УДК 340; 342.7

НЕКОТОРЫЕ АСПЕКТЫ СТРУКТУРЫ МЕЖДУНАРОДНЫХ КОНТРАКТОВ

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RELEVANT POINTS IN THE COMPOSITION OF INTERNATIONAL CONTRACTS

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АННОТАЦИЯ

В период глобализации торгово-экономические отношения проходят весьма оживленно и право должно учитывать нюансы договоров, которые касаются не только торговых отношений, но и сложных отношений между людьми, традициями, культурами. Следовательно, в таких договорах необходимо придерживаться строгих принципов международного права, в дополнение к методам разрешения споров, совместимых с динамикой торговых отношений в ходе глобализации.

ABSTRACT

In a globalized world economic and commercial relations transcend borders with extreme agility and ease, and the law must shape the nuances of contracts that involve not only trade relations, but also complex relationships between different peoples, traditions and cultures. Therefore, in contracts of this nature it is essential to adhere to strict principles of international law, in addition to methods of conflict resolution that are compatible with the dynamics of commercial relations in the globalized world.

Ключевые слова: права человека; международные контракты / договоры; арбитраж; разрешение споров; правовая политика.

Key words: human rights; international contracts; arbitration; resolving conflicts; legal policy.

Introduction

In a globalized world like the one we live in, where the internet is part of our daily lives connecting us and allowing us to relate to people from all over the world, commercial interaction would not be of much difference, even in ancient times where commercial relations were hampered by the lack of practicality from technology, contracts have never ceased to exist, even those that covered more than one national legal system.

Thus, we can glimpse the basic concept of international contracts, that is, a contract instrument belonging to the sphere of Private International Law that regulates the legal relations between two parties which elements of links link more than a single distinct legal system.

Concept

The jurist Luiz Olavo Batista brings us the international character of the contracts accepted by Brazilian law: "a contract has an international character when, due to the acts concerning its execution or execution, or the situation of the parties regarding their nationality or their domicile, or the location of its object, it has a link with more than one legal system". [**10, 82**] Another similar definition of international contracts we can find in the view of jurist Irineu Strenger: "International trade contracts are all by or plurilateral manifestations of the free will of the parties, aiming at patrimonial or service relations, which elements are binding on two or more extraterritorial legal systems, due to the strength of the domicile, nationality, principal place of business, place of contract, place of performance, or any circumstance that expresses an indicative link of applicable law". [**21**]

With regard to the principles that govern international contracts, we see that these are the same as those found in contracts that bind only one legal order, or as we can refer to "national contracts", these are: Principle of good faith, Pacta sunt servanda and Autonomy of the Will. The same applies to the essential requirements in drawing up a "national contract" such as the qualification of the parties involved in the business relationship, the description of the assets to be the subject of the contract, the exact description of the duties and responsibilities that bind the parties to the contract, determining the forum of election to resolve future conflicts and / or arbitration clause. This is because what makes an international contract or not, whether it has international characteristics or not, is precisely the fact that it involves more than one national legal system, and this becomes noticeable when we see the determination of domicile, nationality, Lex voluntatis, location of headquarters, center of main activities, forum, etc ... all of which describe the territoriality of more than one country.

An important point still to be considered about the concept of international contracts is that described in article 1 of the "Inter-American Convention on the Law Applicable to International Contracts" held on March 17, 1994, to which Brazil was a signatory. This article states that: "This Convention shall determine the law applicable

to international contracts. It shall be understood that a contract is international if the parties thereto have their habitual residence or establishments in different States Parties or if the contract has objective ties with more than one State Party. This Convention shall apply to contracts entered into or contracts to which States or State agencies or entities are party, unless the parties to the contract expressly exclude it. However, any State Party may, at the time it signs, ratifies or accedes to this Convention, declare that the latter shall not apply to all or certain categories of contracts to which the State or State agencies and entities are party. Any State Party may, at the time it ratifies or accedes to this Convention, declare the categories of contract to which this Convention will not apply."[**5**] The referred article endorses the aforementioned regarding the concept of the international contract, but it includes States as part of the contract, whether these are contracts between States, or between state agents and private companies. However, even though Brazil is a signatory to this convention, it has not yet been ratified in its domestic legal system.

As for the classification of contracts, Maristela Basso lucidly presents us with three fundamental phases, namely: "formation (generation), completion (improvement) and execution (consummation). However, in each of these parts there will be an adjustment of the will showing particular contours to the contract, but all are indispensable for the constitution, modification and extinction of the legal bonds".[**13**]

When talking about international contracts, we can see that some clauses are essential as far as the composition of the referred contract is concerned; this is because these clauses help in the resolution of conflicts. They are: forum election clause, hardship clause and arbitration clause.

Autonomy of Will and Forum Election Clause

When dealing with international contracts and in the elaboration of their essential clauses, it is essential to mention and discuss the autonomy of the will between the parties regarding the decision of the right to be applied to the contract when resolving conflicts. According to Professor Maristela Basso, although the autonomy of the will between the parties is widely admitted by the legal system, this does not mean

"unlimited freedom of action and absolutism" because in their words "international trade has contributed to strengthening the foundations of lex voluntatis, which, however, cannot remove certain limiting elements, such as: the imperative and public order laws that are in force in the country where the contract will be executed".[**12**] "In international contracts the limitations to the autonomy of the parties result from both the notions of internal public order and international public order. As for the first, we must understand that complex rules and imperative principles determined by the legislator and on which the legal building is based, with the understanding that it is basically up to the judge to interpret its content - from the intimate forum of the one who judges, based on pillars of legal and social construction". [**12, 199**]

According to Luiz Olavo Baptista, the negotiator who, when drafting the contract, should pay important attention when choosing which rules of international law should be applied to the contract. [**10**] The fact is that although the international contract contains in its constitution the incidence of two or more legal systems, at the time of determining the law to be applied to settle the contractual order and possibly existing conflicts, the law of a single State should be linked to the contract, thus preventing the emergence of a self-regulated contract or said lawless contract. Further, Luiz Olavo Baptista, who knowingly elucidates that "the clauses of choice of law and forum are, of course, formulas that many think can definitively resolve the question of the applicable law", however, "whoever wants, and who has a certain international experience knows that they do not generate absolute certainties. Hence the choice, by many, of the arbitration clause as a means of avoiding conflicts of law". [**12, 201**]

It must be understood that the choice of the law to which the contract will be governed must be made with caution, the chosen legal system must be in line with and in favor of the practices determined in the contract, as its legal effects will only be produced in the country it accepts the norm that gives the parties the right to this choice. Clause of choice of forum in its concept in the words of Luciano Benetti Timm: "The choice of forum clause is a clause inserted in a contract, which determines the choice by the parties of which court will have jurisdiction over a possible dispute, involving

the contract. Its limitation derives from procedural rules of the countries at stake. The choice of forum does not imply the application of the material law of the country of the elected court. In the absence of a specific law election clause applicable to the dispute (or in the prohibition of autonomy of the will in some countries), it may result in the application of the conflictual rules of the country of the elected forum, to resolve the apparent conflict of rules in space and, consequently, a legal system unwanted by the parties". [**23**]

Some legal systems restrict the so-called "freedom" of action, which supposedly allows the clause of choice of jurisdiction, as is the case at the beginning of the Brazilian legal system that in its article 9 of the Law of Introduction to the Brazilian Civil Code limits the action of autonomy will when determining that: "Art. 9o In order to qualify and govern the obligations, the law of the country in which they are constituted shall apply," [**2**] that is, the aforementioned article provides that while as a public order rule, its determination cannot be removed by the will of the parties. However, this does not mean that the forum election clause is prevented, since the same legal order in its article 25 in the Civil Procedure Code provides specifically in this respect: "Art. 25. It is not the responsibility of the Brazilian judicial authority to process and judge the action when there is a clause for the election of an exclusive foreign forum in an international contract, which was accused by the defendant in the defense. § 1 The provisions of the caput do not apply to the cases of exclusive international competence provided for in this Chapter. § 2 Art. 63, §§ 1st to 4th". [**3**]

However, this should be a clause expressed in the contract "Art. 63. The parties can modify their jurisdiction by reason of the value and the territory, choosing a forum where action arising from rights and obligations will be proposed. Paragraph 1. The choice of court only takes effect when it appears in a written instrument and expressly refers to a specific legal business". [**3**]

Still regarding the forum election clause, we see its repeated acceptance based on the Buenos Aires Protocol that was introduced by Brazilian law through Decree No. 2,095, of December 1996, which in its Articles 4 and 5 provides: "Article 4:

1. In conflicts arising from international contracts in civil or commercial matters, the courts of the State Party in whose jurisdiction the contractors have agreed to submit in writing shall be competent, provided that such adjustment has not been obtained in an abusive manner. 2. It is also possible to agree on the election of arbitral tribunals.

Article 5: 1. The jurisdiction election agreement can be made at the time of the conclusion of the contract, during its term or once the dispute has arisen. 2. The validity and effects of choice of forum shall be governed by the law of the States Parties that would have jurisdiction in accordance with the provisions of this Protocol. 3. In any case, the most favorable right of validity of the agreement will be applied".

The Hague Convention on the choice of forum agreements held in 2005 also talks about this and in its article 1 "1. This Convention is applicable, in proceedings of an international nature, to exclusive choice of court agreements concluded in civil or commercial matters". Right afterwards in your art. 5 stipulates that: "The court or courts of a Contracting State designated by an exclusive choice-of-court agreement have jurisdiction to decide any dispute to which the agreement applies, unless it is considered null and void under the law of that State. 2. A court having jurisdiction under paragraph 1 may not refuse to exercise its jurisdiction on the grounds that the dispute must be decided by a court of another State". [**4**] This provides greater support for the forum election clause.

Another international convention that addresses this issue is the Inter-American Convention on the Law Applicable to International Contracts, which, although Brazil has not yet ratified the provisions in Articles 7 and 8: "Article 7: The contract is governed by the right chosen by the parties. The parties' agreement on this choice must be expressed or, in the absence of an express agreement, it must be evident from the conduct of the parties and the contractual clauses, considered as a whole. This choice may refer to the entire contract or part of it. The choice of a specific forum by the parties does not necessarily imply the choice of the applicable law.

Article 8: The parties may, at any time, agree that the contract is totally or partially subject to a right other than that by which it previously governed, whether or not this

was chosen by the parties. However, such modification will not affect the formal validity of the original contract or the rights of third parties".[**5**]

Even though the Law of Introduction to the Civil Code limits the clause on the choice of court, the Brazilian legal system has shown itself to be receptive and favorable to its application as long as it is used expressly. Even though Brazil has not ratified the aforementioned convention, it is possible to see that its legal system is in line with the international regulations that deal with the subject in question.

Lex Mercatorial

The illustrious doctrine writer Irineu Strenger conceptualizes lex mercatória as "a set of procedures that enable adequate solutions to the expectations of international trade, without necessary connections with national systems and in a legally effective way". [**21, 58-59**]

In the view of Antônio Carlos Rodrigues do Amaral they would be "The customary rules developed in international business applicable in each determined area of international trade, approved and observed regularly". [**6, 59**]

Josué Scheer DeBres presents us what are the sources of lex mercatoria cited by the doctrine: "a) The general principles of contract law that are related to domestic law and international law as an example: pacta sunt servanda, culpa in contrahendo, exceptio non adimplenti contractus, principle of good faith; b) The use of international commercial customs practices, resulting from voluntary and repeated actions of equivalent procedures by the operators of economic trade; c) Standard contracts or standards, which would be regulations or formulas for contracts, generally prepared by international organizations, and are standardized, with numerous points in common, but differentiated by the characteristics of each branch of trade, such contracts seek to standardize commercial practice; d) Arbitral jurisprudence is the environment in which lex mercatoria takes place, given the close link between lex mercatoria and arbitration". [**14**]

At this point we can glimpse that Lex Mercatória does not follow its own legal order or that in itself it respects a State law, this is because its practice originates from accepted international commercial practices, so it is not difficult to come across jurists who reject its application in contracts because they see it as an act of disrespect for the state legal order. However, it must be considered that allied to the principle of the autonomy of the will, the lex mercantil can be applied as long as it is properly expressed between the parties.

Still in defense of his practice, Pedro Pontes de Azevedo states that: "International arbitration is the means by which the emanations of the lex mercatoria are applied, provided that the contractors admit, when the pact, such a form of conflict resolution. Therefore, there is no need to talk about an affront to the sovereignty of States, nor about an affront to public order". [**8**]

Also in this context, quoting José Alexandre Tavares Guerreiro: "(...) the arbitration jurisprudence integrates, in turn, the content of the lex mercatoria, which, even without constituting an order or system, tends to become institutionalized, increasingly overcoming the insufficiency of the conflict method (of laws and jurisdiction) of private international law, for the discipline of international contracts, since the result of the application of this method is exactly the determination of a national law, which is no longer consistent with the contemporary needs". [**16, 166**]

Hardship Clause

In an objective way in the words of the author Leonardo Gomes de Aquino "It is considered hardship the substantial alteration of the balance of the contract caused by factors, such as, economic, social, financial, legal, technological, political, or others, which cause harmful consequences for either party". [**7**]

In the words of Luiz Olavo Batista, he conceptualizes the hardship clause, as: "(..) a clause that allows the revision of the contract if circumstances arise that substantially alter the primitive balance of the parties' obligations. This is not a special application of the theory of unpredictability to which some want to bring this clause

back, (...). It is a new technique to find an adequate reaction to the occurrence of facts that alter the parties' economy, to maintain ... under the control of the parties, a series of potential controversies and to ensure the continuation of the relationship in circumstances that, according to the schemes traditional legal systems could lead to the termination of the contract". [**10,143-144**]

We have that the emergence of hardship clauses originates from long-term international contracts, which at the time of its conclusion could not predict the nuances of the international market with its crises, generating an imbalance in the rights and obligations previously agreed between the parties and thus damaging the compliance with this contract, in this way with the aim of preserving commercial relations, allows the hardship clause the possibility of revision, a renegotiation of the terms previously agreed thus readapting and preserving the contractual balance due to the supervenience of an unpredictable fact.

The International Institute for the Unification of Private Law (UNITROID) is an independent intergovernmental organization, headquartered at Villa Aldobrandini, in Rome, and aims to study the needs and methods to modernize, harmonize and coordinate private law and, in particular, trade between states and groups of states, as well as formulating uniform instruments, principles and rules to achieve these objectives.

This institute issued a document that clearly and objectively gathers the concepts related to international contracts.

Among these principles are described some of the elements that make up the hardship clause, as adduced by the illustrious master in Constitutional Law by PUC-SP Vladimir Oliveira da Silveira: "The hardship clauses presuppose some elements - many of them legally established in the UNIDROIT principles, as seen in art. 6.2.2 - for its incidence (i) unpredictability of the event; (ii) inevitability, (iii) externality in relation to the parties' will; (iv) great difficulty in executing the contract; (v) excessive burden on one of the parties when fulfilling the obligation and, consequently, (vi) contractual imbalance". [**19**]

It is important to note that the hardship clause is not to be confused with the force majeure clause. The Vienna Convention on the International Sale of Goods of 1980 in its article 79 clarifies to us what is "force majeure": "Article 79 (1) A party is not responsible for the failure of any of its obligations if it proves that such failure to perform was due to an impediment beyond her control and that it was unreasonable to expect her to take it into account when the contract was concluded, to prevent or overcome it, or to prevent or overcome its consequences". [**1**]

Brazilian law also does this by defining force majeure in Article 393 Sole Paragraph of the Civil Code: "Art. 393. The debtor is not liable for damages resulting from unforeseeable circumstances or force majeure, unless expressly held responsible for them. Single paragraph. The act of God or force majeure occurs in the necessary fact, the effects of which it was not possible to prevent or prevent".[**2**]

In this way, we have that force majeure translates into an unpredictable fact, which is beyond the control of the human will, its occurrence is inevitable, making the execution of the contract impossible, however, as Dr. Carolina Gladyer explains: "... the central idea of this principle is linked to the fact that, in the event of unforeseeable circumstances or force majeure, the parties should be exonerated or released from their obligation. This is the effect of the events provided for in this contractual clause". [**17**]

Although the two clauses are similar in their concepts, we can see that the difference between them lies in the fact that while the force majeure clause represents a clear exception to the "Pacta Sunt Servanda" principle and is based on the damage caused by the unpredictable fact, the hardship clause in turn shows itself as a complement to the aforementioned principle, as well as according to the teaching of the other Vladmir Oliveira da Silveira"... the hardship clause is based on the Theory of Excessive Onerosity, not constituting as a main element for its characterization, the unpredictability of the event, but the excessive cost that comes from it to one of the contracting parties". [**19**]

We can glimpse from the principle of UNIDROIT in its article 7.1.7 these elements of connection and division concerning the force majeure and hardship clause.

"Article 7.1.7 (Force majeure) (1) Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences. (2) When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract. (3) The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt. (4) Nothing in this article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due".

The illustrious Doctor also adds that certain elements are necessary for the application of the clause in question, which are: "... (i) the main events that would give him the opportunity (ii) the people competent to carry out the rehabilitation, (iii) the negotiation modalities and (iv) the consequences of these, that is, the possibility of third party intervention in the renegotiation of the contract or even the hypothesis of partial or total suspension of the effects of the contract while the renegotiation lasts". [**19**]

The elements mentioned above are important because although we are dealing with a supervening and unpredictable event, we can still determine how to apply a certain clause. Regarding the effects of this clause, they are duly clarified in the UNIDROIT Principle in its article 6.2.3: "Article 6.2.3 (Effects of hardship)

(1) In case of hardship the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based. (2) The request for renegotiation does not in itself entitle the disadvantaged party to withhold performance. (3) Upon failure to reach agreement within a reasonable time either party may resort to the court. (4) If the court finds hardship it

may, if reasonable, (a) terminate the contract at a date and on terms to be fixed; or (b) adapt the contract with a view to restoring its equilibrium".

Thus, we can state that its effects are specifically the renegotiation, the right to go to court and by its decision to terminate or modify the contract.

Arbitration Clause

Arbitration clauses are a means of resolving conflicts belonging to private law, which do not adhere to state jurisdiction. They are aggregated in international contracts, through the inclusion of agreements called "arbitration clause", which allows the parties to agree the solution by arbitration in case of future contractual disputes, this will occur through a decision made by arbitrators of private competence, and will be appointed by the litigating parties, this is called an "arbitration commitment", that is, the adjustment between parties, anticipating and determining the arbitration procedure after the issue arises.

The sentence handed down by the national arbitral tribunal has the value of an extrajudicial enforcement order, and may be enforced before the Brazilian Court without the need for prior approval, but in case of doubt or suspicion by the foreign party, it is possible to carry out arbitration in a national arbitral tribunal, however with a foreign referee. Therefore, it is possible to verify that the arbitration clause presents itself as a rival of state justice, and this is due to the fact that it presents positive results in filling the gaps left by the national legal system, mainly with regard to the conflict of laws to be applied (national or international) as well as for its speed, however, it is precisely because it is effective and does not have national laws at its core that many jurists see pejoratively in arbitral justice, because in a certain way when choosing an arbitral tribunal the parties choose to withdraw the competence to resolve conflicts from national courts.

In Brazil, the arbitration law is determined by Decree Law No. 9,307, of 23 September 1996 and presents itself as a kind of arbitration convention, which, as stated above, is the will agreement that determines and details the solution of conflicts by

submitting this before the arbitral tribunal. However, it is important to note that the law distinguishes between arbitration clause and arbitration commitment. Article 4 of the referred law presents the arbitration clause as: "Art. 4 The arbitration clause is the convention by which the parties to a contract undertake to submit to arbitration any disputes that may arise, regarding such contract".

Articles 9 and 11 of the same law determine the arbitration commitment as:

"Art. 9º The arbitral commitment is the convention through which the parties submit a dispute to the arbitration of one or more persons, which may be judicial or extrajudicial. Art. 11. The arbitral commitment may also contain: I - place, or places, where arbitration will take place; II - the authorization for the arbitrator or arbitrators to judge by equity, if so agreed by the parties; IV - indication of national law or corporate rules applicable to arbitration, when the parties so agree".

In this way, we see that the distinction between the two is that the first arises when the parties elect the arbitral tribunal before the dispute arises; whereas, the second shows that the election by the arbitral tribunal occurs after the dispute arises.

Luciano Benetti Timm still teaches us that: "The arbitration clause can be full or empty. It is filled in the assumptions in which it is written with all the elements for the institution of arbitration: language, place of arbitration, arbitration institution, regulation, provision on the burden of succumbence. The clause is empty, when it indicates the preference of the parties through arbitration, without, however, enabling the immediate institution of arbitration, and the injured party must appeal to the Judiciary under the terms of article 7 of Law No. 9,307 / 96, if the other part becomes recalcitrant. More dangerously, the arbitration clause can be pathological, which happens when the parties elect a non-existent arbitral institution or even in conflict with state jurisdiction". [**23**]

As an explanation of the advantages of the arbitration clause, the author Garcez does not present the conveniences of applying arbitration as a method used to resolve conflicts in international contracts: a) avoiding the length of judicial proceedings, and

consequently promoting greater speed in resolving the conflict; b) avoid the innumerable amount of judicial remedies that are proper to the state jurisdiction, thus promoting the same effect of speed; c) the possibility of the process being carried out in confidence; d) the possibility for the judgment to be carried out by an arbitrator specialized in the case with regard to technical or more specific matters; e) to allow the process in question to be judged by the generics, general principles of international trade, general rules of law, by equity, or even by the legislation of the country that may be chosen by the parties; f) the possibility that the litigation may take place in a country chosen by the parties, that is, neutral". [**15, 146-148**]

Conclusion

Having made the weightings and detailed analyzes on the structure of the main and most relevant clauses of international contracts, especially those that establish cogent strength, we can infer that despite the robustness and guarantees existing in the midst of these determinations, the use of arbitration as a resolution of conflicts finds applicability resistance in Brazil.

It is true that the clauses of choice of forum, hardship and arbitration, here analyzed extensively, give force to international contracts, fundamentally with regard to the rigid principiological foundation, especially those of lex voluntatis and lex mercatori. These clauses are of paramount importance for international contracts, as they derive not only from the force of self-enforcement, but also the means of resolving conflicts, and all with faithful observance and respect for the will of the parties.

And in a globalized world in which commercial relations transcend borders with extreme agility and ease, the law must shape the nuances of contracts and commercial relations that involve not only trade relations, but also complex relationships between different peoples, traditions and cultures. Therefore, in contracts of this nature it is essential to adhere to strict principles of international law, in addition to methods of conflict resolution that are compatible with the dynamics of commercial relations in the globalized world.

Finally, it appears that in the Brazilian scenario the use of alternative means of resolving conflicts such as arbitration is very reluctant, because, although there is a significant legislative framework that prescribes it, in Brazil, culture is still ingrained. to use the role of the state to guarantee and protect rights, which contributes to a close view that arbitration is an antagonist of state justice, although the country has not yet ratified the Inter-American Convention on Law Applicable to International Contracts.

Bibliography:

1. Convenção da ONU sobre os Contratos de Compra e Venda Internacional de Mercadorias. Site http://www.cisg-online.ch/__temp/CISG_portugues.pdf. Acessado dia 01/05/2020
2. Civil Code of Brazil, URL: http://www.planalto.gov.br/ccivil_03/leis/2002/l10406.htm. (Acessado dia 01/05/2020)
3. Civil Procedure Code of Brazil , URL: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm (Acessado 29/04/2020)
4. Hague Conference on Private International Law, URL: https://www.hcch.net/pt/instruments/conventions/full-text/?cid=98. (Acessado 29/04/2020)
5. Inter-American Convention on the Law Applicable to International Contracts" held on March 17, 1994. URL: http://www.oas.org/juridico/English/Treaties/b-56.html (Acessado dia 27/04/2020)
6. AMARAL, Antônio Carlos Rodrigues do. (coord.) Direito do Comércio Internacional: Aspectos Fundamentais. São Paulo: Aduaneiras, 2004. p. 59.
7. AQUINO, Leonardo Gomes de; As Particularidades Conceituais da Cláusula de Hardship; IJP - Revista Jurídica – n.º 15/2012
8. AZEVÊDO, Pedro Pontes de; A Lex Mercatória e a sua Aplicação no Ordenamento Jurídico Brasileiro. prim@ facie – ano 5, n. 9, jul./dez. 2006, pp. 93-105.

9. BAPTISTA, Luiz Olavo. Contratos Internacionais. São Paulo: Lex Editora, 2010.

10. BAPTISTA, Luiz Olavo. Dos Contratos Internacionais: Uma Visão Teórica e Prática. São Paulo: Saraiva, 1994.

11. BAPTISTA, Luiz Olavo. Dos Contratos Internacionais – Uma Visão Teórica e Prática. São Paulo: Saraiva, 1994. p. 143-144.

12. BASSO, Maristela. A Autonomia da Vontade nos Contratos Internacionais do Comércio; Revista da Faculdade de Direito da UFRGS, v. 12, p. 198-211, 1996.

13. BASSO, Maristela. Cartas de Intenção ou Contratos de Negociação. RT 94-5, Nov. 1994.

14. DEBRES, Josué Scheer; O Contrato Internacional à Luz do Direito Internacional Provado Brasileiro - Revista Eletrônica de Direito Internacional, vol. 6, 2010, pp. Disponível em: http://www.cedin.com.br/revistaeletronica/volume6/

15. GARCEZ, José Maria Rossani. Elementos Básicos de Direito Internacional Privado. Porto Alegre: Síntese, 1999. p. 146-148.

16. GUERREIRO, José Alexandre Tavares. Fundamentos da Arbitragem Comercial Internacional. Tese doutorado. USP: São Paulo, 1989

17. RABELO, Carolina Gladyer; Contratos Internacionais e Clausula Harsdship. Augusto Guzzo Revista Acadêmica, 2015, N°15, 144-155.

18. SANTOS, André Luiz Rigo Costa dos; Cláusulas de Hardship: A Possivel Solução para Assegurar Relações Contratuais Internacionais em Tempos de Crise como a Brasileira. Revista de Direito Internacional e Globalização Econômica. Vol 1, nº 1, jan-jun 2017, p. 136-159. ISSN2526-6284.

19. SILVEIRA, Vladmir Oliveira da, A Cláusula de Hardship nos Contratos de Comércio Internacional. URL: http://www.publicadireito.com.br/conpedi/manaus/arquivos/anais/XIVCongresso/077.pdf. Acessado dia 01/05/2020

20. SOARES, Marta Gonçalves da Silva; A Cláusula de Eleição de Foro em Contratos lntemacionais. Monografia apresentada no Curso de Especialização (Pós-

Graduação Latu Sensu) "O Novo Direito Internacional", organizado pelo Departamento de Direito Público e Filosofia do Direito, da Faculdade de Direito da Universidade Federal do Rio Grande do Sul, 1 ªedição, 1999-2000

21. STRENGER, Irineu. Contratos Internacionais do Comércio. São Paulo: Revista dos Tribunais, 1986

22. STRENGER, Irineu. Direito do Comércio Internacional e Lex Mercatoria, São Paulo: Ltr, 1996.

23. TIMM, Luciano Benetti; A Cláusula de Eleição de Foro Versus a Cláusula Arbitral em Contratos Internacionais: Qual é a Melhor Opção entre as Partes? Researchgate, São Paulo, 2015 – URL: https://www.researchgate.net/profile/Luciano_Timm/publication/268058181_A_CLAUSULA_DE_ELEICAO_DE_FORO_VERSUS_A_CLAUSULA_ARBITRAL_EM_CONTRATOS_INTERNACIONAIS_QUAL_E_A_MELHOR_OPCAO_PARA_A_SOLUCAO_DE_DISPUTAS_ENTRE_AS_PARTES/links/5554968308ae6fd2d820393e/A-CLAUSULA-DE-ELEICAO-DE-FORO-VERSUS-A-CLAUSULA-ARBITRAL-EM-CONTRATOS-INTERNACIONAIS-QUAL-E-A-MELHOR-OPCAO-PARA-A-SOLUCAO-DE-DISPUTAS-ENTRE-AS-PARTES.pdf Acessado 04/05/2020