

INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

YEARBOOK

COMMERCIAL ARBITRATION

VOLUME IV - 1979

GENERAL EDITOR PIETER SANDER

KLUWER

INTERNATIONAL COUNCIL
FOR COMMERCIAL ARBITRATION

YEARBOOK
COMMERCIAL ARBITRATION

VOLUME IV - 1979

GENERAL EDITOR: PIETER SANDERS

with the cooperation of
T.M.C. Asser Institute for International Law, The Hague

ISBN 90 268 1068 7

© 1979 Kluwer B.V., Deventer/The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission of the publishers.

Printed in Great Britain

2-10-95
10-95
YEARBOOK
COMMERCIAL ARBITRATION

CONSOLIDATED TABLE OF CONTENTS

Volumes I-IV

	<i>Vol. I</i> 1976	<i>Vol. II</i> 1977	<i>Vol. III</i> 1978	<i>Vol. IV</i> 1979
PREFACE by Jean Robert	IX			
INTRODUCTION by Pieter Sanders	XI	XI	XIX	XV
RESOLUTIONS OF SIXTH INTERNATIONAL ARBITRATION CONGRESS, Mexico City, March 1978				XIX

PART I - NATIONAL REPORTS

GENERAL INTRODUCTION (CMEA countries), Prof. Heinz Strohbach	4			
GENERAL INTRODUCTION TO INTER- AMERICAN COMMERCIAL ARBITRATION, Mr. Charles Robert Norberg			1	
INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION, Panama, 1975			15	
ALGERIA, Prof. Mohand Issad				3
ARGENTINA, Dr. Jaime Malamud			17	
AUSTRALIA, Dr. John Goldring		3		
AUSTRIA, Dr. Werner Melis				21
BRAZIL, Prof. Vicente Marotta Rangel			31	
BULGARIA, Prof. Zhivko Stalev	18			
CANADA, Prof. L. Kos-Rabcewicz-Zubkowski		16		
CHILE, Prof. Rafael Eyzaguirre Echeverria			45	
CHINA, PEOPLE'S REPUBLIC OF, Mr. Jen Tsien-Hsin and Mr. Liu Shao-Shan			153	
COLOMBIA, Dr. Alberto Diaz Rubio			58	
COSTA RICA, Mr. Fernando Fournier			70	
CUBA, Prof. Hector Garcini	27			
CZECHOSLOVAKIA, Dr. Theodor Donner	30			
ECUADOR, Prof. Carlos Jimenez Salazar			76	
EGYPT, Prof. Moshen Chafik				44
GERMAN DEMOCRATIC REPUBLIC, Prof. Heinz Strohbach	40			
GERMANY, FEDERAL REPUBLIC OF, Dr. Ottoarndt Glossner				60
HUNGARY, Dr. Gy. Sebestyen	53			
INDIA, Mr. N. Krishnamurthi		31		
				IX

	<i>Vol. I</i> 1976	<i>Vol. II</i> 1977	<i>Vol. III</i> 1978	<i>Vol. IV</i> 1979
IRAN, Dr. Jalal Abdoh				81
IRAQ, Prof. Akram Yamulki				104
ISRAEL, Dr. Smadar Ottolenghi		47		
JAPAN, Prof. Teruo Doi				115
KUWAIT, Dr. Fuad S. Abu Zayyad				139
LIBYA, Dr. A. Buzghaia				148
MEXICO, Dr. Humberto Briseno Sierra			94	
MONGOLIA, Dr. Dawaashabin Dashdondog	63			
NIGERIA, Mrs. Tinuade Oyekunle		66		
PANAMA, Dr. Erasmo de la Guardia			106	
PERU, Dr. Andrés Aramburú Menchaca			116	
POLAND, Prof. Jerzy Jakubowski and Dr. Anrzej Wisniewski	64			
RUMANIA, Dr. Ion Nestor	77			
SAUDI ARABIA, Dr. Salah Hejailan				162
SWEDEN, Dr. Ulf Holmbäck and Mr. Nils Mangård			161	
SWITZERLAND, Dr. Robert Briner			181	
SOUTH AFRICA, Mr. Maurice Schaeffer		76		
UNITED KINGDOM, Mr. William Gill		90		
UNITED STATES, Mr. Howard Holtzmann		116		
U.S.S.R., Prof. Serguei Lebedev and Dr. Vladimir Podznyakov	91			
VENEZUELA, Dr. Gonzalo Parra Aranguren			133	
YUGOSLAVIA, Prof. Aleksandar Goldštajn	106			

PART II – ARBITRAL AWARDS

AD HOC				177
BULGARIA	123			188
CZECHOSLOVAKIA	125	143		144
GERMAN DEMOCRATIC REPUBLIC	127	144	209	197
GERMANY, FEDERAL REPUBLIC OF		146	212	202
INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENTS DISPUTES				206
INTERNATIONAL CHAMBER OF COMMERCE	128	150	214	209
JAPAN				213
NETHERLANDS	136	156	224	214
POLAND	130		228	
SWEDEN	141			
UNITED STATES	142			

PART III – ARBITRATION RULES

	<i>Vol. I</i> 1976	<i>Vol. II</i> 1977	<i>Vol. III</i> 1978	<i>Vol. IV</i> 1979
1. Uniform Rules (1974) for Arbitration in the Arbitration Courts at the Chambers of Commerce of the CMEA Countries	147			
2. Rules of Conciliation and Arbitration (1975) International Chamber of Commerce	157			
3. The revised Rules of Arbitration ICC, Dr. Frédéric Eisemann	167			
4. The UNCITRAL Arbitration Rules		161		
5. Commentary on UNCITRAL Arbitration Rules, Prof. Pieter Sanders		172		
6. Rules of Procedure (1978) of the Inter-American Commercial Arbitration Commission			231	
7. PEOPLE'S REPUBLIC OF CHINA				
A. FTAC				
Decision (1954) Concerning the Establishment of a Foreign Trade Arbitration Committee			243	
Rules of Procedure (1956) of the Foreign Trade Arbitration Committee			244	
B. MAC				
Decision (1958) Concerning the Establishment of a Maritime Arbitration Commission			248	
Rules of Procedure (1959) of the Maritime Arbitration Committee			249	
8. Rules (1976) of the Arbitration Institute of the Stockholm Chamber of Commerce			254	
9. Rules (1977) for Conciliation and Arbitration of the Zurich Chamber of Commerce			259	

PART IV – RECENT AMENDMENTS ON ARBITRATION STATUTES

BELGIUM, Prof. Pieter Sanders (with the assistance of Alex Boehlé, Gent)	173			
GREECE, Dr. Anghelos C. Foustoucos	177			
SWEDEN, Mr. Nils Mangård		227		
YUGOSLAVIA, Prof. Dr. Aleksandar Goldštajn			269	

PART V – COURT DECISIONS ON THE NEW YORK CONVENTION 1958

INTRODUCTION	181	231	273	225
TEXT OF THE CONVENTION				226
LIST OF CONTRACTING STATES				230
COMMENTARY Vol. I and Vol. II, Prof. Pieter Sanders	207	254		

	<i>Vol. I</i> 1976	<i>Vol. II</i> 1977	<i>Vol. III</i> 1978	<i>Vol. IV</i> 1979
CONSOLIDATED COMMENTARY Vols. III-IV, Prof. Pieter Sanders (with the assistance of Dr. Albert Jan van den Berg)				231
EXTRACTS OF COURT DECISIONS				
Austria	182	232		
Belgium				254
France	184	244		
Germany, Federal Republic of		233	274	258
Ghana			276	
Greece	186			269
India	188	245		270
Italy	189	247	277	275
Japan	194			
Mexico				301
Netherlands	195			305
Switzerland	199			309
Tunisia			283	
United Kingdom			284	314
United States	201	250	286	328
U.S.S.R.	206			

PART VI – ARTICLES

Administration of Evidence in International Commercial Arbitration, Me. Jean Robert	221			
Fifth International Arbitration Congress, New Delhi, January 1975, Mr. N. Krishnamurthi	227			
The ICCA Interim Meeting, Vienna, September 29 – October 1, 1976, Dr. Werner Melis		267		
Arbitration Clause for Optional Use in U.S.A. – U.S.S.R. Trade			299	
The Application of the New York Convention by the United States Courts, Mr. Gerald Aksen				341
The Application of the New York Convention by the Italian Courts, Prof. Giuseppe Mirabelli				362
The 'Additional Facility' of the International Centre for the Settlement of Investment Disputes (ICSID), Mr. Aron Broches				373
The Training of Arbitrators at the Institute of Arbitrators (U.K.), Mr. Berti Vigrass				380

PART VII – BIBLIOGRAPHY OF RECENT PUBLICATIONS ON ARBITRATION

	<i>Vol. I</i> 1976	<i>Vol. II</i> 1977	<i>Vol. III</i> 1978	<i>Vol. IV</i> 1979
INTRODUCTION	237	277		
I. GENERAL				
1. Register of Texts	238			391
2. Congresses	238	278	307	391
3. Bibliographies and Dictionaries	240		307	393
4. Books	241	278	308	393
II. COUNTRIES (see also Part I National Reports under I.3)				
Austria	247			
Belgium	247			
Chile	247			
China, People's Republic of	247	279		
France	247			
German Democratic Republic (and Eastern Europe)	248		309	
Germany, Federal Republic of	248			394
Greece	249	279		
India	249			395
Italy	249	279		
Latin America (general)			309	
South Africa	249			
Spain	249			395
Sweden		280		
Switzerland	250			395
United Kingdom	250	280		396
United States	250	280	311	396
U.S.S.R.	251	280		
Yugoslavia			311	
III. JOURNALS ON ARBITRATION	252	280		
LIST OF OFFICERS AND MEMBERS OF ICCA	253	281	312	397

INTRODUCTION

1. The International Council for Commercial Arbitration (ICCA) held its Sixth International Arbitration Congress in Mexico City in March 1978. The Congress was attended by many lawyers, businessmen and, especially, judges, from all parts of the world. The Resolutions of this successful Congress, as well as those of the three working groups, are reproduced on the next pages. The list of papers submitted to the Congress can be found in Part VII (Bibliography).

At the ICCA Council meeting in Mexico, Me Jean Robert, who for so many years served as the stimulating and inspiring President of ICCA, was succeeded by the undersigned. As a token of appreciation for Me Robert's dedication to ICCA, the Council has nominated him as its honorary President.

It was also decided that an Interim Meeting of ICCA on the theme 'International Arbitration in Multi-Party Business Disputes' will be held in Warsaw from June 30 until July 2, 1980. The provisional program is reproduced on pages XXV-XXVI.

2. *Part I* of this volume of the Yearbook devotes special attention to the law and practice of arbitration in oil-producing countries (Algeria, Iran, Iraq, Kuwait, Libya and Saudi Arabia). It includes, further, national reports on arbitration law and practice in Egypt, Austria, F. R. Germany, and Japan.

Part II contains, as usual, extracts of arbitral awards. Of particular interest is the award made in the dispute between Libya and foreign oil companies, which is given extensive coverage. Due to lack of space, we can only publish a limited number of extracts of awards. In the forthcoming Volume we hope to be able to publish more extracts of arbitral awards. We therefore invite our readers to continue to send us awards of general interest for publication.

Lack of space also makes it necessary to leave out of this Volume *Part III* (Arbitration Rules) and *Part IV* (Recent Amendments on Arbitration Statutes). In Volume V (1980) we intend to reproduce the new Arbitration Rules of the London Court of Arbitration (in force as of September 1, 1978), which integrate to a large extent the UNCITRAL Arbitration Rules,

INTRODUCTION

reproduced with an extensive commentary in Volume II. Our next Volume may also contain an amendment to the English Arbitration Act of 1950 which is currently under consideration.

The lack of space is mainly caused by the considerable number (40) of court decisions on the New York Convention 1958, reported in *Part V*. The reported cases are preceded by a consolidated commentary on the decisions reported in Volumes III and IV, along the same lines as the commentary in Volumes I (1976) and II (1977). In addition, *Part VI* contains two articles on the application by national courts of the New York Convention, one concerning Italy (written by Prof. Giuseppe Mirabelli), the other dealing with the United States (written by Mr. Gerald Aksen). The total number of court decisions reported in the four Volumes of the Yearbook now amounts to 112, representing 16 countries.

Part VI contains, in addition to the two articles on the application of the New York Convention, also two other articles. Mr. Aron Broches, Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID), gives a brief description of the recently established 'Additional Facility' for arbitration under the auspices of the Centre. The other article is the first in a series we intend to publish on the training of arbitrators and lawyers. It was written by Mr. Berti Vigrass, Secretary of the Institute of Arbitrators (U.K.).

3. ICCA has again – see Introduction to Volume II (1977) – been approached by the United Nations Commission on International Trade Law (UNCITRAL) to set up a special Advisory Committee in order to advise UNCITRAL on a new project, this time concerning Conciliation. This subject will be discussed at UNCITRAL's forthcoming meeting in Vienna, June 1979.

Beginning with this Volume, ICCA enters into cooperation with the T.M.C. Asser Institute for International Law, The Hague. This inter-university institute has enlarged its activities to include the collection and classification (in anonymous form) of arbitral awards resulting from international trade, as well as all other material (laws, publications etc.) on international commercial arbitration. Members of the Department for Private International Law and Commercial Arbitration of the Institute lent most valuable assistance in the preparation of this Volume. My warmest thanks are again due to Dr. Albert Jan van den Berg, my collaborator for Volumes II and III, who, since joining the Institute, has continued his assistance.

INTRODUCTION

4. Finally, I again express my sincere thanks to all those who were so kind as to contribute to the Yearbook. Without their help the Yearbook would not be the source of world-wide information it is today.

Pieter Sanders
General Editor

Material for the Yearbook can be sent to:

Prof. Pieter Sanders

Address: 134 Burg. Knappertlaan
3117 BD Schiedam, Netherlands

Cable address: SANDLAW SCHIEDAM, Netherlands

Telex: 34273 ASSER NL.

RESOLUTIONS OF THE SIXTH INTERNATIONAL CONGRESS ON ARBITRATION MEXICO CITY, MARCH 16, 1978

GENERAL RESOLUTIONS

I

Resolved that the Congress,

Aware that its work could not have been accomplished without the many types of assistance provided to it through the efforts of the Mexican Organizing and Host Committees;

Recognizing the fraternal reception that its delegates have received in so many ways from the Presidents and all members of the Mexican Organizing and Host Committees;

Honoured by the hospitality that the delegates and accompanying persons have received from government officials, from the Mexico City Chamber of Commerce, from the National Confederation of Chambers of Commerce of Mexico and from distinguished personages;

Expresses its appreciation to the Mexican Organizing and Host Committees and requests that they be the bearers of the gratitude of the Congress to government authorities, to the commercial organizations and to eminent Mexicans.

The Congress sends its greetings to the Mexican nation, together with its best wishes for the prosperity of the country and the well-being of its people.

II

Resolved that the Congress,

Notes with satisfaction that during the period since the Fifth International Arbitration Congress, many important developments have occurred in the field of international arbitration. Among these developments have been the modernization of arbitration rules and the establishment of new rules by various bodies and institutions throughout the world, notably including the UNCITRAL Arbitration Rules which were developed by the United Nations Commission on International Trade Law;

Notes also that the General Assembly of the United Nations by resolution adopted 15 December 1976 has recommended 'the use of the arbitration rules of the United Nations Commission on International Trade

RESOLUTIONS

Law in the settlement of disputes arising in the context of international commercial relations, particularly by reference in commercial contracts';

Bearing in mind that, as stated in the resolution of the General Assembly, the UNCITRAL Arbitration Rules were prepared after extensive consultations with arbitration institutions and centers of international commercial arbitration, which consultations were carried out in large measure through the activities of the International Council for Commercial Arbitration;

The Congress recommends that arbitration institutions throughout the world should be encouraged to consent to act as appointing authorities pursuant to the UNCITRAL Arbitration Rules when they are so designated by the parties or by the Secretary-General of the Permanent Court of Arbitration at The Hague, and also to consent to perform administrative services in connection with cases under the Rules when so requested.

III

Resolved that the Congress,

Believing in the extremely important role which the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, is able to play in ensuring the effectiveness of international commercial arbitration;

Wholeheartedly welcoming the appeal of the General Assembly of the United Nations that those countries which have not yet ratified or acceded to that Convention should 'consider the possibilities of adhering thereto';

Being convinced that it would be in accord with the action of the United Nations and with the objective needs of eliminating obstacles which hinder normal development of world trade;

Calls on arbitration institutions and other organizations active in this field to work to the fullest extent of their powers for the widespread adoption of the 1958 Convention, as well as for all conceivable perfecting of the manner in which it is applied in the member countries.

IV

Resolved that the Congress,

Noting with great satisfaction that three issues of the 'Yearbook on Commercial Arbitration' have been successfully published under the sponsorship of the International Council for Commercial Arbitration;

Believing that the 'Yearbook on Commercial Arbitration' provides an important source of information concerning international arbitration, including reports on arbitration law and practice in various nations through-

RESOLUTIONS

out the world, texts of new arbitration legislation and rules, a comprehensive collection of digests of cases concerning the application of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, analytical articles on subjects of great interest and a complete world bibliography on arbitration;

Urges that arbitration institutions throughout the world exercise their best efforts to give the widest possible circulation to the 'Yearbook on Commercial Arbitration'.

V

Resolved that the Congress,

Takes note of the resolutions adopted by its three Working Groups which considered the subjects 'Arbitration and Business', 'Arbitration and the Courts' and 'Arbitration and Technology'.

VI

Resolved that the Congress,

Determines that the next Interim Meeting of the International Council for Commercial Arbitration shall be held at Warsaw, Poland, in June 1980 on a date and with a theme to be determined by the Council.

VII

Resolved that the Congress,

Determines that the Seventh International Congress on Arbitration shall be held at Hamburg, Federal Republic of Germany in June 1982, on a date and with a theme to be determined by the International Council for Commercial Arbitration.

RESOLUTIONS OF WORKING GROUP I ARBITRATION AND BUSINESS

The working group, assigned to the study of 'Arbitration and Business', adopted the following resolutions:

1. It is possible for arbitration to become an efficient instrument for the resolution of disputes which may arise from international commerce, and this is the case if the arbitrators and institutions administering arbitrations carry out their functions in accordance with accepted standards.
2. The VIth International Arbitration Congress calls the attention of all States to the advisability of ratifying the multilateral conventions on international commercial arbitration.

RESOLUTIONS

3. The VIth International Arbitration Congress recommends to all States the advisability of passing modern legislation on arbitration adapted to the present time, in which the following criteria, at least, should be included: the necessity of confirmation by the courts or Public Notary of the arbitration agreements should be removed; by means of arbitration it should not only be possible to settle disputes already existing, but also those which may arise in the future; in the solution of disputes, arbitrators should be empowered to fill gaps in the contract if empowered by the parties; the participation in arbitration of States and agencies should be encouraged; their administered arbitration should be encouraged to the utmost; the arbitral award should be final and binding as a judgment of the court; it would be advisable to limit the possibility of appeals in arbitration awards to extreme cases.
4. The existence of permanent arbitration institutions operating at an international level should be supported as a guarantee of the neutrality and stability of arbitration. Special attention should be given to those which are specially concerned with particular aspects of commerce in their region.
5. The Congress stresses the vital importance of the training of arbitrators and emphasizes the need for the dissemination of information on arbitration.

RESOLUTIONS OF WORKING GROUP II ARBITRATION AND THE COURTS

RESOLVED that the Working Group on Arbitration and the Courts,

Expresses deep appreciation to the distinguished judges from many nations, including judges of the highest courts, who have participated in the Working Group on arbitration and the courts, being the first broadly international meeting of specialists in law and arbitration from all regions and social and economic systems which has ever convened to analyse systematically the relationship of arbitration and the courts and to develop ways to encourage common efforts by arbitrators and judges to facilitate world trade and economic cooperation.

The Working Group reaches the following conclusions:

1. There is clear evidence that commercial arbitration is strongly desired throughout the world by businessmen, by governments, by intergovernmental bodies, and by arbitration organizations. While in most cases parties voluntarily comply with agreements to arbitrate and respect arbitration awards, when they fail to do so effective international commercial arbitration cannot exist alone, but requires the support of national legal systems. Therefore, the relationship of the courts to arbitration is highly important.
2. Arbitration and the courts are complementary legal processes; they are not antagonistic or competitive, but, rather are partners in a system of international commercial justice.
3. While arbitration is a process created by and responsive to the will of the parties, it is nevertheless governed by national laws and international treaties and cannot function effectively without the support of national courts which interpret and enforce those laws and treaties. The understanding and cooperation of judges of national courts is, therefore, a vital and indispensable element in establishing and maintaining international commercial arbitration.
4. The cooperation and support of national courts may be needed at all stages of the arbitration process – in recognizing agreements to arbitrate, in assisting during arbitration proceedings and in enforcing arbitral awards.
5. In deciding legal issues relating to international commercial arbitration, judges have a great responsibility because their decisions affect not only the business interests of the parties but also often establish conditions for trade which have a lasting influence upon the economic development of their countries. Court decisions which support effective arbitration facilitate international trade and thereby promote

RESOLUTIONS

stability and world peace. Likewise, arbitrators have a great responsibility to act in a manner which reflects fundamental principles of justice and accords fairness and equality to the parties.

The Working Group recommends that cooperation of the courts be encouraged in recognizing and enforcing agreements to arbitrate. Courts can assist effective arbitration by refusing to decide the merits of a case when the contract provides for arbitration. When seized of such cases, it is suggested that courts limit their inquiries to the fewest possible questions, most particularly to, whether an agreement to arbitrate exists, and that they apply the widely-accepted 'separability' doctrine which permits the arbitral tribunal to determine (subject to judicial review) the existence and validity of the contract of which the arbitration clause forms a part.

The Working Group recommends that the cooperation of courts be encouraged in facilitating the conduct of arbitration cases. Such cooperation may occur, *inter alia*, in the following ways:

1. When seized of matters involving international arbitration, courts can cooperate by recognizing that trade is facilitated by prompt disposition of such cases.
2. When called upon to appoint arbitrators in cases in which the parties have failed to do so or where the contract does not specify a method for appointment, judges can cooperate by recognizing the growing practice in international cases of taking into account the advisability of appointing arbitrators of a nationality other than the nationality of the parties. In this connection, judges are invited to consult arbitration institutions concerning the names of qualified arbitrators of other countries, and arbitration institutions are urged to cooperate with the judiciary when so requested. ICCA is urged to initiate programs to encourage such cooperation.
3. When the contract of the parties provides that the arbitration shall be conducted in accordance with the rules of intergovernmental bodies or established institutions, judges can cooperate by permitting the arbitration to be conducted in accordance with such rules, it being recognized that such established rules reflect broadly accepted international practice and rarely, if ever, violate fundamental principles of justice.
4. When interim measures of protection are needed to safeguard property which is the subject matter of an arbitration, or when witnesses fail to appear voluntarily or to present necessary evidence, effective arbitration often depends on prompt assistance by courts. Judges can cooperate by giving such assistance to the fullest extent permitted by governing law.

The Working Group recommends that cooperation of the courts be encouraged in enforcing international commercial arbitration awards on the basis of international conventions and in carrying out the will of the parties as expressed in their contract. In this connection, the Congress notes with satisfaction judicial decisions in many countries which demonstrate a growing tendency of courts to make a distinction between national public policy which is applicable in domestic cases and an international public policy which is to be applied in international cases. This useful distinction provides judges with a basis for supporting international commercial arbitration while at the same time preserving national public policy for use in domestic cases.

The Working Group recommends that courts be encouraged to interpret national legislation as liberally as their powers permit in order that the subject matters which are capable of being submitted to international arbitration include the entire range of modern business transactions. While transactions consisting primarily of sales of goods continue to be of great significance in world trade, long-term transactions involving investments, use of natural resources, transfers of technology, construction of industrial facilities, and other forms of economic development are of growing importance. Arbitration facilitates such transactions. Courts may also assist economic development by permitting arbitrators to fill 'gaps' which may arise in long-term transactions, a function whose value was recognized in the resolutions of the Fifth International Arbitration Congress in New Delhi in 1975. Where national legislation narrowly limits the scope of arbitration or restricts the possibility of arbitrators to fill 'gaps', it is