

Revisiting the ‘Content-of-Laws’ Enquiry in International Arbitration

Soterios Loizou at King’s College London has uploaded an interesting article on SSRN entitled “Revisiting the ‘Content-of-Laws’ Enquiry in International Arbitration”. The abstract is:

Establishing the content of the applicable law is one of the most important, albeit seldom examined, topics in the theory and practice of international arbitration. Setting as point of departure the regulatory vacuum in nearly all national laws on international arbitration, this study examines in depth this “content-of-laws” enquiry in an attempt to foster doctrinal integrity, legal certainty and predictability in arbitral proceedings. Specifically, this study encompasses a three level analysis of the topic. Firstly, it explores the theoretical underpinnings and the various approaches articulated in legal theory to the establishment of the content of the applicable law in international litigation and arbitration. Secondly, on the basis of an elaborate comparative review of the various legal regimes and jurisprudence in the most frequently selected venues of arbitration, namely England & Wales, France, Hong Kong, Singapore, Switzerland, the state of New York (USA), and Sweden, as well as in leading investment arbitration fora, it challenges conventional wisdom by showcasing the emerging trend towards the application of a “facultative” jura novit arbiter principle in international arbitral proceedings. Thirdly, it delineates a clear modus operandi for arbitral tribunals, and national courts reviewing arbitral awards in annulment proceedings, and offers model clauses, arbitration rules, and national law provisions on the content-of-laws enquiry. The study concludes with some final remarks and observations that amplify the importance of continuous governing law related consultations between the parties and the arbitrators throughout the arbitral proceedings, and, certainly, before the tribunal has rendered its final award.

The full article can be accessed [here](#).