BRIEF ANALYSIS OF THE RES JUDICATA EFFECTS OF ARBITRAL AWARDS WITH EMPHASIS ON ITS PARTICULARITIES VIS-À-VIS THE TRADITIONAL RES JUDICATA EFFECTS OF A COURT DECISION

By Carla Góis Coelho

Introduction

Res judicata is a principle recognised by all legal orders, which seeks to protect legal certainty through its various procedural manifestations, in particular, the efficacy of the contents of the final decision.

The application of this principle within the scope of arbitration proceedings has not warranted significant attention from specialised arbitration doctrine[1], which is probably due to the propensity for absolute comparison between court proceedings and arbitration proceedings, as well as to the fact of arbitration and arbitral res judicata being regulated by reference to the existing civil procedure law remedies.

It is strange that this should be the case given that it is capable of undermining that which is the ultimate goal of arbitration – to obtain a final and definitive decision on the dispute between the parties – and in this way runs counter to the predicates and the very raison d'être of arbitration proceedings.

The arbitral award

The decision which brings the arbitration proceeding to a close, whether it is a decision on the merits or a procedural decision, can be termed as an arbitral award. Such a decision ends the arbitration proceedings and exhausts the jurisdictional power of the arbitration tribunal unless an application for the correction and interpretation of the award or an additional award has been submitted, where such a request is possible in procedural terms. However, it is only the decision on the merits of the cause of action that will be effective in terms of material res judicata (which may be also relied on as between the same parties outside of these proceedings).

Material res judicata is traditionally ascribed a positive effect and a negative effect.

The positive effect, commonly referred to as "res judicata authority", concerns the imposition of the res judicata decision in subsequent judicial or arbitration proceedings. The negative

effect, on the other hand, concerns the inadmissibility of filing a second action on a subject that has already been decided, with the former decision constituting an obstacle to any new decision on the same matter.

Both these effects are recognised in all legal systems, albeit with variations in the requirements for their existence, particularly with regard to the positive effect.

Let us look then at the particularities of the positive and negative effects of arbitral res judicata vis-à-vis the positive and negative effects of judicial res judicata.

The positive effect of arbitral res judicata

If there is a second action pending between the same parties in which the claim is related to the one already decided in the arbitral award that has become final and the cause of action in the first action is relevant to the decision on the merits in the second action, the second action should respect the operative part and the relevant thema decidendu (which may include the factual and/or legal arguments that constituted its essential base) of the invoked arbitral award[2].

Apart from the desired coherence between judgments that are part of the same legal order, this solution is also justified by the intention of the parties to be bound by the arbitral award, as being the outcome of the arbitration proceedings in which they were involved.

This is the line taken in Article III of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958 – NYC) when it refers to the recognition, by the Contracting States, of the authority of the arbitral award and the grant of enforceability to such an award, which further justifies the extension of res judicata efficacy to international arbitral awards, that is to say, to an award made by an arbitration tribunal which has its seat in a country other than that in which the second action is pending. In addition, Article II(3) of the NYC provides that the Contracting States must recognise the effects of a valid arbitration agreement, consequently being bound to avoid parallel proceedings and to strive towards obtaining a final binding decision.[3]

The positive effect of the arbitral award is not conditional on the identity of the causes of action of both proceedings,[4] from which, in conjunction with the admissibility of the res judicata efficacy of the grounds which constituted the ratio decidendi necessary for an understanding of the arbitral award, a conclusion can be drawn as to the admissibility, in the field of arbitration also, of implicit res judicata and the extension of the positive effect of res judicata in order to safeguard the indisputability of the factual and legal assertions established in the first proceedings.

If the proceedings in which it is intended to rely on the positive efficacy of the arbitral award are pending in the courts of a country other than the country of the seat of the first arbitration proceedings or, in the case of an arbitration proceeding, has its seat in a country other than the country in which the seat of the former was located, reliance on the authority of res judicata will be conditional on its recognition in the country of the second proceedings.

If the second action is judicial in nature, the above-mentioned positive effect may be recognised by way of a favourable appreciation of the viability of such recognition.[5] This appreciation – as long as it has a positive outcome – will be sufficient for the invoked authority of arbitral res judicata to apply.[6] Conversely, if the outcome is a negative one, in the sense that the recognition application is unlikely to be granted, it is our belief that the court in the second action can order the proceedings to be stayed, provided that the party that intends to trigger the authority of res judicata proves the lis pendens status of the recognition proceedings within a short time period established for the purpose.[7]

If, on the other hand, the second forum is an arbitration tribunal, the possibility remains of a stay of proceedings being ordered until such time as the proceedings on the recognition of the previous arbitral res judicata have been concluded. This possible stay may be conditional on the expiry of the time limit for the arbitral award to be delivered by this second arbitration tribunal, which will not of course wish to incur any possible liability to the parties for not carrying out its decision-making task in time.[8]

We believe that any finding as to the very likely recognition of the arbitral award will only be valid if the proceedings in which it is intended to rely on such an award are judicial in nature, since the court making such a finding belongs, in this hypothesis, to the same judicial order as the court that would effectively have jurisdiction to decide on the application for recognition of the arbitral award, thereby minimising the risk of a conflict of judgments.

Conversely, if an application for setting aside the arbitral award is pending "against" the decision in respect of which res judicata authority is claimed, and as a way of covering against this risk, we consider that it is admissible, provided that it is done at the request of one of the parties, for the second judicial or arbitration proceedings to be stayed[9] until such time as a final decision is delivered on the application.

We believe that this is not a question of subjecting the full efficacy of a final arbitral award to the end of the time limit for filing the application for setting aside the arbitral award or, when this is pending, to a final decision thereon, but rather to pursue the higher interest of harmonising judgments and protecting the content of the above-mentioned award.[10] Indeed, if the recognition and/or enforcement of a foreign arbitral award, while the application for setting aside the arbitral award is pending, is safeguarded by the provisions of Article VI of the NYC[11], the triggering of its positive effect must be done in identical contours, thus by recourse to the analogous application of the above-mentioned article.

The negative effect of res judicata

The availability of this effect requires triple identity of parties, claim and cause of action.

In the case of an award rendered in an arbitration action with its seat in a country other than that in which the second action is pending, there should be a requirement that this award has already been the subject of recognition as it is only in this way that it will be part of the legal order and therefore capable of bringing about the dismissal of the lis pendens.[12]

If the recognition application is already pending – or if it is filed within a short time limit, to be fixed by the court – there will be grounds for a stay of the proceedings, with a view to awaiting the outcome of the application.

If the negative effect of arbitral res judicata is raised in a second arbitration action, given the time limit prescribed by law or agreed by the parties for the delivery of the arbitral award, the parties must agree on the above-mentioned stay and, therefore, on a stay or extension of this time limit or, alternatively, they must not contest the decision of the arbitration tribunal to extend the time limit.[13] If no solution is reached with regard to the management of the time limit for delivering the arbitral award, it will be incumbent on the arbitration tribunal to order that the proceedings be dismissed on the basis of the negative effect of res judicata – provided that it is proven that the recognition application in respect of the previously-decided arbitration award is pending - since any decision to the contrary would imply a very serious risk of conflict of judgments.

When the second action is judicial in nature, we would adopt, categorically, a distinct decision-making criterion from that adopted previously in respect of the argument of the positive effect of res judicata (where we were less demanding and considered its recognition possible on the basis of a finding – a cautious and careful finding, it is true, and only if possible in the light of the evidence brought to the proceedings by the parties – of the great likelihood of recognition of the award in the country where the second action is pending). This dissimilar treatment emanates from the potentially more serious consequence of disregarding the negative effect of res judicata (a second judgment on the same cause of action) and on the fact of the above-mentioned Article 34(4) of EC Regulation No. 44/2001, though affording importance to the potentiality of recognition (which has served us as a ground for the discussion of the positive effect of res judicata), not doing so within a scenario of a repeat of proceedings.

This dissimilarity of remedy – a dissimilarity in the substance of the procedural burden which falls to the party who, in the second judicial proceedings, seeks to trigger the positive or negative efficacy of the previous arbitral res judicata – seems legitimate to us since the recognition of the negative effect implies a decision on form (which renders possible the filing of a new, identical, legal action if the recognition process of the previous arbitral award should fall by the wayside).

A favourable decision on the negative effect of the res judicata of an arbitral award should also be stayed if an application for setting aside the arbitral award is pending against it, as proposed in respect of the favourable decision on its positive effect.[14] If the arbitral award is tainted by an obvious flaw, we feel that, for the sake of procedural celerity and efficiency, the second proceedings could be allowed to proceed, provided that at the time the final decision is delivered – by a new and ultimate judgment on compliance with the procedural assumptions in these proceedings – a decision – also final – is taken – to the effect of granting the application for setting aside the arbitral award. If this is not the case, the court in the second proceedings should re-embrace the general decision-making criterion and thus stay the taking of any decision on the merits, rendering it conditional on the decision on the application for

setting aside the arbitral award becoming final.[15]

The specificity of the efficacy of arbitral res judicata – the potential preclusive effect of arbitral res judicata.

The preclusive effect of res judicata involves the impossibility of a new action – and decision – having as its subject any issue which could have been (but was not) raised by the parties – and decided upon – in the action that has already been decided and become final.

Unlike judicial res judicata, this preclusive efficacy has been conservatively designed and most of the time leads to the figure of abuse of process (which is attributed to the party who unfairly seeks to re-litigate the same dispute, while escaping the assumptions of the positive and negative effect of res judicata).[16]

When an arbitral award on the merits becomes final, the jurisdictional power of the arbitration tribunal comes to an end and, in addition, the arbitration agreement expires, as its subject-matter has been satisfied and exhausted: in the case of a submission agreement, the expiry will operate in totum; in the case of an arbitration clause, the above-mentioned expiry will affect that part of its content which concerns the dispute that is the subject-matter of the proceedings (considered lato sensu and as generically set down in the request for arbitration).

The expiry of the arbitration agreement is not therefore restricted to the procedural contours envisaged by the arbitral award, but extends to include the actual subject-matter and also the potential subject-matter of the dispute.

Article 46(10) of the Portuguese Voluntary Arbitration Law 2011 (in force since 14 March 2012) supports this understanding since it provides a contrario that an arbitral award which becomes final narrowly restricts the efficacy of the arbitration agreement insofar as the subject-matter of the dispute is concerned, not distinguishing between the hypothesis of the arbitration agreement being an arbitration commitment or a commitment clause, and referring expressly to the "subject-matter of the dispute" as opposed to the "subject-matter of the proceedings".

We believe that the extinguishment of the arbitration agreement accompanies and therefore provides grounds for the construction of the preclusive effect emerging from arbitral res judicata.

Indeed, at the risk of violating the principles of good faith, the efficacy of contractual commitments and the rule against their unilateral alteration, the fact of the arbitration agreement extinguishing owing to satisfaction of its subject-matter may not bring about full extinguishment of its efficacy, therefore making it possible to disregard the intention of the parties to the effect of removing the dispute from judicial jurisdiction and obtaining a definitive decision by way of arbitration.

The origin and consensual nature of arbitration and its repercussion on the contours and construction of the case and on the approval of the validity of the proceedings and the arbitral award, implies the imposition on the parties of an additional duty of responsibility and action in accordance with the standards of procedural good faith, which entails an added diligence on their part with regard to the interpretation and performance of the arbitration agreement and to the contours of the subject-matter of the arbitration proceedings and, on the other hand, renders unviable any threat to the certainty that arbitral res judicata affords to the resolution of the dispute and the definition of the legal positions of the parties by way of an attempted re-litigation of the dispute in question.

In addition, we advocate that the scope of efficacy of arbitral res judicata cannot be defined by applying the rule set down in this respect in the procedural law that applies to arbitration proceedings (or substantive law, if the understanding is that substantive provisions regulate the scope and efficacy of res judicata), but rather by having regard, in view of the consensual origin of the proceedings and the significance that the intention of the parties carries in such proceedings, to the express or implicit intention of the parties with regard to the resolution of the dispute.

Obtaining a final decision is one of the much-vaunted advantages of the arbitration system as a form of alternative dispute resolution, which is clear from the provisions on annulment actions, which are exhaustive and not capable of operating ex officio (which should not be confused with the actual admissibility of ex officio knowledge of certain grounds for annulment), and also from the provisions on appeals, as a rule inadmissible. The expiry of the arbitration agreement similarly supports this idea of definitiveness which can, as a rule, be inferred from such an agreement.

From our point of view, there is justification therefore for the construction of specific preclusive efficacy for arbitral res judicata, an efficacy which can be presumed from the intention manifested by the parties upon entering the arbitration agreement, with a view to obtaining, via arbitration, a final and definitive decision on the dispute which has arisen or may arise between the parties.

This presumption may be rebutted by the party seeking to re-litigate the dispute from a new perspective by demonstrating that the parties agreed on the possibility of the dispute in question being the subject of more than one decision or through the prove of – objective or subjective – supervening facts deemed decisive for the desired re-litigation.

The conclusion of an arbitration agreement will therefore give rise to an onus for each one of the parties to formulate any claims which they understand as being factually and legally available to them and also for full disclosure of the facts and legal arguments capable of supporting such claims. This onus also applies to defence material as well as to any counterclaims that may arise out of the same dispute.[17]

The scope of the preclusive effect of arbitral res judicata corresponds to that of the above-mentioned procedural onus.

This effect lies, as we have posited, within the willingness

of the parties, who may (jointly) waive it, provided that such a waiver is not in opposition to the positive and negative efficacy of res judicata (which, conversely, we consider not to lie within the willingness of the parties).

The preclusive effect of arbitral res judicata may be triggered in arbitration proceedings or judicial proceedings.

Procedural approval for such an effect may be achieved by designing it as a material plea which extinguishes the right of the parties to obtain a decision on the dispute in accordance with any procedural perspective other than that raised in the first proceedings between the parties, and as such, the subject-matter of the res judicata produced therein.

This plea will be a result of the combination of the meeting of the minds of the parties regarding the resolution of a given dispute by way of arbitration (from which should be presumed, as we have seen, its final and definitive resolution by way of one single action) and of the arbitral award that has become final, delivered on the merits of the case in execution of that meeting of minds.

Conclusion

The theory we have constructed about the preclusive efficacy of arbitral res judicata has not been embraced by the jurisprudence of civil law systems, or even with the specificity (namely in terms of reasoning) that we are positing in the common law systems studied, which, being a necessary consequence of the tendency to equate the arbitral award with the judicial decision, could not, in itself, serve to erode our theory, the assumptions of which, in the jurisprudence analysed, are not settled and, therefore, are not directly refuted.

However, from our analysis, the decision of the French Cour de Cassation on 28.05.2008 in "Société Prodim v société G e A Distribution"[18] stands out, being interpreted by doctrine not as the result of a projection of the typical efficacy of judicial res judicata to arbitral res judicata, but rather as a consequence of the specificity of the arbitration proceeding, a ground for an a fortiori interpretation of traditional judicial efficacy.[19]

We believe that the theme of efficacy of arbitral res judicata should rid itself of judicial res judicata regulation, moving definitively to warrant separate jurisprudential and doctrinal treatment, as otherwise the very raison d'être of arbitration as a means of extrajudicial dispute resolution may be threatened. We hope that we have contributed, even if only modestly, to this end.

1. With the exception of the report on "Res judicata and Arbitration" prepared by the International Commercial Arbitration Committee of the International Law Association for the conference held in Berlin in 2004 and the report on "Lis pendens and Arbitration" prepared by the same committee of the International Law Association for the conference held in Toronto in 2006, both of which are available at http://www.ila-hq.org/en/committees/index.cfm/cid/19.
2. In this regard, Bernard Hanotiau (Complex Arbitrations: Multiparty, Multicontract, Multi-Issue and Class Actions, (Kluwer Law International 2006, pp. 248 and 249) argues that the factual and legal assertions of a previous arbitral award could be enforced in a second action pending between the same parties if these have been a fundamental feature of the first award. In this respect, see ICC Awards Nos. 2475 and 2762: the arbitration tribunal decided that the former had res judicata authority and would be binding on the second arbitration proceedings, as these proceedings involved the same parties, the same issues, had been filed with the ICC and were subject to its rules of procedure (Apud Bernard Hanotiau, op. cit. p. 51). As advocated, among others, by Nigel Blackaby, Constantine Partasides, Martin Hunter, Alan Redfern (Redfern & Hunter on International Arbitration, Oxford University Press, 2009, p. 563) the efficacy of res judicata of the arbitral award covers the operative part of the arbitral award, as well as the points of fact and of law which are considered necessary and vital for an understanding of the latter. In this regard, see also Bernard Hanotiau ("L'autorité de la chose jugée des sentences arbitrales" in L'arbitrage complexe – Questions de Procédure, Supplément Spécial 2003 – Bulletin de la Cour internationale d'Arbitrage de la CCI, p. 52) and the Mélanges case, decided by ICC Arbitration Tribunal Award No. 3267, of 28.03.1984 (in XII Yearbook of Commercial Arbitration, No. 87, 1987, pp. 87 - 96), in which it was recognised that the binding effect of the first arbitral award is not limited to its operative part but also extends to the reasoning necessary for arriving at the decision, that is to say, its ratio decidendi.
3. As advocated by Luca G. Radicati di Brozolo, Res judicata, Post awards issues – ASA Special Series, no. 38, p. 134. Along the same lines, Gary Born, International Commercial Arbitration, Kluwer Law International, 2009, p. 2889, argues that under the above-mentioned Articles II and III of the NYC the Contracting States of the Convention are prevented from refusing to attribute to the arbitral award the res judicata efficacy that is capable of rendering unviable the filing of any second action with a view to "denying" the decisory content of the arbitral award which has become final and is therefore binding on the parties.
4. As advocated by Luca G. Radicati di Brozolo, Res judicata, Post awards issues – ASA Special Series, no. 38, p. 134. Along the same lines, Gary Born, International Commercial Arbitration, Kluwer Law International, 2009, p. 2889, argues that under the above-mentioned Articles II and III of the NYC the Contracting States of the Convention are prevented from refusing to attribute to the arbitral award the res judicata efficacy that is capable of rendering unviable the filing of any second action with a view to "denying" the decisory content of the arbitral award which has become final and is therefore binding on the parties.
5. For a contrary view, see the position of Mauro Rubino-Sammartano, who argues that the authority of res judicata presupposes that the decision invoked for the purpose is effectively recognised in the state of the court before which such an invocation is made (International Arbitration Law and Practice, 2nd Edition, 2001, The Hague Kluwer, p. 797).
6. For a contrary view, see the position of Mauro Rubino-Sammartano, according to which the authority of res judicata presupposes that the decision invoked for the purpose is effectively recognised in the country of the court before which such an invocation is made (International Arbitration Law and Practice, 2nd Edition, 2001, The Hague Kluwer, p. 797).
7. In harmony with this, we can, we believe, cite Article 34(4) of EC Regulation No. 44/2001, which provides for the refusal of recognition of a court judgment if "it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed". Despite being established for the recognition of court judgments delivered in European Union Member States (other than Denmark) in civil and commercial matters and for the triggering of the negative effect of res judicata, this option of the lawmakers points to an appreciation of the recognition being sufficient for efficacy to be attributed to a previous court judgment, and we do not see any reason why this should not be transposed to the appreciation of the efficacy of an arbitral award (indeed it emanates from the principle of equating a court judgment with an arbitral award that is enshrined in most legislation and arbitral institutions), all the more so if the arbitral award in question has been delivered in arbitration proceedings based in a country of the European Union or, inclusively, a signatory of the NYC.
8. Given the time limit stipulated by law or agreed by the parties for the delivery of the arbitral award, it is necessary that the parties agree to such a stay and, as such, on the stay or extension of the above-mentioned time limit, or that they do not contest the decision of the arbitration tribunal with a view to extending the above-mentioned time limit. If no solution is reached for this contingency, the arbitration tribunal should, at the risk of incurring liability for non-performance of its decision making duty or being attributed the burden of demonstrating that it had no "fault" for any damage caused to the parties in this respect and that it acted in pursuit of the higher interest of the legal order and of the parties, order the arbitration proceedings to proceed, disregarding the allegation of the party as to the positive effect of the res judicata of the arbitral award, since proof of recognition of the arbitral award falls to whomever relies on it and, if not complied with in a timely fashion – at the most, by the end of the time limit for the delivery of the decision on the merits in the second proceedings – it is acceptable that this same party should be burdened with an unfavourable decision as regards the allegation made in respect of the authority of res judicata.
9. See the content of note 8 above, with the specificity that demonstrating the success of an annulment action is dependent on this being proven by the party that intends to prevent the positive efficacy of the arbitral res judicata from coming into play and, accordingly, if not complied with in a timely fashion – at the most, by the end of the time limit for the delivery of the decision on the merits in the second proceedings – it is acceptable that this same party will be burdened with a decision unfavourable to its intent and, as such, that the arbitration tribunal takes into consideration the invoked authority of a previous res judicata.
10. An identical solution is advocated by Pierre Mayer, "Litispendance, connexité et chose jugée dans l'arbitrage international", in Liber amicorum Claude Reymond, Edições Litec, Paris, 2004, p. 199. A similar line is taken in the ICC decision in Case No. 3383, 1979, in which it was decided that the authority of res judicata of an arbitral award depends on its validity not having been contested before the judicial authority of jurisdiction, and it is not incumbent on the court in the second proceedings in which it is intended to raise this res judicata authority to appreciate either the above-mentioned validity or the purported invalidity (S. Jarvin and Yves Derain, Recueil des Sentences Arbitrales de la CCI, 1974-1985, ICC Publication, No. 433, p. 394).
11. This article provides that if the setting aside or stay of the arbitral award has been requested by one of the parties from the competent authority for the purpose according to the country (or according to the law of the country) in which it was delivered, the Court of Recognition may, if it deems it proper "adjourn the decision on the enforcement of the award". This article follows the line of indent e) of Article V(I) of the NYC, which provides that recognition and enforcement of the arbitral award will be refused, at the request of one of the parties, if it is proven that the arbitral award "has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made".
12. In this regard, see José M.ª Chillón Medina and José Fd.º Merino Merchán, Tratado de Arbitraje Privado Interno e International, Editorial Civitas, S.A., Madrid, 1978, pp. 479 - 481.
13. See as to this, the discussion in Note 8 above.
14. Pierre Mayer (Litispendence…, op. cit., p. 202) argues the power of the arbitral tribunal to stay the proceedings when faced with a pending annulment action (and also an application for recognition) of the arbitral award with the same subject-matter as the dispute which has been submitted to it and, therefore, with negative res judicata efficacy in this respect. The writer clarifies, however, that the stay will not be ordered if the arbitration tribunal concludes as to the manifest inefficacy of the arbitral award relied upon by the respondent with a view to the dismissal of the (second) arbitration action.
15. If the second lis pendens between the same parties is arbitral in nature, we refer the reader to note 8 above and to the problem discussed therein, which may also be the case in this situation.
16. Spanish and Brazilian procedure law contain legal provisions which can point to preclusive effect stricto sensu, whereas court jurisprudence and legal doctrine tentatively restrict its efficacy. In effect, civil law orders advocate, in general, an apparently more restricted doctrine on the efficacy of res judicata than common law systems, a conclusion which results in part from the triple identity test of parties, claim and cause of action which, in civil law systems, constitute a presumption as to the efficacy of res judicata. In the English common law system, the broad interpretation of "issue preclusion", which led to the Henderson v. Henderson rule, and this same procedural rule, amount to preclusive efficacy in the narrow sense, corresponding to a decision which did not effectively exist and which is prevented from existing. French doctrine and court jurisprudence, on the other hand, have created a broader notion of res judicata efficacy, from which they have built an obligation of concentration of allegations and defences, factual and legal, attributable to the claimant and the respondent. In fact, in France, the Plenary Session of the French Cour de Cassation delivered, on 07.07.2006, the final decision in "Cesareo v. Cesareo", which overturned the previous jurisprudence of this Court and ruled that the res judicata of a judicial decision precludes reliance, in a subsequent case, on the same facts, even if these are submitted in different legal contours (full text of the ruling available at http://www.courdecassation.fr/jurisprudence_2/assemblee_pleniere_22/arr_ecirc_8709.html.).
17. As regards ICC Case No. 1354/2011 (apud Luca G. Radicati di Brozolo, in Post awards issues, ASA Special Series, No. 38, 2011, pp. 140 and 141) the arbitration tribunal constituted for the purpose decided that the principle of concentration of claims does not yet have a clear and binding existence, but that this would be desirable, and is, it admits, making progressive inroads.
18. In Revue de l'Arbitrage, Comité Français de l'Arbitrage, 2008, Volume II, pp. 344 to 345 and Revue de l'Arbitrage, Comité Français de l'Arbitrage, 2010, Volume II, pp. 347 - 351.
19. In this precise sense, see Laura Weiller's note on the "Société Prodim v société G e A Distribution" ruling (Revue de l'Arbitrage, Comité Français de l'Arbitrage, 2008, Volume III, p. 463) which advocates that in arbitration proceedings the application of the principle of concentration could apply a fortiori owing to its basis in accord (and what is more in a written accord), which thus and also by virtue of the principle of contractual good faith, will justify the attribution of distinct efficacy to arbitral res judicata.