

INTERNATIONAL COUNCIL
FOR COMMERCIAL ARBITRATION

YEARBOOK
COMMERCIAL ARBITRATION

VOLUME V - 1980

GENERAL EDITOR: PIETER SANDERS

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

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INTRODUCTION

1. At its Board meeting held in Warsaw, September 1979, ICCA decided to continue the publication of the Yearbook after Volume V. In the Volumes appearing after this Volume, the Part dealing with Arbitral Awards will be expanded (Part II). It will contain National Reports concerning countries which have not yet been reported, such as Italy, France, the Netherlands and Spain, as well as updatings of the National Reports already published. It is furthermore the intention to include in future Volumes important papers submitted to the International Congresses and Interim Meetings organized by ICCA. A first step in this direction already has been taken by including in Part VI of this Volume the General Report by Prof. Giorgio Bernini for the ICCA Interim Meeting on International Arbitration in Multi-Party Business Disputes in Warsaw, to be held June 30 until July 2, 1980.¹

At the suggestion of our readers a new Part, Part IIA, has been added. In this new Part court decisions of special interest for international commercial arbitration will be reported.

The general editor gratefully receives further suggestions from the readers of the Yearbook as to other items which might be included in future Volumes of the Yearbook.

2. *Part I* of this Volume of the Yearbook contains, in the first place, National Reports on the law and practice of arbitration in the remaining Scandinavian countries (Denmark, Finland and Norway), Sweden having already been covered in Volume III (1978). It also contains National Reports on two other European countries (Belgium and Greece) as well as two Asian countries (Indonesia and Pakistan).

Part II contains extracts of arbitral awards. In the preceding Volume IV (1979) an extensive extract of the arbitral award made by Prof. René-Jean Dupuy in the dispute between TOPCO and Libya was reported. In this Volume an extensive extract of the arbitral award made by Mr. Justice Gunnar Lagergren in the dispute between BP and Libya is reported. As both awards concern virtually the same nationalization measures, taken by Libya and involve almost identical concession agreements, a table of comparison between both awards, in which the differences of opinion between both arbitrators are indicated simultaneously, is added in the present Volume. The other extracts are reported as usual.

1. The program of this Interim Meeting appears on p. XXI after this Introduction.

INTRODUCTION

The readers of the Yearbook are invited to continue to send the general editor awards of general interest for publication in anonymous form.

Part IIA (new) concerns national court decisions of particular interest for international commercial arbitration with the exclusion, however, of court decisions concerning the interpretation and application of the New York Convention of 1958, which are reported in Part V. Part IIA starts in this Volume of the Yearbook with two decisions of the Swiss Federal Supreme Court.

Part III does not reproduce the new Rules of Arbitration of the London Court of Arbitration of 1978 as announced in the preceding Volume of the Yearbook. Because of the English Arbitration Act 1979, these Rules are currently under revision, and will therefore be published in Volume VI (1981). However, some special features of the New Rules are mentioned in a short note.

Part IV reproduces the text of the English Arbitration Act 1979 together with a Commentary by Prof. Clive Schmitthoff. The most important feature of the new English Act is the replacement of the Special Case Stated procedure by an appeal procedure to the court, which right of appeal can be excluded in a limited number of cases. The Arbitration Act 1979 represents an important development of English arbitration law and is of particular interest for international commercial arbitration taking place in England.

Part V contains new extracts of court decisions concerning the application and interpretation of the New York Convention of 1958. A Commentary as contained in the Volumes I (1976), II (1977) and IV (1979), in which the cases are compared and commented upon, does not appear in the present Volume. The cases reported in this Volume will be included in a Consolidated Commentary envisaged for Volume VI (1981).

On request of several readers of the Yearbook, an *Index* on the court decisions reported in Volumes I–V is included for the first time in the present Volume. The Index follows the text of the Convention and refers beneath each Article to the relevant court decisions.

Also new is that readers who are interested in having a copy of the *integral text* of a court decision concerning the New York Convention may obtain this text from the TMC Asser Institute for International Law; a charge will be made to defer costs. (Address: P.O. Box 30461, 2500 GL The Hague, Netherlands.)

It is worth mentioning that in a study on the application and interpretation of the New York Convention of 1958, which study is explicitly based on the court decisions reported in Volumes I–IV of the Yearbook,² the

2. UN DOC A/CN. 9/168.

INTRODUCTION

U.N. Commission on International Trade Law (UNCITRAL) reached the following conclusion:

'The problems identified in this report are not of such a magnitude that their existence would justify the preparation of a protocol to the 1958 Convention. In the light of the more than 100 reported decisions on the 1958 Convention, one cannot but conclude that this Convention has satisfactorily met the general purpose for which it was adopted and that, for that reason, it would, at least at this juncture, be inadvisable to amend its provisions. Notwithstanding this, other steps designed to eliminate certain problem areas could well be taken which, if successful, would facilitate the application of the Convention'.

Part VI continues the series on the training of arbitrators and lawyers in arbitration. In Volume IV (1979) an article on the training facilities at the Institute of Arbitrators (U.K.) was published. In this Volume, the training at the International Chamber of Commerce (by Mr. Y. Derains) and at the Indian Council of Arbitration (by Mr. N. Krishnamurthi) are dealt with.

As mentioned under 1 above, Part VI also includes the General Report by Prof. Giorgio Bernini on International Arbitration in Multi-Party Business Disputes which theme will be considered at the ICCA Interim Meeting in Warsaw, June 30–July 2, 1980.

3. In May 1979 the United Nations added ICCA to the group of non-governmental organizations which have been officially granted consultative status. Already before its official recognition ICCA has been consulted by the U.N. Commission on International Trade Law (UNCITRAL). This took place in connection with the UNCITRAL Arbitration Rules, adopted on December 15, 1976, by the General Assembly of the United Nations, and reproduced, with an extensive commentary in Yearbook II (1977) pp. 161–223. UNCITRAL is now preparing a set of Conciliation Rules on which ICCA has been consulted in December 1979.

The new consultative status now granted to ICCA will encourage even closer working relations with the United Nations in the future. As a non-governmental organization with consultative status, ICCA will be entitled to act as an observer and to present statements and recommendations on relevant topics at meetings of the U.N. Economic and Social Council and its various subsidiary bodies. The granting by the United Nations of consultative status to ICCA is one more recognition that international commercial arbitration is an important instrument in promoting peace and international justice.

4. ICCA is most grateful for the cooperation with the TMC Asser Institute for International Law, The Hague, which started with the previous Volume.

INTRODUCTION

In the meantime 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 other materials (laws, publications, etc.) on international commercial arbitration. For this Volume members of the Department for Private International Law and Commercial Arbitration of the Institute again lent most valuable assistance. Sincere thanks go also to all those who were so kind as to contribute materials to the Yearbook. Without their cooperation the Yearbook would not have become an established series for world-wide information on international commercial arbitration.

Pieter Sanders
General Editor

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ICCA INTERIM MEETING, WARSAW 1980

INTERNATIONAL ARBITRATION IN MULTI-PARTY BUSINESS DISPUTES

GENERAL INTRODUCTION

Prof. Avv. Giorgio Bernini — Multi-Party Business Disputes

SPECIAL REPORTS

Gerald Aksen— The United States Experience
Prof. Jacques El-Hakim— Projects in the Middle East
Prof. Jerzy Jakubowski— The Polish Experience
Prof. Iván Szász— Disputes in Joint-Ventures and with
Sub-Contractors

All meetings will be held at the Victoria Hotel, Warsaw.

PROGRAM

Saturday June 28	:	Arrival and registration 14.00–18.00 Victoria Hotel
Sunday June 29	:	Arrival and registration 14.00–18.00 Victoria Hotel 20.00 Reception (cold buffet) Victoria Hotel
Monday June 30	:	9.00–9.30 Opening Session 9.30–12.30 Working Session (coffee 11.00–11.30) 14.30–18.00 Working Session (tea 16.00–16.30) 20.30 Gala dinner Victoria Hotel (informal dress)
Tuesday July 1	:	9.30–12.30 Working Session (coffee 11.00–11.30) 16.00–17.30 Reports of the Working Sessions in joint meeting and closing of the meeting 19.00 Opera
Wednesday July 2	:	9.30 Excursion with luncheon to birthplace of Chopin, including concert (45 minutes) First Group 12.30 Luncheon with excursion to birthplace of Chopin, including concert (45 minutes) Second Group

Registration fee US \$150 (for accompanying person \$50). Cold buffet (Sunday), gala dinner (Monday), opera (Tuesday) and excursion (Wednesday) and a special program for accompanying persons on Monday, are included. Simultaneous translation English/French/Polish/Russian. Registration forms can be obtained from the Polish Chamber of Foreign Trade, Trebacka 4, 00-074 Warsaw, Poland.

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