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The Impact of Uniform Law on National Law: Limits and Possibilities

By Lauro Gama Jr.

QUESTIONNAIRE ADDRESSED TO THE NATIONAL REPORTERS

From your national law perspective, would it be proper to include within the notion of "Uniform Law" usages of the trade or "customs", general principles of law, general principles of contract law or of the law of obligations, transnational law, *lex mercatoria*, general rules of procedure? Uniform Law below shall mean Uniform Law according to the meaning assigned to this expression in your reply to this Question 1.

The answer is multifaceted. Under Brazilian doctrine and case-law usages of the trade or "customs" fall under the notion of Uniform Law because of their very commercial nature (i.e., their pertaining to Commercial Law), though more often they are presented under the title of lex mercatoria or international trade law, which are uniform law in essence (cf. Irineu Strenger. Direito Internacional Privado. 4ª ed., São Paulo: LTr, 2000, p. 754-755).

It is proper, as well, to include general principles of law under the Uniform Law category. According to Brazilian doctrinal authority such principles are a source of law, especially of Uniform Law, when they can be shared by different nations (cf. Lauro Gama Jr. Contratos Internacionais à Luz dos Princípios do UNIDROIT 2004. Rio de Janeiro: Renovar, 2006, p. 241-242).

For all the other categories, namely, general principles of contract law or of the law of obligations, transnational law, lex mercatoria and general rules of procedure, I have no doubt to include them into the category of Uniform Law, being them part of the so-called soft law (cf. Lauro Gama Jr. ..., p. 219).

To what extent has your country incorporated Uniform Law as national law through treaty ratification, other enactments or court decisions?

Brazil has incorporated Uniform Law through treaty ratification on some occasions, such as:

a) general rules of procedure: *Inter-American Convention on Letters Rogatory* (Panama, 1975); Inter-American Convention on International Commercial Arbitration (Panama, 1975); Inter-American convention on extraterritorial validity of judgments and arbitral

awards (Montevideo, 1979); New York Convention on the Recognition and Enforcement of Arbitral Awards (1958).

b) general principles of law: Inter-American convention on general rules of private international law (Montevideo, 1979)

c) uniform law strictu sensu: Geneva Conventions on letters of credit, promissory notes and letters of change (Geneva, 1930)

Unfortunately Brazil is not yet a party to the Vienna Sales Convention (CISG, 1980).

Uniform Law has also been incorporated through court decisions referring to commercial practice. In particular, the INCOTERMS (FOB, CIF clauses) have been taken into account by the country's highest court, Superior Tribunal de Justiça, in the following judgments: REsp 886.695, REsp 194.117; REsp 343.754; REsp 37.033; AI 136.065.

From my knowledge, the UNIDROIT Principles of International Commercial Contracts have been invoked by one of the parties as an authoritative source of law in at least two arbitrations taking place in Brazil.

To what extent should your national law be considered as including Uniform Law when designated as proper law of the contract? The law governing the tort? When your country is designated as place (seat) of the arbitration?

Under the influx of the post-positivistic theories, the concept of law – and therefore of Brazilian law – has been extended so as to embrace not only congress-enacted legislation but also – and especially – general principles of law drawn out from other sources of law, such as the international law of Human Rights, international trade law etc.

Therefore under current Brazilian doctrine and case-law (cf. Supremo Tribunal Federal, Intervenção Federal 2.257-6, j. 1.8.2003 and more recently RE 466.343 – Min. Gilmar Mendes) binding law includes not only parliamentary-enacted law but also general principles of law.

As a result, when the Brazilian law is applied to an international contract, it shall include not only law of a legislative nature but also the usages of the trade or "customs", general principles of contract law or of the law of obligations, transnational law and lex mercatoria which are compatible with the Brazilian legal system.

It goes without saying that, because of their traditional positivistic training, judges may face more difficulties than arbitrators when applying Uniform Law.

As for the law governing the tort, the same reasons apply .

When Brazil is the seat of the arbitration the reasoning above remains unchanged. Only the post-arbitration judicial control of the law applicable, exercised by the Courts may take into deeper consideration the principle of public order ("ordre public") in the analysis of any potential and severe incompatibility between the Uniform Law applied in the dispute and the Brazilian legal order as a whole.

To what extent will legal notions in your country applicable in the process of deciding a dispute by courts or arbitrators (including public policy and international mandatory rules or *lois de police* (national or foreign)) accept Uniform Law incorporated in the foreign law (substantive or procedural) applicable, as the case may be, to the contract giving rise to the dispute/at the foreign arbitral place or seat?

As with most countries, the notion of public order in Brazil is generally used by Courts and arbitral tribunals to avoid the application of a foreign law in cases where such application entails a violation of the basic principles underlying the Brazilian social, economic and legal environment. It is also applied by the Superior Tribunal de Justiça to avoid recognition and enforcement of foreign judgments or arbitral decisions that may violate the Brazilian fundamental legal principles.

As a rule, the notion of public order is employed by the Superior Tribunal de Justiça in order to prevent the recognition of foreign court or arbitral decisions in Brazil that offend due process of law, accept polygamy, avoid marriage without just cause etc. In other words the Brazilian STJ will recognize and enforce a foreign judgment or arbitral award without analyzing its merits (revision au fond), thus the law applicable to the merits of the case.

Recently the STJ did so in the context of enforcement of foreign arbitral awards (SEC 967 and SEC 978), for there was no evidence of written consent to arbitrate given by the Brazilian-domiciled party against which the enforcement was sought. The same reasoning was adopted by the STJ in the SEC 866 case.

On the other hand, the STJ recognized a foreign arbitral award (in the SEC 857 case) based on an arbitration agreement which had not been signed by both parties. In that case, however, the STJ stated that in the context of international trade and in that of the NY

Convention the agreement to arbitrate may be evidenced not only in writing but also from the conduct of the parties.

In other cases, the STJ denied the argument of violation of public order brought by one of the parties in SEC 874, affirming that the use of international arbitration per se did not amount to violation of the Brazilian public order, nor did it when the service of process of the party domiciled in Brazil was done by mail or any other means different from a rogatory letter.

As to mandatory rules, the STJ has decided that the consumer protection rules enacted by the Brazilian legislator – Consumer Protection Code – have an extraterritorial effect so as to embrace the purchase of an equipment in the United States and thus ensure technical assistance to it in Brazil from any of the authorized Panasonic dealers (STJ – 4a Turma – REsp 63981/SP – Rel. Min. Salvio de Figueiredo, j. 11.04.00).

In sum: the Brazilian courts and/or arbitral tribunals sitting in Brazil will accept Uniform Law incorporated into the foreign law (substantive or procedural) as applicable to the contract under dispute at the foreign arbitral place or seat so far the foreign judgment or arbitral award, as a whole, do not offend the Brazilian public order.

To what are extent arbitral awards officially published or informally disseminated in business and legal circles in your country? Is your country a *stare decisis* country? If so, to what does extent *stare decisis* apply to arbitral determinations/awards? To what is extent issue preclusion or collateral estoppel (if accepted in your legal system) applicable in arbitration (from court of law to arbitral tribunal and viceversa / between arbitral tribunals)?

Arbitral awards, as elsewhere, are scarcely published in Brazil. Arbitral awards have been regularly published in the two specialized Brazilian arbitration revues: the Revista Brasileira de Arbitragem (published since 2004 by the Brazilian Arbitration Committee in conjuction with Thomson) and the Revista de Arbitragem e Mediação (published since 2004 by Prof. A. Wald in conjunction with Editora Revista dos Tribunais).

Though the majority of the arbitration institutions do not publish the awards rendered under their auspices, at least two of the most renowned Brazilian institutions, the Centro Brasileiro de Mediação e Arbitragem (www.cbma.com.br) and the Câmara de Mediação e Arbitragem do Instituto de Engenharia de São Paulo

(www.institutodeengenharia.org.br/cmaie), do allow for the publication, for academic purposes, of extracts of their respective arbitral awards.

There is a claim by the arbitral community favoring such publications, for academic purposes.

Brazil is not a stare decisis country, such as England or the United States. However judicial precedent is of growing importance for the country's legal system.

Very recently, the Constitutional Amendment 45/2004 allowed for the Supreme Court (STF) to enact binding precedents in some matters so as to avoid repeated appeals.

In legal practice, STJ precedents do not only convey persuasive authority but also allow for the rejection in limine of an appeal or a case by an inferior judge or Court (cf. CPC, art. 518 and art. 285-A).

In sum: in spite of lacking binding authority (save the STF "súmula vinculante") judicial precedents are of growing importance in the Brazilian legal practice.

The Brazilian legal culture favors the authoritative force of judicial precedents in arbitration. It is self-evident that whenever such precedents are binding by themselves, such as the STF "súmula vinculante", they must be applied by arbitrators as an integral part of Brazilian law.

As well, prior judgment between the same parties on different cause of action represents an estoppel as to those matters under litigation or controverted point and, as its forms res judicata, must be followed by arbitrators as well as by courts of law. This happens in both directions: from court of law to arbitral tribunal and vice versa, as in between arbitral tribunals, because the arbitral award does not differ in authority from a judicial decision.

To what extent are national laws and state courts in your country "arbitration friendly"? Does your answer change depending on whether a state party or a state interest is directly involved in or affected by the resolution of the dispute or the contract may be labeled as "a public" or as an "administrative" contract under your legal system? Whether the arbitration is "international or domestic"? Whether its seat/place is within/outside your country?

The 1996 Brazilian Arbitration Act has proven to be very successful in its mission of creating an arbitration-friendly environment in the country. It has allowed for a consistent growth of arbitration in Brazil, both domestically and internationally, as well as for the enforcement of foreign arbitration awards.

A landmark judgment by the Supreme Court (STF – SE 5.206 – Rel. Min. Ellen Gracie, j. 12.12.2001) affirmed the constitutionality of the Brazilian Arbitration Act. From then on, arbitration has not ceased to grow as a means for solving both domestic and international disputes in Brazil.

In terms of statistics, between 1958 and September 1996 (when the new Brazilian Law entered into force), 23 requests for enforcement of foreign arbitral awards were brought before the Supreme Court. Twelve of them were denied, for various reasons: two denials based on the lack of judicial recognition in the country of origin, six based on lack of rogatory-letter service of process of the party domiciled in Brazil.

Following the entry into force of the Brazilian Law (Sept. 1996) – and before the Superior Tribunal de Justiça was granted the jurisdiction for such requests in December 2004 – the STF examined five requests of enforcement of foreign awards, of which only two were denied: one that lacked proof of the arbitral agreement and the other whose arbitral proceedings lacked proper service of process of the Brazilian-domiciled party.

Under the STJ jurisdiction, there have been 20 decisions since 2005 on the recognition and enforcement of foreign arbitral awards, of which twelve were granted, five were rejected, and two ended in a settlement between the parties.

As for domestic arbitration, both the State Courts (with the notable exception of the State of Paraná Court of Appeal) and the STJ have re-positioned themselves, from a historic rejection of arbitration, stating that it was an institution "without much use in Brazil" (cf. 4a Turma - REsp 15231 / RS – Min. Salvio de Figueiredo Teixeira, j. 12.11.1991) to the rendering several landmark decisions in favor of arbitration.

Firstly, the STJ has found the Brazilian Arbitration Act applicable to arbitration agreements (international contracts) executed before its entry in force in Sept. 1996 (cf. 3a Turma, REsp 712566 / RJ – Rel. Min. Nancy Andrighi, j. 18.08.2005).

Secondly, the STJ has found that the Courts must not re-examine the merits of arbitral awards (cf. 3a Turma - REsp 693219 / PR – Rel. Min. Nancy Andrighi, j. 19.4.2005).

Thirdly, the STJ has found that arbitration agreements may have binding effects on a third party who is bound by an interconnected agreement (for the construction of a ship) (cf. 3a Turma - REsp 653733 / RJ – Rel. Min. Nancy Andrighi, j. 03.08.2006).

Finally, the STJ found that arbitration agreements are binding on state-owned companies (cf. 1a Seção - AgRg no MS 11308 / DF, rel. Min. Luiz Fux, j. 28.6.2006; 2ª Turma - REsp 606345 / RS, rel. João Otávio de Noronha, j. 17.5.2007; 2ª Turma - REsp 612439 / RS, rel. João Otávio de Noronha, j. 20.10.2005).

However, as in other countries, the STJ found that arbitration agreements included in consumer contracts (as well as adhesion contracts) were void and null (3a Turma - REsp 819519 / PE – Rel. Min. Humberto Gomes de Barros, j. 9.10.2007).

At the State Court of Appeals level there is a strong drive in the direction of preserving the judgments rendered by arbitrators. Between 1998 and 2004, in the 27 State Courts of Appeal, 5 Federal Courts of Appeal and the STJ, approximately fourteen judgments were rendered with respect to the validity of arbitral awards. Of these, thirteen affirmed the validity of such awards, while only one denied it, which reveals a strong adherence and positive attitude of the Brazilian Courts towards arbitration.

As per the above mentioned information and objectively responding to the queries, one may state that:

a) Except for the State of Paraná Courts, the judicial environment for arbitration in Brazil is very friendly in all other 26 Brazilian States as well as in Federal Courts and the nation's highest court for non-constitutional matters, the Superior Tribunal de Justiça..

b) State-owned companies are bound by arbitration agreements, according to the STJ, but this test has not yet been fully made with regard to the State itself (i.e. the public entity, the government).

c) Both international and domestic arbitrations enjoy the same standing in Brazil.

d) The seat of arbitration is relevant only for the establishment of the appropriate Court with jurisdiction to enforce the arbitral award: in the case of a foreign seat, the (foreign) award must be brought before the STJ for enforcement; all other awards (domestic) are enforceable before the first instance local Courts.

To what extent are arbitral awards subject to control on the merits (including from the outlook of private international law or choice-of-law methodologies, rules or principles applicable or accepted in your country) or in respect of procedural notions or matters (e.g.,

due process) when rendered in your country or (if rendered abroad) when brought for enforcement/recognition in your country?

The criteria applicable in the judicial control of an arbitral award, be it domestic or foreign, are very similar. As a rule, Courts are not allowed to re-examine the merits of the arbitration award, be it domestic (cf. 3a Turma - REsp 693219 / PR – Rel. Min. Nancy Andrighi, j. 19.4.2005) or foreign (cf. Corte Especial - SEC 856 – Rel. Min. Carlos Alberto Direito, j. 18.5.05; SEC 760 – Rel. Min. Felix Fischer, j. 19.06.2006).

In other words, the grounds for nullity of a domestic arbitral award, provided for in article 32 of the Brazilian Arbitration Act, as well as the grounds for rejection of enforcement of a foreign award (basically the same included in the NY Convention), provided for in articles 38 and 39 of the BAA do not allow the judge to control the merits of the award, save in the case where there is offence to the public order.

Specifically, the choice-of-law methodology and the substantive law applied by the arbitral tribunal to establish the law applicable and judge the merits of the case are irrelevant for the purpose of judicial control of the arbitral award.

On the other hand, the procedural aspects of the arbitral proceedings relevant to the fulfillment of the due process of law clause are key in the judicial control of arbitral awards, as revealed by articles 32 (above mentioned), 38 and 39 of the Brazilian Arbitration Act (cf. STJ, Corte Especial – SEC 833 – Rel. Min. Luiz Fux, j. 16.08.06).

On one occasion, however, the STJ refused to examine a request for the enforcement of a foreign arbitral award and put an end to the proceedings without judging its merits on the grounds that the claimant was not the "legitimate" party for the request, for it was the mere assignee of the contract with respect to which the original contracting party had obtained a favorable arbitral (foreign) award (cf. STJ, Corte Especial – SEC 968 – Rel. Min. Felix Fischer, j. 30.06.06). Subsequently, however, the STJ recognized and enforced a foreign arbitral award rendered against a company that had merged with the original signatory of the arbitral agreement (cf. STJ, Corte Especial 894 – Rel. Min. Nancy Andrighi, j. 20.8.2008).

What is the notion of and role played by public policy in the recognition or enforcement of arbitral awards rendered abroad? Of lack of arbitrability? international mandatory rules or

lois de police (national or foreign)? To what extent do any of these reservations/notions serve the purpose of advancing primarily local or domestic notions regarding both substantive law and procedural law matters?

In Brazil the notion of public policy is multifaceted, with different meanings depending on the context that it is applied. It can be used as a means to avoid the application of a foreign law otherwise applicable according to the private international rules. It can also be used as an escape clause for the rejection of foreign judgments and arbitral awards deemed to be offensive to the average domestic political-economical-social standards. And finally it is used to classify certain domestic (and foreign) rules which are mandatory ("lois de police").

As an open-ended rule, the public policy plays a very important role in the recognition of foreign arbitral awards in Brazil. However, the public policy concept is narrowly interpreted and applied by the STJ (which works with even narrower interpretations than those used by the STF when it had jurisdiction over such recognitions).

For instance, the public order escape clause has been invoked by the STJ to reject enforcement of a foreign arbitral award which was not based on a valid arbitration agreement, i.e., formed upon the unequivocal and express will of the party to submit the dispute to arbitration; such discrepancy, according to the STJ, offended the public order (cf. Corte Especial – SEC 967- Rel. Min. José Delgado, j. 15.2.06; SEC 866 – Rel. Min. Felix Fischer, j. 17.05.06 – this latter judgment affirmed nevertheless that the control of a foreign arbitral award by the STJ is limited to the respect of certain formal aspects).

More recently, the STJ rejected a request for enforcement of a foreign arbitral award on the grounds that the absence of the party's signature on the arbitration agreement contained in a sales contract as well on the appointment of arbitrator by this same party violated: i) art. 4, para. 2, of the Brazilian Arbitration Act (applicable to standard form contracts or adhesion contracts), ii) the party autonomy principle and iii) the Brazilian public order (cf. SEC 978, Rel. Min. Hamilton Carvalhido, j. 17.12.2008).

On the other hand, the vast majority of judgments rendered by the STJ on enforcement of foreign arbitral awards rejected the public order allegation, be it:

a) with respect of service of process by a means other than rogatory letter, as allowed for by article 39 of the Brazilian Arbitration Act (cf. STJ, Corte Especial – SEC 874 – Rel. Min. Francisco Falcão, j. 19.04.06);
b) with respect to the conciseness of the reasons (motivation) of the arbitral award (cf. SEC 760 – Rel. Min. Felix Fischer, j. 19.06.2006)
c) with respect to allegation of exceptio non adimpleti contractus, which relates to the merits of the case and is not subject to control by the STJ (cf. SEC 507 – Rel. Min. Gilson Dipp, j. 18.10.2006)
d) with respect to the applicability of the Brazilian Arbitration Act to arbitration agreements executed before its entry into force in Sept. 1996 (cf. SEC 349 – Rel. Min. Eliana Calmon, j. 21.3.07)
e) with respect to the irrelevance of a lawsuit in course in Brazil where the debtor seeks annulment of the foreign judgment (cf. SEC 611 – Rel. Min. João Otávio de Noronha, j. 23.11.06)

Finally, the STJ in the judgment of SEC 802 (Rel. Min. José Delgado, j. 17.08.05) stated very clearly what were the meanings of the public order notion in Brazilian law, gave examples of mandatory laws, and eventually refused the allegation of violation of public order raised by the defendant.

In conclusion, in my opinion, the STJ, being a domestic court in essence, tends to apply the Brazilian legal notions regarding both substantive law and procedural law matters to cases involving the recognition and enforcement of foreign arbitral awards. And this is done for a number of reasons:

a) firstly, because the STJ judges generally lack international experience; it is only the more recent generation of judges (still working in the first instance) that have had the opportunity to study abroad and therefore have a broader view of the law (European and North-American experiences);

b) secondly because the opening of the Brazilian legal system to international cases (arbitration mainly) is relatively recent, starting in 1996, and it takes some time to incorporate the new legal institutions that come with arbitration (mainly international).

Bearing in mind your answers to questions 3-8 above, to what extent do arbitral awards or determinations influence, or may be considered as possibly influencing state court decisions or legislative change in your country? To what extent do courts of law in your country defer to determinations made by local or international arbitral institutions in charge of administering arbitrations? If no experience at hand, what would be the prospective answer to these questions? Please differentiate the areas of the law in which this influence exists or may potentially exist in the future.

The influence of arbitral awards on State Courts decisions is very little. Firstly because arbitral awards are not published and remain known only to the parties and the arbitral institution. Secondly because arbitration is not (yet) a traditional means for solving disputes in Brazil, but only an alternative means of dispute resolution, mainly in the business sector, that since 1996 has been growing steadily. Thirdly because the Judiciary is fairly well organized in Brazil, access to justice is quite open to everybody who seeks it – including foreigners, and therefore arbitration remains just an alternative means for dispute resolution.

The influence of arbitral awards on legislative change, except with regard to arbitration laws, is also very little. Some of the reasons abovementioned apply. Furthermore, the parliament members, with a few exceptions, are not widely aware of the importance of arbitration of a means for dispute resolution. On the other hand, the enactment of the 1996 Arbitration Act and its subsequent success in Brazil have led to other legislative initiatives such as bills on mediation (both compulsory and voluntary).

Though judges generally respect the will of the parties and the legal provisions concerning arbitration in both their negative and positive effects, in practice they still seem uncomfortable to abide by or defer to a (private) decision or determination made by local or international arbitral institution in charge of arbitration. Therefore, in practice the interaction between arbitral institutions and the Judiciary must be very diplomatic and

delicate so that judges do not feel their vested powers diminished by a determination (with force of law) made a private judge (i.e., by an arbitrator).

If and when arbitral awards are published and studied by the Brazilian legal community at large, I believe that they will have the potential to influence the law of contracts quite positively. And this is based on the fact that the majority of Brazilian judges (both at first instance and at Court of Appeal) are career judges with no previous experience in legal practice, who tend to depart from the classical contract principles, such as the binding force of contract agreements, and (mis)apply other contract principles such as "the social function of the contract" in a sense that warrants the breach of contract by one party to the detriment of the other – and the society as a whole, in L&E terms. In sum, according to an inquiry made by L&E scholars in Brazil, Brazilian judges tend to use their judgments as gap-fillings for situations uncovered by governmental actions (e.g., in health insurance contracts, labor contracts etc.).

Bearing in mind your answers to questions 1-9 above, to what extent do arbitral awards rendered in your country, enforced or enforceable in your country or concerning nationals of or residents in your country apply or may be deemed as based on Uniform Law? If no experience at hand, what would be your prospective answer to this question?

Being a civil law tradition jurisdiction, Brazil is still quite attached to the positive legal rules enacted in the Civil Code, Code of Civil Procedure etc.

Only the further development of arbitration in Brazil and the systematic publication and study of arbitral awards will allow for a consistent answer to this topic.

Personally, I believe that arbitral awards rendered or enforceable in Brazil – more than court judgments – apply Uniform Law more often than not, specially to commercial disputes.

Bearing in mind your answers to questions 1-10 above, what has been the impact of arbitral awards and determinations in introducing, firming up or applying Uniform Law, including through legislative change or the action of the courts, in your country? Of foreign court decisions regarding arbitral awards or determinations referring to or based on Uniform Law? If no experience at hand, what would be the prospective answers to these questions?

As said before, I believe that there is a potential impact of arbitral awards and determinations in introducing, firming up and applying Uniform Law in Brazil. For example, there is wide awareness in the arbitral community of the importance of the UNIDROIT Principles in governing international (and sometimes domestic) contracts, even if just as a supplement to the otherwise applicable domestic law.

The growing number of domestic and foreign arbitral awards enforceable in Brazil will certainly bring about questions related to the application of Uniform Law, which, however, has not so far occurred very often. The few examples are:

a) STJ – Corte Especial - SEC 856 – Rel. Min. Carlos Alberto Direito, j. 18.05.05: where the judgment refers expressly to the norms of the 1958 NY Convention (which do not require the signature of the parties on the arbitration agreement) and the uniform practices and rules in the international trade of cotton, compiled by the Liverpool (today International) Cotton Association.

b) STJ – Corte Especial - SEC 887 – Rel. Min. João Otávio de Noronha, j. 06.03.06 and SEC 839 – Rel. Min. Cesar Asfor Rocha, j. 16.5.07: where the STJ declared enforceable an arbitral award that solved a dispute related to the sale and purchase of Brazilian coffee rendered in accordance with the (uniform) rules of the standard contract and the Havre Coffee and Pepper Arbitration Chamber.

c) STJ – Corte Especial - SEC 866 – Rel. Min. Felix Fischer, j. 17.05.06: where the STJ rejected the enforcement of an arbitral award based on lack of evidence of a tacit arbitration agreement, but cited provisions of the 1958 NY Convention and the (uniform) rules of the GATFA – The Grain and Feed Trade Association.

d) STJ – Corte Especial - SEC 1.210 – Rel. Min. Fernando Gonçalves, j. 20.06.07: where the judgment refers expressly to the norms of the Liverpool (today International) Cotton Association applicable to the arbitral award.

e) STJ – Corte Especial - SEC 831 – Rel. Min. Arnaldo Esteves Lima, j. 03.10.07: where the judgment refers expressly to the (uniform) provisions of the 1958 NY Convention.

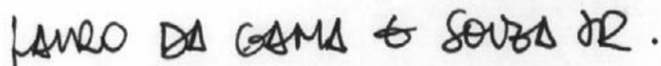
Bearing in mind your answers to questions 1-9 above what has been the impact on the fashioning of your national legislation on arbitration – domestic or international – or on

arbitral awards rendered in your country or concerning nationals of or residents in your country of: (a) the action and rules of international arbitral institutions (e.g. the International Court of Arbitration of the International Chamber of Commerce (ICC), the American Arbitration Association (AAA) and its International Centre for Dispute Resolution (ICDR), the London Court of International Arbitration (LCIA)); (b) the works of international organizations (e.g., UNCITRAL, UNIDROIT, the European Union, NAFTA, the Organization of American States); and (c) foreign court decisions or legislation reflecting the influence of the action or works of institutions or organizations like the ones mentioned in subparagraphs (a) or (b) above? If no experience at hand, what would be your prospective answers to these questions?

The 1996 Brazilian Arbitration Act was inspired by the 1985 UNCITRAL Model Law on Arbitration, the 1988 Spanish Arbitration Act and the 1958 NY Convention. At the same time that the Brazilian Parliament enacted the domestic law on arbitration it ratified the 1975 Panama Convention of International Commercial Arbitration. Therefore, there has been a positive influence of foreign and international legislation on the fashioning of the Brazilian law of arbitration.

With respect to its impact on domestic arbitral awards, it is noticeable in Brazil in the action and rules of the ICC (Brazilian parties are now the fourth largest client of ICC), which are known and applied by arbitral community more than ever. Less applied – and therefore less known – are the actions and rules of the American Arbitration Association (AAA) and its International Centre for Dispute Resolution (ICDR) and those of the London Court of International Arbitration (LCIA).

Rio de Janeiro, 6 January 2009.



Lauro Gama Jr.