Michigan Journal of International Law

Volume 10 | Issue 1

1989

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CULTURAL NEUTRALITY: A PREREQUISITE TO ARBITRAL JUSTICE

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I. DEFINITION OF NEUTRALITY

In the framework of the judiciary, the state itself, as a body politic organized in compliance with the rule of law, is the institutional guarantor of the neutrality of the persons invested with the judicial power. In arbitration, neutrality must be sought as the expression of an intellectual and ethical attitude to be verified in each individual case, i.e. within the boundaries of the arbitrators' *ad hoc* jurisdiction, conferred on them through the parties' agreement.

The search for neutrality on this case-by-case basis, as opposed to neutrality as a due prerequisite inherent in the judicial system, calls for a different intellectual approach. In the latter situation the parties' attention is alerted only when faced with an exceptional situation, i.e. when the presumption of neutrality may be rebutted by taking exception to the personal qualifications or individual interest of a judge. In arbitration, on the contrary, there exists no general presumption of neutrality. Consequently, when designating the arbitrators, the parties and the appointing authority should inquire, as a matter of priority, into their neutrality.

In common parlance, neutrality is often equated with impartiality. Any such assimilation, however, would be incorrect, since neutrality and impartiality are intrinsically different. At the risk of oversimplification, neutrality may be defined as an objective status, i.e. the likelihood that the arbitrator will be, and remain, wholly equidistant in thought and action throughout the arbitral proceedings. Impartiality, on the contrary, partakes more of a subjective status, to be tested in the context of the concrete relations existing between the arbitrator(s) and each individual party. It follows that one can be impartial without being neutral; and conversely, that no arbitrator may be deemed neutral if he/she is behaving partially.

A further distinction touches upon the definition of the parties' state of mind when analyzed in terms of neutrality as opposed to impartiality. The arbitrator may lack neutrality in perfectly good faith,

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but if the arbitrator is not impartial this can only be the result of bad faith, i.e. malicious intent (*dolus*), or a lack of diligence or care regarding the arbitrator's most elementary duties (*culpa*).

The arbitrator may also fail to be equidistant irrespective of any subjective bad faith or negligence. Being neutral, as pointed out above, means having, and always maintaining, a mental attitude which is, in concrete terms, wholly and actually equidistant vis-à-vis the parties. There often exist cultural gaps, differences in the appraisal of basic values, and misunderstandings due to a diversity of educational background, all of which affect the channels of communication with one party, and conversely facilitate — and hence privilege — said channels with the other. This is especially true at the international level, where mere differences of nationality among the arbitrators may, as such, unbalance the flow of cultural interchange within the arbitral panel and between the arbitrator(s) and one or more of the parties. This involuntary unbalancing should be cured, after honest acknowledgment, through individual or collegiate action aimed at restoring an overall atmosphere of neutrality and impartiality.

II. The Cultural Problem

The situation so identified gives rise to a cultural problem. As pointed out above, an arbitrator, without relinquishing the most impartial frame of mind, may nonetheless remain very distant, in educational and cultural terms, from one particular party or its counsel. In such a case, difficulties are likely to arise which have nothing to do with the probity of the arbitrator in question. They are due solely to the fact that said arbitrator reveals greater intellectual propensity to grasp every detail of the arguments put forward by one party, while encountering objective and honest difficulties in understanding the submissions of the other(s) in the same way. Albeit unwillingly, the conduct of the arbitrator may thus adversely affect the equal treatment of the parties.

This aspect of neutrality has remained somewhat in the dark. Students of arbitration tend to deal indiscriminately with neutrality, impartiality, and independence of arbitrators. The borderline between these definitions cannot be clearly traced, as all are characterized by a common goal, namely the safeguard of equal treatment as regards the arbitrator's intentional conduct vis-à-vis the parties.

*Un*intentional violations of the principle of equal treatment, stemming from inadvertent violations of cultural neutrality, cause the gravest harm to the cause of arbitration. Arbitral injustice caused by the innocent, yet harmful, behavior of an honest arbitrator lacking cul-

tural qualifications is far more difficult to cure than the arbitral pathologies of wilful partiality and prevarication. This is the main theme of this study, which is inspired by countless instances in which deadlocks and misunderstandings have arisen in international arbitration, due to circumstances in which the intellectual honesty and the probity of the arbitrators were beyond question. The identification of these instances as the areas of greater difficulty in terms of cultural compromise may guide the search for adequate remedies.

Remedial action can be pursued, in the first place, through the search for arbitrators culturally open and able to cope with differences in educational and professional background. Comparative law is the password, certainly easier if one remains within the bounds of the same legal families, undoubtedly more difficult if one transmigrates from one family to another. The difficulties increase in geometric proportion if the comparison touches on systems in which the legal phenomena are deeply imbued with ethical, religious, and socio-political elements peculiar to individual countries or regions. When faced with such a juncture, the comparative lawyer/arbitrator must exercise the utmost prudence to avoid hasty and misconceived judgments and opinions which may adversely affect the equanimity and correctness of his/her legal conclusions.

Obstructions in the channels of intellectual communication give rise, as already anticipated, to unintentional violations of the principle of neutrality. The practice of international arbitrations is prodigal of examples of such violations, some of which indicate recurring deadlocks which can be avoided by careful arbitrators.

In identifying the situations most likely to cause these deadlocks, a pragmatic approach should be favored, with a view to affording a survey of the problems which the utilizers of international arbitration (and their lawyers) may encounter when faced with concrete instances of arbitration proceedings at the international level. In view of the above, our attention should not be confined to the comparative law analysis of the main theoretical differences existing between the major legal systems (not necessarily limited to the domestic legislation prevailing in individual countries); it should rather focus upon the practice of international arbitration: the ensemble of legal rules in action, *mores*, professional habits, and strategies drawn from concrete experience. All these are likely to condition the conduct of the parties, their counsel, and the arbitrators themselves when acting in the framework of proceedings carried out in different legal environments.

Emphasis should be put on the arsenal of remedies available to address the difficulties pointed out above, all of which presuppose an

intelligent awareness of cultural differences. It is through this awareness that prudent protagonists on the arbitration scene have more often than not achieved a satisfactory *modus vivendi* in international arbitration by exercising conscious self-restraint over the habits to which they are accustomed, with a view to opening up channels of intellectual communications with other parties prepared to exercise the same self-restraint over their own habits.

In the general framework of comparative law it is traditional to stress the dichotomy between common law and civil law systems. In the arbitration field, practice suggests that a different approach be followed, whereby the United States of America and Western Europe should be identified as the two major areas of difference, the latter expression including Great Britain in all its "departments." Eastern Europe may be regarded as a third group, in which it appears that the legal systems concerned tend to allow a hybrid approach, by showing commendable flexibility in resolving several issues that still divide the United States and the Western European philosophies. In spite of the above, references to common law as opposed to civil law systems will nonetheless appear from time to time, for example when necessary to identify divergencies still existing within the countries or sub-systems conventionally grouped in the three major systems. The principles developed in the light of this subdivision may perhaps be applicable to situations arising in other national or regional systems, by relating the traits of the major systems to legal traditions prevailing locally. This would allow our analysis to be extended to include areas such as the Near or Far East and Latin America.

This attempted classification provides the basic tools for a comparative reference to the different philosophies under which a number of situations, all potential sources of legal misunderstandings, should be analyzed with an open and flexible cultural approach. The most critical situations in which this analysis should be applied are treated below.

III. The Critical Topics

A. *Agreement to Arbitrate*

The formal and substantive requirements of the arbitration clause or agreement still diverge when looked upon in the light of different principles prevailing in the various systems. These divergencies are highlighted, for example, in situations when the parties' intent to arbitrate is not embodied in an *ad hoc* clause or agreement, but may be evidenced by reference to documents pertaining to previous business

relations between the parties; when the arbitration clause is incorporated into the contract by reference to pre-prepared document(s) foreign to the instrument executed by the parties; and when the arbitration clause is inserted into standard conditions of contract prepared by one party. Within the civil law countries the trend is towards narrow interpretation of arbitration clauses or agreements, requiring clear and unequivocal waiver of the right of access to the judiciary.

The choice between *ad hoc* and administered arbitration may be guided by different criteria in the U.S., Western Europe, and the Socialist countries. These criteria (embodying value judgments) should be known to the parties when executing the arbitration clause or agreement. The responsible parties should agree beforehand on the system of appointment of arbitrators, with particular sensitivity to the differences between the legal systems involved. Important issues in this context include, but are not limited to, the nationality of the arbitrators; the fees that parties are expected to pay; and the code of ethics used to guide the arbitrators' actions — especially when the arbitrators are appointed by the parties themselves. Careful valuation of administrative costs should also be made when facing administered arbitration, as such cost may differ greatly between the systems considered. Attention should also be paid to the possibility that the arbitrators' panel may wish to appoint a secretary (such practice, for example, being rather common in Switzerland).

A major issue concerns the likelihood that arbitrators, rather than focusing solely on domestic laws, may be inclined to apply general usages of trade, or even the principles stemming from the elaborated doctrines of *lex mercatoria*, such latter hypothesis being looked upon more favorably in certain countries (e.g. France and other Western and Eastern European countries) than in others (e.g. U.K. and U.S.). Further, decisions *ex aequo et bono* or by arbitrators acting as "amiable compositeurs" (these two expressions being now generally equated despite differences still traceable in historical perspective) are generally accepted in Continental Europe and in the Socialist countries; yet the same cannot be said for the U.K. and the U.S.

Careful analysis on the scope of arbitrability should always be carried out beforehand. In the Socialist countries, the U.S., and Switzerland, for instance, the arbitrability is viewed in commendably wide terms. The U.K. and a number of other European countries tend to adopt a "middle of the road" position. In some European countries the scope of arbitrability is more drastically reduced, as when limited to disputes touching upon, for example, patents, trademarks and other

industrial property rights, antitrust, exchange control regulation, company law, or securities regulation.

Selection of the place of arbitration should be made keeping in mind the features of local legislation which almost inevitably are likely to have a bearing on the arbitral proceedings. A modicum of knowledge of the prevailing regulations is deemed of the essence, with particular reference, but not limited to, the number and ambit of local procedural rules deemed imperative and the grounds upon which the award may be set aside locally. Socialist countries appear to have reduced the procedures to set aside awards to the barest minimum. Means of recourse are generally provided under the other systems considered, but the specific grounds for setting aside the award differ greatly under the numerous domestic laws.

The same remarks apply to the wider subject matter concerning the relationship between the arbitrators and the courts. In this connection, albeit to a lesser extent after the recent amendment to the Arbitration Act (1979), England may still be said to express a unique position in terms of a close-knit "working relationship" between the arbitrators and the judiciary. In the U.S., as well, the cooperation between the arbitrators and the courts is to be deemed notable. Among other countries belonging to the systems considered, the relationship varies considerably, to the point of reaching, in certain instances, the extreme of an underlying antagonism. Unless fully understood, the details of the relations between arbitrators and the courts under the applicable law may create serious disturbances and misunderstandings throughout the arbitration.

B. *Preliminary Procedure and Disclosure of the Case*

In the U.S. it is accepted that in many a case only the barest indication of the nature of the dispute involved need be communicated beforehand by a claimant to the respondent. In the other systems, albeit to varying degrees, the preliminary claim is put forward in a more detailed fashion.

Again, in the U.S. (and possibly to a lesser extent in the U.K.) there exists a strong inclination to prefer oral communication and debate as the principal mode of judicial or quasi-judicial proceedings. Other systems may range from the extreme of a reasonable combination of oral and written communication (to be found in Socialist countries and in some countries belonging to the other two systems), to the other extreme of a marked favor towards the written form (still typical of some civil law countries).

Manifold consequences stem from this basic dualism, which affects

all phases of the arbitral proceedings, such dualism being a derivative of the traditional juxtaposition (though softened in the course of time by reciprocal influence) of adversary systems, on the one side, and inquisitorial systems, on the other.

In arbitration proceedings, identifying the issues referred to the arbitrator(s) presents major problems. Here again the basic approach guiding the conduct of the proceedings is likely to have its influence. In an adversary system the arbitrator tends to assume a reasonably passive role, the bulk of all procedural activities being reserved to the parties' initiative. In the framework of inquisitorial proceedings, the situation is reversed, and the arbitrator is called to a more active role in all phases of the proceedings. Arbitration rules may provide that the parties must sign the arbitrator's terms of reference, containing, *inter alia*, the list of the issues to be decided by the arbitrators. The terms of reference evoke the ancient spirit of the Roman law *litis contestatio* together with a reference to the partially obsolete requirement of the *compromis arbitral* (i.e. the instrument to be executed after the occurrence of the dispute), whereby defects affecting the arbitration clause may be cured.

C. *The Features of Arbitration Proceedings Under the Systems Considered*

A "variable" to be considered within the framework of oral proceedings touches upon the "formality" of such proceedings. In the U.S., for instance, formality of procedure (especially but not limited to the preliminary procedure) is often minimized, while under other systems formality is more carefully preserved — as when written form prevails over oral form.

Practice inspired by the inquisitorial approach of Western Europe privileges the authority of the arbitrator(s), allowing the issuance of imperative directions to the parties throughout the arbitral proceedings. The right balance between the unrestricted exercise of the imperative powers of the arbitrator(s) and the unrestricted exercise of the right of defense still represents a *punctum pruriens*, giving rise to complaints by the supporters of procedural archetypes that privilege the adversary approach — such as that in the U.S.

Parties should pay special attention to the different mores illustrated above, since bitter controversies may arise, despite the good faith of all parties and arbitrators, when the respective cultural backgrounds conflict. For example, U.S. practices concerning the number and duration of hearings, the costs involved, the request for court reporters to prepare transcripts, and more generally, the plea that the

party's initiative be essentially unrestricted, have caused objections in many situations. Countervailing objections have been put forward against the inquisitorial approach, criticizing the arbitrators' power to monitor the conduct of the proceedings imperatively.

D. *Presentation of Evidence*

Presentation of evidence is indeed the occasion in which the different approaches give rise to greatest misunderstanding and conflict. The aversion to documents in general is traditional in the U.S. Mistrust of lengthy and detailed affidavits, originally drafted by the lawyers then sworn by witnesses, is equally traditional in other systems. The drafting of affidavits by the lawyers themselves may even be regarded as unethical under certain domestic laws.

The arguments for and against cross-examination are well known. The issue is still wide open and remains a major point of debate. The same can be said as regards discovery, indeed a most controversial subject in arbitration. In this connection severe critics (mainly of civil law extraction) go so far as to say that, through ill-conducted discovery procedures, the burden of proof may be unduly shifted.

The powers of arbitrator(s) to obtain evidence are strictly linked with procedural rules prevailing under the systems considered. Ultimately the issue touches upon the status of the arbitrators, which is, in turn, drawn from the general qualification of arbitration as such in the framework of the applicable legal rules. The powers which may be exercised by an arbitrator fall far short of the powers which may be exercised by a judge. The parties cannot confer upon the arbitrators the coercive powers conferred by the state upon the court. As a consequence, a comparative view of the situation reveals differences between legal systems that give powers directly to arbitrators, and systems that authorize the courts to exercise powers on behalf of arbitrators or the parties themselves.

There also exist systems under which the arbitrators' powers remain narrowly confined within the private law bounds of mere agents (mandataries, to use a civil law terminology) jointly appointed by the parties.

It follows, then, that the powers conferred upon the arbitrators often vary to a great extent in light of the different rules applicable to them. These rules must be drawn, in the first place, from the arbitration agreement establishing what powers the parties themselves have conferred upon the arbitrators. The powers thus conferred, however, are ultimately to be construed in light of the law applicable to the arbitration agreement together with the law governing the arbitration

itself (*lex arbitri*). Either of these laws may indeed supplement or restrict the powers conferred by the parties.

The ambit of possible differences in arbitral authority may be marked through examples. Arbitrators in the U.S. and the U.K. (as well as in other common law countries) may administer an oath to witnesses, while in most civil law countries, this would not be allowed. Again in the U.S., the U.K., and other common law countries, a party may apply to the court for an order to compel the attendance of a witness or the production of a document while a court in the civil law countries would not, as a general rule, give this assistance. This explains why, under the systems in which arbitrators do not have, either directly or through the courts, any power of coercion, their obligation to render the award is *de facto* contingent upon both parties carrying out a modicum of procedural activity. To counterbalance this inherent weakness, the arbitrators may draw presumptive evidence from the conduct of the parties during these proceedings.

The systems considered vary as to the existence and scope of rules controlling arbitrators' discretion in taking and evaluating evidence. Problems have arisen, in particular, concerning admissibility of evidence in the more general framework of the arbitrators' power to "monitor imperatively" presentation of evidence from the parties. Here again reference should be made to the basic distinction between the adversary and the inquisitorial nature of the background rules likely to inspire the organization of arbitral proceedings in a given case, the former being obviously oriented towards a minimal intervention by the arbitrators, the latter allowing the arbitrators a more incisive role concerning presentation of evidence by the parties.

Nomination of experts is *de facto* a crucial issue, although there seems to exist no doubt, in principle, that the arbitrators have the right to appoint an expert whenever their reasonable discretion so advises. In practice, and more often than not, parties have objected to nomination of experts directed *ex officio* by the arbitrators. The applicable procedure may lead to the definition of the appointed expert as "expert witness" or as "expert" *tout court*, this distinction expressing the obvious difference between the expert appointed by the parties and the "independent expert."

The definition of arbitrator-expert evokes the dilemma of when to choose an arbitrator with technical qualifications as opposed to a lawyer. The former choice may be preferable whenever technical knowledge is deemed of the essence for the decision of a given dispute. This is only a facet of a far-reaching policy issue, i.e. whether the predominant role in arbitration should be entrusted to jurists, or extended on

equal footing to technical and technological experts. The latter alternative enjoys its strongest support in the U.K. and the U.S., while lawyers still seem to enjoy a dominant position in other systems.

E. *Demeanor of Counsel During the Proceedings*

This subject matter is important as it is meant to go beyond the realm of the procedural rules of the arbitral proceedings. A comparative survey should indeed focus on forensic habits and tactics stemming *de facto* from concrete professional experiences, rather than expressing the compliance with legal and conventional rules governing the arbitral proceedings. It should be stressed, however, that major misunderstandings and clashes may occur unless a mutually satisfactory *modus vivendi* is achieved among the parties and the arbitrators.

Under the U.S. practice it is customary (possibly in fulfillment of a keen duty of thorough diligence vis-à-vis the client, stimulated by severe principles governing professional ability) to present very detailed, impeccably typeset briefs. The advanced mechanization of U.S. law offices itself may play a significant role in this direction.

In the U.S., the parties often feel that presentation of evidence (by live witnesses and in documentary form) should undergo no restriction. The same applies to numerous documents and materials (sometimes only remotely connected to the case) which are submitted to the arbitrators under liberal selective criteria. It follows that the sheer bulk of the records tends to become overwhelming, with ensuing logistical problems affecting both the cost and the duration of the proceedings, as well as the time that arbitrators must devote to familiarizing themselves with the file. Other legal systems almost always provide a less cumbersome practice, with ensuing dissatisfaction with certain U.S. habits frowned upon as harassing, or as likely (in the words of the critics) to burden the conduct of the arbitral proceedings unduly.

The acknowledgement of different forensic habits may favor the achievement (through self restraint) of a mutually acceptable demeanor likely to minimize the extent of unproductive conflict on the subject.

F. *The Award*

Interim (i.e. partial or non-definitive) awards are not provided as such in all domestic legislation, but the general weight of opinion favors their use. While many systems permit immediate challenge to such interim awards, other systems permit them to be set aside only in conjunction with the final award.

Some laws may also fail to provide for awards by consent of the parties. Under the systems where arbitration is viewed as the expression of a quasi-jurisdictional function, awards by consent may give rise to difficulties in enforcement if looked upon as "amicable settlements" rather than as arbitral awards in a strict sense.

It is often lamented that arbitrators' mores are deteriorating. Whether that is true or not, there is no doubt that even within the milieu of arbitrators one encounters dilatory tactics, if not "filibustering" as such. It largely depends on the role that the party-appointed arbitrator is expected to play.

The above dichotomy of views dramatizes the problem of the remedies that one may adopt to prevent this unfortunate occurrence. Replacement of the recalcitrant arbitrator or a claim for damages caused by the arbitrator's negligence can hardly be cited as satisfactory remedies. The truly crucial instance occurs when arbitrators are called to "deliberate" the award, i.e. at the stage in which the arbitrators are supposed to meet with a view to bringing about the decision of the dispute. *Quid iuris* if the arbitrator fails to participate in the meeting? Under the majority of systems deliberation (even in the absence of *ad hoc* formalities) must be taken by the arbitrators physically present in personal conference. Only after deliberation may the majority of the arbitrators draft and sign the award, with the specific mention that the other arbitrator(s) refused to affix their signatures. Debate on this topic, usually identified by the expression of "truncated tribunal," is currently vital to international arbitration practice. The same problem is likely to present itself even when the third arbitrator acts as an "umpire," since the diverging opinions of the remaining arbitrators must be recorded at the stage of deliberation of the award.

The admissibility of dissenting opinions and the necessity for the arbitrator(s) to state the reasons supporting the decision are classic themes of contrast between common law systems (in which the answer is positive as to the first question and negative as to the second) and civil law systems (in which the answer is negative as to the first question and positive as to the second). This is a further instance where reasonable self-restraint, in recognition of the clash of legal cultures, can bring about satisfactory practical results.

A very practical question likely to worry arbitrators in many a case is the following: after deliberation has taken place and the drafting of the award is completed, should one go back to the place of arbitration to physically affix the signature on the document? Is signature by correspondence admitted in international arbitration, thus obviously saving time and often substantial costs? Careful scrutiny of the systems

concerned shows that this topic is seldom dealt with specifically by the pertinent legal rules. Debate on this issue, as well, appears to be very important in comparative arbitration practice.

The power of arbitrators to order interim measures of protection, with or without security for costs, is highly controversial under the different systems. One should note that once again this is only a facet of the more general problem dealing with the scope and nature of the powers entrusted to the arbitrators in the light of the principles applicable in each individual case.

Should arbitrators worry beforehand about the enforceability of their awards? The answer is, in principle, in the affirmative, if the applicable arbitration rules so provide (e.g. Sec. 26 of the International Chamber of Commerce Rules of Conciliation and Arbitration). However, in terms of specific precepts, the definition of what arbitrators are supposed to do remains vague. At issue here is the identification of rules and principles (mainly pertaining to public policy and to arbitrability) other than those prevailing in the *forum* which the arbitrator should consider, with a view to fulfilling the legitimate expectations of the parties, the interests of trade, and the imperatives of international solidarity and comity. This subject matter is indeed worthy of further exploration, as it is currently the subject of efforts within different systems aimed at strengthening the features of a truly international arbitration. In this connection a mention should be made of the UNCITRAL Model Law, which is being adopted in a growing number of countries. General adherence to the principles embodied in the Model Law may greatly favor the cultural compromise which is deemed of the essence as pointed out below.

IV. The Cultural Compromise

For the foregoing reasons it is fair to state that international arbitration requires mutual understanding and trust to achieve reasonable function. This frame of mind in turn presupposes knowledge and familiarity not only with legal rules, but also with habits and concrete ways of behaving other than those to which each party is accustomed. The cultural connotations of the problem are self-explanatory.

The topics identified above demonstrate situations when lack of cultural neutrality may bring about harmful consequences. To force upon a party legal precepts and ways of behaving to which the party is not accustomed would indeed be unwise. Only a cultural compromise along the lines which have been indicated as the *leitmotiv* of this study may help to overcome deadlocks which would otherwise paralyze some stage of the arbitral proceedings.

V. Neutrality of Party-Appointed Arbitrators

Whether or not the principle of neutrality should apply to party-appointed arbitrators is an open query. To dissipate any doubts, and in harmony with the definitions adopted above, one may concede, also in the light of existing practice, a margin of discretion in allowing departures from the basic canon of neutrality. As regards impartiality, however, the acceptance of possible deviations must be reduced to the barest minimum.

It has been said that the arbitrator may be partial but not dishonest. I understand this statement as an ethical justification only if partiality is the result of some bona fide (i.e., somehow justifiably negligent) conduct. However, setting aside the ethical outlook, an arbitrator who is "innocently" partial cannot be accepted in the framework of fair and orderly proceedings. This would allow tolerance of a lack of independence which, though perhaps morally admissible, would betray the arbitral function at its very roots.

A slightly different conclusion may be reached with reference to neutrality. It is acceptable that one party should seek, in terms of legal and cultural extraction, greater intellectual propinquity with its appointed arbitrator. This does not *per se* adversely affect the independence of the arbitrator. Non-neutral arbitrators, therefore, do not necessarily threaten the nature of arbitration as traditionally envisaged — provided that the same rules apply, by mutual agreement of the parties, to all appointees, in full transparency and without hidden or overt discriminations. In conclusion, any lack of independence due to cultural hurdles, conceivable in principle, should be acknowledged beforehand and accepted. Furthermore, it should not adversely affect the basic principles and the workability of arbitral proceedings.

The system that I depict is based on a clear and unconcealed favor towards the appointment of neutral arbitrators. In contemporary practice, however, this is not necessarily true in all instances, especially when the parties themselves are public entities or the State itself. In such a situation other considerations may lead to the decision of appointing functionaries or other persons who, in one way or another, are not neutral and therefore may not be expected to remain totally independent of the appointing party.

A discussion on the theoretical advantages and disadvantages of neutral versus non-neutral arbitrators exceeds the bounds of this study. Be that as it may, and whatever the system adopted, the rules of the game should be disclosed beforehand and remain the same for both parties. If a party, including a State or a public entity, appoints

an arbitrator without expecting the same to be neutral, that party should inform its opponent. One would thus be faced with different styles of arbitral strategy, of which all parties should be fully cognizant.

It should be equally clear, however, that lack of neutrality is not meant to include a license to kill. There are definite limits of fairness and honesty that even non-neutral arbitrators should never trespass. It is up to the arbitrators themselves to assert the dignity of their function under the circumstances prevailing in each case. They must keep in mind that an arbitrator should never tolerate being turned into the servant of the appointing party. Otherwise, the proceeding should properly fall outside the realm of arbitration as traditionally known. It would become part of a different system wherein the dispute is settled through a direct confrontation of the parties reserving no role whatsoever to any third subjects acting in a quasi-judicial fashion. The culture of arbitration would be wholly betrayed by such a system, which should not be termed as, or considered with, true arbitration.

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The purpose of this article is to identify a special aspect of neutrality of arbitrators, defined as cultural neutrality, as the potential source of obstacles, if not altogether deadlocks, in the inception and implementation of international arbitration. To confer a pragmatic dimension on this proposition, certain factual situations were identified in which lack of cultural neutrality may bring about the above unwelcome results.

Because of this methodological choice, the article touches upon a set of heterogeneous issues in a perspective which *a fortiori* cannot seek exhaustiveness on each of the individual issues. The selected bibliography below, favoring comparative works, will facilitate further inquiry.

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