

Choice of Law In Convention Establishing Louvre Museum in Abu Dhabi

Which law governs the establishment of a Louvre museum in Abu Dhabi? The answer can be found in an international agreement concluded in March 2007 between the French state and the United Arab Emirates to that effect (the Agreement). The French Parliament has ratified the Agreement on 9 October 2007. The French text of the Agreement can be found [here](#).

Although the Agreement was concluded between the two States, more actors are involved. One is the Louvre Museum. The Louvre Museum controls the use of the name *Louvre* and thus granted the United Arab Emirates (UAE) permission to use its name. Another actor is a new French agency established for the occasion, the International Agency for French Museums. The Agreement provides that the agency will advise the UAE on a variety of issues regarding the creation of the museum. Each of these two entities are autonomous and have legal personality under French law.

This background is necessary to understand the provisions of the Agreement dealing with choice of law (articles 17, 18 and 19). These provisions provide for a different choice of law depending on which of these entities is involved.

- 1) As between the States, article 17 provides that disputes ought to be resolved amicably. No rules of decision are provided.
- 2) As far as the Louvre is concerned, article 18 provides that any dispute regarding the use of the name *Louvre* shall be decided by French courts pursuant to French law.
- 3) Finally, article 18 provides that disputes between the agency and the UAE shall be resolved by way of arbitration, and article 19 provides that arbitral tribunals shall decide such disputes pursuant to English law. Interestingly enough, article 19 also provides that the contracting parties (i.e. the States) owe a duty of good faith to each other, and that so do the agency and the UAE.

These provisions raise several issues. First, why did the negotiators choose to distinguish between the Louvre Museum and the newly created agency? One possibility is that the subject matter of the potential dispute (use of the name *Louvre*) was perceived as belonging exclusively to courts and as being unarbitrable, as under the French law of arbitration, intellectual property is regarded as partly unarbitrable. Second, why did the negotiators choose English law, and why did they then add on a duty of good faith? It seems to me that the only reasonable answer to the first part of this second question is that they were looking for a law which was both sophisticated and “neutral”. But then they decided to add on a duty of good faith. Were they scared of the consequences of the application of a law which was perceived as not including such a duty? What will it mean, however, from a practical perspective, for the tribunal to apply English law with a duty of good faith? All comments welcome!