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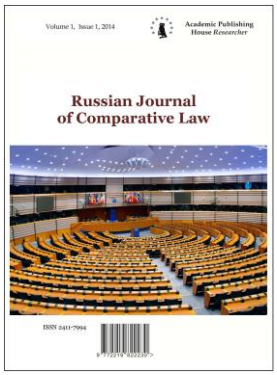

The Influence of the International Soft Law on the Internal Iegislator. The Big Leap in the Dark of the International Contract's Law in Paraguay

Estelle Fohrer-Dedeurwaerder [a, *]

[a] University of Toulouse 1 Capitole, France

Abstract

Paraguay opened himself to international exchanges with the creation of the MERCOSUR. After 20 years, it was necessary to Paraguay to modernize its legislation of private international law of contracts because it left no place for the autonomy of the will. To that purpose it took on board the Principles of The Hague relative to the international commercial contracts, a kind of soft law proposed to States wishing to reform their national law. These Principles authorize the parties to choose the applicable law of their contract, included a non-State law, solution rejected by numerous States. The paraguayan legislator also incorporated the liberal rules of the Inter-American Convention of Mexico City, which allows the judges, in the silence of the parties, to apply the law which presents the closest connections with the contract. It remains however to know how the judge will select the applicable law, knowing that the paraguayan legislator allows him to implement a non-State law.

Keywords: autonomy of the will, conflict of laws, Convention of mexico city, international contracts, mandatory rules, non-state law, Paraguay; principles of the Hague, private international law, proper law of the contract.

1. Introduction

For 20 years international business and investisments have been growing in Paraguay. So the authorities of this country were aware of the importance to have laws adapted to international exchanges to garantize security and rentability of the international transactions. They renovated the legislation about the law applicable to international contracts. Now Paraguay is the first country in the world to use the Principles on Choice of Law in International Commercial Contracts, approvided by the Conference of The Hague on 19th March, 2015. In this occasion, the paraguayan law was also put in accordance with the Inter-American Convention on the law applicable to the contractual obligations (signed in Mexico City on 17th March, 1994), known for its modernity.

This normative boil was beause the recent openness to trade in Paraguay, closed for a long time in the cross-border exchanges. After Declaration of Indépendance in 1813, Francia who led the country until 1840, had indeed set up a strong protectionism to favor the local economy. In this way, the country was isolated from the outside world. As historians note, «Francia led the foundations for a strong and interventionist State. Watching to protect itself against international flows of goods which could weaken its own production, Paraguay established a rigorous protectionism» (Le Monde diplomatique, 2014). When Francia died, Carlos Antonio Lopez who followed him, opened the borders to import expertise and modern equipment (telegraph lines,

* Corresponding author
E-mail address: estelle.fohrer-dedeurwaerder@ut-capitole.fr (E. Fohrer-Dedeurwaerder)

railroads, etc.); but the commercial balance of the country remained positive, that the other countrys of Latine America were jalous and supported by the Great Britain (which desapproved Paraguay to refuse the rules of the free exchange) they waged war to it. This war, said «riple Alliance War» because of the Treaty with the same name, signed on 1st May, 1865, between Brazil, Argentina and Uruguay, is having a devastating effect on the country's economy and that's why Paraguay had to join in the global economic system. But a second war («Chaco's war»: 1932-1935) against Bolivia stopped this movment. The coming to power of the Generals taken out glorious of this war changed it nothing, more than the coup d'etat of General Alfredo Stroessner in 1954. The country remained so closed to the outside world until 1989, date of the overthrowing this dictator (under the pressure of the United States). Free elections were then organized and it was at this moment that the new Constitution, adopted in 1992, asserted, in its Introduction, that Paraguay «is an integral part of the international community», encouraging by the development of the cross-border exchanges, since the creation of the MERCOSUR (Common Market of the South). Indeed, from 1991 Paraguay participated in its creation, as permanent member.

Despite the recent impact of the exchanges' globalisation on its economy, Paraguay reacted fastly on legislative plan, supported by the doctrine convainced by the crucial play of the principle of the autonomy of the will. Especially Dr. José Antonio Moreno Rodriguez, who participed to the development of The Hague Principles, was a decisive factor for the legislator of his country. Now, private international law is not any more considered as a « law for aristocrats, for elitist minorities, which could have real international life» (Di Martino, 2009), but as an instrument to impose Paraguay in the global trade. In fact, its legislation is now the most liberal and the most modern of the world for the international contract's law, because the adoption of the principle of the autonomy of the will, as designed by The Hague Principles and because the recognition of the proper law of the contract following the example of Mexico City's Convention.

2. Materials and methods

When it comes to the materials and sources, both Paraguayan domestic (Constitution, laws and sentences of the Supreme Court) and international regulations in force in Paraguay have been used, as well as the concluded international agreements and conventions and international soft law coming from the Conference of The Hague, together with relevant scientific papers and academic books, and databases. In this paper, the formal-legal method, the comparative method and the method of text analysis have been used.

3. Discussion – part. 1

The adoption of the principle of the autonomy of the will coming from the Principles of The Hague

Paraguay's will to adopt rules transposing The Hague Principles is clear in the preparatory debates of the Law № 5393, adopted in January 2015. Even if the motivations were various, all explain the opening to non-State law.

Two main reasons are at the origine of this ambitious reform: at first, the previous rules about international contracts' law were considered archaic; then, the participation of the paraguayan doctrine in the works of the Conference of The Hague and UNIDROIT allowed to introduce new ideas into this country, in correlation with the concern to attract new investors.

The terms are never rather strong to describe the law system which was up applicable until then : «dilapidated», «anachronistic», «antique», «archaic», etc. Indeed a big part of the rules of the paraguayan Civil Code, among which those concerning the international contracts, are inspired by old texts. Nevertheless this Code dates back only to 1987, substituting for the one which had been imported by Argentina hundred years earlier. In spite of, the main sources of the rules of conflict in contracts remained the Treaties of Montevideo of 1889 and 1940.

In 1888-1889, the conflict of law's rules between States of South America were standardized by the Congress which took place in Montevideo (Uruguay). 8 Treaties were adopted, all ratified by Paraguay (but also by Argentina, Bolivia, Peru and Uruguay).

The rule about the law applicable to cross-border contracts is in the Treaty on international civil law (1889), in the Title X (about legal acts); it designates the place of the execution of the contract for the main connexion (art. 32-39). Despite intensive discussions in the Civil law's Commission of the Congress, the Treaty didn't adopt the faculty for the contracting parties to

choose the applicable law because the majority of the congress participants were afraid that, by this way, the will is placed above the law. But this absence of consecration of the law of autonomy was quickly likened to a silence from which it was then easy to deduct, as the Argentine doctrine (Albornoz et al., 1986) made, as for lack of express ban, nothing prevented the parties from making a choice of law.

However, the question was not cut within States parties of this Treaty, no more than during the negotiation of the Treaty of Montevideo of 1940, which succeeded this of the 1889 in the relations between States today members of the MERCOSUR. Actually, although the latter proceeded to a dust removal from the original text, they did not leave the connexion of the contract to the place of its execution. But a new element, which seized the doctrine, came to confuse the issue: this version of the Treaty is endowed with an additional Protocol and the article 5 of this expresses that «the will of the parties can modify neither the jurisdiction nor the applicable law according to the respective Treaties, unless this law authorizes it». Certain authors saw an express reference in the national law of every State where the contract was executed. So, if the contract must be executed in Paraguay, it would have been up to the paraguayan law to say if the parties could opt for the law of another State.

With respect to the paraguayan law, in spite of the Preliminary Title of the Civil Code, which specifies that it can be broken the law only by another law (Art. 7), and in spite of the letter of its articles, which didn't leave place for the parties's autonomy according to the Montevideo's Treaties, it was the object of diverse interpretations. Two doctrinal currents were in confrontation: for some like R. Silva Alonso (Silva Alonso, 1995), member of the Commission for the codification in the origin of the Code of 1987, the principle of the autonomy of the will for international contracts would inevitably have been adopted through article 715 of the Civil Code which expresses that «the agreements made in contracts form the rule for the parties in which they have to submit themselves as to the law ». For this author, as long as the chosen law doesn't carry breach of the paraguayan public order and public morals, it would be absurd not to allow the parties to use their will to submit their contract to a foreign law. According to R. Ruiz Díaz Labrano (Ruiz Díaz Labrano, 2007, 2010), the principle of the autonomy of the will would also find a basis in article 669 of the Civil Code which specifies that the contractual freedom finds limit only in the imperative rules and in article 301 concerning the effects ot the contract.

But the opponents (Diaz Delgado, 2003; Pisano, 2009) of the conflicting autonomy (ie of the faculty for the parties to an international contract to choose the applicable law) answered that these texts were not conceived for the international contracts and that we could not give them a reach which they do not have : according to them they would dedicate only a material autonomy allowing the parties only to break the default rules of the paragayan law.

To get free of these currents, J.A. Moreno Rodriguez (Moreno Rodriguez, 2010) recommended, as for him, to draw the solution somewhere else that in the Civil Code; for him the conflicting autonomy could find its source directly in the Constitution, which accepts the existence of an international legal order (art. 145), as well as in the Law № 1879 of 2002, which resumed the model law UNCITRAL on *international arbitration*, which recognizes by the parties the faculty to say which law must be applied by the arbitrator.

The Supreme Court of Justice (civil and commercial division) finally adopted the principle of the autonomy of the will in an unique decision of March, 21st, 2013, resting on the most recent doctrine. But, in a civil law system such as that of Paraguay, an intervention of the legislator remained necessary. After the judge, it is the legislator, willing to offer a more liberal legislation to the investors, which was convinced.

The majority of the doctrine was in favor to the law of the autonomy pulling up to the extreme the interpretation of the existing texts. In the same purpose, it recommended the ratification of the Convention of Mexico City of 1994 (already signed by Paraguay), the article 7 of which recognizes to the contracting parties the faculty to choose the applicable law, just like the Convention of Rome concluded between the European States (19th June, 1980), which served as a model in its elaboration.

It is nevertheless another factor which is going to be decisive : the appointment, in March, 2010, by the Conference of The Hague, of Professor J. A. Moreno Rodriguez, among the experts asked to develop some «principles» about the law applicable to the international contracts. The Senator (Estigarriba Gutiérrez, Senate, Asuncion, 7th May, 2013) asked to present the bill to

the Senate so underlined that it «is important to recognize that the proposal was elaborated originally by a jurist of renamed, professor in our country, Doctor José Antonio Moreno Rodriguez, who based himself on the Principles of The Hague». This eminent jurist indeed drafted the first version of the bill and, allthough it underwent some modifications then, it was only to put the future paragayan law in accordance with the Convention of Mexico City when contracting parties emitted no choice of law.

Now, article 4 of the Paraguayan Law N 5393 of 2015 asserts expressly that «the contract is governed by the law chosen by the parties» (art. 4.1), that the parties can choose different laws to govern the various parts of their contracts as far as we can clearly distingish them (art. 4.2.b), that this choice can be done at any time and that it harms on no account the formal validity of the contract or the interests of third parties (art. 4.3), and finallly that no link is required between the chosen law and the parties or their contract (art. 4.4).

If at first sight, this law more seems to be inspired by the article 7 of the Convention of Mexico City, it overtakes it by admitting without ambigüité (Juenger, 1994) the choice of a non-State law.

The paraguayan Legislator opened the principle ot the autonomy of the will extremely by offering to the parties the possibility of choosing a right which was not generated by a State. According to article 5 of the Law N 5393, « a reference to law includes rules of law that are generally accepted on a non-State origin, as a neutral and balanced set of rules ». So, a liberal solution, unequalled besides, was confirmed. The conviction that the authority of the paraguayan law is not questioned by the choice of a non-State law and the admission of the «juridicity» of the latter contributed together to this U-turn.

The Principles of The Hague give to the parties the possibility to choose «rules of law that are generally accepted on an international, supranational or regional level as a neutral and balanced set of rules, unless the law of the forum provides otherwise» (art. 3). However they establish only an instrument of soft law proposed to the States which reform their legislation. Consequently they can be taken back in whole or in part, serving only a source of inspiration.

By implementing these Principles, Paraguay was not forced to recognize the faculty of the contracting parties to choose a non-State law. As the European States which are connected with the state positivism (EU Regulation N 593/2008), it would have been able to content with offering them the possibility of choosing a state law, which is not the one appointed by the rule of conflict in the absence of choice. According to this monistic approach (according to which only the State may generate the law), which is the most spread in the world, the choice by the parties of a body of non-State rules must be analyzed as a simple «incorporation» to the contract, ie which it does not prejudge the applicable (state) law. Consequently, non-State rules choosen by the contracting parties are a substitute for the suppletive rules of the state law which governs the contract, and find their limit in the imperative rules of this one. For instance, if the applicable law is the one of the contract's place of the execution, the choice of non-State rules, would be only a demonstration of «the material autonomy» by which the parties can rule out the suppletive rules of the competent law. The imperative rules come to impose upon the will because there is no contract above the law.

This fear of the «lawless contract», which still supports the solutions of the conflict of laws in Europe today (Landö, Nielsen, 2008; Hahn, 2006), was exactly one of the bastions fought successfully by the paraguayan doctrine. This one indeed dedicated numerous works to demonstrate that the authority of the law is not more questioned when the parties are authorized to choose a non-State law that when they can elect a national law. Actually, this will always and inevitably finds a limit in «the most imperative» rules of the paraguayan law.

Unlike the theory of the incorporation, the imperative rules in cause are the ones of the seized judge, whom he considers as internationally imperative in the point not to be able to give up their application (and not the imperative rules of the internal law of the law objectively applicable to the contract). Professor Moreno Rodriguez (Moreno Rodriguez, 2010), defender of the legal pluralism, so showed how, in paraguayan law, certain rules had an imperativity bigger than others, which will be maintained at all costs.

For instance, the article 9 of the Law N 194 of 1993, relative to the contracts of agency, representation and distribution plans that «the parties (...) cannot give up in no way the rights which are recognized by them in the present law». In 2001, the constitutional chamber of the Supreme Court of Justice of Paraguay so imposed the protective rules contained in this law on the

agreement of the parties. More exactly, the Supreme Court pronounced in favour of the character of «mandatory rule» or «loi de police» (ie internationally imperative rule) of its article 10 which requires the parties to submit their dispute to the paraguayan courts when the execution of the contract of agency, representation or distribution took place – or should have taken place – on the paraguayan territory. The Supreme Court underlined that for the paraguayan legislator «the fact that the litigious question can be discussed in the place of execution of the contract constitutes a guarantee for the parties. Indeed it is not illogical that after the enactment of a law, the State wants to intervene in the contractual relationship considered by putting precise rules to which the parties have to adapt themselves».

The same article, which allows the arbitration when it is an internal dispute, also raised the question if it is possible to envisage an arbitration abroad with the risk that the arbitrator does not apply the paraguayan law. In the same logic, the constitutional chamber of the Supreme Court (1996), which had been seized with this question a few years earlier, considered that to guarantee the paraguayan law's enforcement, an arbitration could take place only in Paraguay.

So these decisions give an evidence of the international imperative character of the Law № 194 of 1993, which a choice of law would not allow to escape. In other words, even though the parties would appoint a foreign law to govern their contract of agency, representation or distribution, the paragayan law will find to enforce when the contract runs in Paraguay because in this case the paragayan judge (or the arbitrator whose his head office is situated in Paraguay) is inevitably competent by application of its article 10. And in this respect, no matter that the parties appointed a foreign law or a non-State law.

Besides, the Law N 5393 took back for itself this decision by excluding expressly contracts of franchise, agency and distribution, from its scope of application (art. 1). In a more general way, it limits the choice of the parties when there are mandatory rules of paragayan law. Indeed its article 17, §1, resumes article 11, §1, Principles of The Hague according to which a court can «apply mandatory rules of the for, whatever is beside the law chosen by the parties».

As for non-State rules susceptible to by applied by the paragayan judge, they must be «generally accepted as a set of neutral and balanced rules» (art. 5 of the Law N 5393), ie as being enough complete to solve a contractual dispute, from a representative source of diverse economic, political and legal points of view, and not favoring systematically one of the parties to the detriment of the other one. So the paragayan legislator resumes the definition given by the Principles of The Hague, while amputating it of the requirement that this set of rules is «accepted at the regional, supranational or international level». The fact remains that in its spirit, these rules should result neither from the contract itself, nor the general conditions of a contracting party, nor even of a set of specific clauses in a given business sector.

The sets of rules are aimed from then on such as the Principles of European law of the contracts developed by the Commission Ole Landö, the Draft Common Frame of References stemming from the work of the Commission von Bar and from the Group EU Acquis managed by Schulte-Nöltke, the Convention of Vienna on the international sale of goods (1980) all the times when it is not applicable according to its own rules, or still the Principles relative to the right of the international trade developed by UNIDROIT. According to J. A. Moreno Rodriguez (Moreno Rodriguez, 2010), who contributed to the elaboration of Principles of The Hague and drafted the first version of the paraguayan law, the coherence of the transnational right would be assured, indeed, by systematizations realized by certain private bodies as UNIDROIT, of whom he is a member.

It is what also explains why the author estimates that its «juridicity» is acquired, in particular resting on the texts about the international arbitration, including the paraguayan law. In 2002, following the example of its South American counterparts (for insance, Mexico in 1993), Paraguay indeed adopted a modern Law (№ 1879 on the arbitration and the mediation), taking back the Convention of New York for the recognition and the execution of the foreign arbitration sentences which it ratified in 1998, and the model law of the UNCITRAL on the international commercial arbitration (in its version of 1985). Yet all impose on the arbitrator to respect the autonomy of the will. In this respect, the article 28, § 1, of the model law UNCITRAL refers to the «legal rules», understood as including the lex mercatoria and the transnational law, and its 4th § still specifies that «in every case, the arbitration court (...) takes into account commercial practices applicable to the transaction». This rule was adopted as before by the article 32 of the Paraguayan Law of 2002.

And, although the latter does not say expressly that the arbitrator can apply the practices of the international trade or the UNIDROIT Principles to the international commercial contracts without the support of a national law, the paraguayan authors nevertheless saw there the implicit assertion of this possibility. From then on, leaning on the French jurisprudence, and specially on the decision «Valenciana» (1991) where the Court of Cassation asserted that the arbitrator, who rules in accordance with custom and practices of the international trade, rules in law, they pull argument to assert the juridicity of certain sets of non-State rules.

4. Results – part. 1

Thus it is not surprising, in this context, that the Law N 5393 adopts not only the principle of the autonomy of the will, but also the possibility of choosing a non-State law (without going to arbitration). It will however remain to say, in time, if the contracting parties will use this faculty and how the judge will face the difficulties which can rise because of the choice of a non-state law (deficiency, interpretation, etc.). For the moment, it is still too early. But it is necessary to hope that the paraguayan judge will have the opportunity to establish judge-made rules, contrary to what takes place, it seems, in the other Latin American countries having ratified the Convention of Mexico City. This one, often considered as a model for its opening at the non-State law, is also a model of liberalism, which Paraguay has just resumed when the contract does not contain a clause of electio juris.

Discussion – part 2

The adoption of the proper law of the contract coming from the Convention of Mexico City

In spite of its global brilliance with the doctrine, the Inter-American Convention of Mexico City, adopted on 17th March, 1994, by the 5th Conference of Private International law of the Organization of American States (OAS), was applicable only in two States when Paraguay decided to adopt a part of its rules. But among these States, all do not consider it directly applicable in their legal order (self-executing), preferring to adopt a law to resume the main part, as Paraguay has just made. From now on, for lack of choice of law by the parties, thus the paraguayan judge applies the flexible principles contained in this Convention.

The integration of an international Convention in the legal order of a State depends on its constitutional rules. Whereas in certain States a ratification of the instrument is enough so that it becomes immediately and directly applicable, in others after promulgation it can produce effect only if its rules are resumed by a law. This one transposes then the rules of the Convention and makes them effective towards the people subject to the national jurisdictions.

Although it is classically asserted that the Convention of Mexico City is applicable in Venezuela and in Mexico, the first one resumed only the spirit. In the same way, Paraguay has just incorporated the Convention into its legal system, but without having ratified it.

According to articles 26 and 27 of the Convention of Mexico City, «the present Convention is opened to the ratification» and «to the membership of any State after its coming into force", planned 30 days after the deposit of the second instrument of ratification. Mexico was the first State to have ratified it, with a law of November 27th, 1995. Further to its approval by Venezuela, the Convention came into effect on December 15th, 1996.

However, Venezuela did not make a directly applicable instrument because, according to its constitutional rules, a law of transposition was necessary. It is a general law of private international law that was adopted more than one year later, on 6th, August, 1998 and which came into effect on 6th, February, 1999. So between December, 1996, and February, 1999, the Convention was only in force, without the support of a law of transposition. Accordingly, its rules were considered as of « principles of private international law generally accepted », in the sense of the former article 8 of the Code of civil procedure, today substituted by the 1th article of the law of 1998 (Hernández-Bretón, 2013).

Concerning the international contracts, its rules introduce in reality only a synthesis of the solutions of the Inter-American Convention. As explains it an author of this country, E. Hernández-Bretón (Hernández-Bretón, 2008), if the Convention of Mexico City is the main source of Venezuelan law regarding international contracts, it remains that the text of the law is much more moderated than the Convention, whose fundamental principles were only reproduced.

For instance, contrary to the Convention (art. 11), the law does not authorize the judge to take into account internationally imperative rules of another State (art. 10) (Parra-Aranguren, 1999).

In Paraguay, « the international Treaties validly celebrated, approved by a law of the Congress, and whose the instruments of ratification were exchanged or deposited, are a part of the internal legal order according to the hierarchy determined by the article 137 » (Art. 131, Constitution). Thus the Convention of Mexico City could be directly applicable, after approval of the Congress then the ratification. No act of ratification was however deposited with the Organization of the Inter-American States (OAS) (http://www.oas.org/juridico/english/sigs/b-56.html).

In spite of, it is possible to assert that the Law N 5393 of 2015 is a «law of incorporation» of this Convention in the paraguayan legal order, in the fact that it resumes the principle of the proper law of the contract, just like the Venezuelan law. Moreover, Senator H. E. Estigarribia Giutiérrez said, in his Speech to introduce the bill to the Senate, that «to tell the truth, the Convention of Mexico City can be incorporated by way of a ratification or an adoption of a law which collects the spirit of the text, as it often arrived in Latin America. This [paraguayan] bill incorporated the virtues of the Convention of Mexico City». Actually, the paraguayan law reproduces almost literally its rules in the absence of choice of law.

Before the adoption of the law, Paraguay subjected systematically the international contracts to the law of the place of their execution as regards the question of their validity and their effects. Today, on the contrary, the law invites the paraguayan judge, according to the Convention of Mexico City, to implement a flexible criterion : that of the narrowest links with the contract. According to its article 11, «1. If the parties have not selected the applicable law, or if their selection proves ineffective, the contract shall be governed by the State law with which has the closest ties. 2. The Court will take into account all objective and subjective elements of the contract to determine the State law with which it has the closest ties».

Resuming partially the article 9 of the Convention of Mexico City, the legislator so requires the judge, who has to identify the «proper law» of the contract, to make an individual appreciation, by paying attention to «objective and subjective elements» such as the currency of exchange, the writing language of the contract, the place of conclusion or execution. On the other hand, no reference is made, at the stage of the identification of the applicable law, in the «general principles of the international trade recognized by the international organizations» which the national judges should be able to take into account according to the Convention of Mexico City (art. 9). Thus the article 11 of the paraguayan law is not a simple copy of the article 9 of the Convention, because of the differences of interpretation (Muir Watt and B. Ancel, 2006) arisen from its writing as for the role of the general principles of the international trade which it is made reference. Actually, the writers of the law considered that as far as its article 5 specifies that by «law» it is necessary to hear «legal rule», it was not useful to call back in the article 11 that the judge can apply directly non-State rules if he considers that they are more appropriate and closer to the contract (Moreno Rodrigez, 2016).

Concerning the article 12 of the law, it specifies that «in the addition to the provisions in the foregoing articles, the guidelines, customs and principles of the international commercial law as well as the commercial usage and practices generally accepted shall apply to discharge the requirements of justice and equity in the particular case». This text resumes word for word the article 10 of the Convention, authorizing the paraguayan judge to implement these non-State sources every time he considers that their application allows to satisfy the justice and the equity. Thus the judge has a unprecedented latitude in this country to apply the non-State law even though the parties didn't ask for it because, in the same circumstances, the arbitrator couldn't according to the letter of the article 32 of the law N 1879 of 2002. In spite of, the doctrine underlines that the parties which didn't appoint the law shouldn't be surprised and should be satisfied with the application of a rule generally accepted in comparative law.

4. Results – part. 2

The doubt as for the regime of this non-State law in front of the judge was not totally raised : if the objective of this formula is to give to the judge the necessary tools to look for an equitable solution, we don't know if he can evict the State law and substitute these non-State sources to meet

the requirements of justice and equity, or if he can only complete it with these sources. It will thus be up to the paraguayan judge to say it.

In any case, we could regret this legislative choice because it conflicts with the principle of legal security nevertheless advocated by the promoters of the law to defend the consecration of the autonomy of the will. Indeed, if the autonomy of the will offers a flexibility which «does not threaten the predictability, but (...) reinforces it» because «the parties can know the applicable law about their controversy, without having to ask for judicial interpretations» (Arroyo, 1995), on the other hand, the principle of the proper law allows no predictability because everything depends on the judge's appreciation. Therefore, as long as the latter didn't pronounce, the solution remains uncertain, uncertainty aggravated by the multiplication of the possibilities which are granted to him: enforcement of a state law or of a non-State law (on the condition of being generally accepted as a set of neutral and balanced rules, according to the article 5 of the law); enforcement of a State law with the possibility to correction this with a non-State law for equity's reasons, etc.

However some authors will answer that this lack of predictability is the ransom of the modernism. It remains to be seen how the judge will manage this new prerogative for which he does not benefit even from an assumption such as the one that knew formerly the European judges with the Convention of Rome (Art. 4, §2: «(...) it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporate, its central administration») which widely inspired the Convention of Mexico City.

5. Conclusion

Innovation calls up always one time of adaptation, what doesn't seem to slow down the paraguayan legislator, whose project to modernize its rules of judicial mutual aid forms gradually. Actually, except in the mercosurian frame (Protocol, Buenos Aires, 5th August, 1994), the paraguayan law (Art. 3, Code of civil procedure) refuses any efficiency to the clauses about jugdes'comptence, a real anachronism for a State which wishes to attract new investors (Moreno Rodriguez, 2006). Because, even if a country is capable of making business and wealth, theses latters come only if the judicial obstacles were erased and a predictable frame was set up. That is why, behind the scenes, it is about ratify the Convention of The Hague on Choice of Court Agreements, of 30th June, 2005. Undoubtedly, Paraguay is unwilling to remain simple spectator of this economic world phenomenon!

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