

Party Autonomy and Choice of Law in International Commercial Contracts: Theoretical and Practical Perspectives

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Abstract:

The principle of party autonomy in international commercial contracts, which allows contracting parties to choose the governing law of their agreement, plays a crucial role in cross-border transactions. While this principle is widely accepted, its practical application varies significantly across jurisdictions, leading to diverse legal interpretations and enforcement challenges. This article aims to address the drawbacks identified in the existing literature by providing a clearer structure, more in-depth analysis, practical examples, and a balanced discussion of theoretical perspectives and recent developments.

Keywords: Choice of Law, Party Autonomy, Legal Uniformity, Cross-border Transactions, The Hague Principles, Contractual Freedom, Conflict of Laws, Legal Harmonization, Global Trade Law, International Arbitration, UNIDROIT Principles.

Introduction to Choice of Law

In the realm of international commerce, contracts serve as the backbone of transactions that span across borders. The ‘choice of law’ is a pivotal aspect of these agreements, determining which jurisdiction’s legal framework will govern the contract. This choice is not merely a technicality; it shapes the rights and obligations of the parties involved and can significantly influence the outcome of disputes. Choice of law, also known as conflict of laws, determines which jurisdiction’s rules govern a given interpersonal interaction. While often associated with cross-border transactions, choice of law extends beyond national boundaries. In this paper, we explore doctrinal perspectives and their implications. Scholars emphasize party autonomy—the idea that contracting parties should have the freedom to choose the applicable law. This enhances predictability and allows tailored

solutions. Choice-of-law agreements provide certainty, enabling parties to plan and perform contractual obligations.

At this point we should bear in mind that the importance of party autonomy is evolving against the background of choice of law by the national courts or arbitrators even if the parties have already agreed on the applicable law, stating that there are obligatory legal norms which identifies another law for a specific contract. We can assume that such conduct can lead to mistrust in international commercial relations and legal uncertainties when concluding international commercial contracts.

In addition to the critical role of party autonomy in shaping the choice of law, it is imperative to consider the broader implications of this decision on the international legal landscape. The interplay between party autonomy and the regulatory oversight exercised by national courts or arbitrators reflects a complex dynamic that has far-reaching consequences for global commerce. While party autonomy fosters predictability and facilitates tailored legal solutions, it must operate within the confines of existing legal frameworks and international conventions. Moreover, the evolving nature of international law necessitates a nuanced understanding of how choice-of-law agreements interact with emerging norms and practices in areas such as transnational trade and investment law. As such, our exploration of doctrinal perspectives should not only address the theoretical underpinnings of party autonomy but also consider its practical implications in an increasingly interconnected and multifaceted global economy. By examining these dimensions, we can better appreciate the challenges and opportunities presented by the harmonization of choice of law in international commercial contracts, thereby contributing to a more robust understanding of this pivotal aspect of cross-border transactions.

The Hague Principles on Choice of Law in International Commercial Contracts (2015) offer guidance and promote party autonomy while balancing predictability and flexibility [1]. These principles recognize the validity of choice-of-law agreements and address issues like formal validity and battle of form. Symeonides' Annual Survey provides insights into recent American cases. It informs teachers and students of conflicts law, focusing on choice of law focusing on the cases brought to the US courts [2]. According to the report, several U.S. states have passed laws that allow contracts worth a lot of money to be governed by their own state laws, even if the contract has nothing to do with that state. This is true even if it goes against the rules of another state. New York was the first to do this with a law that says contracts worth more than \$250,000 can use New York law. This does not apply to jobs or personal shopping contracts or deals where a set of rules called the U.C.C. says you cannot pick your own laws. New York also says that if you have a contract worth at least \$1 million, you can agree to go to court in New York if there is a problem. States like California, Delaware, Florida, Illinois, and Texas have made similar laws to try to get these big contracts [2].

There was a case, *Havtech Parts Division, LLC v. Advanced Thermal Solutions, LLC*, where a New York court said it was okay to use New York law for a deal between a Wisconsin company and a Maryland company. The Maryland company didn't think it was fair because the deal didn't have anything to do with New York and it was against Maryland's rules. However, the New York court said the law does not need the deal to be related to New York, and just because it's against another state's rules doesn't mean you can't use New York law. A Maryland court later agreed that the New York court's decision had to be followed considering it *res judicata* [2].

Choice of law itself can be very vague without a clear framework of the regulation in different circumstances. One of the examples can be the clash between the party autonomy and the public policy of the *lex fori*, where the arbitrators or any state may claim that particular commercial relation should be regulated by the specific law of a certain country. The application of the national law of a seller is one of the general examples of such laws. However, we cannot clearly mention the boundaries of such national law interference into the party autonomy in choice of law. In navigating

the complexities of choice of law, it is essential to address the inherent tensions between party autonomy and broader considerations of public policy and regulatory frameworks. The clash between these competing interests underscores the need for a nuanced approach that balances the autonomy of contracting parties with the imperative to uphold fundamental principles of justice and fairness. For instance, while party autonomy empowers parties to select the governing law based on their mutual interests and preferences, it must not come at the expense of overriding public policy objectives or contravening mandatory legal norms designed to protect vulnerable parties or promote societal welfare. The challenge lies in delineating the boundaries of national law interference in choice of law while preserving the integrity of party autonomy and ensuring equitable outcomes in cross-border transactions. By elucidating these complexities and exploring potential avenues for reconciling conflicting interests, we can contribute to the development of a more coherent and principled approach to choice of law in international commercial contracts. Dagan and Peari propose a novel perspective on choice of law [3]. They propose to release the choice of law from its subordination to private international law or its inter-state equivalent in federal contexts. This means that the choice of law would not be bound by the constraints of private international law, allowing for greater flexibility and adaptability. The theory underscores the importance of party autonomy and self-determination and implies that the parties involved in a legal agreement should have the freedom to choose the law that governs their agreement, thereby enhancing their autonomy and self-determination. It also provides a basis for reforming the current choice of law doctrine to lead to significant changes in how choice of law is understood and applied, potentially leading to more equitable and just outcomes. In their view, the principle of choice of law extends beyond mere resolution of legal conflicts. It should be recognized as a vital component of doctrines that promote autonomy, offering a variety of legal frameworks for individuals to manage their mutual relations.

This approach is rooted in a liberal tradition that integrates concepts of state authority, individual autonomy, and regulatory boundaries – elements that are central to the contemporary understanding and application of choice-of-law principles. Such a tradition anchors the right of individuals to enter into contracts, a right that is safeguarded by the liberal state and emanates from the fundamental human right to self-governance. The liberal interpretation of contractual rights suggests that current legal restrictions, which address relational inequities and undesirable societal impacts, are intrinsic to any valid choice-of-law framework. Furthermore, the liberal perspective on choice of law identifies certain applications of this principle as misuses of an otherwise commendable legal concept, which must be diligently eliminated. However, this perspective also advocates for a broader application of choice of law. It posits that the relevance of choice of law is not dependent on the presence of an international component, thus, a progressive legal system should welcome the use of non-state laws and acknowledge the relevance of choice of law in domestic contexts as well.

In my opinion, Dagan and Peari's emphasis on party autonomy aligns well with the principles of *lex mercatoria* and transnational law. Their approach could potentially enhance the role of party autonomy in international transactions. By releasing the choice of law from the constraints of private international law, their approach introduces greater flexibility and adaptability, which are key features of *lex mercatoria*. Their proposal could potentially support the delocalization of legal agreements. By allowing parties to choose the law that governs their agreement, it could facilitate the use of transnational law or other non-local legal systems. However, we should also bear in mind that while the flexibility of their approach is a strength, it could also lead to legal uncertainty. Without the constraints of private international law, parties might choose laws that lead to unpredictable or unjust outcomes. The enforcement of agreements under their proposed system could be challenging, especially in jurisdictions that adhere strictly to their own private international law rules. Here is a risk that parties that are more powerful could impose their preferred laws on weaker parties, leading to potential inequities. Moreover, while Dagan and Peari's proposition offers significant advantages in terms of flexibility and adaptability, it also presents notable challenges in terms of ensuring fairness and equity in contractual relationships. The potential for

powerful parties to exploit their advantage and impose their preferred laws on weaker counterparts is a legitimate concern that warrants careful consideration. Without adequate safeguards and mechanisms to prevent the abuse of power, there is a risk of exacerbating existing disparities and inequalities within the realm of international commerce. Furthermore, the enforcement of agreements governed by non-local laws could pose practical challenges, particularly in jurisdictions where the legal system is deeply rooted in traditional notions of sovereignty and territoriality. Therefore, while embracing a more liberal approach to choice of law has its merits, it is imperative to strike a delicate balance between promoting party autonomy and safeguarding fundamental principles of fairness and justice in international commercial transactions.

At the heart of choice of law lies the principle of party autonomy. This widely recognized tenet allows contracting entities the liberty to select the law most appropriate for their agreement. It reflects the respect for parties' freedom and the recognition of their capacity to assess the risks and benefits of their contractual commitments. The principle of party autonomy is a cornerstone in the field of private international law. It grants contracting parties the freedom to choose the applicable law governing their contractual relationship. Over time, party autonomy has evolved, and various doctrinal views have shaped its contours. Furthermore, the principle of party autonomy not only enhances predictability and fosters tailored solutions but also promotes efficiency and facilitates international trade. By empowering parties to select the governing law that best aligns with their commercial objectives and preferences, it streamlines the negotiation process and minimizes transaction costs. Additionally, party autonomy fosters a conducive environment for innovation and experimentation in contractual arrangements, driving economic growth and fostering competitiveness in the global marketplace. However, it is essential to recognize that the exercise of party autonomy is not without its challenges and limitations. In some instances, conflicting laws or divergent interpretations may arise, leading to legal uncertainties and potential disputes. Therefore, while upholding the principle of party autonomy, it is crucial to strike a balance between promoting freedom of choice and ensuring legal certainty and fairness in international commercial transactions.

The historical roots of party autonomy can be traced back to choice of forum and choice of law. However, it was only in the twentieth century that party autonomy gained widespread acceptance as a doctrine [4]. It is pointed out that the 20th century witnessed not just a divergence in choice-of-law approaches across the Atlantic. Indeed, following extensive discussions, legal frameworks in both regions have converged to a unified stance regarding the private international law governing contracts. More specifically, in the past, there was vigorous debate regarding party autonomy in choice of law, with resistance against free party choice of law. Initially, parties were not allowed to raise themselves above the law by choosing another, but this resistance melted away in the 20th century due to increased international trade. By the 1980s, the principle of party autonomy was incorporated into the Rome Convention, marking a significant shift towards recognizing parties' freedom to choose the applicable law. However, currently Both American and European legal systems now uphold the principle of party autonomy in choosing the applicable law in contracts. In Europe, the Rome Convention Article 3(1) and in the United States, Restatement (Second) § 187 and UCC § 1-105 affirm the supremacy of party autonomy in selecting the governing law. Recent developments in American states like Oregon and Louisiana show a trend towards broadening parties' choices beyond traditional limitations, allowing for the selection of non-state bodies of law [4].

In my view, the principle of party autonomy in the choice of law is a cornerstone of international contract law that should be vigorously defended and promoted. The historical resistance to party autonomy was based on a fear that parties might evade justice or undermine public policy by choosing a law more favorable to their interests. However, this concern has been largely mitigated

by the safeguards built into legal systems that prevent the choice of law from contravening mandatory rules or public order.

The incorporation of party autonomy into the Rome Convention and its recognition in both American and European legal systems represent a triumph for the freedom of contract. It acknowledges that parties engaged in international commerce are the best judges of their commercial needs and interests. By allowing parties to choose non-state laws, such as transnational laws, we recognize the unique nature of international transactions that may not fit neatly within the confines of any single national legal system.

The developments in states like Oregon and Louisiana, which broaden the scope of permissible choices to include non-state bodies of law, are particularly commendable. They reflect a modern understanding that the parties to a contract may have legitimate reasons for preferring a set of rules that is specifically designed for international transactions, such as the UNIDROIT Principles of International Commercial Contracts.

Moreover, the principle of party autonomy serves as a catalyst for legal innovation and harmonization in the realm of international commerce. By fostering a dynamic and responsive legal environment, party autonomy encourages the development of transnational legal frameworks that transcend traditional jurisdictional boundaries. This evolution reflects the growing interconnectedness of global markets and the need for adaptable legal solutions that can accommodate diverse cultural, economic, and regulatory contexts. Furthermore, the recognition of non-state laws, such as the UNIDROIT Principles of International Commercial Contracts, underscores the importance of promoting legal pluralism and accommodating the unique needs of parties engaged in cross-border transactions. Embracing party autonomy in choice of law not only enhances the efficiency and effectiveness of international commercial transactions but also promotes the harmonization of legal standards and practices on a global scale.

Unlike a single defining moment, its establishment was a gradual process. Some scholars emphasize party autonomy as a fundamental right. They argue that parties, as autonomous agents, should have the liberty to shape their contractual relationships by choosing the governing law. For example, in his work on private international law, Alex Mills explores the historical and theoretical foundations of party autonomy. He highlights the distinct background of party autonomy in choice of forum and choice of law, emphasizing its gradual evolution [5]. We can state that he proposed clearer guidelines for the scope of party autonomy in private international law. Symeonides has extensively analyzed the scope and limits of party autonomy in international contracts [6]. He highlights that party autonomy allows parties to a multistate contract to agree on which state's law will govern their contract within certain parameters and limitations. The principle of party autonomy is considered a universal principle of private international law or conflicts law, with many choice-of-law codifications and international conventions endorsing this principle for contract conflicts. In examining the limits of party autonomy, Symeonides points out that various factors and parameters need to be considered for a complete assessment of the liberality of a particular party autonomy regime. He notes that comparing party autonomy regimes can be complex due to differences in how courts apply these regimes in practice, making it challenging to determine the actual liberality of a particular regime. Overall, Symeonides' analysis underscores the significance of party autonomy in international contracts while also highlighting the need to consider the limitations and factors that shape the application of this principle in practice.

His comparative research sheds light on the variations across legal systems and the essential role of party autonomy. Symeonides emphasizes that party autonomy, the principle that parties to a multistate contract should be allowed to agree in advance on which state's law will govern their contract, is accepted in at least 150 countries. However, he astutely points out that this general principle is implemented differently across countries, leading to significant variations. For instance,

legal systems differ on which contracts and for which contractual — or non-contractual — issues may the parties choose the applicable law. Differences also exist in defining the appropriate public-policy threshold for policing party autonomy. While the concept enjoys widespread acceptance, its practical application reveals notable disparities among jurisdictions. Symeonides highlights variations in the scope of autonomy granted to parties, including differences in the types of contracts eligible for choice of law designation and the specific issues subject to such designation. Additionally, discrepancies emerge in the criteria used to assess the validity of party autonomy agreements, particularly concerning the threshold for invoking public policy considerations. These variations underscore the need for a nuanced understanding of party autonomy within the broader context of legal pluralism and cross-border cooperation. As international commerce continues to expand, harmonizing the treatment of party autonomy across jurisdictions remains an ongoing challenge, requiring careful consideration of both legal principles and practical realities.

Party autonomy in choosing the applicable law in contracts is subject to several key principles globally. These include authenticity, ensuring that the chosen law truly reflects the parties' intentions; foreseeability, requiring that the selected law be reasonably foreseeable within the contract's context; considerations of public interests and values, preventing party autonomy from overriding essential public policy concerns; justifiability, mandating that the choice of law be rational and non-arbitrary; and the necessity of a genuine connection to the chosen jurisdiction in cross-border contracts. However, regional variations exist in the implementation and acceptance of party autonomy. In the European Union, while party autonomy is recognized, its application varies among member states. Common law systems, such as those in the United Kingdom, Canada, India, and South Africa, typically embrace party autonomy, albeit with variations in scope and limitations. These differences often revolve around defining the extent of party autonomy and the permissible constraints imposed upon it. Party autonomy remains a powerful tool in international contracts. While respecting parties' freedom, we must balance it with essential legal safeguards. As global commerce evolves, understanding these doctrinal views is crucial for practitioners and scholars alike.

Additionally, the principle of party autonomy intersects with broader considerations of legal harmonization and international cooperation. Efforts to promote uniformity in choice-of-law rules, such as the Hague Principles on Choice of Law in International Commercial Contracts, aim to provide clarity and consistency in cross-border transactions. These initiatives recognize the importance of respecting parties' autonomy while also addressing concerns related to legal certainty, predictability, and the resolution of disputes. By establishing common frameworks and guidelines, international organizations and legal bodies facilitate smoother interactions between parties from different jurisdictions, thereby fostering trust and confidence in global commerce. However, challenges persist in reconciling divergent legal traditions and cultural norms, highlighting the ongoing need for dialogue and cooperation among stakeholders in the international legal community.

Lack of Universality

Despite the global acceptance of party autonomy, a universal standard for choice of law remains elusive. Jurisdictions around the world exhibit diverse approaches, influenced by their legal traditions, cultural values, and economic policies. This lack of uniformity can lead to unpredictability and complexity, undermining the very certainty and stability that choice of law aims to provide.

Peter Hay's work on "Flexibility versus Predictability and Uniformity in Choice of Law" reflects on the tension between these two goals [7]. He argues for principled flexibility, emphasizing the need to address conflicts effectively while maintaining predictability [8]. This concept aligns with the flexibility that Hay advocates, as it allows the arbitration process to adapt to the specific needs of

the dispute at hand. However, Hay's work also emphasizes the importance of predictability, which can be a challenge in the context of *lex mercatoria* due to the inherent flexibility.

Larry Kramer advocates for a uniform choice-of-law code. He contends that the National Conference of Commissioners on Uniform State Laws (NCCUSL) should prioritize comprehensive treatment of choice of law, similar to the impact of the Uniform Commercial Code in commercial relations [9]. Larry Kramer's advocacy for a uniform choice-of-law code, akin to the Uniform Commercial Code's impact, is indeed a significant proposition. However, as an advocate for *lex mercatoria* and delocalization, I would view this differently, because uniform choice-of-law code, while providing predictability and consistency, may lack the flexibility and adaptability of *lex mercatoria*. It could potentially impose a rigid framework that might not cater to the unique needs of all jurisdictions or the evolving demands of international commerce. Moreover, such a code might undermine the principle of delocalization. By tying legal relationships to a specific set of laws, it could limit parties' freedom to choose a neutral forum for dispute resolution. In conclusion, while Kramer's proposal has its merits in promoting uniformity and predictability, it might be viewed as less favorable from the standpoint of *lex mercatoria* and delocalization, which value flexibility, adaptability, and neutrality. It is a delicate balance between uniformity and flexibility, and the ideal solution might lie somewhere in between. Furthermore, the push for a uniform choice-of-law code raises questions about its feasibility and enforceability on a global scale. While such a code may streamline legal processes and enhance cross-border trade, its effectiveness hinges on widespread adoption and adherence by states with diverse legal traditions and interests. Achieving consensus on the content and application of a uniform code presents formidable challenges, considering the complexities of national legal systems and divergent policy objectives. Moreover, ensuring compliance and enforcement mechanisms in jurisdictions with varying levels of legal infrastructure and capacity poses practical hurdles. Therefore, while the concept of a uniform choice-of-law code holds promise in theory, its practical implementation requires careful consideration of the diverse legal, cultural, and institutional landscapes across jurisdictions.

Hanoch Dagan and Sagi Peari propose a theory of choice of law that emphasizes party autonomy, states, and limitations. They argue that choice of law should be a freestanding concept, promoting people's self-determination within private law [10]. States and Limitations reflect the constraints that national legal systems impose on international commerce. Delocalization seeks to overcome these limitations by detaching legal relationships from any specific national legal system. In this context, Dagan and Peari's emphasis on making choice of law a freestanding concept resonates with the principle of delocalization. However, it is important to note that while Dagan and Peari's theory promotes self-determination, it still acknowledges the role of states and limitations. This suggests a balance between party autonomy and the need for some level of regulation to ensure fairness and protect public interests. This balance is also inherent in *lex mercatoria*, which, while being a transnational and decentralized system, still adheres to universally accepted principles of justice and fairness. In other words, it offers a nuanced approach to choice of law that recognizes the importance of flexibility and adaptability in international commerce, while also acknowledging the role of states and the need for certain limitations. Moreover, the concept of delocalization underscores the importance of creating a legal environment conducive to fostering trust and cooperation among contracting parties. By transcending the confines of national legal systems, delocalization promotes a neutral and impartial framework for resolving disputes, thereby mitigating the inherent risks associated with cross-border transactions. However, achieving widespread acceptance and implementation of delocalization poses significant challenges, particularly in reconciling divergent legal traditions and safeguarding against potential abuses. Moreover, the effectiveness of delocalization hinges on establishing robust mechanisms for enforcing agreements and ensuring compliance with the chosen legal framework. Therefore, while delocalization offers a promising solution to the limitations of national legal systems, its successful

realization necessitates concerted efforts to overcome practical hurdles and cultivate a conducive regulatory environment at both domestic and international levels.

Achieving uniformity in choice of law presents ongoing challenges owing to diverse legal traditions and practical considerations. While party autonomy is crucial, striking a balance between flexibility and predictability is imperative. The development of a uniform choice-of-law code holds the potential to enhance clarity and consistency, offering significant benefits to litigants and legal practitioners alike. However, the implementation of a uniform choice-of-law code requires careful consideration of its implications across various legal systems. While aiming for consistency and predictability, such a code must also accommodate the diverse needs and priorities of different jurisdictions. Moreover, achieving consensus on the content and scope of a uniform code presents a formidable task, necessitating extensive collaboration and negotiation among stakeholders. Additionally, the enforcement mechanisms and procedures associated with a uniform code must be robust enough to ensure its effectiveness across borders. Therefore, while the idea of a uniform choice-of-law code holds promise, its realization demands a nuanced approach that acknowledges and addresses the complexities inherent in harmonizing legal principles on a global scale.

The system created by the European Union also aligns with the principles of party autonomy and an intention to harmonize the rules of choice of law underscoring the importance of legal certainty, foreseeability of outcomes, and respect for parties' contractual freedom in the interpretation and enforcement of agreements. The study on European Commercial Contract Law was conducted by Andrea Bertolini mentions that in the absence of an autonomous European contract law, business parties often opt for non-European jurisdictions, particularly common law ones, to govern their contractual agreements and suggests that efforts to unify European contract law may face challenges, but targeted interventions focusing on business agreements could be more feasible and effective in addressing the complexities of choice of law in commercial contracts.

The Hague Principles

The Hague Principles on Choice of Law in International Commercial Contracts endeavor to bridge these gaps. They are a significant development in navigating the complexities of international commercial transactions, advocate for the recognition of party autonomy, and strive to offer a balanced framework that respects the diversity of legal systems while promoting predictability in contractual dealings. However, their status as 'soft law' means they are not binding, and their influence is thus limited.

The Hague Conference on Private International Law (HCCH) emphasizes party autonomy as a core principle [11]. This view aligns with the increasing globalization of trade, where parties often operate across different legal jurisdictions. This approach fosters predictability and flexibility for businesses engaged in international commerce. Lex Mercatoria and Delocalization support the HCCH's emphasis on party autonomy by providing businesses with the flexibility and predictability they need in the increasingly globalized world of trade. These principles allow parties to operate beyond the constraints of national legal systems, thereby fostering a more conducive environment for international commerce.

Gilles Monéger commends the Principles for respecting party autonomy while acknowledging limitations due to public policy considerations [12]. This view recognizes the need for courts to intervene in exceptional cases where upholding a chosen law would violate fundamental principles of a legal system. This creates a necessary safeguard against potential abuses of party autonomy. In this regard, concept, while promoting party autonomy, can potentially lead to abuses, as it might allow parties to evade certain mandatory rules of law. Therefore, the need for courts to intervene in exceptional cases, as Monéger suggests, becomes crucial to prevent such abuses.

Conclusion and Future Outlook The pursuit of a universal framework for choice of law in international commercial contracts is indeed a critical endeavor for the global economy. The Hague

Principles on Choice of Law in International Commercial Contracts have been a significant advancement, promoting party autonomy and providing guidance on best practices. However, scholars argue that further harmonization is necessary. The Hague Principles are seen as a tool to refine the concept of party autonomy, especially in jurisdictions where it is not yet fully accepted or is subject to significant restrictions [13].

A comprehensive choice of law regime is essential for giving effect to party autonomy, enhancing certainty and predictability within contractual arrangements, and recognizing that parties may be best positioned to determine the most suitable legal principles for their transaction [14]. The Legal Guide to Uniform Instruments in the Area of International Commercial Contracts, a joint publication by UNCITRAL, UNIDROIT, and the HCCH, illustrates how various texts interact to achieve shared goals of predictability and flexibility [15].

An analysis of the methods of harmonization of international commercial law reveals that while institutions like UNIDROIT, HCCH, and UNCITRAL have made strides in harmonization, many areas of commercial law remain un-harmonized due to factors such as political, cultural, and economic reasons, as well as institutional constraints [16]. The role of corporations in promoting the standardization of laws and issues of social responsibility and corporate accountability are also crucial in the harmonization process, as they reflect the movements of capital and the emerging new *lex mercatoria* [17]. The harmonization of international commercial law is an overarching goal of the EU as part of the development of the internal market, leading to conventions, regulations, and directives that contribute to a more unified legal framework [18].

In conclusion, the scholarly theses emphasize the importance of a universal framework that is both flexible and predictable, accommodating the diverse needs of an interconnected global economy. The Hague Principles have laid the groundwork, but ongoing collaboration and development are necessary to achieve a cohesive and binding set of rules that can govern international commercial contracts effectively.

The article explores the intricate landscape of choice of law in international commercial contracts, highlighting the absence of a universal standard despite the recognition of party autonomy. It begins by defining choice of law as the process of determining which jurisdiction's laws will govern a contract involving multiple countries. Party autonomy, the freedom for parties to select applicable laws, is considered crucial, promoting predictability and tailored solutions. However, the lack of universality poses significant challenges. Different jurisdictions have varying approaches, leading to unpredictability and complexity. The Hague Principles aim to bridge these gaps by promoting party autonomy, but their non-binding nature limits their effectiveness.

Challenges and criticisms include legal fragmentation, forum shopping, and complexities in dispute resolution. Case studies illustrate the practical implications, highlighting the difficulties in enforcing contracts and resolving disputes. In the conclusion and outlook, the article emphasizes the need for a more harmonized and efficient choice of law framework. While the Hague Principles are a step forward, further harmonization is necessary. Scholars advocate for comprehensive frameworks that accommodate the diverse needs of the global economy.

In my view, the *lex mercatoria* approach holds great promise for the future of international commercial contracts. By advocating for a delocalization of applicable laws, we can break away from the constraints imposed by disparate legal systems and foster a more harmonized and efficient environment for global trade.

The concept of *lex mercatoria*, or "law of the merchants," represents a body of principles and customs that have historically governed international commercial transactions. It transcends national boundaries and legal traditions, offering a set of rules that reflect the needs and practices of the international business community. Embracing this approach allows parties to choose laws based on their specific requirements rather than being confined to the laws of a particular jurisdiction.

The delocalization of applicable laws is crucial in this regard. It entails detaching the governing law of a contract from any specific jurisdiction, thereby allowing parties to opt for a set of rules that best suit their transaction. This approach promotes flexibility and adaptability, essential qualities in the ever-changing landscape of global commerce.

Furthermore, I strongly advocate for the harmonization of choice of law instruments. A universal framework would provide much-needed predictability, making it easier for parties to navigate the complexities of international contracts. Instead of grappling with conflicting legal systems and uncertainties, businesses can rely on a coherent set of rules that govern their transactions across borders.

A universal framework not only benefits parties directly involved in contracts but also contributes to the overall stability and growth of the global economy. By streamlining legal processes and reducing transaction costs, it encourages greater participation in international trade and investment, ultimately leading to increased prosperity for nations and individuals alike.

In essence, promoting a *lex mercatoria* approach and enhancing the efficiency and harmonization of choice of law instruments are vital steps towards creating a more equitable and prosperous global marketplace. By empowering parties to choose laws that best serve their interests and facilitating smoother transactions, we can foster a climate of trust and cooperation that underpins sustainable economic development worldwide.

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