Developments

Book Review—Herman Hoffmann's *Kammern für internationale Handelssachen*: Can Arbitration Serve as a Model for the Law of Civil Procedure?

By Daniel Saam[*]

[HERMANN HOFFMANN, KAMMERN FÜR INTERNATIONALE HANDELSSACHEN – EINE JURISTISCH-ÖKONOMISCHE UNTERSUCHUNG ZU EFFEKTIVEN JUSTIZDIENSTLEISTUNGEN IM AUßENHANDEL (Chambers for international commercial matters: A legal and economic analysis to effective judicial services in foreign trade, Nomos, 2011); ISBN 978-3-8329-6922-6, 246 pp., 65€ Paperback]

A. Introduction

International commercial disputes, resulting from the failure of cross-border business transactions, are no new phenomena at all. However, the mere number of disputes between at least two different[1] business actors either residing in different states or disputing over events having taken place or having effects that occur in a state different to the forum state have been increasing for the last decades.[2] As the markets for goods and services have been globalizing successively—with the invention and, then, triumphal march of the internet marketplace as the latest and, of course, most revolutionary development—not only big but also so-called small and medium-sized businesses (SMB) are keeping pace. And, so do legal conflicts that arise, for example, in cases where one fails to perform a commercial contract or where a certain product causes mass injuries in different countries - just to name a few relevant constellations.[3]

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[*]The author is a judge at the *Amtsgericht* (local court) of Frankfurt am Main, currently delegated to the *Hessische Ministerium der Justiz, für Integration und Europa* (Ministry of Justice, for Integration and Europe of the Federal State of Hessen) in Wiesbaden. This book review solely reflects personal opinions of the author. Email: saamdaniel@hotmail.com.

[1] If the two business entities are, for example, either part of the same group of companies or affiliated companies, the dispute is rather solved by internal mechanisms, for instance by a mere decision of the management board.

[2] These are just some of the thinkable constellations that might constitute an "international dispute".

[3] It goes without saying that at the same time the number of international disputes between consumers and business actors increases too. In fact, the number of c2b-disputes may have increased even faster. The European Commission has been pursuing for at least six years a political approach in which costumers play the role of the "motor of integration". Therefore, the Commission tries to tear down walls that it considers to be the reasons why consumers refrain from purchasing goods and services in Member States different from their own, even if they might asses the offer as the economically preferable one. The Commission, thus, aims at creating confidence of the consumers in the facts that the same contractual rights and the same ability to enforce those rights exist no

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So far so good. At first sight, the conclusion seems to be mandatory. Since commercial transactions are generally guarded by legal contracts, the number of legal disputes and, therefore, the number of cases before courts should be increasing accordingly. Yet, it does not! The well-known fact is that international commercial disputes seldom are subject to state court proceedings.[4] Instead, the commercial actors execute their private autonomy extensively and opt out of the state judiciary. They agree upon an arbitration clause according to which any disputes resulting from a specific relation must be brought before either *ad hoc* or administered arbitration forums. Famous administered arbitration forums include the International Court of Arbitration of the ICC[5] or the London Court of International Arbitration (LCIA). In fact, there is strong evidence that the number of arbitration cases dealing with international business disputes has been increasing consistently.[6]

As a matter of fact, in certain fields of commercial law it is already fairly difficult to research precedent cases by state courts.[7] This finding, for instance, in the field of law for mergers and acquisitions is devastating—at least seen from the rule of law's point of view as producing legal certainty is a very important feature of law itself.[8] Since arbitration procedures are regularly conducted confidently, the arbitral award, which, in general, is kept confidential, is only capable of resolving the single dispute. Due to this, arbitration—in contrast to publicly conducted court proceedings—has no guiding function for further disputes and, thus, creates no legal certainty. Arbitration can neither create precedents for the interpretation of a certain vague legal term nor for those circumstances or facts, which – according to the legislature's will—are not subject to a specific legal rule.

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matter where in the European Union the contractual partner resides. *Cf.* DANIEL SAAM, KOLLEKTIVE RECHTSBEHELFE ZUR DURCHSETZUNG VON SCHADENSERSATZANSPRÜCHEN IM EUROPÄISCHEN WETTBEWERBS- UND VERBRAUCHERSCHUTZRECHT (Collective redress for the enforcement of compensation claims in European competition and consumer protection law) 122-124 (2011).

[4] *See* Gralf-Peter Calliess & Hermann Hoffmann, *Judicial Services for Global Commerce – Made in Germany?,* 10 GERM. L. J. 115 (2009), available at: http://germanlawjournal.com/index.php?pageID=11&artID=1080 (last accessed: 27 June 2013).

[5] The International Court of Arbitration was already founded in 1923 and is based in Paris. For further information, *see* International Chamber of Commerce, *Arbitration* (n.d.), available at: http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/ (last accessed: 27 June 2013).

[6] Gralf-Peter Callies & Hermann Hoffmann, *Effektive Justizdienstleistung für den globalen Handel* (Effective judicial service for the global trade), ZEITSCHRIFT FÜR RECHTSPOLITIK (ZRP) 1, 4 (2009).

[7] Christian Duve & Moritz Keller, *Privatisierung der Justiz – bleibt die Rechtsfortbildung auf der Strecke?* (Privatization of justice - is the development of the law on the track?), SCHIEDSVZ (GERMAN ARB. J.) 169 (2005); Rex Perschbacher & Debora Lyn Bassett, *The End of Law*, 84 BOST. UNIV. L. REV. 1-62 (2004), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=621146 (last accessed: 27 June 2013).

[8] *Cf.* KONRAD HESSE, GRUNDZÜGE DES VERFASSUNGSRECHTS DER BUNDESREPUBLIK DEUTSCHLAND 85 (20th ed., 1995).

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However, the aforementioned remarks provoke many questions. For instance, why do international businessmen refrain from going to state courts? And, hence, what results from this phenomenon of the *Entstaatlichung der Justiz* (denationalization of justice)?[9] What is the outcome for national judiciary? And might it be worth trying to bring international business disputes back to the states' court houses? And if this aim is worthwhile what are the adequate means to achieve it? Which are the appropriate modifications of the procedural law in the first place? And can arbitration be a model for the law of civil procedure?

B. The Book

These questions build the starting point as well as the objects of the very worthwhile reading doctoral thesis of Hermann Hoffmann.[10]

In its first chapter the empiric facts of the phenomenon that Marc Galanter calls 'the vanishing trial' are summarized.[11] Hoffmann asks therein, whether state courts and arbitral tribunals can, from the perspectives of a businessman, be seen as competing institutions, (i.e. if they are competitors).[12] This aspect is also crucial for the question of whether the legislature has the actual ability at all to attract businessmen to prefer state courts to arbitration by modifying the rules of civil procedure.[13]

By referring to several studies Hoffmann shows that the practical relevance of state courts deciding on disputes arising out of international business contracts is and presumably has always been minor compared to international arbitration regimes.[14] Since 1967 many surveys have gathered empirical data by asking managers of business entities whether they typically rely on arbitration clauses in national and/or international business agreements or not. According to one of the most recent surveys—undertaken in the years

[9] *Cf.* Hermann Hoffmann & Andreas Maurer, *Entstaatlichung der Justiz* (Denationalization of Justice), 31 ZEITSCHRIFT FÜR RECHTSSOZIOLOGIE 279 (2010).

[10] HERMANN HOFFMANN, KAMMERN FÜR INTERNATIONALE HANDELSSACHEN – EINE JURISTISCH – ÖKONOMISCHE UNTERSUCHUNG ZU EFFEKTIVEN JUSTIZDIENSTLEISTUNGEN IM AUßENHANDEL 15 (2011).

[11] Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. OF EMP. LEG. STUD. 459 (2004).

[12] HOFFMANN, *supra* note 10, at 28-56.

[13] In Germany the laws of civil procedure basically consist of the *Zivilprozessordnung* – *ZPO* (Code of Civil Procedure) and the *Gerichtsverfassungsgesetz* – GVG (Judicature Act).

[14] HOFFMANN, *supra* note 10, at 39.

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from 2003 through 2006 by the *Sonderforschungsbereich Staatlichkeit im Wandel* at the University of Bremen[15], where Hoffmann himself is doing research—the quantity of arbitration agreements is significantly higher within international business relations than in contracts guiding national business relations. While national business contracts—at least in Germany—are still mainly subject to state court proceedings, the parties of international business contracts regularly opt out of state judiciary by imposing arbitration agreements instead.[16]

But why is that so?[17] In order to answer this question, Hoffmann inquires whether a relevant competition between state courts and arbitral tribunals exists. Therefore, the author deploys the theory of the New Institutional Economics (NIE). NIE emphasizes the importance of institutions for the economic process. It is an economic (and not a legal) theory, which understands systems of rules and respective enforcement procedures as institutions that are supposed to guide human behavior.[18] One approach of this theory is that it identifies the main ambition of the business actors in their struggle to minimize transaction costs in order to maximize their profits. Hoffmann concludes that both arbitral tribunals as well as state courts are, seen from the economist's point of view, institutions that basically guard the compliance and provide the possibility to enforce a contract. So, when it comes to the enforcement of certain contractual provisions, both institutions are functional equivalents (*funktionale Äquivalente*) and, thus, may compete against each other on this field of law.[19] The decisive question is *which institution minimizes transaction costs better*?

According to Hoffmann the only reason why a competition between these two institutions still does not exist is that states have yet to recognize arbitral tribunals and their regulation as competitors to their courts.[20] However, the last step toward an actual competition is about to be made since the United Kingdom and Germany have published brochures aiming at promoting their legal systems.[21] These brochures reveal that nation states have

[15] *See* Collaborative Research Center 597 (CRC 597), available at: http://www.sfb597.uni-bremen.de/?SPRACHE=en (last accessed: 27 June 2013).

[16] HOFFMANN, *supra* note 10, at 38-39.

[17] *Id.* at 40.

[18] *Id.* at 40-41.

[19] *Id.* at 43.

[20] *Id.* at 54.

[21] For the 2nd edition of the German brochure see Federal Chamber of Notaries (BNotk) *et al.*, Law Made in Germany (2nd ed. 2012), available at: http://www.lawmadeingermany.de/Law-Made_in_Germany.pdf (last accessed: 27 June 2013). *See also* The Law Society of England and Wales, England and Wales: The Jurisdiction of Choice—Dispute Resolution (n.d.), available at: https://www.haitz-rechtsanwaelte.de/de/newsarchiv/data/aktuelles__4_2.pdf (last accessed: 27 June 2013).

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been commencing to acknowledge that their legal systems are competing with others as well as with alternative non-state institutions.

In the second and most comprehensive chapter, Hoffmann asks why arbitration is actually so important when it comes to international commercial contracts. In order to provide an answer, he gathers the alleged advantages of arbitration, which many legal scholars regard as crucial arguments for preferring arbitration to state judiciary. For instance, there is the possibility that the arbitrator and/or the law applicable to the contract can be randomly elected. Other advantages include the expectation of a shorter duration of proceedings, confidentiality of the proceedings and the award, lower costs, and the fact that it is easier to enforce an arbitral award in other states different to the forum state.[22] In order to assess these asserted advantages, Hoffmann compares every single of the aforementioned arguments with reference to, on the one hand, state court proceedings and to arbitration proceedings on the other. He asks, for example, if and under what conditions one is able to choose a specific arbitrator and a specific judge under German law or if and under what circumstances the arbitration and the state court proceedings can be conducted confidentially. This approach enables the author to distinguish real amenities of arbitration from merely supposed ones.

Hoffmann's thereby found conclusions embrace, *inter alia*, that on a global – not necessarily on a European – level it is currently preferable for the contractual partners to choose an arbitration tribunal and, thereby, opt out of state judiciary.[23] Within the European Union (EU), the Brussels-I regulation brings into line the member states' provisions governing the acceptance and enforceability of foreign judgments.[24] However, beyond the EU there is no comparable level of harmonization. The Hague Convention on Choice of Court Agreements[25], which would harmonize the laws concerning the acceptance in many more nation states, is yet to be enforced. The consequence is that, outside the European Union, state laws governing the contractual choice of forum can considerably differ from each other. This leads to uncertainty whether the state law in the forum state actually acknowledges the contractual choice of forum by the parties. And, seen through the glasses of NIE, legal uncertainty leads to higher transaction costs, which business actors generally need to avoid. This might be one reason why international business actors prefer arbitration. Since the laws governing the enforcement of arbitral awards are conformed to

[22] *Id.* at 58.

[23] *Id.* at 114.

[24] Council Regulation No 44/2001 of Dec. 22, 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 2001 O.J. (L12), available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:012:0001:0023:EN:PDF (last accessed: 27 June 2013).

[25] Hague Convention on Choice of Court Agreements, June 30, 2005, available at: http://www.hcch.net/upload/conventions/txt37en.pdf (last accessed: 27 June 2013).

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the so-called New York Convention of 1958[26] in 145 states all over the world, arbitration is less uncertain at this point.[27]

Another advantage of arbitration is that it enables the parties to choose that their business relation and, hence, their contract shall be governed by or be subject to private legal regimes – such as the *lex mercatoria, lex sportiva* or the *lex maritima*. Although those regimes are practically very important, German courts would not regard these rules as applicable.[28]

However, the main advantage of arbitration proceedings lies in the ability to choose the language of the case (*Verfahrenssprache*). Under German law, in particular Section 1045 paragraph 1 of Germany's Code of Civil Procedure (*Zivilprozessordnung*), the language of arbitration proceedings may be chosen randomly by the contractual partners.[29] Hoffmann reasonably estimates that most of the arbitration proceedings concerning international business relations are held in the *lingua franca* of international business. In fact, the conformity of the language of the contract on the one and the language of the case on the other hand lowers transaction costs.[30] However, section 184 of the German Judicature Act (*Gerichtsverfassungsgesetz*), German civil procedural law, states that the language of the case (*Verfahrenssprache*) is German. Thus, the currently pending legislative initiative, which aims at inserting the possibility to choose English instead of German as language of the case in German state court proceedings, shall be appreciated.[31]

Hoffmann concludes the second chapter by stating that judiciaries ought to offer procedures that are orientated at arbitration proceedings, but without copying them.[32]

That leads to Chapter 3. Therein, Hoffmann traces the reasons why nation states ought to offer legal services in the field of international business law in the first place. He points out that states should definitely have a strong economic interest in attracting international

[26] The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Sept. 30, 1970. [1970] 3 U.S.T 2517, T.I.A.S. No. 6997, 330 U.N.T.S 3 (effective Dec. 29, 1970), available at: http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII_1_e.pdf (last accessed: 27 June 2013).

[27] HOFFMANN, *supra* note 10, at 104.

[28] *Id.* at 97.

[29] The first sentence of Section 1045 paragraph 1 of Germany's Code of Civil Procedure (*Zivilprozessordnung)* states: "The parties may agree on the language(s) to be used in the arbitration proceedings."

[30] HOFFMANN, *supra* note 10, at 109.

[31] *Id.* at 114.

[32] *Id.* at 115.

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business actors to choose their courts as competent forum to resolve their disputes.[33] Under German law, the legal costs that the plaintiff has to pay before getting access to a court proceeding directly depend on the value in litigation (*Streitwert*). And, since international business disputes regularly concern high monetary amounts in controversy, they bring high revenues for the state treasury.[34] Furthermore, if in case of international disputes the actors choose to bring their case before German courts the "sale of ancillary services"[35], for example, the sale of hotel or restaurant services, is provided. It goes without saying that the attorneys and the parties as well as the witnesses need to sleep and eat somewhere near the courthouse.

However, besides mere economic reasoning, Hoffmann argues that states were legally obliged to offer effective court proceedings. This obligation should also be valid when it comes to international business disputes even when no German party is involved[36] as article 6 of European Convention of Human Rights (ECHR), the Charter of Fundamental Rights of the EU, and the German Basic Law (*Grundgesetz*) all ensure the right to a fair trial. And since parties of international business contracts often opt out of state judiciary, the law of civil procedure is not sufficiently effective.

In Chapter 4, Hoffmann looks beyond his own nose and informs about the so-called 'Business Courts'[37], which, meanwhile, have been imposed as specialized courts for business trials in 23 states of the United States of America. These Business Courts are not separated from the regular court system; they are special chambers within the state courts that, for example, provide a clear schedule for resolving the dispute and are capable of using measures of alternative dispute resolution[38].[39] When, during the 1990s, the Chief Judge of New York Judith S. Kaye realized that the confidence in the capacity of state courts in resolving business disputes has strongly decreased, she established a task force that should work on a justice reform that addresses this development. As of the beginning, in this task force judges and attorneys worked together intensively. They aimed at

[33] *Id.* at 143-157.

[34] HOFFMANN, *supra* note 10, at 156.

[35] Jens Damann & Henry Hansmann, *A Global Market for Judicial Services* 1, 54 (University of Texas School of Law, Law & Economics Research Paper Series, Paper No. 98, Mar. 2007), available at: http://ssrn.com/abstract=976115 (last accessed: 27 June 2013).

[36] HOFFMANN, *supra* note 10, at 126-127.

[37] *Id.* at 159-174.

[38] In fact, due to the *Mediationsgesetz* (statute of mediation) effective within all German courts, so-called *Güterichter* (meditative judge) offer to resolve a dispute by way of measures of ADR. See Mediationsgestez (MediationsG) v. 21.07.2012, BGBl. I S. 1577.

[39] HOFFMANN, *supra* note 10, at 160-161.

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enhancing "New York's role as the center of commerce", which reveals that they regarded capable courts as a brick of business development.[40]

Initial examinations of their practical relevance show that, where Business Courts have been installed, the importance of arbitration proceedings dealing with international business relations decreases.[41] To put it on a more abstract level: the more accurate the offer of specialized state court proceedings is for business actors demands, the more the importance of arbitration decreases.[42]

Hoffmann, then, points out those legal reforms, which were in his opinion necessary to strengthen German civil procedure law in particular. Therefore, he uses the already existing draft law[43] about the conception of Special Chambers for International Commerce (*Kammern für internationale Handelssachen*) as a blueprint.[44] This draft law, which has initially been introduced by the German federal states of North Rhine-Westphalia (*Nordrhein-Westfalen*) and Hamburg[45] and supported by the states of Hessen and Lower Saxony (*Niedersachsen*), is currently pending in the German *Bundestag.*[46] The German *Bundesrat* – the second legislative chamber representing the Federal States – has adopted the amended draft.[47]

The main aspect of the draft law is the invention of the aforementioned so-called 'Chambers of International Commercial Matters' (*Kammern für internationale Handelssachen*) at specific district courts. The Chambers offer the possibility that the parties can mutually opt to conduct their law suit thoroughly in English. However, the draft

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[40] *Id.* at 161.

[41] *Id.* at 159.

[42] *Id.* at 173.

[43] Entwurf eines Gesetzes zur Einführung von Kammern für internationale Handelssachen (Draft law on the introduction of chambers for international commercial matters, KfiHG), 16 June 2010, BT-Drucks 17/2163, available at: http://dipbt.bundestag.de/dip21/btd/17/021/1702163.pdf (last accessed: 27 June 2013).

[44] HOFFMANN, *supra* note 10, at 175.

[45] *See* KfiHG, 27.01.10, BR-Drucks. 42/10, available at: http://dipbt.bundestag.de/dip21/brd/2010/0042-10.pdf (last accessed: 27 June 2013).

[46] HOFFMANN, *supra* note 10, at 213.

[47] The current standing of the legislative process is described by Christoph Kern, *English as Court Language in Continental Courts*, 5 ERASMUS L. REV. 187, 199, 200 (2012); *see also* Stefan Huber, *Prozessführung auf Englisch vor Spezialkammern für internationale Handelssachen* (Litigation in English before special chambers for international commercial matters), *in* EUROPÄISCHE UND INTERNATIONALE DIMENSION DES RECHTS – FESTSCHRIFT FÜR DAPHNE-ARIANE SIMOTTA (European and International dimensions of law – publications in honor of Daphne—Ariane Simotta) 245 (Thomas Garber *et. al.*, eds., 2012).

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law does not contain any further alterations to German civil procedural law that Hoffmann has pointed out as being crucial to strengthen the judiciary in its competition with arbitration. Seen before this background, Hoffmann*'s* critique that the draft law – although it is a good first step – does not go far enough is consistent, reasonable and legitimate. In fact, his approach is a much broader one. Because it offers many interesting perspectives, Hoffmann's point should be taken seriously and needs to be considered in the pending legislative process that has not made any significant progress since November 2011, when a public hearing in the German Bundestag was conducted.[48]

C. Conclusion

Hoffmann's book is a well-founded piece, which, furthermore, is very worthwhile reading. At least the first part of the appraisal is not astonishing at all, since Hoffmann has been studying the subject for quite some time and has already published numerous articles on this issue.[49] His approach deploys the theory of New Institutional Economics in order to show why businessmen prefer arbitration and omit state courts. Since the economic system orients itself in accordance with the principle of maximizing profits, this approach is persuasive and can definitely be helpful for legal politics, in order to understand why businessmen in some cases prefer arbitration over state courts, despite the often emphasized and undoubtedly given professionalism of German judges and courts.

Hoffman's conclusion that it might not be sufficient to just implement a special English speaking Chambers of International Commercial Matters, is strongly supported by the following: an interesting pilot project, practiced at some courts in North-Rhine-Westphalia, Germany, might build ground for serious doubts as to the demand for only English speaking courts.[50] By way of extensive interpretation of the German law of civil

[48] For further information, *see Ja zu englischsprachigen Gerichtsverhandlungen* (Yes to English court hearings), DEUTSCHER BUNDESTAG (2011), available at: http://www.bundestag.de/dokumente/textarchiv/2011/36400205_kw45_pa_recht/index.html (last accessed: 27 June 2013).

[49] Calliess & Hoffmann, *Effektive Justizdienstleistungen für den globalen Handel*, *supra* note 6; Calliess & Hoffmann, *Judicial Services for Global Commerce*, *supra* note 4, at 115; Hermann Hoffmann, *Rechtsfortbildung im internationalen Wirtschaftsrecht*, DEUTSCHE RICHTERZEITUNG 2009, at 329; Gralf-Peter Calliess & Hermann Hoffmann, Kammern für internationale Handelssachen—folgt die Justiz der Anwaltschaft auf dem Weg in die Globalisierung (Chambers for international commercial matters, the judiciary follows the legal profession on the way to globalization), 6 MITTEILUNGEN DER BUNDSRECHTASANWALTSKAMMER (BRAK-MITT) 241, 247 (2010), available at: http://194.8.213.231/script/app.cgi?siteid=brak-mitteilungen (last accessed: 27 June 2013); Hermann Hoffmann, *Pro: Englisch als Gerichtssprache* (Pro: English as official language in court), 3 ZRP 103 (2010).

[50] *See* Kern, *supra* note 47, at 198.

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procedure[51] the Court of Appeals of Cologne (*Oberlandesgericht* Köln) and the District Courts in its circuit have created special chambers and senates that offer the possibilities to conduct at least hearings in English. At those chambers the parties are also entitled to submit English documents for evidence. However, since the pilot project began in January 2010, only two cases have been filed and merely one has been processed.[52]

This review shall conclude with one critical remark to the book. Hoffmann's argument that the 'Chambers of International Commercial Matters' shall not be imposed due to economic purposes and in order to meet the demands in Article 6 of the ECHR, the Charter of Fundamental Rights of the EU, and the German Basic Law proposes, must be questioned. According to Hoffmann the basic right to have recourse to a court (*Anspruch auf effektive Justizgewährung*) in international commercial disputes forces the legislature to impose an effective civil procedural law.[53] But what does 'effective' in this constitutional context mean? Is it really compelling that the procedural rules in effect do not suffice because they are seldom employed in international commercial cases?[54] And does the *Anspruch auf effektive Justizgewährung* really lead to the obligation to accept private legal regimes as binding legal rules before state courts?

Notwithstanding the aforementioned questionable points, in addition to the economic aspect, national states have at least one more very strong interest in bringing international commercial disputes back before state courts that proceed and decide publicly: the creation of legal certainty in this particular area of law.[55] And since legal certainty is also a decisive precondition of confidence of business-makers and, thus, for conducting business at all, German businessmen should have a strong interest in improving the legal services German courts offer. That is why the task force in New York during the 1990s that led to the introduction of Business Courts embraced private and public actors. Maybe this aspect can also work as a model for German legal reform in the field of international business law.

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[51] This refers to Sec. 185 of the German Judiciary Act (*Gerichtsverfassungsgesetz)*, which states in its Paragraphs (1) and (2): "(1) If persons are participating in the hearing who do not have a command of the German language, an interpreter shall be called in. No additional record shall be made in the foreign language; however, testimony and declarations given in the foreign language should also be included in the record or appended thereto in the foreign language if and to the extent that the judge deems this necessary in view of the importance of the case. Where appropriate, a translation to be certified by the interpreter should be annexed to the record. (2) An interpreter may be dispensed with if all the persons involved have a command of the foreign language." An English version of the Act is available at: http://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html#p0833 (last accessed: 27 June 2013).

[52] *See* Kern, *supra* note 47, at 199.

[53] HOFFMANN, *supra* note 10, at 126-128.

[54] *Id*. at 135.

[55] *Id*. at 140.

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