

INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

YEARBOOK

COMMERCIAL ARBITRATION

VOLUME I - 1976

GENERAL EDITOR PIETER SANDERS

KLUWER

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YEARBOOK
COMMERCIAL ARBITRATION

PREFACE

The world-wide use of arbitration as a means of solving international trade disputes gave rise to the constitution of the International Council for Commercial Arbitration (I.C.C.A.). The use and promotion of international commercial arbitration called for guidance by an institution of a truly international character, though as small as possible in order to remain efficient. A list of the present members of I.C.C.A. can be found in this publication.

The special task of the I.C.C.A. is the organization of international congresses and interim meetings, which function as a forum where everybody throughout the world, interested in commercial arbitration, has the opportunity to confront his ideas with those of others with regard to the subjects discussed on these occasions. To the objectives of I.C.C.A. belong, amongst others,

- exchanging information and sharing knowledge,
- encouraging and sponsoring publications.

It is for this reason that I.C.C.A., at the New Delhi congress 1975, decided to publish a Yearbook that would serve as a source of information of what is going on in the field of commercial arbitration throughout the world. Professor Pieter Sanders, who has undertaken the task of editing the Yearbook will deal in more detail in the following pages with the contents of the Yearbook. Although the Yearbook, as it should be, is the result of a collective undertaking I would like to express the special gratitude of the I.C.C.A. to our general editor.

The New Delhi Congress was the fifth in a series of congresses on international commercial arbitration, which started with the Paris congress in 1961, followed by the international arbitration congresses in Rotterdam 1966, Venice 1969 and Moscow 1972. The success of New Delhi has encouraged the I.C.C.A. to start immediately the preparations for the Sixth International Arbitration Congress, which will be held in Mexico City, in 1978.

The subject matter of the Sixth Congress will be determined definitely during the next meetings of the I.C.C.A. It is however already possible now to indicate, that, in view of the fact that in a number of countries arbitration has not yet been developed to a full extent, this Congress will deal with the means appropriate to stimulate its use. As the success of arbitration relies heavily on the recognition and enforcement given by the various national judiciaries to the arbitration agreement and the arbitral award, like it depends also on a harmonized interpretation of the well-known international conventions on arbitration (see the unique examination of the court decisions involving the application of the New York Convention of 1958 below), the Mexico Congress will offer the occasion for an important dialogue among representatives of the different countries, bar associations and arbitration practitioners.

PREFACE

One of the great problems today might be the rôle arbitration can play in the transfer of technology. The I.C.C.A. is preparing on this theme an interim meeting, which will be held in Vienna (Austria) September 30–October 1, 1976. As it is foreseeable that these two days will not suffice to treat the subject in all its aspects, it will also be included in the themes dealt with at the Sixth Congress in Mexico City, 1978.

The growing importance of arbitration has recently been underlined in the Final Act of the Conference on Security and Co-operation in Europe signed at Helsinki on August 1, 1975 by the representatives of 35 States. This document reads under the heading Arbitration:

The participating States,

Considering that the prompt and equitable settlement of disputes which may arise from commercial transactions relating to goods and services and contracts for industrial co-operation would contribute to expanding and facilitating trade and co-operation,

Considering that arbitration is an appropriate means of settling such disputes,

Recommend, where appropriate, to organizations, enterprises and firms in their countries, to include arbitration clauses in commercial contracts and industrial co-operation contracts, or in special agreements;

Recommend that the provisions on arbitration should provide for arbitration under a mutually acceptable set of arbitration rules, and permit arbitration in a third country, taking into account existing intergovernmental and other agreements in this field.

This recommendation to organizations, enterprises and firms to include, where appropriate, arbitration clauses in commercial contracts and industrial co-operation contracts coincides with the policy of I.C.C.A. and its decision, earlier that year, to start the publication of a Yearbook, disseminating information on arbitration on a world-wide scale.

As President of the I.C.C.A. it is not without some pride that I present today our first volume of what we hope will become a work of long duration: I.C.C.A.'s Yearbook on Commercial Arbitration.

Jean Robert
President of the I.C.C.A.

INTRODUCTION

This Yearbook is the first of a series of at least five on the publication of which I.C.C.A. decided at its meeting during the New Delhi Conference in January 1975.

This first volume concentrates, as far as *national reports* are concerned, on arbitration law and practice in the Comecon countries. The plans for the Yearbook 1977 envisage contributions on the arbitration law and practice in the United States, Canada, England, Israel, South-Africa, Ghana, India and Australia. For the years 1978-1980 contributions from Latin America, Africa, Middle East, Asia and Western Europe (except England) are envisaged. Together these national reports will give a survey of the rôle arbitration plays in the resolution of commercial disputes on a world-wide scale. As far as national reports are concerned the Yearbook will replace the three Volumes on International Commercial Arbitration published in 1956, 1960 and 1965 (publishers Martinus Nijhoff, The Hague).

It is the purpose of the Yearbook to give the necessary information which practitioners of international commercial arbitration are looking for. Therefore a *bibliography* and information on recent *amendments of arbitration law* (Arbitration Acts) in different countries is also included. Any suggestions from our readers for further information as well as additions on the information already given are most welcome. They should be sent to the general editor.

A special part of the Yearbook is reserved for a report of national court decisions dealing with the interpretation and application of the *New York Convention 1958* on the Enforcement of Foreign Awards. A first report is contained in the Yearbook 1976. Our readers are invited to send copies of court decisions for publication in the following volumes to the general editor.

Arbitration Rules are another subject dealt with by the Yearbook. Their publication is limited to those Rules of more than national interest that have been newly established or re-drafted. The Yearbook 1976 contains the new Uniform Rules for Arbitral Institutions in the Comecon-countries and the new version of the Rules of the International Chamber of Commerce.

A difficult subject is the reporting on *Arbitral Awards* of general interest. Publication of arbitral awards, except for the Eastern European countries, is still exceptional. Nevertheless an attempt will be made to include in each Yearbook some extracts of arbitral awards which may show, how arbitrators in

INTRODUCTION

international commercial arbitration deal with questions such as force majeure, applicable law and the like. Here again this section may only become general with the assistance of our readers who are invited to send copies of interesting awards or extracts of awards to the general editor.

I.C.C.A. therefore counts upon the collaboration of our readers and users of the Yearbook to make its publication as efficient as possible.

Pieter Sanders

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Part I

National Reports

NATIONAL REPORTS

This first volume of the Yearbook concentrates as far as the national reports are concerned on the arbitration law and practice in the member countries of the Council for Mutual Economic Assistance.

The national reports are preceded by a General Introduction, introducing to our readers the Moscow Convention 1972 and the Uniform Rules of Procedure 1974 for the Arbitration Courts at the Chambers of Commerce of the C.M.E.A.-countries. The english translation of these Uniform Rules is reproduced in Part III of the Yearbook: New Arbitration Rules.

As the Moscow Convention and the Uniform Rules apply to all the member countries of the C.M.E.A. it seemed useful, in order to avoid repetitions in the separate national reports, to deal first with the Convention and the Rules in a general way.

As explained in the General Introduction (under 12) the C.M.E.A. countries were obliged to bring the Rules of their Arbitration Courts in line with the Uniform Rules. This applies to them in principle; deviations on minor (non-essential) points is possible. When entering into an arbitration in one of the C.M.E.A. countries the specific Rules of the Arbitration Court involved should therefore be consulted.

General editor

GENERAL INTRODUCTION

Prof. Heinz Strohbach (G.D.R.)

I. Introduction

1. All the socialist countries attach great significance to arbitration which is regarded as the typical organizational method of deciding litigation arising from and connected with foreign economic relations. Its international character makes arbitration a method which is particularly appropriate for these international trade relations¹.

The socialist countries regulate arbitration either by way of special acts (e.g. in the C.S.S.R. or Cuba) or in special sections of their general procedural laws (e.g. in the C.S.S.R. and Poland)². These arbitration-minded national regulations have been supplemented by international arbitration conventions of a general nature: The Geneva Protocol 1923, Geneva Convention 1927, New York Convention 1958, Geneva Convention 1961³. Above all should be mentioned the rules bilaterally agreed upon by the member countries of C.M.E.A. (Council for Mutual Economic Assistance), such as e.g. Articles 90 and 91 of General Conditions of Delivery 1968⁴. Similar provisions are contained in other General Conditions⁵. Finally, the Moscow Convention of May 26, 1972 to which all C.M.E.A. countries are parties constitutes a further development in the settlement by arbitration of disputes resulting from economic, scientific and technical cooperation⁶.

2. The principal (though not exclusive) form of arbitration in the C.M.E.A. countries is to be found in the arbitration organized by the central foreign trade chambers of the various countries and handled by permanent arbitration courts. The activities of the arbitrators are the same, in the case of permanent arbitration courts as in ad-hoc arbitration. Therefore the present law makes no distinction as to the value of the procedures and decisions in the one or the other type of arbitration.

3. The Overall Programme 'For the Further Deepening and Perfection of Cooperation and Development of Socialist Economic Integration' which was adopted by the XXVth Session of the Council for Mutual Economic Assistance, stipulated under the aspect of the further perfection of the legal basis for this cooperation, the extension of the jurisdiction of the arbitration courts, which are attached to the chambers of commerce of the member-countries, the approximation and unification of the procedural rules of these arbitration courts and the improvement of the exchange of information between them⁷.

On May 26, 1972, following a recommendation made at the 58th session of the CMEA Executive Committee, the 'Convention on the Decision by way of Arbitration of Civil Litigations Resulting from Relations of Economic and Scientific-technological Cooperation' was signed in Moscow⁸. (More details under II.)

The 66th Session of the CMEA Executive Committee (February 26/28, 1974) approved of the 'Uniform Rules of the Arbitration Courts attached to the Chambers of Commerce of the CMEA Countries', which were elaborated by a group of experts and confirmed by the 'Consultation of the Representatives of the CMEA-countries for Legal Questions' (Legal Consultation), including the Annex: 'Regulation on Arbitration Court Fees, Costs and Expenses'⁹. These rules were elaborated parallel to the draft of the Moscow Convention and are the result of investigations, which were jointly initiated late in 1969. They are based upon comparative legal analyses of arbitration in the individual CMEA-countries, and upon comparisons between the statutes (rules) of the permanent arbitration courts of the socialist countries and their practical application. They also take into account the development trends of the so-called international arbitration as manifested in working papers and discussions within the scope of UNO, especially of UNCITRAL and at international congresses, such as the IIIrd and IVth International Congress on Arbitration in Venice (1969), Moscow (1972), seminars in New Delhi and Herrnsstein (1969)¹⁰.

The Uniform Rules have been applied from 1975 onwards at all arbitration courts attached to the chambers of commerce of the CMEA-countries except specialized arbitration courts, such as the International Arbitration Court for Marine and Inland Navigation in Gdynia. (More details under III).

II. The Moscow Convention 1972*

4. The Moscow Convention of May 26, 1972 embodies the further development of the provisions on the settling of disputes, which had become necessary as a result of the intensification of economic cooperation among the CMEA-countries, within the above-mentioned General Conditions of CMEA.

The Convention proceeds from the fact that the process of socialist economic integration engenders many quite new types of economic relations, that foreign trade no longer represents the almost exclusive form of economic cooperation, that especially relations of cooperation in research, development and production as well as a great many kinds of services will supplement the traditional supply

* English and French translations of the Convention in Multilateral Conventions and other instruments on Arbitration, published by Associazione Italiana per l'Arbitrato, Via XX Settembre 5, Roma (1974). English text also in International Commercial Arbitration, Documents and Selected Papers, Clive M. Schmitthoff, Oceana Publications (1974-1975) second part p. 250.