Question 1 (50%)

A (domiciled in Switzerland), B (domiciled in Switzerland) and C (domiciled in France) enter into a contract. The contract contains an arbitration clause that provides as follows:

“All dispute arising out of or in connection with this agreement shall be resolved either by arbitration in Switzerland or by French courts.”

a) Is the PILA applicable to determine the validity of the above “arbitration agreement” in case B intends to initiate arbitration proceedings against A?

b) Suppose C has assigned all its rights out of the contract to D (domiciled in Switzerland). Is the PILA applicable to determine the validity of the above “arbitration agreement” in case D intends to initiate arbitration proceedings against A?

Question 2 (50%)

The State of A enters into an arbitration agreement with B (domiciled in Italy). The arbitration agreement provides for arbitration with seat in Paris. The Panel issues an award according to which A must pay to B the sum of CHF 1,000,000. B seeks enforcement of the award in Switzerland against assets of A. The competent court refuses to enforce the award, stating that B’s claim has “no sufficient connection with Switzerland”. B does not know what the “sufficient connection-prerequisite” is. However, he is of the view that this constitutes a breach of Switzerland’s international obligations under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Please comment.