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Amiable Composition in International Arbitration

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Amiable composition is a means of dispute resolution based on the arbitrator's authority to base his decision on equity. Although this method has been used frequently in the last decades of the 20th Century, the number of the published awards by amiable compositeur arbitrators is getting lower and lower. The reason(s) for unpopularity of amiable composition should be sought in its very nature, in its relationships with other institutions such as arbitration in law, equity, ex aequo et bono arbitration, other means of dispute resolution and in its role in the development of the rules specific to international commerce.

A brief look at the history of law shows that the concept of equity comes to the scene every time that the rigidity of the rules of law challenges the justice. This has been the case in the 20th Century with respect to international commercial law which was deprived of specific rules. The role of amiable composition has been to contribute to the development of the rules specific to international commerce. The progressive codification of such rules in the last decades is also owed to amiable composition, which has accomplished its mission in the evolution of these rules.

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Ⅰ. Introduction

While doing my research on amiable composition, my first remark was that the awards by *amiable compositeur* arbitrators were intensifying in the 1970's and 1980's.[1] In the literature, awards also from the 1950's and 1960's are mentioned; however only a few of these have been published. The number of this kind of arbitral awards decline in late 1980's and early 1990's. Today, it can be fairly said that the publication of awards by *amiable compositeur* arbitrators is quite rare. We are not in the golden age of *amiable composition* and this subject finds its place rather in legal writings and in the rules of arbitral institutions.

What can be the reason of this unpopularity of *amiable composition*? Is this a sign of failure of this institution, or to the contrary, does it imply the accomplishment of its mission? In order to answer these questions in a satisfactory manner, we need to approach the subject from the point of view of its relations with other institutions with which it is connected.

I would like to start with elaboration of an analysis on the differences

1) Sigvard Jarvin, "The Sources and Limits of the Arbitrators' Powers", in Julian D. M. Lew (ed.), *Contemporary Problems in International Arbitration,* London, 1987, 50 et seq. , p. 71; Sigvard Jarvin, "Commercial Arbitration in East-West Relations: The Experience of the ICC Arbitration Court with Regard to Choice of Law, Number of Arbitrators and Seat of Arbitration", 10 International Trade, Law and Practice 1984, p. 117 et seq.

between *amiable composition* and arbitration of law, the reasons for which, and the conditions in which *amiable composition* is preferred (II). After this analysis, I will examine the relationship between *amiable composition*, equity and *ex aequo et bono* arbitration (III). I will then turn my attention to the possibility of adaptation or modification of the contract by *amiable compositeurs* (IV). Finally, I will finish my analysis with the role of *amiable composition* in the development of the new *lex mercatoria* (V).

Ⅱ. The Differences Between Amiable Composition and Arbitration, Advantages and Disadvantages of Amiable Composition

The expression "*amiable compositeur*" is derived from "*amicabilis compositor*" of the 13th Century, who was a third party without judicial power, but who mediated the parties.[2] *Amiable composition*, found its modern meaning with the French Code of Civil Procedure of 1806,[3] and today, this institution is found in local laws,[4] in the rules of arbitral institutions,[5] and in the UNCITRAL Model Law.[6]

2) Éric Loquin, "Arbitrage - Instance arbitrale - Arbitrage de droit et amiable composition", JurisClasseur Procédure civile, Fasc. 1038 (1994), p. 1 et seq., p. 12; Mauro Rubino-Sammartano, "Amiable Compositeur (Joint Mandate to Settle) and Ex Bono et Aequo (Discretional Authority to Mitigate Strict Law)", Journal of International Arbitration 1992, Vol. 9 No. 1, p. 5 et seq., p. 14; Karyn S. Weinberg, "Equity in International Arbitration: How Fair is 'Fair'", 12 B.U. Int'l L. J. 1994, p. 227 et seq., p. 231.

3) Articles of the French Code of Civil Procedure of 1806 relating to amiable composition read as follows: Art. 1474: "An arbitrator determines a dispute in accordance with the rules of law, save where, in the arbitration agreement, the parties assigned him as an amicable compounder."; Art. 1483: "... The appeal judge will determine the matter as an amicable compounder where the arbitrator has this assignment."; Art. 1497: "The arbitrator will decide as an amicable compounder if the agreement between the parties gives him this assignment." 〈http://www.legifrance.gouv.fr/Traductions/en-English/Legifrance-translations〉 (Last visit on July 29, 2014)

4) See, inter alia, Art. 114 of the Italian Code of Civil Procedure; Art. 1054/3 of the Dutch Code of Civil Procedure; Art. 187/2 of the Swiss Code of Private International Law; Art. 1700/1 of the Code of Justice of Belgium of 1998, Art. 1051/3 of the German ZPO of 1997; Art. 42/3 of the Washington of 1965. For a comparative study of these legislations, see, Chiara Tenella Silliani, *L'Arbitrato di Equità,* Milan 2006, pp. 148-160.

5) See the rules of arbitration of the ICC, Art. 21/3, KCAB Art. 25/3, LCIA Art. 22/4, SCC Art. 22/3, DIS Art 23/3.

Although there is not a precise definition upon which the authors unanimously agree, *amiable composition* is traditionally defined negatively, as the power of arbitrators to decide the merits of the dispute without being bound by the laws of the parties, but on the basis of their conception of equity.[7)]

Amiable composition, in its modern sense, is not anymore as "amiable" as it used to be, or as its name implies. Indeed, this is arbitration;[8)] an arbitration procedure where there is a claimant and a respondent, and at the end of which one of the parties wins while the other looses. The award issued at the end of the procedures is binding,[9)] and it can be executed by compulsory means, if needed.

However, *amiable composition* is still "amiable" compared to arbitration of law because of two reasons: (1) because it implies a derogation by the parties from their own laws in favor of the arbitrator's power to decide according to his conception of equity,[10)] (2) and because it requires a cooperation between the parties.

These are rather psychological and commercial aspects which are dominant in this conflict resolution method, rather than its juridical aspect.[11)] Because of this reason, *amiable composition* is recommended to parties wishing to protect their commercial relationships, such as the parties to long-term contracts.[12)] This feature already implies a disadvantage of *amiable composition* for parties who do not have a close commercial relationship and who tend not to cooperate.[13)]

Accordingly, in order to protect the parties from the effects of this disadvantage, there is a "presumption for arbitration of law" since the enactment

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6) Art. 28/3 of the UNCITRAL Model Law on International Commercial Arbitration.

7) Jarvin (note 1), p. 70; Loquin (note 2), p. 8; Emmanuel Gaillard, John Savage (eds.), *Fouchard Gaillard Goldman on International Commercial Arbitration,* The Hague, 1999, p. 837; W. Laurence Craig, William W. Park, Jan Paulsson, *International Chamber of Commerce Arbitration,* 3rd Edition, New York, 2000, p. 348; Wolfgang Peter, *Arbitration and Renegotiation of International Investment Agreements,* 2nd Edition, The Hague, 1986, p. 172.

8) Loquin (note 2), p. 12. For an opposing view see Michael Kerr, "Equity Arbitration in England", 2 AMER. REV. INT'L ARB'N 377, (1991), p. 383.

9) Weinberg (note 2), p. 244.

10) Loquin (note 2), p. 9, Jarvin (note 1), pp. 70-71.

11) Loquin (note 2), p. 42.

12) Craig, Park, Paulsson (note 7), p. 351.

13) Loquin (note 2), p. 7.

of the French Code of Civil Procedure of 1806,[14] according to which an arbitration of law is presumed if the power of arbitrator to decide as *amiable compositeur* is not expressly stipulated in the parties' contract. This presumption is found in the rules of certain arbitral institutions[15] and it reads, for instance, in Art. 28, paragraph 3 of the UNCITRAL Model Law on International Commercial Arbitration as follows: "The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so."

Therefore, the second difference between arbitration of law and *amiable composition* is a formal one, and it is that in order to have the power to decide as *amiable compositeur*, the arbitrator should have been expressly authorized to do so.[16]

As for the aim of conferring this power to arbitrator, this is to avoid the rigidity of the rules of law, in particular when they are likely to lead to a result which is not compatible with equity.[17] It would not be an exaggeration to say that this objective of *amiable composition* is its most important advantage for the professional parties wishing to avoid rigid consequences of law. This advantage is essential for moderating negative consequences of the rules of law for the party losing the arbitration.[18]

However, this advantage constitutes at the same time the most important basis of the criticisms raised against *amiable composition*, according to which it reduces predictability and legal security intended by the parties by their contract.[19] This conception is based on a positivist perspective and is not fully justified, since the identification of legal security with national laws is only a political presumption.

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14) Loquin (note 2), p. 6.

15) See note 5.

16) A.F. Munir Maniruzzaman, "The Arbitrator's Prudence in Lex Mercatoria: Amiable Composition and Ex Aequo Et Bono in Decision Making", MEALEY'S International Arbitration Report 2003, Vol. 18, # 22, p. 4.

17) Jarvin (note 1), p. 70; Weinberg (note 2), p. 231; Filip De Ly, *International Business Law and Lex Mercatoria,* Amsterdam, 1992, p. 124.

18) Craig, Park, Paulsson (note 7), p. 353; Kerr (note 8), p. 378.

19) Weinberg (note 2), p. 247; Herboczkova Jana, Amiable Composition in the International Commercial Arbitration, Faculty of Law of University of Masaryk, (2008), p. 9-10, available at 〈http://www.law.muni.cz/edicni/sborniky/cofola2008/files/pdf/mps/herboczkova_jana.pdf〉 (last visit on July 29, 2014)

On the other hand, it cannot be denied that this positivist perspective which is hostile to *amiable composition* has dominated England in 1960's and 1970's.[20] Although this positivist perspective still finds some support even today,[21] the practice of *amiable composition* has already shown that the concern for predictability was not founded.[22]

As another advantage of *amiable composition*, we may mention the decrease of possibility of scrutiny of the award by International Court of Arbitration of the ICC (as far as ICC arbitration is concerned) and intervention of state courts in arbitral awards.[23]

Ⅲ. The Relationship Between Amiable Composition, Equity, and Ex Aequo et Bono Arbitration

We have seen that *amiable composition* is distinguished from arbitration of law by the arbitrator's authority to decide according to equity. This is not to say that it is prohibited for him to decide according to the rules of law.[24] To the contrary, if the parties have granted this power to the arbitrator to supplement a domestic law,[25] it is a must for the arbitrator to apply the provisions of this law and to modify its effects by his conception of equity.[26] However, if the parties

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20) This has been the case since *Orion v. Belfort* case, [1962] 2 Lloyd's List. L. Rep. 257 until the decision in the *Eagle Star Insurance Co. v. Yuval Insurance Co.* case [1978] 1 Lloyd's Rep. 357; Jarvin (note 1), p. 70. Rubino-Sammartano (note 2), pp. 5-7; Craig, Park, Paulsson (note 7), pp. 348-350; Kerr (note 8), p. 390.

21) Weinberg (note 2), p. 253.

22) Maniruzzaman (note 16), pp. 4-5.

23) Craig, Park, Paulsson (note 7), pp. 353-354. It should also be mentioned that scrutiny process increases the quality and enforceability of awards.

24) Loquin (note 2), p. 33; Maniruzzaman (note 16), p. 2.

25) Jarvin (note 1), p. 71.

26) Gaillard, Savage (note 7), pp. 837-839; Craig, Park, Paulsson (note 7), p. 352. The authors refer to awards made in ICC cases No. 2139 (1974), 102 Journ. dr. intern. 929 (1975); ICC No. 2216 (1974), 102 Journ. dr. intern. 917 (1975) ICC No. 2879 (1978), 106 Journ. dr. intern. 989 (1979). See also Weinberg (note 2), p. 242; Jarvin (note 1), p. 71; Rubino-Sammartano (note 2), pp. 12-13. Alan Redfern, Martin Hunter et al., *Redfern and Hunter on International Arbitration*, 5th Edition, New York, 2009 p. 228.

have opted for *amiable composition* without any reference to a domestic law, in this case the arbitrator may also decide directly on the basis of the equity, without having to determine the applicable law and to study its effects.[27)]

On the other hand, from the point of view of a judge or an arbitrator of law it is not prohibited for him neither to resolve certain disputes according to the equity, in particular if he is requested to decide according to a legal system which considers equity as an institution to supplement written provisions.[28)]

If this is the case, what is the difference between an arbitration of law where the applicable law includes equity and an *amiable composition* procedure where the parties have chosen the law applicable to the substance of the dispute?

It is true that these two situations are very similar;[29)] but there has to be a difference between them, because in the second situation the parties should have expressly granted the power to decide as *amiable compositeur* to the arbitrator.[30)] Therefore, this arbitrator has to do something more than an arbitrator of law. This is not a privilege, but a must for him.[31)] What an arbitrator applying the rules of a domestic law to the substance of the dispute has to do would be to verify whether the effects of these rules of law are compatible with equity.[32)]

Another difference between the powers of an *amiable compositeur* and an arbitrator of law regarding the application of the equity is that *amiable compositeur* may have recourse to equity *contra legem*, that is to say, he may depart from the law, whereas an arbitrator of law may apply equity only for filling a gap *praeter legem.*[33)]

Obviously, the power of *amiable compositeur* to depart from the law has also

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27) Gaillard, Savage (note 7), pp. 836-837. The authors refer to the award made in the ICC case No. 5103 (1988), 115 Journ. dr. intern. 1206 (1988)

28) Maniruzzaman (note 16), p. 3; Weinberg (note 2), p. 232; Filip De Ly (note 17), p. 124; Bernard Hanotiau, "La Détermination et l'Evaluation du Dommage Réparable: Principes Généraux et Principes en Emergence", in Emmanuel Gaillard (Ed.), *Transnational Rules in International Commercial Arbitration,* ICC Publication No. 480/4, p. 211 et seq., p. 219.

29) Loquin calls this phenomenon as "la dualité de l'arbitrage (duality of the arbitration)", Loquin (note 2), p. 18.

30) Loquin (note 2), p. 20.

31) Loquin (note 2), p. 24.

32) Loquin (note 2), p. 33.

33) Loquin (note 2), p. 28. Maniruzzaman (note 16), p. 3.

certain limits: he may not in principle[34] depart from mandatory provisions.[35] This is so because the limits of the powers of *amiable compositeur* are determined by the limits of the powers of the parties which confer him these powers.[36]

It has been noted by some authors that the difference between *amiable composition* and *ex aequo et bono* decision-making is that in the latter the arbitrator is not bound even by mandatory rules.[37] However, since the sense of justice of the arbitrator shall dominate over any other consideration, this difference remains rather theoretical.[38] It should also be mentioned that according to another opinion, the difference between these two institutions is that the power of *amiable compositeur* is limited to settle the dispute and he is not authorized to decide it, whereas *ex aequo et bono* decision-making implies also this power.[39] This point of view is justified by the history of the development of these institutions; but the practice shows that this distinction too remains theoretical.

As regards the procedure, a point of view supports that *amiable compositeurs* may proceed with a lower degree of conviction for accepting the facts as established,[40] while according to another opinion *amiable composition* concerns only the merits of the dispute and not the procedure.[41] In any case, the reasons for the decision of *amiable compositeur* shall be stated.[42]

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34) Loquin (note 2), p. 35.

35) Jarvin (note 1), p. 71. Loquin (note 2), p. 8-9.; Rubino-Sammartano (note 2), p. 13; Gaillard, Savage (note 7), p. 841; Craig, Park, Paulsson (note 7), p. 352. The authors refer to awards made in ICC cases No. 4265 (1984), 111 Journ. dr. intern. 922 (1984); ICC No. 6503 (1990) 122 Journ. dr. intern. 1022 (1995)

36) Loquin (note 2), p. 34. Silliani (note 4), p. 10.

37) Maniruzzaman (note 16), pp. 2-3; Gaillard, Savage (note 7), p. 836; Jana (note 20), p. 2.

38) Gaillard, Savage (note 7), p. 836. Craig, Park, Paulsson (note 7), p. 348.

39) Rubino-Sammartano (note 2), pp. 14-16.

40) Jarvin (note 1), p. 72; Jana (note 20), p. 6.

41) Gaillard, Savage (note 7), p. 841; Rubino-Sammartano (note 2), p. 13.

42) Jarvin (note 1), p. 72; Silliani (note 4), p. 45.Weinberg, on the other hand, accuses amiable compositeurs for not stating the reasons of their decisions, without basing his argument on an in-depth research. Weinberg (note 2), p. 250.

Ⅳ. The Possibility of Adaptation and Modification of the Contract by *Amiable Compositeur*

May *amiable compositeurs*, who have the power to depart from the law, also depart from the provisions of the parties' contract? If so, what are their limits? On this issue, there is a variety of answers in legal writings and in case law. Most authors agree that, in principle, they do not have such a power,[43] because to admit otherwise would jeopardize legal security.[44] This limitation is found in the rules of some arbitral institutions,[45] as well as the UNCITRAL Model Law, where it is provided that "the arbitral tribunal shall decide in accordance with the terms of the contract".[46] This is a natural consequence of the general principle of *pacta sunt servanda*. Accordingly, the discussions on this issue appear to be a reflection of the debate on the tension between the principle of *pacta sunt servanda* and the idea of contractual justice.

According to an opinion, since the *pacta sunt servanda* principle has some limits, the rule according to which the arbitrators shall apply the provisions of the parties' contract cannot be absolute either. Therefore, some authors admit that *amiable compositeurs* have the power to modify or moderate the consequences of contractual provisions,[47] while some other authors emphasize the binding character of the contract.[48]

In case law, it is possible to find decisions representing both approaches. However, as regards arbitral case law, it is possible to observe that the general tendency is to recognize *amiable compositeurs*' power to depart from contractual

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43) Gaillard, Savage (note 7), pp. 839-840. Craig, Park, Paulsson (note 7), p. 353 The authors refer to the award made in the ICC case No. 3938 (1982), 111 Journ. dr. intern., 926 (1984); Weinberg (note 2), p. 243

44) Jarvin (note 1), p. 71.

45) See, for instance, the rules of arbitration of the ICC, Art. 21/2 and DIS, Art 23/4.

46) Art. 28/4 of the UNCITRAL Model Law reads as follows: "In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."

47) Loquin (note 2), p. 36; Gaillard, Savage (note 7), p. 840.

48) Jarvin (note 1), p. 72.

provisions.[49] This tendency seems to be more justifiable than a rigid conception of the binding character of the contract, since even an arbitrator of law can modify excessive provisions of a contract when he applies a law which grants him such power,[50] or when he rules on the basis of the general principle of *rebus sic stantibus*. If an arbitrator of law who does not have the powers of an *amiable compositeur* can modify or moderate contractual provisions, it should be admitted that an *amiable compositeur* too, he has such a power.

Differing from an arbitrator of law, modification or moderation of the contract's provisions may also be an obligation for *amiable compositer.*[51] Since the parties confer the power to decide according to equity to the arbitrator, they expect that his decision would be in conformity with equity. Therefore, it can be deduced that *amiable compositeur* has the duty to moderate or to modify the provisions of the contract, if equity requires so.[52]

Moderation or modification of the contract shall be reasoned.[53] The reason for this may be the disequilibrium of the contract which appears unfair to *amiable compositeur.*[54] In case of hardship, where an unforeseeable event renders the performance of the contract more burdensome, *amiable compositeur* may adapt the contract to unforeseen circumstances. However, he may do so only for the future of the contract,[55] and only in exceptional cases.

In conclusion, although the principle is that contractual provisions are binding, the power of *amiable compositeurs* to revise, modify or moderate the contract in order to make it equitable makes part of the essence of the institution of *amiable composition.*[56]

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49) Gaillard, Savage (note 7), p. 840. The authors refer to awards made in ICC cases No. 3327 (1981) 109 Journ. dr. intern. 971 (1982); ICC No. 3344 (1981) 109 Journ. dr. intern. 978 (1982), ICC No. 4972 (1989), 116 Journ. dr. intern. 1100 (1989)

50) Gaillard, Savage (note 7), pp. 840-841.

51) Loquin (note 2), p. 39.

52) Loquin (note 2), p. 39; Filali Osman, *Les principes généraux de la lex mercatoria,* Paris 1992, p. 171. The author refers to the decision of the Cour d'Appel de Paris dated 28 Nov. 1996, Rev. arb. 1997, p. 380, note É. Loquin.

53) Loquin (note 2), p. 40.

54) Loquin (note 2), pp. 40-43.

55) Loquin (note 2), pp. 40-41.

56) Loquin (note 2), p. 42. See, in particular, the award made in *SEEE v. Republique Populaire Fédérale de Yougoslavie* case, 1074 Journ. dr. intern. (1959). For a study of this case, see

V. The Role of Amiable Composition in the Development of the *New Lex Mercatoria*

As regards the relationship between *amiable composition* and the new *lex mercatoria*, we may say that these two institutions are inseparable. Undoubtedly, *amiable compositeur* can decide according to the rules of the new *lex mercatoria.*[57] In writings, three reasons are mentioned regarding the application of the new *lex mercatoria* by *amiable compositeurs*:

(1) If the parties have stipulated an *amiable composition* clause without determining a law applicable to the substance of the dispute, *amiable compositeur* may apply the rules of the new *lex mercatoria*, since also an arbitrator of law has such a power.[58]

(2) Equity, as a part of the new *lex mercatoria*, may - or rather should- be applied by the *amiable compositeur* even if the parties have made a choice of law applicable to the substance of the dispute,[59]

These two reasons already show how intense and deep is the relationship between *amiable composition* and the new *lex mercatoria*.

(3) Finally, and in conformity with this character of the relationship between these two institutions, some authors consider that an *amiable composition* clause implies a choice for the application of the new *lex mercatoria.*[60]

The reason of this interdependence between *amiable composition* and the new *lex mercatoria* can be found in the distinctive notion of *amiable composition*, which is "equity". Legal history shows us that the humanity needed the notion of

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Peter (note 7), p. 172; Ahmet Cemil Yıldırım, Equilibrium in International Commercial Contracts, The Netherlands, 2011, p. 35.

57) Maniruzzaman (note 16), p. 2.

58) Maniruzzaman (note 16), p. 4.

59) Maniruzzaman (note 16), p. 4.

60) Gaillard, Savage (note 7), p. 838; Berthold Goldman, "The applicable law: general principles of law - the lex mercatoria", in Lew (note 1), p. 113 et seq., p. 117.

equity every time the rigidity of the rules of law reached the level of challenging the justice.[61] This has been the case in the 20th Century with respect to international commercial law, which had to answer the needs of the globalizing business world, but which was governed by the rules of state legal systems.

The function of the equity has been to contribute to the emergence and development of the rules of law specific to international commerce, otherwise called as the new *lex mercatoria*. This function has been performed through interpretation and filling the gaps in normative legal systems.[62]

In the years 1950's 60's and 70's, even if international commerce was not totally deprived of particular norms, the degree of development of these norms was incomparable to the level of formulation of the rules of the new *lex mercatoria* of our days. Moreover, the juridicity of the new *lex mercatoria* was not yet confirmed by case law and legislation. Therefore, until the years 1980's, *amiable composition* used to appear as the only secure way to apply the rules of the new *lex mercatoria.*[63] We may deduce from this that one of the reasons for which *amiable composition* is not so popular today can be found in the recognition of the new *lex mercatoria* as a legal system by case law and national and international legislators.

A second reason is the level of formulation of the rules of the new *lex mercatoria* reached in the years 1990's, in particular with the publication of the UNIDROIT Principles of International Commercial Contracts.[64] More the rules of the new *lex mercatoria* will be developed and precise, less the arbitrators will

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61) This has been the case, for instance, as regards the *aequitas* of *Praetor* against the rigidity of *ius civile* and the Courts of Equity in England against the rigidity of common law. Rubino-Sammartano (note 2), pp. 7-9; Konrad Zweigert, Hein Kötz, *Introduction to Comparative Law,* 2nd Edition, New York, 1987, pp. 198-203; René David, John E. C. Brierley, *Major Legal Systems in the World Today,* 3rd Edition, London, 1985, pp. 324-330; Willem Zwalve, Egbert Koops, *Law & Equity: Approaches in Roman Law and Common Law,* The Netherlands, 2013, pp. 3-13.

62) Maniruzzaman (note 16), p. 5. For instance, it has expressly been stipulated in the Section 1-103 (1992) of the Uniform Commercial Code (UCC) of the United States that "the principles of law and equity, including the law merchant … supplement its provisions."

63) Gaillard, Savage (note 7), pp. 838-839.

64) UNIDROIT Principles of International Commercial Contracts 2010, available at 〈http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf〉 (last visit on July 29, 2014).

need to have recourse to equity. Today, it is possible to observe the reflections of the decisions of *amiable compositeurs* made in 1050's and 60's first as the principles of the new *lex mercatoria,*[65] then within soft law codifications, such as the UNIDROIT Principles.[66]

If we consider *amiable composition* from a historical point of view and as a dispute resolution mechanism which is only aimed at settling the dispute, but not to decide it in place of the parties,[67] we may say that also the development of other methods, such as mediation and conciliation, had an impact on the current situation of *amiable composition*.

In conclusion, we may say that the lack of popularity of *amiable composition* in the 21st Century does not imply the failure of this important institution. To the contrary, this is a sign of achievement of its mission in the development of rules specific to international commerce.

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65) It is possible to observe the impact of the award made in *SEEE v. Republique Populaire Fédérale de Yougoslavie* case, (note 54), on the arbitral awards made in ICC cases No. 4761, 114 Journ. dr. intern. 1012 (1987); ICC No. 5961, Journ. dr. intern. 1051 (1997), ICC No. 7365, Uniform Law Review / Revue de droit uniforme, 1999, p. 796; Yıldırım (note p. 54), pp. 90-95.

66) See Chapter 6, section 2 of the UNIDROIT Principles, titled "hardship"

67) See note 39.

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