

INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

YEARBOOK

COMMERCIAL ARBITRATION

VOLUME VI-1981

GENERAL EDITOR
PIETER SANDERS

KLUWER LAW INTERNATIONAL

**INTERNATIONAL COUNCIL
FOR COMMERCIAL ARBITRATION**

**YEARBOOK
COMMERCIAL ARBITRATION**

VOLUME VI - 1981

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In memoriam Martin Domke

Just before this volume of the Yearbook went to print the sad message reached us that Martin Domke, recently elected Honorary Member of ICCA, had passed away at the age of 88 years.

Martin Domke, born in 19th-century Germany, went to the United States in 1943. There he served as Vice-President of the American Arbitration Association and Editor of the Arbitration Journal. During his academic career he lectured at various Universities and became Professor of Law at New York University. In the field of arbitration he was a master of both practice and theory, which is reflected by his long list of publications, of which his handbook on 'The Law and Practice of Commercial Arbitration' is probably the best known.

His death means a great loss to the World of Arbitration and ICCA, but most of all to his wife Eva. To her we express our deepest sympathy and most heartfelt condolences. We all in ICCA miss a good friend and the world at large has lost one of its greatest experts in arbitration.

General Editor

INTRODUCTION

1. In 1980 ICCA held a successful interim meeting in Warsaw on the difficult subject of arbitration of multi-party business disputes. A report of this interim meeting, which was excellently organized by the Polish Chamber of Commerce and Industry, is included in this sixth Volume of the Yearbook. ICCA is now preparing for its VIIth International Congress, to be held next year (1982) in Hamburg and organized by the Hamburg Chamber of Commerce. A provisional program of this Congress is also to be found in the introductory Part of this Volume.
2. The UNCITRAL Conciliation Rules were finalized last year; ICCA, as a non-governmental organization participated in their preparation. The Rules and a Commentary on these Rules by Dr. Gerold Herrmann are reproduced in *Part III* of this Volume.
3. *Part I* contains three new National Reports on arbitration law and practice, this time from France, Italy and the Netherlands. This brings the total number of National Reports to 51, covering by now practically all countries where arbitration is practised. Only a few countries still remain to be included. The time may have come to update several of the National Reports to inform our readers of changes in law and practice since our reporting started in 1976 (Volume I).
4. *Part II* (Arbitral Awards) gains more and more importance. Publication of arbitral awards is becoming gradually more accepted. Special mention should be made of the third Libyan nationalization case, this time *Libyan American Oil Company* (U.S.A.) v. *Socialist People's Libyan Arab Jamahiriya* formerly *Libyan Arab Republic* (Libya), award made by Dr. Sobhi Mahmassani. The other two cases were reported in Vol. IV (1979) and Vol. V (1980) with a Comparative Table (Vol. V). Attention should also be drawn to the award made in the dispute between *GMTC* and *Götaverken*, also reported in this Part of the Yearbook. This case has already led to several court decisions which are reported in Part IIA (Switzerland no. 2) and Part V (Sweden no. 1 and France no. 3).
5. *Part IIA*, besides the Swiss decision in the *Götaverken* case, also contains the first decision under the new English Arbitration Act 1979 (United Kingdom no. 1, the *Pioneer*-case) with a note by Prof. Clive Schmitthoff.
6. *Part III* (Arbitration Rules) contains the UNCITRAL Conciliation Rules already mentioned under 2 above. The new London Court of Arbitration Rules were not ready in time for this Volume, and will be published, with a commentary, in Vol. VII (1982).

7. *Part IV* mentions three recent changes on the Arbitration law: France, Iran and Malaysia. The new French law is extensively dealt with by Mr. Derains in his National Report on France. This new law, only dealing with domestic arbitration, may soon be followed by a special regulation for international commercial arbitration. This may then be dealt with in our next Volume of the Yearbook.

8. *Part V* again contains extracts of court decisions on the application of the New York Convention 1958. From the beginning this has been an important part of our Yearbook and one of the main reasons to start our publication. This time 14 court decisions are reported, bringing the total to 137. A consolidated commentary, dealing with the court decisions reported in Vols. V (1980) and VI (1981) precedes the extracts.

9. The size of this Volume did not permit us to include Articles (*Part VI*). The Bibliography (*Part VII*) has been brought up to date. A worldwide list of Arbitral Institutions with their addresses, a short description of their activities and reference to the latest edition of their Rules is added for the convenience of our readers.

10. Finally, I have to express my thanks to the network of correspondents – far more than 100 – who collaborate with the General Editor by sending him the necessary material, such as court decisions and awards, or draw his attention to changes in the law or to new publications on arbitration. All this material is finally kept and systematized at the T.M.C. Asser Institute for International Law, The Hague, an interuniversity institute previously mentioned in my Introductions.

For this Volume again, members of the Department for Private International Law and Commercial Arbitration of the T.M.C. Asser Institute lent most valuable assistance. A special word of thanks should go to Dr. Rosabel Everard who is especially in charge of the arbitration section of this Department and who was of great help in assisting me in the composition of this Volume.

Pieter Sanders
General Editor

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**I.C.C.A.
SEVENTH INTERNATIONAL
ARBITRATION CONGRESS
AT
CONGRESS CENTRE OF HAMBURG
(JUNE 7 – 11, 1982)**

Provisional Schedule

Monday, 7 June 1982

9.30 – 18.00

Registration of participants

18.00 – 20.00

Reception given by Senate of Hamburg
Rathaus (Townhall) of Hamburg

Tuesday, 8 June 1982

9.30 – 11.00

Opening Plenary Session

Welcome Messages and Greetings from Host
Organizations (Prof. Stödter)

Addresses by Bürgermeister and President of the
Senate, Hamburg

Address by the Minister of Justice of the Federal
Republic of Germany

Address by the Chairman of ICCA

Coffee break

11.00 – 11.30

Two addresses on the General Theme of the
Congress (see Program hereafter)

11.30 – 12.30

– Mrs. Oyekunle (Nigeria)

– Prof. Szász (Hungary)

12.30 – 14.30

Free time

14.30 – 17.00

Meeting of the Working Groups

18.30 – 20.00

Reception given by the Minister of Justice of
the Federal Republic of Germany
(Hotel Inter-Continental)

Wednesday, 9 June 1982

9.30 – 12.30

Meeting of the Working Groups
(10.30 – 11.00 Coffee break)

12.30 – 14.30

Free time

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14.30 – 17.00	Meeting of the Working Groups
20.00	Buffet-reception (Hotel Atlantic)
Thursday, 10 June 1982	
9.30 – 12.30	Meeting of the Working Groups (10.30 – 11.00 Coffee break)
12.30 – 14.30	Free time
14.30 – 16.30	Meeting of the Drafting Commission
19.00	Opera
Friday, 11 June 1982	
9.30 – 12.30	Presentation of the Reports by the Working Groups (10.30 – 11.00 Coffee break)
12.30 – 13.00	Final Plenary Session and vote of thanks

**ORGANIZING COMMITTEE
HAMBURG CHAMBER OF COMMERCE**

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P.O.B. 11 1449
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Provisional Program

New Trends in the Development of International Commercial Arbitration and the Role of Arbitral and Other Institutions

I. Contributions which Conventions, Treaties and Agreements among Institutions can make to the Development of Arbitration

This Working Group will explore the contributions which can be made to arbitration by multilateral conventions, bilateral treaties, model laws and cooperative arrangements between arbitral institutions. While past discussions have mainly focused on enforcing foreign arbitral awards, this Working Group will for the first time systematically analyze the role of other instruments.

Chairman: MELIS (Austria)

Rapporteurs:

- | | |
|-------------------------------------|----------------|
| – Conventions and Treaties | LEBEDEV (USSR) |
| – Inter-Institutional
Agreements | COULSON (USA) |

II. Resolving Disputes Involving Commodities and Raw Materials

This Working Group will consider the differences in quality arbitration practices in various parts of the world, the contributions of institutions in resolving commodity disputes and arbitration trends in important fields of international commerce involving raw materials.

Chairman: KRISHNAMURTHI (India)

Rapporteurs:

- | | |
|-----------------------|------------------------|
| – Quality Arbitration | GLOSSNER (FRG) |
| – Raw Materials | Mrs. Pamela CROFT (UK) |
| | JAKUBOWSKI (Poland) |
| | LAKHDARI (Algeria) |

III. New Methods for Resolving International Commercial Disputes

The preparation by the United Nations of Conciliation Rules points to a new emphasis on resolving disputes without recourse to arbitration. In addition, there are recent institutional arrangements for helping to settle disputes by the use of technical expertise or through procedures for adapting contracts to changed conditions. These techniques, and their relation to arbitration, will be reviewed by this Working Group.

Chairman: HOLTZMANN (USA)

Rapporteurs:

- Conciliation HERRMANN (UNCITRAL Secretariat)
A representative of the Foreign Trade and
Economic Arbitration Commission of the
China Council for the Promotion of Inter-
national Trade (invited)
.....
- Technical Expertise DERAINS (France)
Référé arbitral
- Adaptation of contracts BERNINI (Italy)
STALEV (Bulgaria)

IV. Developments in Maritime Arbitration

This Working Group will discuss the role of the network of maritime arbitration institutions. It will also consider the effect on arbitration of international maritime conventions, such as the UN Hamburg Rules and the UNCTAD Code, and will review other current issues in maritime arbitration.

Chairman: HANÁK (Czechoslovakia)

Rapporteurs:

- Role of Maritime Arbitral
Institutions BERLINGIERI (Italy)
STROHBACH (GDR)
- Legal Issues in Maritime
Arbitration TRAPPE (FRG)
- Practical Experience in
Maritime Arbitration BARCLAY (UK)

ICCA INTERIM MEETING WARSAW 1980

‘INTERNATIONAL ARBITRATION IN MULTI-PARTY BUSINESS DISPUTES’*

1. From June 30 – July 1, 1980, the Interim Meeting of the International Council for Commercial Arbitration (ICCA), organized by the Polish Chamber of Foreign Trade, was held in Warsaw. The Symposium was attended by more than 400 participants from 37 countries.

The subject of the Symposium was: ‘International Arbitration in Multi-Party Business Disputes’. The reasons for discussing this problem were expounded in the Symposium information brochure:

‘The subject is important because of the growing number of multiparty transactions in all regions of the world, such as construction contracts, joint ventures and various consortia which involve not only the principal parties, but also include subcontractors, insurers, guarantors and others. Multiparty disputes which arise in these transactions present new opportunities and challenges for international commercial arbitration.’

The Symposium was opened by the President of the Polish Chamber of Foreign Trade, *Mr. J. Burakiewicz*. He expressed his satisfaction that ICCA had entrusted the organization of the Symposium to the Polish Chamber of Foreign Trade.

On behalf of the Polish Government the participants were addressed by the Minister of Justice, *Professor J. Bafia*. In his speech he emphasized the importance which the Polish Government attaches to international commercial arbitration, and its positive attitude towards every initiative to expand, strengthen and improve arbitration. Minister Bafia said that the existence and proper functioning of arbitration is necessary to ensure fairness, certainty and justice in international trade, and stressed the importance of the Symposium.

Professor Pieter Sanders, Chairman of ICCA, passed votes of thanks to the host organization and spoke briefly about ICCA’s activities, its present status, being recognized by the United Nations as a Non-Governmental Organization (NGO), the plans for the future, the forthcoming Congress in Hamburg (1982), and ICCA’s Yearbook Commercial Arbitration, which has been regularly published since 1976.

* Based on the information given by Professor Jerzy Jakubowski, ICCA member, President of the Court of Arbitration at the Polish Chamber of Foreign Trade, and organizer of the Interim Meeting.