parts of a plant to be built in Iraq. This subcontract was governed by Italian law. The Sole Arbitrator Riccardo Luzzatto stated that the No. 2340/90 of 8 August 1990 banning trade by the European Community with Iraq and Kuwait[114] and the Italian Decree No. 247 of 23 August 1990, which was transformed into Law no. 289 of 19 October 1990, with regard to the Iraq and Kuwait embargo "not only cannot be derogated from; they must be necessarily applied; that is, they are provisions which must be necessarily applied in the EC, whichever law applies to the contract, as it appears from their purpose and public law character."[115] In construing the cited provisions, the Sole Arbitrator Luzzatto took account of the purpose the rule was intended to serve, that is to "preclude in the amplest possible way all activities which may lead to supply goods to Iraq or Iraqi bodies and individuals, or to execute works in their favour. This intention calls for a non-restrictive interpretation, which may contribute towards attaining the goals set on the international level by the UN Security Council decisions and later on EC level."[116]

F. Conclusion

Internationally mandatory rules, as defined in the European private international law of contracts, are rules that meet two basic requirements: they are enacted for the purpose of safeguarding a country's political, social and economic organisation, and respecting those rules is regarded as crucial by that country to the extent that they purport to apply irrespective of the law otherwise governing a contractual relationship. When applying this provision *in concreto* the two requirements, interest criterion and overriding criterion, function inseparably from one another. The internationally mandatory rule has to be assessed as to whether its underlying interests match any of those enumerated in the definition, as well as in respect to the degree of the rule's indispensableness for preserving those interests. The fact that a certain rule is "protective", in a sense of assuring some private interests, should not automatically disqualify that rule from the internationally mandatory category. In order to be still considered internationally mandatory it must, at the same time, guarantee a general interest crucial for state organisation. Therefore, both purely "interventionist" rules as well as those hybrid "interventionist-protective" rules may fall under the notion of the internationally mandatory rules. Regardless of the court seized, the rule is assessed by reference to the conceptions of the enacting country, or endorsing supranational or international organisation, as a case may be.

The above definition is not yet part of the law in force, and has been drafted on the basis of the already unified rules as well as considering the developments in the European Court of Justice case law. This does not, however, mean that the conclusions presented here are inapplicable to the provisions that are part of other legal instruments, as they in principle contain substantive elements matching to a significant degree. However, one must be cautious when using the analogy: it has been noted that the mechanism of internationally mandatory rules, when extended to the legal order of the European Community change character, so that the same terminology is used, but the substance is different.[117]

[114] [1990] O.J. L 213, pp. 1-2, last amended by EC Council Regulation No. 1194/91, [1991] O.J. L 115, pp. 37-40. The Regulation No. 2340/90 was repealed by Article 8 of the EC Council Regulation No. 2465/96 of 17 December 1996, [1996] O.J. L 337, pp. 1-3. Simultaneously, the Representatives of the Governments of the Member States meeting within the Council adopted a corresponding Decision 90/414/ECSC (so-called 'framework-decision') in regard to the products under the ECSC Treaty, [1990] O.J. L 213, pp. 3-4.

[115] Para. 16 of the Final Award No. 1491 of 20 July 1992.

[116] Para. 19 of the Final Award No. 1491 of 20 July 1992.

[117] *Poillot Peruzzetto, Sylvaine,* Ordre public et loi de police dans l'ordre communautaire, in: Droit international privé, Travaux de Comité français de droit international privé, Années 2002-2004, Editions Pedone, Paris, 2005, (pp. 65-106) p. 70.

Service

Allgemeines Gemeinschafts- und Gemeinschaftsprivatrecht

Französische Rechtsprechung zum Gemeinschaftsprivatrecht

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Depuis sa création, la *Revue de Droit Privé Communautaire* assure avec constance le suivi des jurisprudences nationales faisant application des dispositions communautaires de droit privé. Tel est précisément l'objet de cette chronique pour ce qui concerne les juridictions françaises. A ce stade mérite d'être tiré un bref bilan d'étape.

La jurisprudence française de droit privé (essentiellement celle de la Cour de cassation, cour suprême en matière de droit privé) fait régulièrement référence à des textes communautaires, principalement règlements et directives, et même parfois (c'est plus rare) à la jurisprudence de la Cour de justice. Si ce type de jurisprudence interne ne saurait jamais tarir, on ne