CACOPHONY OF DELOCALISATION: EMERGING TREND IN THE INTERNATIONAL COMMERCIAL ARBITRATION*

Abstract

Delocalization of international commercial arbitration involve releasing international commercial arbitration from the constraint of the lex loci arbitri that invariably governs procedural matters thereby making it to drift and be free from national laws, notwithstanding the seat of the arbitration. Mostly, the seat of arbitration is chosen for the reason of convenience. Parties are not always willing to submit their arbitration to the procedural rules for court interference. This article examines the concept of delocalization and its practicability in International commercial arbitration particularly how it tends to liberalize National Arbitration law. The article discusses the jurisdictional trend in United Kingdom, India and France and how delocalization has been able to minimize reliance on the procedural laws of those jurisdictions. The article also finds that delocalization of international commercial arbitration is yet to spread globally to many jurisdictions. It discovers that delocalization protected many arbitral awards which would have been annulled by the lex arbitri. The article concludes that delocalization of the arbitral process and the final award would mean that parties should be unconcerned by unknown National laws. To this effect, the parties will not face the risk that noncompliance with such laws would render their awards unenforceable.

KEY WORDS: Arbitral awards, Arbitration, Delocalisation, Liberalisation

Introduction

With existence of international business transactions being on the increase, plenty cross-border activities which are not bound by National laws are existing and therefore making it difficult to submit disputes to a particular jurisdiction. Parties have oftentimes made up their minds to utilise arbitration in settling international commercial disputes since they can decide what rules would guide the arbitral proceedings. People involved in international commercial contracts have subscribed to the use of arbitration as a dispute resolution mechanism as a result of the following among others; autonomy of the parties' neutrality, confidentiality, enforceability of awards under the New York Convention is for recognition and enforcement of foreign awards (NYC) and availability of experts to settle disputes.

However, in today's world, arbitration is beginning to lose its autonomy as a result of different national legislation imposed by different countries on international commercial arbitration.

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This caused problems that have made delocalisation a theory worth considering in the world of international arbitration.

Introducing delocalization theory into international commercial arbitration reduces the involvement of the national court in international commercial arbitral proceedings and enforcement of awards thereunto. It does not mean escaping from national court but a total reduction of territoriality or localisation in International commercial arbitration.

Delocalised arbitration can be safely defined as "specie of arbitration not derived or based on municipal legal order".[1] Bringing this down to international commercial arbitration would definitely help improve international commerce as most international commercial entities do not want their disputes subject to any municipal law but rather to the terms of their agreement for easy determination of commercial disputes that arise.

International Commercial Arbitration

Arbitration is the "reference of a dispute by parties thereto for settlement by a person or tribunal of their own choice, rather than a court; the basis of arbitration is the consent of the parties to submit or refer their disputes to arbitration."[2]

The United Nation Commission on International Trade Law is responsible for harmonisation of Arbitration Law UNCITRAL Model Law suggests the following as examples of relationships of a commercial nature:"[3]

> *any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.*

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[1] Sarzin L. M. *The Extent To Which The Unidroit Principles Of International Commercial Contracts Contribute To "The Evolution Of Transnational Trade Law* Australian International Law Journal", 1997. – NO: 112. P. 123.

[2] Ajogwu F. 2013. Commercial Arbitration in Nigeria: Law & Practice, 2nd ed. Lagos: Centre for Commercial Law Development. Insert page

[3] Article 1(1) of the UNCITRAL Model Law.

Commercial arbitration has been divided into two, international and domestic. The main area of concentration here is the international commercial arbitration.[4]Why this gap.Some of the laws that govern international commercial arbitration are:

1. The United Nations Convention on International Trade (UNCITRAL) Model Law.
2. International Convention Settlement of Investment Disputes (ICSID) Convention.
3. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards -The New York Convention (NYC).
4. The National Laws of various jurisdictions.

a. International Convention ON Settlement of Investment Disputes (ICSID) Convention.

This is the topmost organisation for determination of international commercial arguments. ICSID was created under a multifaceted international treaty, the convention on the settlement of investment disputes (ICSID Convention). On October 14th, 1966 the convention entered into force and over 150 states are parties to it. Arbitration under ICSID is voluntary and parties whether states or individuals need to give their consents and such consent cannot be unilaterally withdrawn because it binds both parties as an undertaking.[5]

b. The United Nations Convention on International Trade (UNCITRAL) Model Law

The UNCITRAL model law was adopted on 21st June 1985 by the United Nations Commission on International TradeLaw, it was amended in 2006 to include interim measures provisions. Although the Law is not binding on states, states may decide to domesticate the Law.[6]

c. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards -The New York Convention (NYC)

This convention has about 157 state members. It deals with recognition and enforcement of arbitral awards globally just as the name implies. It simply provides that awards gotten in any

[4] Article 1(3) of the Model Law.

[5] *Background Information on The International Centre for Settlement of Investment Disputes (ICSID)* https://icsid.worldbank.org/en/Documents/ICSID%20Fact%20Sheet%20-%20ENGLISH.pdf Accessed April 10, 2019.

[6] UNCITRAL_Model_Law_on_International_Commercial_Arbitration Accessed April 10, 2019

of the state parties can be enforced easily in another state party. This has made it easier to enforce foreign arbitral awards in home countries of parties.[7]

For international commercial disputes to be referred to arbitration, there must be present in the agreement an arbitration agreement. Parties can also decide to have a submission agreement signed to resolve an existing dispute by arbitration.[8] The agreement to arbitrate shall contain venue of arbitration, language to be used during arbitration, laws to govern the arbitration among others.[9]

There is no dispute regarding the rights parties to arbitration have to determine the law applicable to their disputes.[10] In September 1989, this position was restated in an International law institute resolution arbitration involving some state parties and some international conventions have also adopted this position.[11]

The Doctrine Of Delocalization And International Commercial Arbitration

Delocalization in arbitration came up as a result of parties from different countries seeking neutrality in the arbitral process. Parties not wanting the resolution of their dispute to be delayed by rules of their respective countries or the host country but rather a neutral law should be used notwithstanding the location of the seat of arbitration.[12]

Delocalisation also extends to the acceptance of an award by the jurisdiction where it is being enforced whether or not the laws of that enforcing jurisdiction allows such award.[13] Basically, delocalisation "represents a quintessential choice or mode of international commercial arbitration".[14]

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[7] https://en.wikipedia.org/wiki/UNCITRAL_Model_Law_on_International_Commercial_Arbitration Accessed April 10, 2019

[8] Rashda Rana and Michelle Sanson, *International Commercial Arbitration*(Thomson Reuters, 2011) 32.

[9]https://medium.com/qldlawsociety/international-commercial-arbitration-101-2c7869e3f603 accessed April 10, 2019

[10]Alan Redfern and Martin Hunter, *law and practice of international Commercial Arbitration* (3rd ed, Sweet and Maxwell 1999) pp 65

[11] Articles 1,6 United Nations (Vienna) Convention on Contracts for the international Sale of Goods (1980), Article 2 Hague Convention on the Law Applicable to International Sale of Goods (1980) and so on

[12] Pierre Mayer The Trend Towards Delocalisation in the Last 100 Years in Martin Hunter (1995)

[13] E. Judge Howard M. Holtzmann "*A task for the 21st century: creating a new international court for resolving disputes on the enforceability of arbitral awards" in Martin Hunter, Arthur Marriott, V. V. Veeder The Internationalisation of International Arbitration* (1995) The LCIA Centenary Conference, Graham Trotman/ Martinus Nijhoff. P. 110.

[14]Leila Anglade "The use of transnational rules of law in international arbitration" (2003) Irish Jurist. 101

The General Idea of delocalisation theory in arbitration is that the law of the seat of arbitration should not interfere with the process of an international arbitration.[15] This is because allowing the interference of the law of the seat of arbitration may make it difficult to enforce arbitral awards, because parties can object to its enforcement on the basis that their agreement on law of place of arbitration was not strictly followed.[16]

There are four theories that explain best the nature of arbitration. They are:

(a) The jurisdictional theory
(b) The contractual theory
(c) The hybrid theory
(d) The autonomous theory

i. The Jurisdictional Theory: this focuses on the place of arbitration and the laws existing in such places. The supervisory power of the states which makes the state want to ensure that any arbitration taking place within it be it domestic or international must adhere to the laws available in the state.

ii. The Contractual Theory: this theory postulates that preference should be given to parties' agreement and as such the laws chosen by the parties in the arbitration agreement should be applicable to the arbitral process. This theory is believed to encourage delocalization.

iii. The jurisdiction theory does not give room for delocalisation at all[17] "it provides that the arbitrator should derive his power from the law in place in the seat of arbitration"[18] and "it is totally in contrast with the contractual theory."[19]

iv. The Hybrid Theory: this seems to be creating aproportionality between the jurisdictional and contractual theories. It considers a middle place between the two theories and ensures that while respecting the decisions of the parties, certain policies of the seat of arbitration are adhered to.

v. The Autonomous Theory: this is the theory that gives room for delocalisation the most. It drifts from the traditional approach of arbitration that takes into consideration largely the laws of the seat of arbitration. It states that international

[15] Margaret L. Moses, The principles and practice of international commercial arbitration, (Cambridge University Press 2008)
[16] Ibid
[17] Hong-lin Yu Explore the void – an evaluation of arbitration theories: Part 1 // Int. A.L.R. – 2004.
[18] Arthur Taylor von Mehren, "*International commercial arbitration: the contribution of the French jurisprudence* Louisiana Law Review". – 1986
[19] Teresa Isele, "*The principle iura novit curia in international commercial arbitration*" Int. A.L.R. 2010

> arbitration should enjoy autonomy and have its own system of laws and as such should not be subject to any state laws.[20] It provides further that courts should have nothing to do with the arbitral process starting from commencement to enforcement.[21]

It has been identified that delocalization theory can be applied at two stages of the arbitration proceedings.[22]

> *One is delocalising the arbitral procedures from the surveillance of the lex fori. The other one is delocalising arbitral awards which refer to removing the power of the courts at the place of arbitration to make an internationally valid and forceful declaration of the award a nullity. While delocalised arbitral process guides arbitration which is autonomous of the purview of any municipal procedural law and courts, the concept of delocalisation of awards is slightly more nuanced. The latter acknowledges the power of the supervisory courts but limits their power.*[23]

It has been stated that "an agreement to refer disputes to arbitration in a particular country may carry with it, and is capable of carrying with it, an implication of inference that the parties have agreed that the law governing the contract is to be law of that country. But it is not the case that this is a necessary or irresistible inference or implication."[24]

Issues That Warranted The Introduction Of The Theory Of Delocalization To International Commercial Arbitration

Two basic problems warranted the need to introduce delocalisation to international commercial arbitration and it has for long been an issue for public discuss. These include:

a. Existence of National Mandatory rules.
b. National Public Policy

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[20] Hong-lin Yu, *"Explore the void – an evaluation of arbitration theories": Part 2* Int. A.L.R. 2005
[21] Eric Sauzier, Hong-lin Yu, "*From arbitrator's immunity to the fifth theory of international commercial Arbitration*" Int. A.L.R. 2000
[22] Jan Paulsson *The extent of Independence of international Arbitration from the law of situs* (1986) Lew edn, Contemporary Problems in International Arbitration.
[23] Poon Nicholas, "Choice of Law for Enforcement of Arbitral Awards – A Return to the Lex Loci Arbitri?" (2012)24 SacLJ. 139
[24] *Compagnie d'Armement Maritime v. Compagnie Tunisienne de Navigation* [1971] AC 572,588

a. Existence of National Mandatory Rules

The effect of national mandatory rules is more complicated.[25] Mandatory rules limit the party's choice and must be applied to certain situations. These rules define themselves. A national court will normally apply its mandatory laws whatever the applicable substantive law it applies to the issues before it. However, it is believed that there is mandatory law for international arbitration other than those of the chosen applicable law.[26] In ***OTV v. Hilmarton***[27] mandatory rules were applied. OTV, a French company, had engaged Hilmarton, an English Company, to provide legal and tax advice and to co-ordinate administrative matters with a view to obtaining and performing a contract relating to a sewage processing system in Algiers. The contract was governed by Swiss law. A dispute arose concerning payment of the agreed commissions and the sole arbitrator sitting in Geneva considered that as the claimant essentially gathered confidential information, surveyed and observed and also used its influence on the Algerian authorities, the claimant's mission was contrary to Algerian Law which prohibits the use of intermediaries. He declared the contract void on the grounds that it contravened an Algerian mandatory rule and indirectly *bonos mores* within the meaning of Article 20 (1) of the Swiss Code of Obligations. This was a clear application of the mandatory rules approach, under which the arbitrator felt entitled to give effect to mandatory rules of a Law other than that of the governing contract. The award was set aside by the Court of Justice of the Canton of Geneva, on the ground that it was arbitrary. The Court held that unlike corruption, the use of intermediaries did not offend Swiss Law which was applicable to the merits of the case. The arbitral award in this case shows the injustice that can come with application of mandatory rules to international commercial arbitration and it has been suggested that delocalization of international commercial arbitration would help to reduce if not eradicate the effect of the existence of mandatory rules in National laws.

b. National Public Policy

In international commercial arbitration to determine public policy is very difficult. This is because of the diversity in various judicial systems. What is public policy in a particular

[25] Blessing, "Mandatory Rules of Law versus Party Autonomy in International Arbitration", 14(4) J Int'l Arb 23 (1997)
[26] Julian D. M. Lew, Loukas A. Mistelis, Stefan M. Kroll *comparative international commercial arbitration* (Kluwer Law International, 2003)
[27] Award in ICC case no 5622 (1988), XIX YBCA 112 (1994)

system may not be so in another system. National public policy seems easier to identify than international public policy. The question then arises whether the public policy to be considered is that of the seat of arbitration or the one decided by the parties or whether the parties can decide to not be subject to any public policy. At times the arbitral tribunal makes the decision on which public policy to be bound by during enforcement, the National court will have to consider what effect national public policy has on arbitration. It determines which dispute can be arbitrated in a particular jurisdiction because it will go to a large extent to determine if an award can be recognised and enforced within a jurisdiction.[28] So for enforcement purpose an arbitral tribunal has to consider the effect of National policy at every stage of the arbitral proceeding.

Examples of international public policy include; "seeking to bribe or corrupt government officials, arrangement to smuggle goods in to or out of a particular country,[29]assembling a mercenary army to support an insurrection against a legitimate government, agreements to transport and smuggle individuals into another country, supplying armaments to a terrorist organisation"[30] and so on. Where rights that are contrary to national public policy are brought to arbitration they are considered not arbitrable. However, it has been the case that some parties had wanted the national public policy of their states to be acknowledged and on such basis, arbitration of disputes that contradict their national public policy should not be arbitrable. This is not advisable, as it will give room for diversity and international commercial disputes would become more difficult to arbitrate as each party would want to claim national policy as a reason to not enforce arbitration agreement or award.

Practicability of Delocalization In International Commercial Arbitration In Some Jurisdictions

The leading features of delocalised arbitration are: "a) It is detached from the procedural rules of the place of arbitration, b) It is detached from the procedural rules of any specific national law, c) It is detached from the substantive law of the place of arbitration, d) It is detached from the national substantive law of any specific jurisdiction."[31] "One of the fundamental significant features of this delocalised arbitration is that the whole process is based on the agreement of the parties or else the award given by the arbitrator could not get the eligibility

[28] New York Convention Article V (2) (b)
[29] *Soleimany v. Soleimany* [1998] 3 WLR 811
[30] *National Oil Corporation v. Libyan Sun Oil Company*, 733 F Supp 800-822 (D Ct Delaware, 1990)
[31] Dejan Janićijević, 'Delocalization In International Commercial Arbitration' [2005] 3 Facta universitatis-series: Law and Politics 63

for enforcement."[32] Another feature is the procedure of "delocalised arbitration must not violate the fundamental norms of international arbitral procedure, which is acknowledged in every country where arbitration is practiced, and the delocalized arbitration will take place in a sovereign country and it will not override the country's sovereignty anyway."[33] Few of the states concerned are: France, India and the United Kingdom.

1. France

In *Gotaverken Arendal AB v Libyan General National Maritime Transport Co*[34], a contract was entered into by Libyan General National Maritime Transport Co (LG) with Gotaverken Arendal AB (Gotaverken), a Swedish shipbuilder, for three oil tankers' construction for LG by Gotaverken.[35] Delivery of the tankers was refused by LG on the basis that various breaches had been committed by Gotaverken ranging from the use of materials from Israel (which have been prohibited under the contract from being part of the transaction) in building the tankers to the fact that the agreed specifications were not complied with in constructing the tankers. As a result of an arbitration contract existing between the parties, the dispute was submitted to arbitration in Paris and the applicable law was Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC Rules). Award was given in favour of Gotaverken and LG was asked to pay all outstanding amounts to Gotaverken and that delivery should be taken.

LG appealed the Court of Appeal of Paris for the award to be set aside for various reasons one of which was that the arbitral tribunal failed to give enough reasons for resulting to such award; they also indicated that the French Law applied to the arbitration and thus only the French Court had jurisdiction to handle the dispute.

The Court of Appeals held that the French Courts had no Jurisdiction over the matter because the award is international in nature and not French and thus the appeal was dismissed. And stated further that the place of arbitration was not important to the decision of the tribunal it was just a matter of convenience.

Hence, delocalized arbitration means removal of the:

"(i) Procedural rules of the territory/geographical venue of arbitration;

(ii) Procedural rules of the territory/geographical venue of any specific municipal law;

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[32] *Beaufort Developments (NI) Ltd v Gilbert-Ash NI Ltd* [1998] Adj.L.R. 05/20

[33] Supra note 9

[34] *Societe PT Putrabali Adyamulia v* ***SA*** *Rena Holding*, Case **1,** Cour de Cassation, **29** June **2007** *[Societe PT Putrabali Adyamulia].*

[35] *Ibid*

(iii) Substantive law of the place of arbitration; and

(iv) Domestic substantive law of any municipal jurisdiction."[36]

2. India

In India, the Supreme Court has partially encouraged delocalization. In *Bharat Aluminum Co v Kaiser Aluminum Technical Service, Inc (BALCO* case),[37] The Supreme Court looked into the theory of delocalization under the India Arbitration and Conciliation Act, 1996, and discovered that Section 2(7) of the said act did not change the regional principle the legislature provided for.

It was held by the court that:

> *It certainly does not introduce the concept of delocalised arbitration into the Arbitration Act, 1996. It must be remembered that Part I of the Arbitration Act, 1996 applies not only to purely domestic arbitrations, i.e., where none of the parties are in any way 'foreign' but also to 'international commercial arbitrations' covered within Section 83 2(1)(f) held in India. The term 'domestic award' can be used in two senses: one to distinguish it from 'international award', and the other to distinguish it from a 'foreign award'. It must also be remembered that 'foreign award' may well be a domestic award in the country in which it is rendered. As the whole of the Arbitration Act, 1996 is designed to give different treatments to the awards made in India and those made outside India, the distinction is necessarily to be made between the terms 'domestic awards' and 'foreign awards'*[38]

The Supreme Court was right to state that "where two foreigners are arbitrating in India under a Foreign Arbitration Act, they can claim that the resulting award would be a 'nondomestic' award."[39] The Supreme Court depended on the case of *Bergesen v Joseph Muller Corporation*[40], where it was held that "an award made in the State of New York between two foreign parties was to be considered as a non-domestic award within the meaning of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and its implementing legislation."[41]

3. United Kingdom

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[36] 0 Olatawura, "*Delocalized Arbitration under the English Arbitration Act 1996: An Evolution or a Revolution" (2003)* 30 Syracuse Journal of International Law and Commerce 49.

[37] Civ App 3678 of 2007

[38] [2012] 110 CLA 293 (SC India)*[BALCO*

[39] Supra note 3

[40] 710 F.2d 928, 932-34 (dd cir. 1983)

[41] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 7 ILM 1046 (1968).

In England Unlike in Paris, the English judges have a negative approach toward the theory of delocalisation. In *Naviera Amazonica Peruano S.A. v Compania Internacional de Seguros de Peru,*[42] it was held that "English law does not recognize the concept of a delocalized arbitration… Accordingly, every arbitration process must have a seat or locus arbitri of forum which subjects its procedural rules to the municipal law which is there in force."[43]

Review of Existing Global Conventions That Have Evidenced The Possibility Of Delocalization

There have been conventions put in place to govern commercial transactions that have considered largely the global effect of commercial transactions and has such given room for delocalisation in its contents. These conventions are not based on National or Local enactment and as such give room for proper settlement of disputes when they come up and these conventions are being applied. Some of these conventions include:

a. United Nations Convention on Contracts for the International Sale of Goods (CISG):

The Convention on the International Sale of Goods (CISG) is of high advantage to international trade law. By May 2016, 85 states[44] have adopted the CISG and it has been applied globally to more than 4,500[45] cases. Some signatories to the convention are; Argentina, Canada, United States of America and Switzerland. The top 6 countries that have applied the CISG and have the highest number of judgments relating to the CISG are "Germany (534), China (432), The Russian Federation (305), The Netherlands (268), Switzerland (212) and the United States (183)"[46].

Generally, the CISG is applicable to sale of goods only. Where the parties have agreed to be governed by a certain national law; if they are signatories to the CISG, the CISG shall apply not the chosen national law. Some of the reasons why the CISG should be chosen above national laws are:

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[42] [1988] 1 Lloyd's Rep 116

[43] Ibid

[44] UNICTRAL, Digest of Case Law on the United Nations Convention non Contracts for the International Sale of Goods, 2016 edition, Notes by the Secretariat, page xi, Note 2.http://www.uncitral.org/pdf/english/clout/CISG_Digest_2016.pd

[45] Ibid

[46] CISG Database/Institute of International Commercial Law, country case schedule: http://www.cisg.law.pace.edu/cisg/text/casecit.html

1. CISG is written in different languages. “The provisions of the CISG were drafted to try to avoid using common law or civil law terms because such terms may not exist or be interpreted differently in different languages, in different jurisdictions.”[47] It is written in six popular official languages[48] and this makes the convention more readily available for use by parties from various parties from various part of the world irrespective of their language.
2. CISG does not need a written contract before it can be applicable to a contract of sale. All that is required is the agreement of the parties to its application be it verbal/written.

The CISG is becoming more popular and getting more utilisation to sale of goods contract all over the world.

b. Convention on the Limitation Period in the International Sale of Goods (1974)

On 14th day of June 1974, The Convention on the Limitation Period in the International Sale of Goods was concluded at New York and on the 11th day of Apri,l 1980, a protocol to the earlier mentioned convention ended. The convention and protocol were made for establishing the limitation period for claims to be brought on issues that have to do with international sale of goods. It is not peculiar to any jurisdiction and can be used by any party whose jurisdiction has ratified the convention. Some of the state parties are Argentina, Benin Republic, Belgium, Ghana and so on.

c. Uniform Rules on Contract Clauses for an Agreed Sum Due Upon Failure of Performance (1983)

In 1983, this convention was adopted by UNCITRAL. Its main function is to unify treatment of parties to international commercial transaction. To ensure payment of damages and penalties are properly governed and paid by the defaulting party who has failed to fulfill his contractual obligation.

These conventions have helped to prove that it is possible to have delocalised laws in international commercial arbitration, a law that will be applicable not minding the nationality of the parties or the place of business. The United Nations and other international bodies should make conventions and treaties to govern commercial arbitration globally.

[47] Supra note 50
[48] Supra note 49

CONCLUSION

Generally, in International commercial agreements parties are allowed to choose the applicable laws to their transactions to ensure certainty. This gives the parties control over the scope of dispute settlement should any dispute arise. There is no doubt that, delocalisation aims at saving the arbitration process from judicial interference and time. Allowing judicial interference in international commercial arbitration will lead to a slack in the arbitral process and the primary focus of the arbitration process (which is to solve dispute promptly) will be defeated. Therefore the theory is still making some sense and that is the reason many modern and recent international commercial arbitrations are following the characteristics of the delocalisation theory.

The main advantages of arbitration over other dispute resolution mechanisms are finality of decision and time saving, allowing judicial interference will tamper with this advantages and arbitration would not be different from all other dispute resolution mechanism. Delocalisation if allowed to prevail in international commercial arbitration would be of great impetus to commercial arbitration and would encourage more persons to use arbitration and would promote commercial transactions internationally, as parties are assured of quick dispensation of their dispute with little or no state interference.