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## The Growing Importance of Arbitration in International Finance

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# The Growing Importance of Arbitration in International Finance\*

*Roberto G. MacLean\*\**

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## I. Introduction.

The solution of controversies is one of the services offered by the State to its community. In principle, this service is, generally, an exclusive one (at least in some of the areas it serves, such as criminal law or divorces), and its basic nature allows for no other server in the market. Most often in the area of financial, economic or commercial disputes, legal and judicial systems have not been as jealous in keeping an absolute monopoly over conflict resolution. In any case, the principle of state exclusivity in conflict resolution holds

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valid only as far as the judicial system is socially efficient; otherwise, society itself provides its own alternative solutions. However, as we shall see, alternative ways of solving disputes work well in some situations, but not in others. The purpose of this article is to explore what is happening in this respect in the area of financial disputes.

The relationship between law and the judicial system on the one hand, and the economic and financial community on the other, has recently become clearer. For a good while it was thought in many parts of the world that legal and judicial systems were the outcome of the economic order that determined them. Positivist jurists saw the two of them as unrelated, at least for serious scientific legal purposes. What economists have been telling us during the last decade is that the economy of a country is the result of what the legal and judicial systems *allow* it to be. Apart from a rich bounty of legal literature, two recent Nobel Prizes in Economics (North and Coase) sustain just that.<sup>1</sup> An inefficient judicial system reduces the opportunities of access and increases the costs of transaction. Preliminary studies by the World Bank staff and other economists tentatively quantify the economic impact of a judicial system at around fifteen to twenty percent of the growth rate of a country.<sup>2</sup>

## II. A View of the Landscape.

From the windows of the offices of a corporate international lawyer, a comparative legal scholar, or an officer of an international financial institution, it is possible to see a panorama in which the great bulk of financial disputes is still adjudicated by the national courts of different countries rather than by arbitration or other non-judicial means. Along with torts, these disputes are the great bulk of the civil cases handled by those courts. Among others, in Norway, Denmark, New Zealand, Switzerland, Finland, Ireland, Austria, Australia, Germany, Singapore, and Hong Kong, the perception by both national and foreign users is that the courts are doing either an "excellent" or a "very good" job.<sup>3</sup> But the easy flow of efficient facilitation of international finance in a global society requires more; it requires that the social efficiency of both the legal and the judicial systems is a reality—not only in certain parts of the globe but, at the very least, in a substantial part of it. A close examination shows that this is far from being the case.

In Peru, for instance, businesspeople consider that it is not worthwhile for them to go to court to collect debts below five or ten thousand U.S. dollars, depending on the size of the firms involved. In inflationary economies, like Venezuela or Ecuador in the seventies or

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1. See Ronald H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960); LEE J. ALSTON ET AL., *EMPIRICAL STUDIES IN INSTITUTIONAL CHANGE* (1996); DOUGLASS C. NORTH, *INSTITUTIONS, INSTITUTIONAL CHANGE, AND ECONOMIC PERFORMANCE* (1990). See also DOUGLAS G. BAIRD ET AL., *GAME THEORY AND THE LAW* (1994); ROBERT COOTER & THOMAS ULEN, *LAW AND ECONOMICS* (1988); RICHARD A. ESPSTEIN, *SIMPLE RULES FOR A COMPLEX WORLD* (1995); WILLIAM M. LANDES & RICHARD A. POSNER, *THE ECONOMIC STRUCTURE OF TORT LAW* (1987); RICHARD A. POSNER, *THE ECONOMICS OF JUSTICE* (1981); RICHARD A. POSNER, *THE PROBLEMS OF JURISPRUDENCE* (1990); RICHARD A. POSNER, *ECONOMIC ANALYSIS OF THE LAW* (4th ed. 1986).
  2. Robert M. Sherwood et al., *Judicial Systems and Economic Performance*, 34 Q. REV. ECON. & FIN. 101 (1994).
  3. World Competitiveness Report (1993/94).
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eighties, creditors had only collected minimal amounts of their loans after two or three years in court. In Egypt, the battle to obtain payment on a debt is barely begun with the receipt of the "final" judgment in court. In Indonesia, the reduced percentage of debts that can be effectively collected after a judgment is rather small. In Poland, the debt collection process is so long, costly, and cumbersome that the government has had to exonerate banks from the need to resort to a judge to collect privileged debts, the payment of which they can demand directly from the debtor through the sheriff of the court, in order to prevent the collapse of its banking system. In Russia, a number of bank insolvencies during the early nineties created chaos in the courts with long lines of complainants waiting all night for several weeks to present their complaints. In Albania, the collapse of the pyramid system in some financial institutions created havoc that required intervention from abroad to calm the riots that followed. And even worse, in some cases, mobsters and gangsters moved into the scene and began to act as court enforcers.<sup>4</sup> In all such cases, businesspeople and the general population look for alternatives—not merely for auxiliaries or complements, but for true alternatives. But can arbitration really be a valid alternative?

Not all the changes have been only for the worst, of course. All of those mentioned and many other similar events have created a need to look for valid alternatives, and although most of the formulas found were more related to trade than to finance, some examples exist. For example, the debt crisis of the seventies and eighties in Latin America caused the reversal of a long and solid tradition that had reached in many countries the rank of a constitutional principle—the Calvo Clause. The use of the "clause" had prevented States from resorting not only to domestic or international arbitration, but also to judicial action in any other jurisdictions. According to the Calvo Clause, any dispute that arose from a contract between a state and a foreign party had to be submitted to local law and local jurisdiction, thus excluding the option of national or international arbitration. Changes also have occurred in the doctrine of sovereign immunity, which previously had created a barrier for creditors to sue sovereign debtors. Under that doctrine, the creditors were frequently unable to resort to arbitration in those matters. Additionally, the ratification by a large number of States of the New York Convention and the Panama Convention has made the international recognition and enforcement of arbitral awards much easier. These events encouraged other developments, such as the World Bank sponsoring the creation of the International Center for the Settlement of Investment Disputes (ICSID) as a forum for investment disputes. One economist notes that, after a late start in the financial services industry, arbitration now seems to be gaining momentum quickly.<sup>5</sup> "A few years ago a number of prominent financial institutions committed to resolve their internal disputes by binding arbitration. Then financial institutions tentatively began to take customer disputes to arbitration."<sup>6</sup>

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4. *BBC Summary of World Broadcasts: Russian Bankers Demand Legislation to Protect them from Assassination Attempts* (British Broadcasting Corporation, Aug. 4, 1995), available in LEXIS, News Library, Curnws File. Between 1993 and 1995, the Russian Mafia was suspected of 83 assassination attempts and 45 assassinations of bankers in Russia. The Russian Mafia has, in fact, settled down somewhat because in order to "operate" they demand of the person "hiring" them the production of a valid and conclusive judgment.

5. See JAMES R. BUTLER, JR., *ARBITRATION IN BANKING* (1988).

6. *Id.* at 24.

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### III. A Sobering Reflection.

Even though businesspeople are resorting more often to arbitration, not all types of financial disputes are equally suitable to this type of quasi-judicial solution. We should still recognize—without prejudice—that courts are still the best alternative in some cases, while private justice is better in other cases. Arbitration implies, in principle, that all parties to a suit—at some given moment—agreed to arbitrate, and that there are no reluctant litigants. When this is not the case, it might be necessary to resort to preventive coercive measures that arbitration cannot generally provide.

Financial disputes exemplify how important it is to carefully consider all the consequences of the decision to arbitrate. With respect to financial disputes, there is probably nothing more pressing and important, as far as volume of the number of cases is concerned, than debt collection—and most likely, nothing is as ill-suited to the classical and traditional forms of arbitration. In addition, small claims arbitration can result in almost unaffordable expenses that make litigation uneconomical outside of court. On the other hand, in a claim by a large number of depositors against their bank, the psychological elements involved in mass behavior do not create a climate in which arbitration can be most effective. Alternatively, differences on technical financial matters like currency exchange, particular types of interest, negative pledge, devaluations or swaps are outside of the general training and experience of the average judge in developing nations; there lawyers are better trained in constitutional, civil, criminal or procedural matters instead of financial, monetary or economic problems. To avoid this paradox, some syndicated lenders will include a contractual clause forcing borrowers to submit to the jurisdiction of the lender banks. If of different jurisdiction, the borrowers submit to that of the agent or lender, which is very often New York or London, where judges are better qualified in these areas. In this arena, the advantages for resorting to arbitration are more evident. The Permanent Court of International Arbitration at The Hague has also modified its statutes in order to hear cases in which one of the parties is not a state, opening a new acceptable forum for sovereign debtors. But in many countries, a long list of approvals and authorizations are still required for governments to become part of arbitration procedures, which often defeats the purpose of arbitrations.

### IV. The Necessary Context for Arbitration.

The social efficiency of international non-judicial means of solving disputes depends on more than just writing a good law. Of course, a good law provides adequate tools and a frame within which a controversy can unfold. A good law is necessary but, alone, it is not sufficient because arbitration requires other external elements in order to fulfill its true role in society. Countries as diverse as Russia, Egypt, Indonesia, Guatemala, and Peru have reasonably good arbitration laws and institutions; yet “reasonably good” is a far cry from “successful.” While it may be true that a good arbitration can take place in those countries, arbitration is not socially, politically, or economically significant there. Thus, arbitration cannot fulfill its important and transcendental role for the citizens of those countries. What happens is that people simply do not resort to arbitration as a practical solution in significant numbers; arbitration is still elitist. Most people are still unaware that parties in arbitration enjoy more confidentiality, that parties in arbitration can expect greater expertise from arbitrators than

from judges or juries, and that arbitration is faster, less expensive, less formal, and more final than a judicial proceeding.<sup>7</sup> This gap in knowledge results in a lack of community response to the problem. Compound this with a stereotype of arbitration, especially those sponsored by business associations, as biased against the customers, and arbitration awards tend to be smaller than those granted by courts.<sup>8</sup> As a result, arbitration is not seen as a viable alternative to judicial proceedings.

Nevertheless, the need to look for alternatives remains. In many countries the general public distrusts the judicial system as a way to satisfy their legal claims. But in most of these countries, there is more a culture of authority than a culture of service.<sup>9</sup> Instinctively, when people look for an alternative, they look for an option with authority and power, in the political or physical sense of the words, instead of the moral or social one that would be the natural choice in a culture of service and freedom.

This need for authority affects the judicial process. In Guatemala, many peasants, instead of resorting to the local judges feel more confident if they present their claims to the Mayor of the town, or even to the head or the duty officer of the local regiment. In Albania, the elders of the towns in the mountains exercise a natural and effective authority in their communities. But that is of little consequence as far as financial operations are concerned. As a result, they lack a valid alternative, and, faced with a financial crisis that the courts of justice were not able to handle, the outcome was an eruption of violence. In Peru, Indonesia, Egypt, and the Philippines, large sectors of the population trust neither the official system nor the alternatives offered by other institutions; thus, informal alternatives must be found.<sup>10</sup> One possible alternative is, of course, compulsory arbitration by law. This can take place by forcing parties to submit to arbitration or conciliation before going to court, so that actually going to court would be the last resort when all other avenues are exhausted. This "necessary step," however, could, if applied well, be converted into a mere formality rather than an alternative to an official proceeding. This happened earlier this century in Latin America when new procedural codes were enacted that called for a conciliatory hearing at the beginning of the procedure. A legal culture of lawyers and judges converted it, in a few years, into one more step to a procedure already too long.<sup>11</sup> A fairly designed compulsory arbitration system has a great deal to offer to employees in many countries. Many employees, especially lower-income workers, are shut out of the current litigation process because their low salaries make receiving large dam-

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7. See generally DAVID E. ROBBINS, SECURITIES ARBITRATION PROCEDURE MANUAL 1-42 (LEXIS Law Publishing 3d ed. 1998); BUTLER, *supra* note 5, at 21, 33.

8. See RICHARD A. BALES, COMPULSORY ARBITRATION: THE GRAND EXPERIMENT IN EMPLOYMENT 15 (1997).

9. See Roberto G. MacLean, *The Culture of Service in the Administration of Justice*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 139 (Spring 1996).

10. See HERNANDO DE SOTO, OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD (June Abbot trans., 1989).

11. Another way of implementing compulsory arbitration is that used in labor cases in the United States. Compulsory arbitration provisions can be created as stand-alone agreements, or inserted as part of broader written employment agreements. They can be broad enough to encompass virtually every employment dispute imaginable, or drawn narrowly to encompass only a limited range of disputes (such as those involving discharge from employment). See BALES, *supra* note 8, at 3.

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age awards unlikely. This in turn makes it difficult to attract attorneys who will handle these cases on a contingency basis.<sup>12</sup>

Another method of encouraging arbitration institutions is to replace the image of authority in a culture. Official institutions that sponsor arbitration include the Permanent Court of International Arbitration, ICSID, the World Bank, the World Trade Organization (WTO), or the North American Free Trade Agreement (NAFTA). Additionally, private well-established institutions like the International Chamber of Commerce (ICC) and the Inter-American Commercial Arbitration Commission, or even local chambers of commerce like the Stockholm Chamber of Commerce, among several others, enjoy a well-deserved international reputation.<sup>13</sup>

There are also other national, more specialized types of institutions in the United States that sponsor arbitration in more circumscribed fields, such as the National Association of Securities Dealers, the New York Stock Exchange, the American Stock Exchange, the Municipal Securities Rulemaking Board, and the Securities Industry Conference on Arbitration. Other institutions deal with arbitration not in one particular country or in a particular field like commerce, securities or investments, but in general, and their authority and reputation covers all type of cases, like the American Arbitration Association (AAA), the Center for Public Resources (CPR), the Institute for Dispute Resolution, the London Court of International Arbitration, and the Hong Kong International Arbitration Center. Arbitration can also be sponsored by individual corporations or entities that carry on businesses with large numbers of persons, like banks, insurance companies, or transport companies, which can include in their contracts an arbitration clause. Finally, judges, lawyers (especially at the time of drafting contracts), and scholars can play an important part in developing arbitration as a valid alternative.

## V. Why Is Arbitration of Growing Importance?

It has been said repeatedly that arbitration is growing in importance because it offers parties more confidentiality and expertise, less expense and formality, and on top of it all, it saves time. This list presents only a partial view, a view that although correct, neglects other important elements that should also be considered.

### A. THE COST OF ARBITRATION.

We have just mentioned that among the widely recognized advantages of arbitration is that it is less expensive for the parties. Even though that assertion is not always necessarily true, and even though there are cases in which the contrary is the truth, the real economic advantage of arbitration for society is that it shifts the economic cost of litigation from the taxpayer to the user of the service.

Normally, financial litigation is part of the cost of the financial business, along with risk assessment, credit information and collecting agencies. The inefficiency of the judicial system can increase for the general public the cost of transactions and reduce the

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12. *See id.* at 9.

13. It is important to be aware, however, that in spite of its name, the "Arbitrazh" system in the Russian Federation is not an arbitration system but a commercial court system for corporations and other legal persons.

opportunities of access. However, the efficiency of the system does not benefit equally the general public and the user, as would be the case with criminal justice or family cases and some labor litigation. Therefore, it makes sense that the users of the system should absorb a major part of the expense of solving their disputes and the taxpayers a minor part. We have seen that financial disputes are, with torts, the majority of civil cases handled by the courts. Some countries, such as Russia and Egypt, charge large percentages of the amounts in dispute as court fees for plaintiffs. There is in the United States at least one state, Tennessee, that collects from the users in judicial fees and fines a sum larger than the judicial budget of that state. But arbitration also, if developed properly, can take part of the financial burden from the taxpayer. The economic cost of arbitration to the rest of society is nothing, compared to amounts that range from 0.9 percent to six percent from national or state budgets for the overall cost of judicial systems. This is why financial disputes tip the balance in favor of the privatization of justice.

#### B. THE ADMINISTRATION OF ARBITRATION.

From the administrative side, the advantages of arbitration for societies are many sided. To begin with, the problem of the adequate selection of judges and all its political, administrative, cultural, and financial implications is eliminated; the selection of judges is based on the trust parties feel for them, as it has been since the very beginning. When Moses wandered for forty years in the desert, people spontaneously took all their conflicts to him. Moses spent days solving disputes, as it is described in the book of Exodus, from very early in the morning till very late at night.<sup>14</sup> Based on this trust, in arbitrations, the burden of selection is removed from society, and each party selects its own arbitrator. Another advantage—except in special cases, like WTO or NAFTA, ICSID or perhaps ICC—is that arbitration does not require as complicated an organization as judicial systems do, not such large archives, not as complicated dockets, not such large numbers of support staff, not large requirements of infrastructure and technology. The administrative expenses of arbitrations, except in very special cases, is not comparable to courts, and the public does not pay them. But the most important advantage in administration is that it reduces not only bureaucracies, but also inefficiency and with it the main cause of corruption in judicial systems. The transparency that arbitration offers to the parties in a dispute makes cases of corruption very exceptional indeed.

#### C. THE NATURE OF THE PROCEDURES.

Arbitration helps address many of the problems of international litigation in a court of justice that have to do with procedural matters. First, the malady of "Forum Shopping" is eliminated if the jurisdiction is established by mutual agreement, as is usually the case in arbitration. Second, the problem of assignment of cases to a particular judge, the source of many irregularities, is also eliminated. Third, arbitrators are more "service conscious" toward the parties than judges are, simply because the jurisdiction of arbitrators is not compulsory like that of judges and is only the result of the agreement of the parties. As Judge Roger Warren, President of the National Center for State Courts in the United States said once, he would like to instill in every judge the idea that there is a court a hun-

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14. Book of Exodus, ch. 18, verse 13.

dred yards away offering exactly the same service that the judge offers. The "motto" of arbitrators could well be in this respect: "We never forget that you have a choice." Fourth, submission and assessment of evidence does not take as long in arbitrations as in courts of law. Fifth, arbitrators can be much less formalistic than judges in the procedure, with the result that in many cases it is easier to reach a settlement in arbitration than in a court of law, especially in countries without discovery. Sixth, as decisions of arbitrators are not binding on future cases, there is more flexibility for arbitrators than for judges if circumstances change, especially in common-law countries.

#### D. THE TRAINING FOR ARBITRATORS.

At present, there are numerous institutions around the world dedicated to training judges and their support staff at the expense of the taxpayer, with differing levels of success, while the training of arbitrators, when it takes place, is at the expense of the arbitrator or sponsoring institutions. (The type of skills needed by arbitrators is also important, but will be dealt with below.)

#### E. PARTICIPATION OF THE COMMUNITY.

One of the features of conflict resolution systems in developed industrial countries is the involvement of the community in the solution process. U.S. Supreme Court Justice Abe Fortas said years ago that judicial systems have neither their own economic sources nor their own armed forces, and that their true authority resides in the backing they receive from the community and public opinion. Their true force, he said, is their power of persuasion and of moving public opinion. As a result of shortcomings in their decision and law making processes, developing countries suffer a fracture between their legislative bodies, their judiciaries, and the community.<sup>15</sup> The flow of currents of public opinion between them is not fluid, and, as a result, the public perception of them is rather poor. In an evaluation made by the World Competitiveness Report 1993-1994, the large numbers of conflict resolution systems of developing countries were evaluated by users below a mark of five over a maximum of ten. As Luis Pasara notes, in a Gallup survey in Argentina, forty-nine percent of those interviewed thought that the system was either "bad" or "very bad," forty percent thought it was "medium," and eighty percent did not find any positive aspect in it at all. In Peru, in a survey made under the auspices of the United Nations Development Program, three out of four crime victims thought that the system was corrupt.<sup>16</sup> The general perception in Jakarta, Indonesia is that "justice" belongs to the highest bidder, and the system in Russia is evaluated on the ten-point scale. Coincidentally, in all of these countries, participation by the community is almost non-existent.

The difference with arbitration is that it cannot exist without participation; it is based on voluntary participation. So the growing importance of arbitration in international finance—and its shortcomings—have to be measured mainly by the participation of the community. The efficiency, success, planning, training, and development of arbitration must be measured in the same way. However, this is an aspect in which arbitration could be more successful with a much larger capacity to grow. For all of its impressive

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15. See Roberto G. MacLean, *The Social Efficiency of Laws as an Element of Political and Economic Development*, 4 NAFTA: L. & BUS. REV. AM. 6 (Spring 1998).

16. See LUIS PASARA, JUECES Y JUSTICIA EN TELA DE JUICIO (1995).

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achievements, arbitration remains elitist to a certain degree, with the exception of informal arbitration, which grows and develops without connection and relation to the established ways and institutions mentioned here. There is a whole new field to cultivate, and there is the need to be more aggressive in developing new markets.

#### F. IMPACT OF ARBITRATION ON SOCIETY.

Many questions arise: What is the role of arbitration in society? What is the importance of arbitration beyond the individual cases? Why should everybody be concerned that arbitration works and works well? First, at the most elementary level, arbitration is an important relief from the gigantic pressures of backlogs of cases in the great majority of courts all over the world. At a meeting of the Law Asia Conference in Manila in 1997, one of the vice-presidents of the People's Supreme Court in China reported that China has around 360 million cases pending in the courts. In India, the number of cases pending is estimated at around forty-five million. And in other countries, even though with not such impressive numbers in the whole system, the backlog is concentrated in some particular courts, which damages the performance of the overall system. So, the first role for arbitration in society is to act as an auxiliary to judicial systems to help them to deal with heavy loads of cases.

Arbitration can also act as a complement to the judiciary, to fill in for the recognized limitations and shortcomings of jurisdictional organizations and judicial training in the majority of countries in the world today. The training of judges and even of lawyers is deficient and is becoming increasingly formalistic and inadequate to address the needs of society. The requirements of international trade, investment and finance are not satisfied in a very large number of countries around the world. Matters like maritime cases, insurance, finance, futures, and securities have become so sophisticated and specialized that someone who is not familiarized with the trade cannot easily cope with them. So arbitration, with its rich and almost unlimited resources, can provide answers and solutions in almost any conceivable field.

The third and most important role and impact of arbitration in society is as a nemesis of judicial systems. The emergence of arbitration in the field of conflict resolution responds to the shortcomings of judges, and highlights the fact that things are being done incorrectly in judicial systems. It is similar to how courts of equity developed during the Middle Ages in England, except that in this case, the response did not come from another office of the kingdom, but, as befits more liberal and democratic times, from ordinary citizens, merchants, bankers, professionals, etc. Thus, arbitrators and arbitration institutions rise from being mere auxiliaries of justice to become specialized complementaries and then finally to become the conscience of judicial systems—the guardians of justice, equity, freedom, exchange, development, distribution of wealth, and of understanding—in areas in which the general public might not otherwise perceive whether courts of justice are acting appropriately or not. In the early Middle Ages, knights errant were the mirrors of rulers and judges. In the Golden Century of Spain in "*Don Quixote de la Mancha*," the earthly and common Sancho Panza became the mirror, for centuries to come, of how judges, mediators, conciliators, or arbitrators should look at their business. Now is the time for arbitrators to perform that function. This is the deepest impact that arbitrators can have and their most important civic and political duty.

## VI. The Social Responsibility of Arbitrators.

In contrast to judges, arbitrators do not always need to be lawyers. Sometimes, even in international conflicts, a panel is entirely formed by non-lawyers, because, above anything else, arbitration is about solving disputes; laws are only one of the tools to solve disputes. When King Solomon the Great was faced with a dispute between two prostitutes, each of whom claimed the maternity of the same child, he did not resort to the latest statute on the subject, the precedents set by several centuries of judges in Israel, or the many authorities that had written and interpreted mosaic law. Mocking formal justice, he ordered the child cut in two and ordered one-half to be given to each of the alleged mothers. When one of them resigned her right in order to save the child, he discovered the real mother. Granted, halving a child is not quite the same as halving forty million dollars, yens, marks, francs, or rupees. The point is, however, that even apparent purely legal disputes are, in fact, not about laws, but about value that balances political, economic, social, cultural, ethical or religious interests in conflict. If arbitrators do not understand the values that are at play in a conflict and do not have the intuitive lucidity to establish a balanced order, they will not be a true alternative. Rather, like the medieval ordeal, they will only be a transient incident, a footnote, and a temporary detour in the history of conflict resolution.

Especially in the world of finance, laws and regulations reflect the reality of international relations from very much the perspective of capital exporting countries. These are truly international laws, and they work well within certain sectors of society and in certain areas of the world. But even these international laws are not prepared yet for a truly balanced, global society. In finance, there is no equivalent to The Hague Rules, Hague-Visby Rules, or Hamburg Rules for maritime trade, or the several international conventions for the Sale of Goods, or rules for international air transport. In all these fields, the actors are moving ahead towards a global community. Some international financial regulations have moved forward; the rules for wire transfers are a change. But in lending, we are a long distance from where we need to be. One of the lessons that the debt crisis of the eighties should have taught us is the inadequacy of the existing rules to meet the needs of a plural and global society.<sup>17</sup> Who can find the way? Judges? Judges are not, unfortunately, prepared for the future in much of the world. This is the challenge for arbitrators, and enhances the growing importance of arbitration in international finance.

## VII. Conclusion.

The inadequacy of existing rules and the overwhelming growth of financial developments around the world create a unique opportunity for leadership and creativity. The leaders who grasp that opportunity will help to shape a new society and to establish a new international order based on the awareness that today's problems in Bolivia, Uzbekistan, Burundi and Tonga may be knocking at our doors tomorrow morning. The limitations of judicial systems and the shortcomings of judges around the world present this extraordinary opportunity to arbitrators, not only as learned jurists and deep thinkers, but also as bold leaders, intelligent dreamers and peace lovers.

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17. See Roberto G. MacLean, *Legal Aspect of the External Debt*, 2 RECUEIL DES COURS 35 (1989).

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