts between common law and civil law cultures in international commercial arbitration. Here are some of the most common approaches:

Party autonomy. The principle of party autonomy gives parties the freedom to choose the governing law and arbitration rules to be applied in the arbitration process. This allows

[47] Fouchard et al, Arbitration International, Volume 13, Issue 1, March 1, 1997 , Pages 111-116 pp.
[48] Glover, Maria, Mass Arbitration. 74 Stan. L. Rev. 1283 (2022), p. 187.
[49] Fouchard et al, Arbitration International, Volume 13, Issue 1, March 1, 1997, p. 179.

parties to choose a legal system that they are familiar with and can help reduce cultural conflicts. Parties may also agree to use a combination of common law and civil law principles to govern their dispute. Jean Paulson, in his book The Idea of Arbitration, emphasizes the importance of party autonomy in resolving cultural conflicts in international commercial arbitration. He argues that parties should have the freedom to choose the law that will govern their dispute and that this choice should be respected by arbitrators.[50] Parties to a contract can include a choice-of-law clause in their agreement determining which law will govern the contract. This can help minimize conflicts between different legal systems by providing clarity as to which law will apply in the event of a dispute.

Neutral legal principles. Another approach is to apply neutral legal principles that are common to both common law and civil law systems. These principles may include the UN Convention on Contracts for the International Sale of Goods (CISG),[51] which is a set of standardized rules for international commercial contracts. The application of neutral legal principles can help reduce cultural conflicts and promote fair and equitable dispute resolution. Gary Bourne suggests that the use of neutral legal principles can be a useful approach to resolving cultural conflicts. He argues that CISG is an example of a neutral legal principle that can be applied across different legal systems and that it can contribute to the fair and effective resolution of a dispute.[52]

Hybrid procedures. In some cases, arbitrators may adopt a hybrid approach that combines elements of both common law and civil law procedures. For example, arbitrators may allow written and oral statements and cross-examination of witnesses, which is more typical of common law procedures. At the same time, they may permit expert evidence and reliance on the arbitrator's own knowledge, which is more typical of civil law procedures.

Cultural sensitivity. Arbitrators and parties may also adopt a culturally sensitive approach that recognizes the differences between common law and civil law cultures. This may include the use of interpreters and translators or the use of local counsel familiar with the legal system and cultural norms of the parties. It may also include a willingness to be flexible and adaptive in the arbitration process to accommodate the needs and expectations of both parties.

CONCLUSION

In addition to these themes, several scholars have offered their views on the conflict of legal cultures in international commercial arbitration. They emphasize the importance of communication, cooperation, cultural sensitivity, and a flexible and pragmatic approach to conflict resolution. By taking these perspectives into account, parties and arbitrators can help reduce misunderstandings and misunderstandings that may arise due to differences in legal systems and traditions, and work towards a fair and just resolution of the dispute.

The conflict of legal cultures in international commercial arbitration has its impact on the legal system of Uzbekistan. First, Uzbekistan is a country with a legal system heavily influenced by its Soviet past. This means that its legal culture and practices may differ significantly from those of other countries, especially those with a common law legal system. As a result, when Uzbek companies are involved in international commercial arbitration with

[50] Jan Paulsson, “The Idea of Arbitration”, Oxford University Press, 2013, p. 72.
[51] United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG).
[52] Gary Born, International Commercial arbitration, 3rd edition, 2021.

companies from other countries, there may be a clash of legal cultures, which can create problems in the arbitration process. Second, Uzbekistan is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is a key international treaty governing the enforcement of international arbitration awards. However, Uzbekistan's legal system may interpret and apply the Convention differently from other countries, which may lead to potential conflicts in the recognition and enforcement of foreign arbitral awards. Moreover, Uzbekistan has undergone significant legal and economic reforms in recent years to modernize its legal system and bring it in line with international standards.

In sum, it is clear that the conflict of legal cultures in international commercial arbitration is a complex and multifaceted issue that requires a careful and nuanced approach to resolution. While there is no one-size-fits-all solution to this problem, the approaches discussed in this graduate thesis can provide parties and arbitrators with a framework for effectively and fairly resolving legal culture conflict. Ultimately, by working together and remaining open to new ideas and perspectives, we can continue to make progress toward a fairer and more equitable system of international commercial arbitration.

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