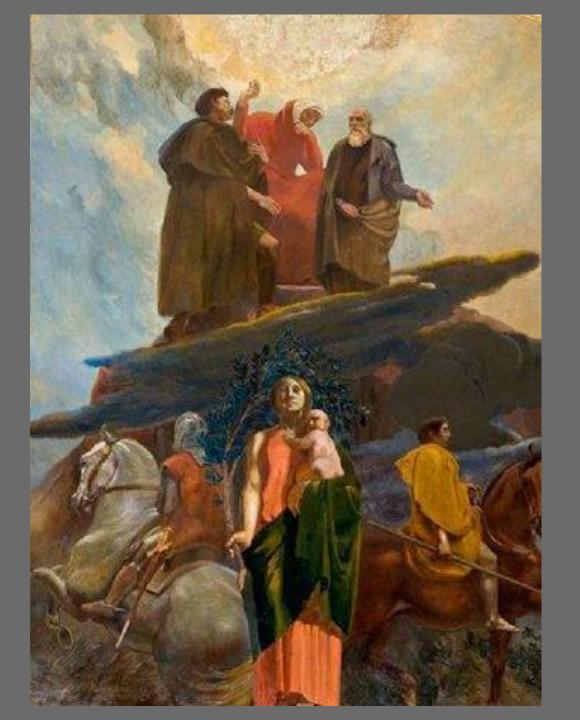
# International Arbitration: Past, Present and Future





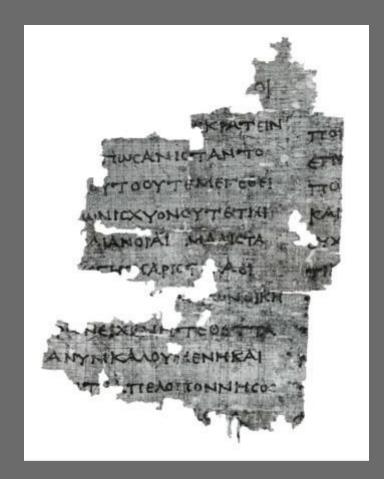


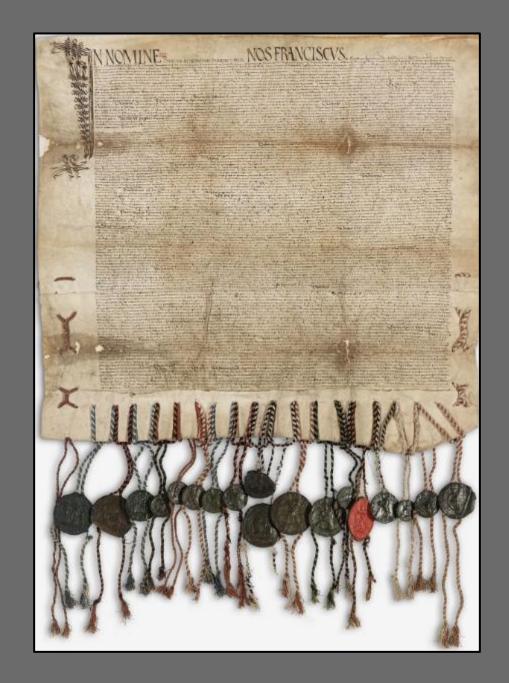


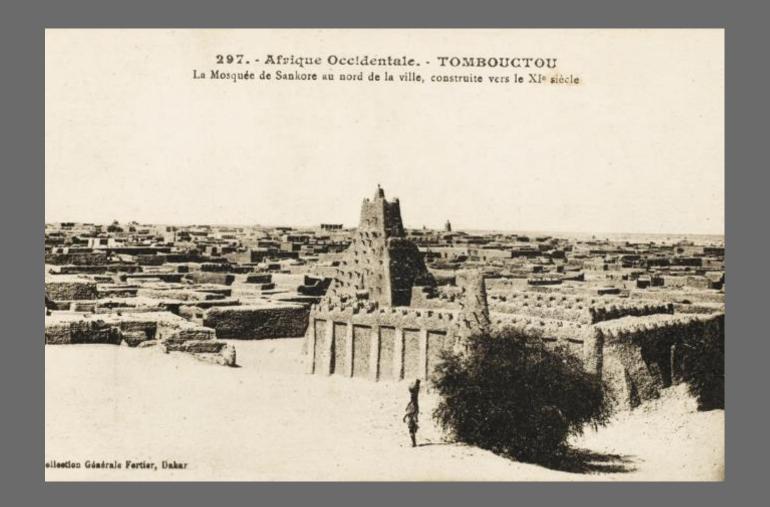






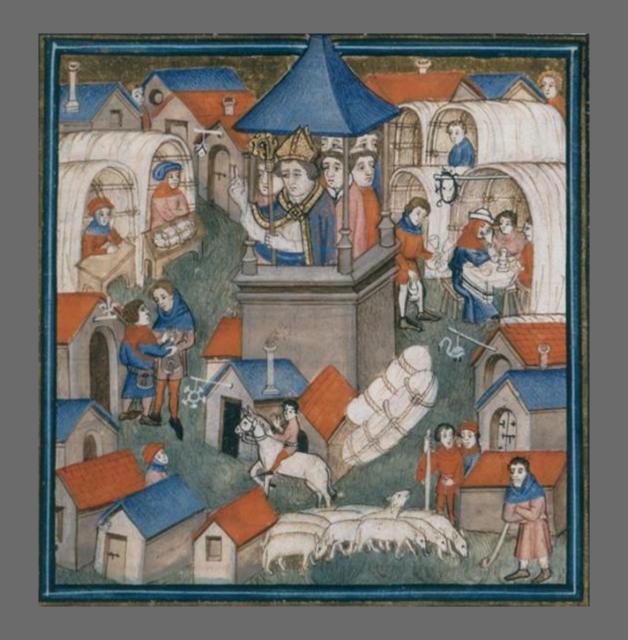


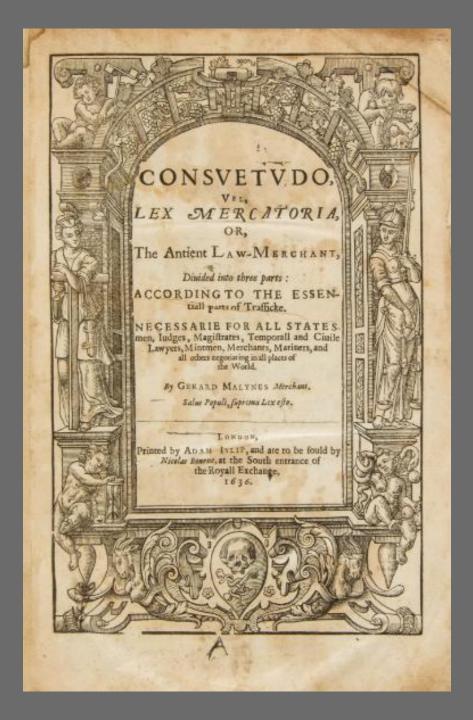












"The second meane or rather ordinarie course to end the questions and controversies arising between Merchants, is by way of Arbitrement, when both parties do make choice of honest men to end their causes, which is voluntarie and in their own power, and therefore called Arbitrium, or free will, whence the name Arbitrator is derived: and these men (by some called Good men) give their judgments by Awards, according to Equitie and Conscience, observing the Custome of Merchants, and ought to be void of all partialitie or affection more nor lesse to the one, than to the other, having onely care that right may take place according the truth, and that the difference may be ended with brevitie and expedition."

G. Malynes, Consuetudo, vel, Lex Mercatoria (1622)

Groendyk v. Winsmore St. Jones County Ct. 1680

Court Records of Kent County, Delaware, 1680-1705 two arbitrators appointed to decide the parties' dispute, who would in case of a "non agreement ... chuse a third person as an Umpire [to] make a final End thereof."

Edited by Leon deValinger, Jr

Groendyk v. Winsmore, (1680), reprinted in L. de Valinger (ed.), Court Records of Kent County, Delaware, 1680-1705 4-5 (1959).



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"I am sorry to hear that the Difference between you and Mr. A is at last like to be brought to a Law-Suit....

The Law, my good Friend, I look upon more than any one thing as the proper Punishment of an overhasty & perverse Spirit, as it is a Punishment that follows of a man's own seeking and chusing.

You will not consent perhaps now to submit the Matter in Dispute to Reference; but let me tell you that after you have expended large Sums of Money, and squander'd away a deal of Time & Attendance on your lawyers, and Preparations for Hearings one Term after another, you will probably be of another Mind, and be glad *Seven Years* hence to leave it to that Arbitration which you now refuse."

N.Y. Weekly Post-Boy, 20 May 1751

many of my leiser chours to digest; different it cato it's present form, it may, no withistan ing, appear orude and incorrect. I'm having endea coursed to be plain, and explicit in all the Deriver even at the expense of prolexity, perhaps of tautology. Thope and trust that no disputes wiharise concerning; but if, centre 24 to expectation, case should be otherwise from the want of legal ex securios, or the usual technical tem or because for much or too little has been said one my of the Devises to be conservant a the law My Well and derection reply is, that all disbutes file ily any should a rise ) shall be dec ded by three in partial and extelliper tones, haves for their probety ind good under Standing; - wo to be chosen by the disputarty each laving The choice of one and the the dby Phose two .-Pohich three men this chorses, That unfettered by La v, or legal con Smelini, declare their serve of The Testatory extertion; and such decision is, to a cisterly and pur hoses to be as a despos the Par ties as if it had been given in The Supreme Court of the United Shales . -

LASTLY.—I constitute and appoint my dearly beloved wife, Martha Washington, my nephews, William Augustine Washington, Bushrod Washington, George Steptoe Washington, Samuel Washington, and Lawrence Lewis, and my ward, George Washington Parke Curtis (when he shall arrive at the age of twenty-one years), executrix and executors of this my will and testament, in the construction of which it will be readily perceived, that no professional character has been consulted, or has had any agency in the draft; and that, although it has occupied many of my leisure hours to digest, and to throw it into its present form, it may, notwithstanding, appear crude and incorrect; but, having endeavoured to be plain and explicit in all the devises, even at the expense of prolixity, perhaps of tautology, I hope and trust that no disputes will arise concerning them. But if, contrary to expectation, the case should be otherwise, from the want of legal expressions, or the usual technical terms, or because too much or too little has been said on any of the devises to be consonant with law, my will and direction expressly is, that all disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men, known for their probity and good understanding; two to be chosen by the disputants, each having the choice of one, and the third by those two; which three men, thus chosen, shall, unfettered by law or legal constructions, declare their sense of the testator's intention; and such decision is, to all intents and purposes, to be as binding on the parties as if it had been given in the Supreme Court of the United States.

In witness of all and of each of the things herein contained, I have set my hand and seal, this ninth day of July, in the year one thousand seven hundred and ninety,\* and of the Independence of the United States the twenty-fourth.

#### GEORGE WASHINGTON.

<sup>\*</sup> The testator seems to have omitted the word "nine."

# 0 U.S. Dept. of state. (1872.)

#### ALABAMA CLAIMS

### ARGUMENT

# THE UNITED STATES

DELIVERED TO

THE TRIBUNAL OF ARBITRATION

AT

GENEVA

June 15. 1872

# PARIS

PRINTED BY DUBUISSON AND CO.
5, RUE COQ-HÉRION, 5
1872



required to meet the burden of proof of irrevocable, and enforceable, is a declarasanity, and other aspects of the prob- tion of national law equally applicable

The judgment appealed from is affirm-



#### ROBERT LAWRENCE COMPANY, Inc., Plaintiff-Appellee,

DEVONSHIRE FABRICS, INC., Defendant-Appellant. No. 121, Docket 25209,

United States Court of Appeals Second Circuit.

> Argued Jan. 16, 1959. Decided Oct. 28, 1959.

Action to recover for fraud inducing purchase agreement. The United States District Court for the Southern District of New York, Edward J. Dimock. J., denied a stay pending arbitration. and an appeal was taken. The Court of Appeals, Medina, Circuit Judge, held that questions as to validity and intercontract affecting interstate commerce are governed by federal rather than by tration clause in question was broad cl. 3; art. 3, § 2, cl. 1. enough to encompass a charge of fraud in inducement to make principal contract for purchase of merchandise, and arbitration clause itself had not been induced by fraud, arbitration must be had.

Reversed with directions.

#### 1. States €=4.2

Arbitration Act section, declaring arbitration agreements affecting commerce or maritime affairs to be valid. in state or federal courts. 9 U.S.C.A.

#### 2. Courts ≎=361

Questions as to validity and interpretation of arbitration agreement affecting commerce or maritime affairs are substantive questions governed by federal rather than local law, 9 U.S.C.A. 8 2; U.S.C.A.Const. art. 1, § 8, cl. 3; art. 3, § 2, cl. 1.

#### 3. Courts = 289

Suits involving application of Arbitration Act do not furnish an independent basis of federal jurisdiction. U.S. C.A.Const. art. 3; 9 U.S.C.A. §§ 4, 8; 28 U.S.C.A. § 1331.

#### 4. Commerce □16 Contracts ©284(1)

"one of the dark chapters in legal history concerns the [treatment of questions of the validity, interpretation and enforceability of arbitration agreements"

construction as well as questions of validpretation of arbitration agreement in ity, irrevocability, and enforceability of arbitration agreements affecting interstate commerce or maritime affairs. 9 local law; and held that since the arbi- U.S.C.A. § 2; U.S.C.A.Const. art. 1, § 8,

#### Contracts ©137(1), 284(1)

Illegality of some other part of contract does not operate to nullify agreement to arbitrate contained therein; nor does alleged breach or repudiation of contract preclude right to arbitrate.

#### Contracts Φ=281(1)

Any doubts as to construction of Arbitration Act ought to be resolved in line with its liberal policy of promoting arbitration both to accord with original intention of parties and to help ease con-

Robert Lawrence Co. v. Devonshire Fabrics, Inc., 271 F.2d 402, 406 (2d Cir. 1959)

"Now we all know that arbitrators, at the common law, possess no authority whatsoever, even to administer an oath, or to compel the attendance of witnesses. They cannot compel the production of documents and papers and books of account, or insist upon a discovery of facts from the parties under oath. They are not ordinarily well enough acquainted with the principles of law or equity, to administer either effectually, in complicated cases; and hence it has often been said, that the judgment of arbitrators is but rusticum judicium. Ought then a court of equity to compel a resort to such a tribunal, by which, however honest and intelligent, it can in no case be clear that the real legal or equitable rights of the parties can be fully ascertained or perfectly protected?...[An arbitration agreement is not specifically enforceable because it] is essentially, in its very nature and character, an agreement which must rest in the good faith and honor of the parties, and like an agreement to paint a picture, to carve a statue, or to write a book...must be left to the conscience of the parties, or to such remedy in damages for the breach thereof, as the law has provided."

Tobey v. County of Bristol, 23 F.Cas. 1313, 1321-22 (C.C.D. Mass. 1845)

#### LIVRE III

#### TITRE UNIQUE:

Des Arbitrages.

ART. 1003.

Toutes personnes peuvent compromettre sur les droits dont elles ont la libre disposition.

1004. On ne peut compromettre sur les dons et legs d'alimens, logement et vêtemens; sur les séparations d'entre mari et femme, divorces, questions d'état, ni sur aucune des contestations qui seraient sujettes à communication au ministère public.

1005. Le con devant les arbit signature privé 1006. Le compromis désignera les objets en litige et les noms des arbitres, à peine de nullité.

1006. Le compromis désignera les objets en litige et les noms des arbitres, à peine de nullité.

1007. Le compromis sera valable, encore qu'il ne fixe pas de délai; et, en ce cas, la mission des arbitres ne durera que trois mois, du jour du compromis.

1008. Pendant le délai de l'arbitrage, les arbitres ne pourront être révoqués que du consentement unanime des parties.

1009. Les parties et les arbitres suivront, dans la procédure, les délais et les formes établis pour les tribunaux, si les parties n'en sont autrement convenues.

1010. Les

#### CODE

Di

#### PROCÉDURE CIVILE.

ÉDITION ORIGINALE ET SEULE OFFICIELLE



A PARIS; DE L'IMPRIMERIE IMPÉRIALE. 1806

Signé NAPOLÉON.

Par l'Empereur :

Le Secrétaire d'État, signé Hueues B. Maner. Pour extrait conforme :

Le Secrétaire-général du Conseil d'État,

Sighe J. G. Locata

Appel par Robert.

De 8 MILLEY 1863, arrêt C. roy. Grenchie, 4 ch., MM, de Brunard cons. f. f. prés., Blacchet i'r av. gén., Nicolot av.

« £A COUR; — Attendu que le 34 mars 1840 la seure Gallier a remis h la maison Durand un bon sur la maison Pary et Girodon, do Lyon, el a donné masdot à cette maison de toucher le montant de ce bon, arrisant à 13,750 ft. en capital et intérêts, à l'échéance du 40 avril 1860 ;

s'Attendu que le 3 avril 1850 in maison Durand, en exècution de ce mandat, a transmis ce bon à la maison Boheri de Lyon, ovec d'antres valeurs, en l'invitant à porter à ana credit d'elle, maison Durand, le montant de ces valeurs, et à lui transmettre des espèces, ce qui n été effectué por la maison Robert, alori que le constatent les livres, soit de ceste maison, soit de la maison Durand;

a Attendu que por cette opération la maison Robert a payé à la maison Dorand le montant du hon de la venue Gallica, paiement qui a pu être exécuté valablement, aus termes de l'art. 1238 C. clv., paragraphe demier, bien que la sociou Robert ne fit pas debistice de la venue Gallice, et qui a été valublement reçu par la maison Durand, en vertu du mandat de la expandice.

s'Attendo qu'il importe peu que cette bégochition soit natielleurs au 10 avril; date de féchérnes de la créance dout il s'agit; que, si cette date est mentionnée dans le mandet donné par la reuve Gallice, c'est pour fixer le jour nuquel la maison Derand desiendont comptable de la tomme de 55,750 fr., la calcul des interêst étant (abbit fin. le cjour, mais non pour interdire à la maison Durand la fuculté de recevoir avant cette époque, ficulté qui était que conséquence naturelle du maniat conféré;

u Attendo que la reuve Galileo, après le polement exécuté por la mainon Robert, m'aurait plus eu le droit de révoquer son mandat et de détraire les effets d'une opération valablement faite dans les termes et pendont la durée de ce mandat, la révocation ne pouvant, d'après l'art. 2006 C. civ., moire ou tiers qui a truid précédemment avec le mandataire;

sattenda qu'il pourrait en être différemment et. dans les rapports de la mai-on Doroud à la maison Robert, il n'y avoit en qu'une simple aubstitution du mandat de la reure Galtice : mods qu'une semblable interprétation De peut se souleuir en présence de la correspondence de la maison Dorund, où l'on Toit que cette maison, en transmetlant le litre du la veure Gallice, entend eire créditée pur la maison Robert du montant de cette eréance, et recevoir en même temps des espèces; qu'il D'y a pas seulement dans cette correspondance un mandat de recousrer ; qu'il y a de plus l'in-Titalion de prendre la valeur pour comptant, et d'en avancer les fonds, ce qui a été pinsk compris et exécuté par les deux muisons ;

#### COUR DE CASSATION. (10 juillet 1843.)

En matière civile ( el notamment en matière de police d'assurance terrestre contre l'incendie) la promesse de compromis quant à ses conditions de validité; spécialement elle est nulle si elle ne contient put la désignation du nom des arbitres (1). C. proc. civ. 1006.

#### COMPAGNIE DE L'ALLIANCE C. PRUNIER.

L'arn't de la Courde Lyon du 9 juin 4860 (V. l. 2 1860, p. 400) declarait nulle à défant de designation de l'alighe on litige et des noms des arbitres la clause d'une police d'assurance terrestre coutre l'incendie portant que toste consestation entre l'assuré et la compagnie l'Albitanca sorait jugee su siège de la compagnie par trois arbitres chossis l'un por l'assuré, l'outre par la compagnie, le troisième par les deux arbitres ou par le président du tribunal de commerce de la Scine. — Cet arret a été frappé au nom de la compagnie l'Albitance d'un pourvoi en cassatlon pour violation ou fausse upplication des est. 1003 et 2006 C. prec. clv.

On disait : Le principe consacré per la Cour royale jetterait le trouble et la perturbation dans un grand nombre de conventions privées : on suit, en effet, que dons la plupart des acles de société civile et commerciale, et dans use foule d'autres actes, on convient ordinairement do soumettre & des arbitres les qualculations qui pourront surrenir, sons aucane autre designation. Cette clause est même souvent une condition sans laquelle la convention principale n'aurait pas en lieux elle se trouve dans tontes les polices consenties par la compagnie l'Alliance, et elle ne pourrait en être détachée sans porter en quelque sorte un coun mortel à cette compagnie. - Au surplus le système de l'arrêt attaqué est le résultat d'une confusion étidente entre deux choses éminempent distinctes, à savoir le compromis et la clause ou convention comprouis-

Si l'ort, 15 de la police avait été présenté par la compognie comme ayont le caractère d'un révitable compromis, comme devant en tenir entièrement lieu, on conçoit que cette clouse aurait pu être déclarée nulle, puisqu'elle ne distinguait pos tout à la fois, seivant les prescriptions de l'art. 4006 (, proc., l'objet du litige et les noms des arbitres ; mais ce n'est pas soits-ce point de vue que la compagnie a prisente l'art, \$5, elle a sculement soutena qu'il y avait mogagement réciproque de procéderà un comproisto et à la fixation d'un tribunol proitral pour le jugement des contestations à veuir, engagement que les pateurs appellent clause compromissoure. - Or cette conrention , qui n'a pour objet que les diffi-

<sup>(1)</sup> La question est contraversée.

"Whereas if one considered as valid a simple arbitration agreement or arbitration clause in the case of fire insurances, one would have to acknowledge and recognize its validity in every contract where it would have been agreed that disputes regarding nonperformance or performance issues would be submitted to unnamed arbitrators; this disposition will become routine and standard; the exception would become the rule, and one would be deprived of the guarantees offered by courts;

Whereas the requirement for compulsory designation of the arbitrators by name at the time the arbitration agreement is entered into is aimed at avoiding disputes regarding the composition of arbitral tribunal, and especially protecting citizens against their own lack of reflection, that could lead them to agree to future arbitrations while lacking sufficient prudence and without being sufficiently thorough as to their understanding of future circumstances, without being sure that the arbitrators who volunteered to hear the case would be able to deal with the matter and be trustworthy..."

Judgment of 10 July 1843, Cie L'Alliance v. Prunier, 1843 Dalloz (I) 343 (French Cour de cassation civ.)

# Deutscheite und Rechtspolitif

#### Amtliches Brgan

bes Reichsminiftern ber Juftig, bes Breufifden Juftigminifters und bes Boyerifden Juftigminifters

#### herausgeber:

Dr. Frang Gürtner

Dr. Fram Beitegelberger

Dinntufebreife im Meichniefffperleifertem

Banne Kerri progifter beltjattelber und Atantarat

Juriftifde Schriftleitung:

Dr. Koland Freisler Profifter Diaslebisetter und Stantard Ballereiter Digefficilie Br. Hans Frank

Rudolf Hehreut

Asperliger Sherrylerangered
bestättig in Sethiophilaninillerium

unter Mitwirkung von Gürefteatsanwalt Br. kart firug im Prechischen Jastipninisterium und Sberregierungsent Br. Erwin Schold im Keichsjustipninisterium







# Fünfundneunzigster Jahrgang

Justip-Ministerial-Blatt Ar. 1—39 Preußische Justip Ar. 40—45 Beutsche Justip Ar. 47 bis 54

R. v. DECKER'S VERLAG, G. SCHENCK, BERLIN W9



Gleichzeitig bat Dr. Frant unter Aufhebung bisberiger Berfügungen ben Rechtsanwalt Bermann Schroer in Duffelborf gum Gauinfpefteur bes BROD3, unter gleichzeitiger Bestellung jum fom-miffarifden Leiter bes Reichtichulungsamtes bes BREDA ermannt.

#### Führersitung der Ahademie für Beutsches Recht

Bie bereits in ber "Deutiden Juftig" vom 8. 12, 33 Rr. 51 mitgeteilt worben ift, bat ber Reichsjuriften-fübrer Reichsjuftigfommiffar Dr. Geant in einer Gubrerratefinung ben organifatorifden Aufbau und ben Arbeitoplan ber Atabemie fur Deutsches Recht feligelegt. Mm Donnerstag, bem 7. 12., fanb abends eine weitere Gipung fatt, auf ber Dr. & rant in feiner Anfprache allen benenigen, die fich gur Mitarbeit an führenben Stellen gur Berfügung geftellt hatten, feinen Dant aussprach und ausführte, bag richtunggebend für bie gu leiftenbe Arbeit fei, bag bie nationalfogialiftifche Nevolution nicht bem Tage biene, auch nicht einer Generation allein, fonbern baft fie auf bie ewigen Grundfage bes beutichen Menfchen gurudgebe. Huf bem Gebiete ber Rechtsveform werbe die Atabemie nicht nur eine wertvolle Ergangung, fonbern bie gegebene Stelle jur Borbereitung fein. Der Stoat habe bann lentlich autveitar ju entscheiben, mas

Reich sin ftigm in ifter Dr. Guriner betonte, bag ihm ber bom Gubrer ber Afabemie vargeschlagene Weg ber richtige scheine. Es handele fich barum, dem deutschen Recht ein einbeitliches Geprage und ein einbeitliches Beficht ju geben. Sierzu fei bie in ihrer Arbeitsweife auch bom Staate freie, aber auf ber weltanichaulichen Grundlage bes Nationalfogialismus ftebende Atabemie bas befte Mittel,

Juftigminifter Rerel erffarte, bag er mit besonderer Freude bas Amt bes Borfipenben bes Führer-rates überischine. Mit ber Alabemie sei ein außerst mertvolles Bert geichaffen. Der Begriff bes Rubrerftaates bebeute feinen Defpotismus. Diele Felifiellung fei befonders fur die Wiffenichaft von Bedeutung, beren Mannigfaltigfeit nur bann gemabeleiftet bleibe, wenn bie gestigen Rafte bie Moglichfeit gur Entfaltung batten. Jum Schluft gab Minister Kerrt befannt, bag bie breubilde Regierung beablichtige, ber Alabemie für Deutsches Recht im Gebaube bes ehennaligen Preuhnichen Lanbtages geeignete Raume gur Berfügung gu ftellen,

Die Afabemie begann alebann mit ber braftifchen Arbeit. Es murbe fiber ben Stand ber Borarbeiten in ben wiffenfchaftlichen Abteilungen berichtet und in lebhafter Ansfprache bie einzelnen Fragen erörtert.

Mm 9. Des fant im Reichstuftigmintfterium ein Empfang bes BNBD3; flatt. Der Führer des Bundes, Reichsinstigenmiffar Staatsminister Dr. Frank, ftellte bein Reichsminister der Julity Dr. Gartner und dem Staatsferteitr Dr. Schlegelberger die Mitglieder seines Stabes und Die Reichsfachgruppenführer bor. Staatsminister De. Frant betonte dabei, das der Reichs-minister der Justig des unbedingten Bertrauens und der hingebenden Mitarbeit des BRSDI, gewiß fein tonne. Reichssufrizminifter Dr. Gariner wies in feiner Erwiberung barauf bin, bag bie großen Aufgaben, Die bas neue Reich auf bem Bebiete ber Rechtserneuerung energisch und zielbewuht in Angriff genommen habe, nur unter der tatfrästigen Mitwirfung ber gefamten beutichen Puriftenichaft erfolgreich burchgeführt werben tonnten. Er begruße es mit Freuden, bag fich ber RRSDI, und die neugeschaffene Atabemie für Deutsches Recht mit allen Rraften in ben Dienft der großen Aufgaben stellten; er hofse gerade von dieser Mitarbeit für die Gestaltung des fünstigen Rechtes reichen Gewinn. Im Anschluß an die Begrüßung wurden in langerer Aussprache Berufsfragen ber Anmalifchaft und bes Rotariate erörtert, wobei bie Reichslachgruppenleiter Rechtsanwalt Dr. Raede und Rotar Dr. Boltere eingebenbe Referate hielten,

Anschliegend an ben Empfang im Reichsjustig-ministerium stellte Reichsjustigkommissar Dr. Frant im Breugifden Juftigminifterium bem Juftigminifter Rerrl und Staatsfefreiar Dr. Freisler feinen Stab und Die Reichofnchgruppenleiter bor. Juftigminifter Rerel gab feiner Groube über bie enge Bu fammenarbeit mit bem BRED3. Ausbrud und bob bie großen Berbienfte berbor, bie fich ber Reichafuriftenührer burch bie Schaffung ber großen Organifation bes BROD3. und bie barin erfolgte einheitliche Bufammenfaffung aller beutiden Juriften ermorben babe.

Der nichfte Togun minifterium gebilbeten am Montag, ben mittags 10 Uhr, Reichsjuftigminifterlum auf brei Tage erftrede fteben ber Abichlug ber gonnenen Husfprache owie bas Thema: & Imngen.

#### Bichtlinien des Bei

Dar bie Reichabeb Bereinbarung von in benen befrimme wie feiten, bie fich aus Be perfonen engeben, aur liden Gerichte Richtlinien wird be fahrungen ber Wrat Schiebegerichtsbarfeit, Erledigung und ger problematifch feien ur Bergleich jur orber Chiebsgerichtsbarfeit Redtsunficherb ftaatspolitifchen Gtat baß eine grobere Ausbeine Erfchitterung b Gerichtsbarfeit und

3m englischen einen Entwurf jur Mis angebörigfeitsgefebes be will ben bisberigen Geumbiet Staatsangeborigfeit burch Chefdliegung mit einem Auslander verliert, gwar nicht gang aufgeben, ibn aber für bie Galle abanbern, in benen er jum Rachteil ber Englanberin ausschlägt. Onber foll insbesonbere eine Eng-lanberin ihre britische Staatsangehorigfeit behalten, wenn fie bei ber Ebeschließung mit einem Unslanber nicht besten Staatsangehörigfeit erwirdt. Ebenfo foll beruiteben werden, dog fie dadund frantenlos wird, daß ihr Ehemann seine Staatsangehörigkeit wechselt.

über bie Anertennung ausländischer Eheldeibungsurteile in Argentinien enthalt bas beft 4,6 bes laufenben Jahrgangs ber Beitschifdeilt für ausländiches und internationales Privatrecht einen wichtigen Beitrag, Danach erfennt Die argentinifche Praxis ausländifche Scheibungsurteile, Die nach bem Recht bes Chemobnities gur Beit ber Scheibung ergongen finb, nur bann an, wenn bie Ebe außerhalb bon Argentinien gefchloffen ift.

In bemfelben Beft finbet fich ferner ein beachtens-werter Beitrag über Brobleme besinternationalen Erbrechte in ben Bereinigten Staaten.

Wie fich aus einer Melbung ber Reuen Burder Beitung ergibt, beginnt man auch in ber Schmeig bie Rotwenbigfeit einer Reubilbung bes geltenben Rechtes einzuseben. Bor bem Burcherifchen Juriftenverein fproch ber Berner Orbinarius ber

## Richtlinien des Reiches über Behiedegerichte

Far die Reichobehorben find Richtlinien über die Bereinbarung con Echledegerichten erlaffen worben, in benen bestimmt wird, bag grundfablich alle Streitigfeiten, Die fich aus Bertragen bes Reides mit Briratretfonen ergeben, jur Enticheibung burch bie orbentlicen Cerichte gedracht werben follen. In den fahrungen ber Braris bie angeblichen Borguge ber Chiebegerichtebarteit, namlich grobere Coneligleit ber Erledigung und geringerer Roftenaufwand, giemlich problematifc feien und intgefamt ben Racteil ber im Bergleich jur ordentlichen Gerichtsbarfeit bei ber Ediedigerichteberleit beftebenben meit großeren Redtsunficherbeit nicht aufwogen. ftaatspolitifden Ctanbpunit ous fel ferner au beachten, bag eine größere Ausbednung ber Chiebegerichtsbarfeit eine Erfcilterung bes Bertrauens gar ftaatlicen Munian Werichtsbarteit und gum Ctaate überbaupt barftellen murbe.



N° 678.

#### ALLEMAGNE, BELGIQUE, BRÉSIL, DANEMARK, EMPIRE BRITANNIQUE, etc.

Protocole relatif aux clauses d'arbitrage, signé à Genève le 24 septembre 1923.

> GERMANY, BELGIUM. BRAZIL, DENMARK, BRITISH EMPIRE, etc.

Protocol on Arbitration Clauses. signed at Geneva, September 24. 1923.

No. 678. — PROTOCOLE 1 RELATIF No. 678. — PROTOCOL 1 ON AR-AUX CLAUSES D'ARBITRAGE, SIGNÉ A GENÈVE LE 24 SEP-TEMBRE 1923.

Enregistré le 28 juillet 1924, par suite de son entrée en vigueur.

Les soussignés, dúment autorisés, déclarent accepter au nom des pays qu'ils représentent, les dispositions suivantes :

1. Chacun des Etats contractants reconnaît la validité, entre parties soumises respectivement a la juridiction d'Etats contractants différents, du compromis ainsi que de la cause compromissoire par laquelle les parties à un contrat s'obligent, en matière commerciale ou en toute autre matière susceptible d'être réglée par voie d'arbitrage par compromis, à soumettre en tout ou partie les différends qui peuvent surgir dudit contrat, à un arbitrage, même si ledit arbitrage doit avoir lieu dans un pays autre que celui à la juridiction duquel est soumise chacune des parties au contrat.

Chaque Etat contractant se réserve la liberté de restreindre l'engagement visé ci-dessus aux contrats qui sont considérés comme commerciaux par son droit national. L'Etat contractant qui fera usage de cette faculté en avisera le Secrétaire général de la Société des Nations aux fins de communication aux autres Etats contrac-

2. La procédure de l'arbitrage, y compris la constitution du tribunal arbitral, est réglée par la volonté des parties et par la loi du pays sur le territoire duquel l'arbitrage a lieu.

Les Etats contractants s'engagent à faciliter les actes de procédure qui doivent intervenir

Acces ion: Rhodésie du Sud, 18 décembre 1924.

BITRATION CLAUSES, SIGNED AT GENEVA, SEPTEMBER 24, 1923.

Registered July 28, 1924, following its entry into

The undersigned, being duly authorised, de-clare that they accept, on behalf of the countries which they represent, the following provisions:

(r) Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other Contracting States may be so informed.

(2) The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken

Accession: Southern Rhodesia, December 18,

<sup>2</sup> Le dépôt des instruments de ratification de la Finlande a eu lieu le 10 juillet 1924 ; celui de l'Italie le 28 juillet 1924 ; celui de l'Albanie, le 29 août 1924 ; celui de la Belgique, le 23 septembre 1924 ; celui de la Grande-Bretagne et de l'Irlande du Nord, le 27 septembre 1924, celui de l'Allemagne, le 5 novembre 1924.

<sup>1</sup> The deposit of the instruments of ratification by Finland took place on July 10, 1924; that by Italy on July 28, 1924; that by Albania on August 29, 1924; that by Belgium on September 23, 1924; that of Great Britain and Nothern Ireland on September 27, 1924, that by Germany, Novem-

ALLEMAGNE, AUTRICHE, BELGIQUE. GRANDE-BRETAGNE. NOUVELLE ZÉLANDE, etc.

Convention pour l'exécution des sentences arbitrales étrangères. Signée à Genève, le 26 septembre 1927.

GERMANY, AUSTRIA, BELGIUM, GREAT BRITAIN. NEW ZEALAND, etc.

Convention on the Execution of Foreign Arbitral Awards. Signed at Geneva, September 26, 1927. L'EXECUTION DES SENTENCES ARBITRALES ÉTRANGÈRES. SIGNÉE A GENÉVE, LE 26 SEP-TEMBRE 1927.

Textes officiels français et anglais. Cette convention a été enregistrée par le Secrétariat, conformément à son article 8, le 25 juillet 1929, jour de son entrée en vigueur.

LE PRÉSIDENT DU REICH ALLEMAND; LE PRÉSIDENT DE LA RÉPUBLIQUE D'AUTRICHE ; THE PRESIDENT OF THE AUSTRIAN REPUBLIC ; SA MAJESTÉ LE ROI DES BELGES; SA MAJESTÉ HIS MAJESTY THE KING OF THE BELGIANS; LE ROI DE GRANDE-BRETAGNE, D'IRLANDE HIS MAJESTY THE KING OF GREAT BRITAIN ET DES TERRITOIRES BRITANNIQUES AU DELA AND IRELAND AND OF THE BRITISH DOMINIONS DES MERS, EMPEREUR DES INDES; SA MAJESTÉ LE ROI DE DANEMARK; LE PRÉSIDENT DE LA MAJÉSTY THE KING OF DENMARK; THE RÉPUBLIQUE DE POLOGNE, POUR LA VILLE PRESIDENT OF THE POLISH REPUBLIC, FOR LIBRE DE DANTZIG; SA MAJESTÉ LE ROI THE FREE CITY OF DANZIG; HIS MAJESTY D'ESPAGNE; LE PRÉSIDENT DE LA RÉPUBLIQUE THE KING OF SPAIN; THE PRESIDENT OF THE D'ESTONIE; LE PRÉSIDENT DE LA RÉPUBLIQUE ESTONIAN REPUBLIC; THE PRESIDENT OF DE FINLANDE; LE PRÉSIDENT DE LA RÉPUTHE FINNISH REPUBLIC; THE PRESIDENT OF
BLIQUE FRANÇAISE; SA MAJESTÉ LE ROI THE FRENCH REPUBLIC; HIS MAJESTY THE D'ITALIE; SON ALTESSE ROYALE LA GRANDE KING OF ITALY; HER ROYAL HIGHNESS THE DUCHESSE DE LUXEMBOURG; LE PRÉSIDENT GRAND DUCHESS OF LUXEMBURG; THE PRESI-DE LA RÉPUBLIQUE DU NICARAGUA; SA MA-JESTÉ LA REINE DES PAYS-BAS; SA MAJESTÉ
LE ROI DE ROUMANIE; SA MAJESTÉ LE ROI
HIS MAJESTY THE QUEEN OF THE NETHERLANDS;
LE ROI DE ROUMANIA; HIS DE SUÈDE : LE PRÉSIDENT DE LA RÉPUBLIQUE TCHÉCOSLOVAQUE; signataires du Protocole of the Czechoslovak Republic, signatories relatif aux clauses d'arbitrage 2 ouvert à Genève of the Protocol on Arbitration Clauses 2, opened depuis le 24 septembre 1923,

¹ Dépôt des ratifications : Nouvelle-Zélande, 9 avril 1929; Danemark, 25 avril 1929; Belgique, 27 avril 1929; Estonie, 16 mai 1929; Suède, 8 août 1929. Espagne, 15 janvier 1930.

<sup>1</sup> Vol. XXVII, page 157; vol. XXXI, page 260; vol. XXXV, page 314; vol. XXXIX, page 190; vol. XI.V, page 116; vol. L, page 161; vol. LIX, page 355; vol. LXIX, page 79; vol. LXXII, page 452; vol. LXXXIII, page 393; et vol. LXXXVIII, page 312, de ce recueil.

Nº 2096. — CONVENTION POUR No. 2096. — CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS. SIGNED AT GENEVA, SEPTEMBER 26, 1927.

> Official texts in French and English. This Convention was registered with the Secretariat, in accordance with its Article 8, July 25, 1929, the date of its entry into force.

THE PRESIDENT OF THE GERMAN REICH; BEYOND THE SEAS, EMPEROR OF INDIA; HIS DENT OF THE REPUBLIC OF NICARAGUA; HER MAJESTY THE KING OF SWEDEN; THE PRESIDENT at Geneva on September 24th, 1923,

New Zealand, April 9, 1929; Denmark, April 25, 1929; Belgium, April 27, 1929; Estonia, May 16, 1929; Sweden, August 8, 1929. Spain, January 15, 1930.

Spain, January 15, 1930.

Vol. XXVII, page 157; Vol. XXXI, page 260;
Vol. XXXV, page 314; Vol. XXXIX, page 190;
Vol. XLV, page 116; Vol. L. page 161; Vol. LIX, page 355; Vol. LXIX, page 79; Vol. LXXII, page 452; Vol. LXXXIII, page 393; and Vol. LXXXVIII page 312. of this Series.

<sup>1</sup> Deposit of ratifications:

#### UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION

#### CONVENTION

ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS



UNITED NATIONS

#### CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

#### Article I

- 1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are cought.
- The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.
- 3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

#### Article I

 Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal

- relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
- The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
- 3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

#### Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in acordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

#### Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforce-

ment shall, at the time of the application, supply:

- (a) The duly authenticated original award or a duly certified copy thereof;
- (b) The original agreement referred to in article II or a duly certified copy thereof.
- 2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consultar agent.

#### Article V

- Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
- (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains

- decisions on matters submitted to arbitration may be recognized and enforced; or
- (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
- Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
- (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

#### Article VI

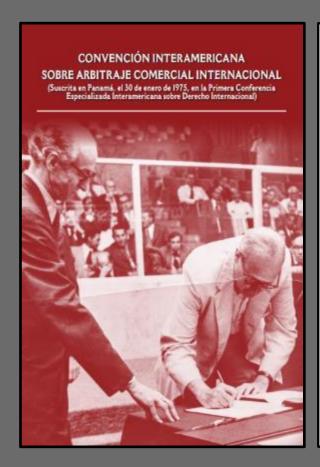
If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article  $V\left(1\right)$  (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

#### Article 1

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive

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#### CONVENCIÓN INTERAMERICANA

#### SOBRE ARBITRAJE COMERCIAL INTERNACIONAL

(Suscrita en Panamé, el 30 de enero de 1975, en la Prinera Conferencia Especia/Saado Asteramericana sabre Derecho intermociona fi

Los Gobiernos de los Estados Miembros de la Organización de los Estados Americanos, deseosos de concertar una Convención sobre-Arbitrale Comercial Internacional, han acordado lo siguiente:

#### ARTICULO I

Es válido el acuerdo de las partes en virtud del cual se obligan a Partri someter a decisión arbitral las diferencias que pudiesen surar o que hayan surgido entre ellas con relación a un negocio de carácter mercantil. El acuerdo respectivo constará en el escrito firmado por las partes o en el canje de cartas, telegramas o comunicaciones por télex.

#### ARTICULO 2

El nombramiento de los árbitros se hará en la forma convenida por Artistros los partes. Su designación podrá delegarse a un tercero sea éste persona natural o jurídica. Los árbitros podrán ser nacionales o extranjeros.

A falta de acuerdo expreso entre las partes el arbitraje se llevará a cabo conforme a las reglas de procedimiento de la Comisión Interamericana de Arbitraje Comercial.

#### ARTICULO 4

Las sentencias o laudos arbitrales no impugnables según la ley processionimito o reglas processies aplicables, tendrán fuerra de sentencia judicial ife Limitios ejecutoriado. Su ejecución o reconocimiento podrá exigirse en la rrism a forma que la de las sentencias dictadas por tribunales ordinarios. nacionales o extrargeros, según las leyes procesales del país donde se ejecuten, y lo que establexcan al respecto los tratados internacionales.

#### ARTICULO 5

- Courolts de 1. Solo se padrá denegar el reconocimiento y la ejecución de la sentencia, a solicitud de la parte contro la cual es invocada, si ésta prueba ante la autoridad competente del Estado en que se pade el reconocimiento y la ejecución:
  - Que las partes en el acuerdo estaban sujetas a alguna incapacidad. en virtudicie la ley que les es aplicable o que dicho acuerdo no es. válido en virtud de la ley a que las partes lo han sometido, o si nada se hubiere indicado a este respecto, en virtud de la ley del Estado en que se haya dictado la sentencia; o
  - b. Que la parte contra la cual se invoca la sentencia arbitral no have sido debidamente notificada de la designación del artitro o del

procedimiento de arbitraje o no haya podido, por cualquier otrararón, hacer valer sus medios de defensa; o

- r. Que la sentencia se refiera a una offerencia no prevista en elacuerdo de las partes de sometimiento al procedimiento arbitral; no obstante, si las disposiciones de la sentencia que se refleren a las cuestiones sorretidas al arbitraje puoden separarse de las que no havan sido sometidas al artitrale, se podrá dar reconocimiento y ejecución a las primeras: o
- il. Que la constitución del tribunal arbitral e el procedimiento arbitral no se hayan ajustado al acuerdo celebrado entre las partes o, en defecto de tal acuerdo, que la constitución del tribunal arbitral o el procedimiento arbitral no se hayan ajustado. a la ley del Estado donde se hava efectuado el arbitrale; o
- e. Que la sentencia no sea aún obligatoria para las partes o haya sido anulada o suspendida por una autoridad competente del Estado en que, o conforme a cuya ley, haya sido dictada esasemencia.
- 2. También se podrá denegar el resonocimiento y la ejecución de una sentencia arbitral si la autoridad competente del Estado en que se pide di reconocimiento y la ejecución comprueba:
- s. Que, según la ley de este Estado, el objeto de la diferencia no essupposible de solución por via de arbitraje; o
- b. Que el reconocimiento o la ejecución de la sentencia sean contrarios al orden público del mismo Estado.

#### ARTICULO 6

Analogias a Si se ha pedido a la autoridad competente prevista en el Articulo 5. Suspensión de la sentencia, la autoridad -Someonial ante la qual se invoca dicha sentencia podrà, si lo considera procedente. aplazar la decisión sobre la ejecución de la sentencia y, a solicitud de la parte que pida la ejecución, podrá también ordenar a la otra parte que otorgue garantias apropiadas.

#### ARTICULO 7

Firms La presente Convención estará abierta a le firma de los Estados Miembros de la Organización de los Estados Americanos.

#### ARTÍCULO 8

Ratificacione: La presente Convención está sujeta a ratificación. Los instrumentos de ratificación se depositarán en la Secretaria General de la Organización. de los Estados Americanos.

#### ARTICULO 9

La presente Convención quedará ablerta a la adhesión de cualquier otro Estado. Los instrumentos de achesión se depositarán en la Secretaria General de la Organización de los Estados Americanos.

#### ICSID CONVENTION, REGULATIONS AND RULES

International Centre for Settlement of Investment Disputes 1818 H Street, N.W. Washington, D.C. 20433, U.S.A.

#### CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES

#### Preamble

The Contracting States

Considering the need for international cooperation for economic development, and the role of private international investment therein;

Bearing in mind the possibility that from time to time disputes may arise in connection with such investment between Contracting States and notionals of other Contracting States;

Recognizing that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

Attaching particular importance to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire.

Desiring to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

Recognizing that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recummendation of conciliators, and that any arbitral award be complied with; and

Declaring that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention and without resconsint be deemed to be under any obligation to submit any particular dispute to cancillation or arbitration.

Have agreed as follows:

#### Chapter I International Centre for Settlement of Investment Disputes

#### Section 1 Establishment and Organization

#### Article 1

- There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre).
- (2) The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.

#### Article 1

The seat of the Center shall be at the principal office of the International Bank for Reconstruction and Development (hereinafter called the Bank). The seat may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of its members.

#### Article 3

The Centre shall have an Administrative Council and a Secretarist and shall maintain a Panel of Conciliators and a Panel of Arbitrators.

#### Section 2 The Administrative Council

#### Article 4

- (1) The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal's absence from a meeting or inability to act.
- (2) In the absence of a contrary designation, each governor and alternate governor of the Bank appointed by a Contracting State shall be ex officio its representative and its alternate respectively.

#### eticle 5

The President of the Bank shall be ex officio Chairman of the Administrative Council (hereinafter called the Chairman) but shall



Dieser Nummer liegt eine zeitliche Übersicht über die Verölfentlichungen im ersten Halbjahr 1961 bei.

#### Gesetz zu dem Vertrag vom 25. November 1959 zwischen der Bundesrepublik Deutschland und Pakistan zur Förderung und zum Schutz von Kapitalanlagen

Vom 29. Juni 1961

Der Bundestag hat mit Zustimmung des Bundesrates das folgende Gesetz beschlossen:

#### Artikel 1

Dem in Bonn am 25. November 1959 unterzeichneten Vertrag zwischen der Bundesrepublik Deutschland und Pakistan zur Förderung und zum Schutz von Kapitalanlagen, dem Protokoll und den Notenwechseln vom gleichen Tage wird zugestimmt. Der Vertreg, das Protokoll und die Notenwechsel werden nachstehend veröffentlicht.

#### Artikel 2

Dieses Gesetz gilt auch im Land Berlin, sofern das Land Berlin die Anwendung dieses Gesetzes feststellt.

#### Artikel 3

(1) Dieses Gesetz tritt am Tage nach seiner Verkündung in Kraft.

(2) Der Tag, an dem der Vertrag nach seinem Artikel 14 Abs. 2 sowie das Protokoll und die Notenwechsel in Kraft treten, ist im Bundesgesetzblatt bekanntzugeben.

Das vorstehende Gesetz wird hiermit verkündet.

Bonn, den 29. Juni 1961

Der Bundespräsident Lübke

Der Stellvertreter des Bundeskanzlers Ludwig Erhard

Der Bundesminister des Auswärtigen von Brentano

Der Bundesminister für Wirtschaft Ludwig Erhard

Vertrag zwischen der Bundesrepublik Deutschland und Pakistan zur Förderung und zum Schutz von Kapitalanlagen

Treaty between the Federal Republic of Germany and Pakistan for the Promotion and Protection of Investments

#### DIE BUNDESREPUBLIK DEUTSCHLAND

#### and PAKISTAN -

IN DEM WUNSCH, die wirtschaftliche Zusammenarbeit zwischen beiden Staaten zu vertiefen,

IN DEM BESTREBEN, günstige Bedingungen für Kapitalanlagen von Staatsangehörigen und Gesellschaften des einen Staates im Hoheitsgebiet des anderen Staates in the territory of the other State, and zu schaffen, und

IN DER ERKENNTNIS, daß eine zwischen beiden Staaten erzielte Verständigung geeignet ist, die Anlage von Kapital zu fördern, das private Unternehmertum in Industrie und Finanz zu ermutigen und den Wohlstand beider the prosperity of both the States. Staaten zu mehren -

HABEN FOLGENDES VEREINBART:

#### Artikel I

(1) Jeder Vertragstaat, in diesem Vertrag im folgenden als Partei bezeichnet, wird bemüht sein, in seinem Treaty a Party will endesvour to admit in its territory. Hobeitsgebiet die Anlage von Kapital durch Staats- in accordance with its legislation and rules and regulalassen, diese Anlagen zu fördern und Anträge auf Erteilung der erforderlichen Genehmigungen wohlwollend zu prüfen. Bei der Erteilung dieser Genehmigungen wird the case of Pakistan such permissions shall be given Pakistan auch seine bekonntgemachten Plane und Richtlinien gebührend berücksichtigen.

(2) Kapitalanlagen von Staatsangehörigen und Gesellschaften einer Partei im Hoheitsgebiet der anderen Partei dürfen nicht deshalb einer diskriminierenden Behandlung unterworfen werden, weil sie im Eigentum oder unter dem Einfluß von Staatsangehörigen oder Gesellschriften etwas anderes vorseben.

#### Artikel 2

Eine Partei wird die Betätigung von Staatsangehörigen eder Gesellschaften der anderen Partei, die im Zusammenhang mit Kapitalanlagen und mit deren zweckgerechgerechten Gebrauch derartiger Anlagen in ihrem Hobeitses sei denn, daß in den Zulassungsurkunden für eine documents of admission of an investment. Kapitalanlage besondere Bestimmungen getroffen sind.

#### Artikel 3

(I) Kapitalenlagen von Staatsangehörigen und Gesellanderen Partei Schutz und Sicherheit.

#### THE FEDERAL REPUBLIC OF GERMANY

#### and PAKISTAN.

DESIRING to intensify economic co-operation between the two States.

INTENDING to create favourable conditions for investments by nationals and companies of either State

RECOGNIZING that an understanding reached between the two States is likely to promote investment, encourage

#### HAVE AGREED AS FOLLOWS:

#### Article 1

(1) Each contracting State hereafter called in this angehörige und Gesellschaften der anderen Partei in tions framed thereunder the investing of capital by Ubereinstimmung mit seinen Rechtsvorschriften zuzu- nationals or companies of the other Party and to promote such investments and will give sympathetic consideration to requests for the grant of necessary permissions. In with due regard also to their published plans and

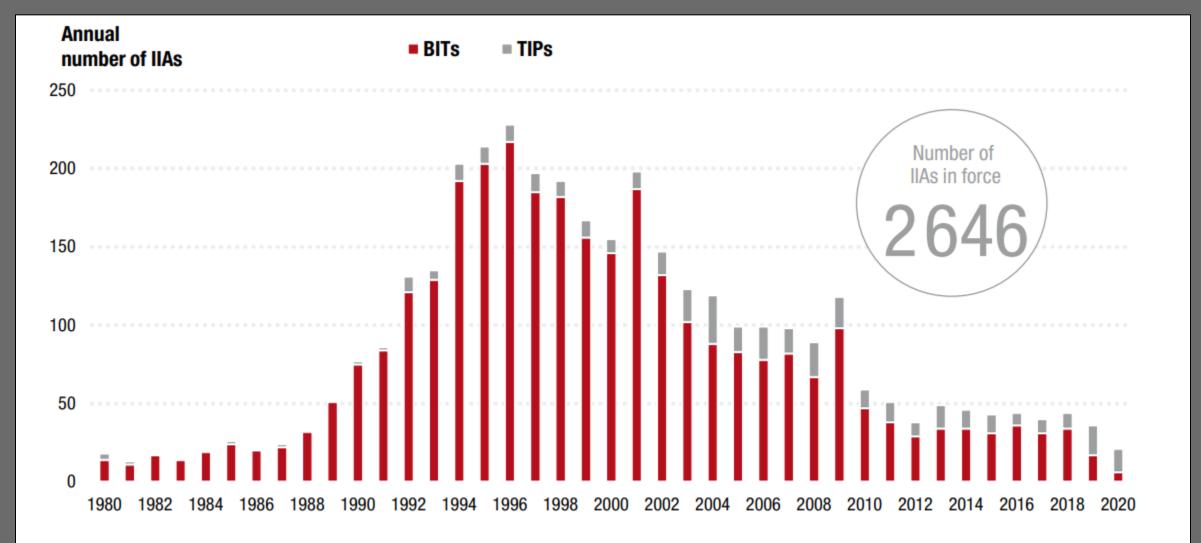
(2) Capital investments by nationals or companies of either Party in the territory of the other Party shall not be subjected to any discriminatory treatment on the ground that ownership of or influence upon it is vested in nationals or companies of the former Party, unless schaften der ersten Partei stehen, es sei denn, daß die legislation and rules and regulations framed thereunder beim Inkrafttroten dieses Vertrages geltenden Rechtsvor- existing at the time of coming into force of this Troaty provide otherwise.

#### Article 2

Neither Party shall subject to discriminatory treatment any activities carried on in connection with investments including the effective management, use or tor Verwaltung and Nutzung sowie mit dem zweck- enjoyment of such investments by the nationals or companies of either Party in the territory of the other gebiet ausgeübt wird, nicht diskriminierend behandeln. Party unless specific stipulations are made in the

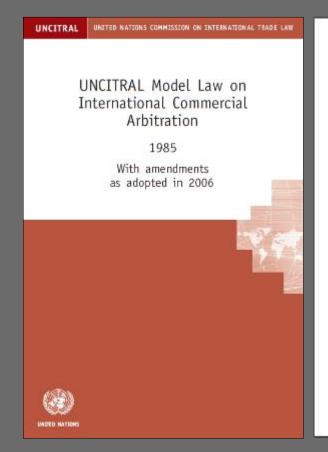
#### Article 3

(1) Investments by nationals or companies of either schaften einer Partei genießen im Hobeitsgebiet der Party shall enjoy protection and security in the territory of the other Party.



Source: UNCTAD, IIA Navigator.

Note: This includes treaties (i) unilaterally denounced, (ii) terminated by consent, (iii) replaced by a new treaty and (iv) expired automatically.



UNITED NATIONS COMMISSION ON INFERNATIONAL TRADE LAW

#### UNCITRAL Model Law on International Commercial Arbitration

1985

With amendments as adopted in 2006



#### Part One

#### UNCITRAL Model Law on International Commercial Arbitration

(United Nations documents A/40/17, annex I and A/61/17, annex I)

(As adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006)

CHAPTER L. GENERAL PROVISIONS

Article 1. Scope of application!

- (1) This Law applies to international connecrcial arbitration, subject to any agreement in force between this State and any other State or States
- (2) The principles of this Low, except articles 8, 9, 17 H, 17 I, 17 I, 35 and 36, apply only if the place of arbitration is in the territory of this State.

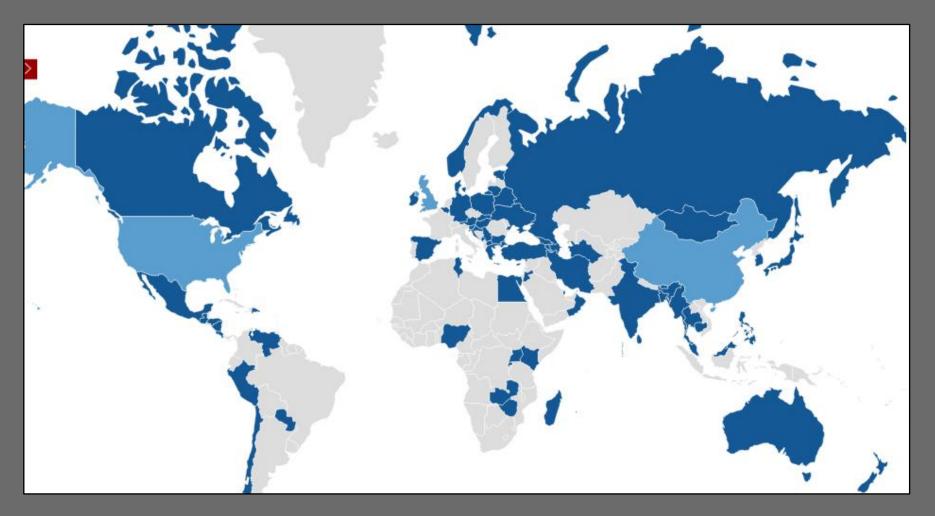
(Article 1(2)) has been amended by the Commission of its Histywoods reason; in 2006)

- (3) An arbitration is international if:
- (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States, or

1

Vertice healings are for reference perposes only and are not to be used for purposes of approaches.

The term "contraction" should be given a wide interpretation so as is cover materia unling from side interpretation and as now received enters, abovier conductation was declinately and a some received interpretation. Then are not boundary for the interpretation for the supply or exchange of greatly as services, relatedation approach, command approachasin as a greatly change, intering a greatly and approachasin and production of the contraction of an exchange of the contraction of the



Legislation based on UNCITRAL Model Law on International Commercial Arbitration

Legislation based on Model Law adopted only in certain subnational jurisdictions

# STATUTES AT LARGE

OF THE

#### UNITED STATES OF AMERICA

FROM

DECEMBER, 1923, TO MARCH, 1925

CONCURRENT RESOLUTIONS OF THE TWO HOUSES OF CONGRESS

RECENT TREATIES, CONVENTIONS, AND EXECUTIVE PROCLAMATIONS

EDITED, PRINTED, AND PUBLISHED BY AUTHORITY OF CONGRESS UNDER THE DIRECTION OF THE SECRETARY OF STATE

#### VOL. XLIII

IN TWO PARTS

PART 1-Public Acts and Resolutions PART 2-Private Acts and Resolutions, Concurrent Resolutions, Treaties, and Proclamations

#### PART 1

WASHINGTON GOVERNMENT PRINTING OFFICE 884

SIXTY-EIGHTH CONGRESS. SESS. II. CH. 213. 1925.

issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement: Provided, That the hearing and proceedings under such agreement:

Provided, That the hearing and proceedings under such agreement shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trials be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by law for referring to a jury issues in an equity action, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If ment in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

SEC. 5. That if in the agreement provision be made for a method Sec. 5. That if in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided

the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

Szc. 6. That any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

Szc. 7. That the arbitrators selected either as prescribed in this

Act or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendence shall be the same as the fees of mmons. witnesses before masters of the United States courts. Said summons

shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subposnas to appear and testify before the Onethand, ourt may court; if any person or persons so summoned to testify shall refuse compal attendance of or neglect to obey said summons, upon petition the United States court in and for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner now provided for

securing the attendance of witnesses or their punishment for neglect

securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

Sec. 8. That if the basis of jurisdiction be a cause of action other-admiraty, to be beld wise justiciable in admiralty, then, notwithstanding anything herein until award in arbitration.

Sec. 8. That if the basis of jurisdiction be a cause of action other-admiraty, to be beld wise justiciable in admiralty, then, notwithstanding anything herein his proceeding hereunder by libel and seizure of the vessel or other

473 U.S. 614 (1985)

MITSUBISHI MOTORS CORP.

٧.

SOLER CHRYSLER-PLYMOUTH, INC.

No. 83-1569.

Supreme Court of United States.

Argued March 18, 1985 Decided July 2, 1985<sup>[1]</sup>

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

\*615 Weyne A. Cross argued the cause for petitioner in No. 83-1569 and respondent in No. 83-1733. With him on the briefs were Robert L. SWs, WWWem I. Sussman, Samuel T. Cespedes, and Ana Metilide Nin.

As international trade has expanded in recent decades, so too has the use of international arbitration to resolve disputes arising in the course of that trade. The controversies that international arbitral institutions are called upon to resolve have increased in diversity as well as in complexity. Yet the potential of these tribunals for efficient disposition of legal disagreements arising from commercial relations has not yet been tested. If they are to take a central place in the international legal order, national courts will need to "shake off the old judicial hostility to arbitration," and also their customary and understandable unwillingness to cede jurisdiction of a claim arising under domestic law to a foreign or transnational tribunal. To this extent, at least, it will be necessary for national courts to subordinate domestic notions of arbitrability to the international policy favoring commercial arbitration.

Japanese corporation which manufactures automobiles and has its principal place of business in Tokyo, Japan. Mitsubishi is the product of a joint venture between, on the one hand, Chrysler International, S. A. (CISA), a Swiss corporation registered in Geneva and wholly owned by Chrysler Corporation, and, on the other, Mitsubishi Heavy Industries, Inc., a Japanese corporation. The "617 aim of the joint venture was the distribution through Chrysler dealers outside the continental United States of vehicles manufactured by Mitsubishi and bearing Chrysler and Mitsubishi trademarks. Respondent-cross-petitioner Soler Chrysler-Plymouth, Inc. (Soler), is a Puerto Rico corporation with its principal place of business in Pueblo Viejo, Guaynabo, Puerto Rico.

Mitsubishi v. Soler Chrysler-Plymouth, 473 U.S. 614 (1985)

















**NETHERLANDS ARBITRATION** 















































	<b>'93</b>	<b>'</b> 97	<b>'01</b>	<b>'</b> 05	<b>'</b> 09	<b>'13</b>	<b>'17</b>	'20	<b>'23</b>
AAA / ICDR	207	343	649	580	836	1,165	1,026	704	848
AIAC	7	8	8	14	42	154	100	100	103
CIETAC	486	723	731	979	1,482	1,256	2,298	3,615	5,237
DIS	19	43	58	72	176	121	152	162	191
HKIAC	139	218	307	281	429	260	297	318	281
ICC	352	452	566	521	817	767	810	929	890
JCAA	3	13	17	11	18	26	14	18	19
КСАВ	68	133	197	213	318	338	385	405	368
LCIA	29	52	71	119	272	290	285	440	377
LMAA	3,126	3,076	2,686	2,864	4,326	2,836	2,357	2,754	1,845
scc	110	110	130	100	216	203	200	213	175
SIAC	15	43	64	74	160	259	452	1,080	663
VIAC	65	46	60	52	62	49	41	37	52
Total	4,626	5,260	5,544	5,880	9,154	7,724	8,417	10,775	11,049

Cases Filed with Leading Arbitral Institutions (1993-2023)























COUNT OF ARIESTRATION FOR SPORT

ARRESTRATION BELLES FOR THE CLAMPIC GAMES



YEAR	Ordinary procedures	Appeal Procedures	Ad hoc Procedures	Anti-Doping Procedures	Mediation Procedures	Consultation Procedures	TOTAL
1986	1					1	2
1987	5					3	8
1988	3					9	12
1989	5					4	9
1990	7					6	13
1991	13					5	18
1992	19					6	25
1993	13					14	27
1994	10					7	17
1995	2	8	0			3	13
1996	4	10	6			1	21
1997	7	11	0			2	20
1998	4	33	5			3	45
1999	8	24	0		1	1	34
2000	5	55	15		0	1	76
2001	10	32	0		2	0	44
2002	9	66	8		1	3	87
2003	61	46	0		1	2	110
2004	9	252	10		2	0	273
2005	9	185	0		3	4	201
2006	17	175	12		3	0	207
2007	22	230	0		1	0	253
2008	26	276	9		4	2	317
2009	25	245	0		4	5	279
2010	49	244	5		6	0	304
2011	71	294	0		1		366
2012	62	301	11		4		378
2013	58	349	0		4		411
2014	68	349	10		6		433
2015	88	410	0		3		501
2016	100	458	28	13	10		609
2017	111	461	0	0	12		584
2018	116	463	15	5	7		606
2019	107	493	0	5	4		609
2020	129	811	0	8	9		957
2021	147	796	15	29	9		996
2022	151	644	12	15	8		830
2023	213	695	0	17	17		942
TOTAL	1764	8416	161	92	122	82	10637

Cases Submitted to the CAS Since Its Creation (1986-2023)

# Legal Areas in WIPO Mediation and Arbitration Cases 19% Patents Trademarks

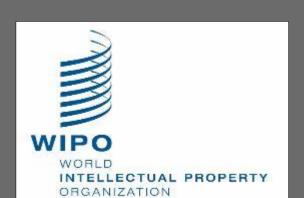
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Copyright

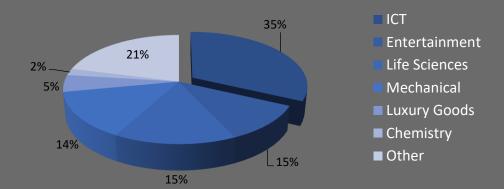
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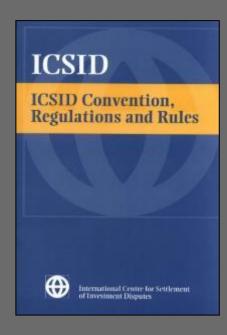




9%

#### **Industry Areas in WIPO Mediation and Arbitration Cases**





PREAMBLE

The Chinacol is Notes:

Our storage for modern storage responses for recording to department of the sale of particular storage and department.

Description and the pass of by that there are to take the extension which is consciously as the color of the Description of the

Recognizing the wide secretarities with search technic amount liquid promises, interestinal materials of artificial service stay from propagation containst season.

Attaching primer to employment to the result between their their three formations of collections and tracked to which the formation of an arm of maintained from the product of the produc

This map is said that so the factor is to express the interest in different factors and Development.

Recognizing the mutual concernies for plantes to see also also despite to the state of an artist at the mutual state of the control attention of a language or the state of the control attention of the state of the control attention of the state of the

Declaring that we Connecting State shall by the mere that of its indication, occupants or agreement in the Convention and should not select the control in the units conjugation to obtain a provision of the charge of the conjugation on the state.

Herd appeal to the look.

CHAPTER I Lecturiosal Cores to Satisface: effinosment Dispute



Year	Requests for arbitration filed	Total
1972	1	1
1974	4	5
1976	1	6
1977	2	8
1978	1	9
1981	2	11
1982	2	13
1983	3	16
1984	4	20
1986	1	21
1987	4	25
1989	1	26
1992	2	28
1993	1	29
1994	3	32
1995	3	35
1996	3	38
1997	10	48
1998	11	59
1999	10	69
2000	12	81
2001	14	95
2002	19	114
2003	31	145
2004	27	172
2005	27	199
2006	23	222
2007	37	259
2008	21	280
2009	25	305
2010	26	331
2011	38	369
2012	50	419
2013	40	459
2014	38	497
2015	52	549
2016	48	597
2017	53	650
2018	56	706
2019	39	745
2020	58	803
2021	66	869
2022	41	910
2023	57	967
Total		967

Cases Submitted to the ICSID Since Its Creation (1972-2023)

Paraguay dice arbitraje con Venezuela por deuda PDVSA se congela; tribunal reconoce a Guaidó

> Une décision de la Cour d'arbitrage "essentielle" pour la paix

## Suzuki Takes Volkswagen Dispute to Arbitration

New Brazil arbitration law makes welcome change

### Abyei Arbitration court redefines borders of the disputed area

Gas Natural Fenosa gana el primer arbitraje de su Arbitration is becoming increasingly Asian conflicto en Egipto conflicto en Egipto

# BREAKING: Philip Morris Loses Uruguay Packaging Arbitration

South China Sea tribunal favours

New Draft Law Aims to Bring Arbitration in Russia to Order

Pearl consortium seeks \$1bn from Kurdistan

Offshore driller wins \$622M in arbitration against Petrobras

Tercer Período de Sesiones Extraordinarias de la Comisión 14 - 31 de diciembre de 1970 Lima - Perú

#### **DECISION 24**

Régimen común de tratamiento a los capitales extranjeros y sobre marcas, patentes, licencias y regalías

LA COMISION DEL ACUERDO DE CARTAGENA.

VISTOS: Los Artículos 26 y 27 del Acuerdo de Cartagena y la Propuesta No. 4 de la Junta:

CONSIDERANDO: Que er extranjero "puede realizar un ap Latina, siempre que estimule la participación amplia del capital r integración regional";

Que en el mismo docume normas que faciliten el uso de la productos que se fabriquen con inversión foránea con los planes

Que en la Declaración de e "la integración debe estar ple

que "la integración debe estar ple la mome a como mediante un vigoroso respaldo financiero y técnico que le permita desarrollarse y abastecer en forma eficiente el mercado regional", y reconocieron que "la iniciativa privada extranjera podrá cumplir una función importante para asegurar el logro de los objetivos de la integración dentro

de las políticas nacionales de cada uno de los países de América Latina"; y

Que los Ministros de Relaciones Exteriores de los Países Miembros del Acuerdo de Cartagena, en su primera reunión celebrada en Lima, ratificaron la convicción expresada en el Consenso de Viña del Mar "de que el crecimiento económico y el progreso social son responsabilidades de los pueblos de América Latina, de cuyo esfuerzo depende principalmente el logro de sus objetivos nacionales y regionales"; reafirmaron su respaldo decidido "al derecho pleno y soberano de las naciones a disponer libremente de sus recursos naturales"; adoptaron como política común "la de dar preferencia en el desarrollo económico de la Subregión a capitales y empresas auténticamente nacionales de los Países Miembros" y reconocieron que la inversión de capitales y el traspaso de tecnologías extranjeras constituyen una contribución necesaria para el desarrollo de los Países Miembros y "deben recibir seguridades de estabilidad en la medida en que realmente constituyan un aporte positivo".

**Decision 24 of the Andean Commission Concerning Treatment of Foreign Capital (1971)** 

Artículo 51.- En ningún instrumento relacionado con inversiones o transferencia de tecnología se admitirán cláusulas que sustraigan los posibles conflictos o controversias de la jurisdicción y competencia nacionales del país receptor o que permitan la subrogación por los Estados de los derechos y acciones de sus nacionales inversionistas.

[No agreement concerning foreign investment shall contain provisions] which withdraw possible ... controversies from the national jurisdiction of the recipient country....

#### DECLARACIÓN PÚBLICA SOBRE EL RÉGIMEN DE INVERSIÓN INTERNACIONAL 31 de agosto 2010

Tenemos una preocupación común ante el daño causado al bienestar público por el régimen de inversión internacional tal como está estructurado en la actualidad, especialmente en la manera en que dicho régimen obstaculiza la capacidad de los gobiernos para proteger a los pueblos en respuesta a las preocupaciones que conciernen el desarrollo humano y la sostenibilidad ambiental.

#### CONVENIMOS EN LO SIGUIENTE:

#### Principios generales

- La protección de los inversores, y por extensión el uso de la ley de inversiones y arbitraje, es un medio para el fin de promover el bienestar público y no debe ser tratado como un fin en sí mismo.
- Todos los inversores, independientemente de su nacionalidad, deben tener acceso a un sistema judicial abierto e independiente para la resolución de disputas, incluidos los litigios con el gobierno.
- La inversión extranjera puede tener efectos tanto dañinos como beneficiosos para la sociedad y es la responsabilidad de todo gobierno fomentar los aspectos benéficos limitando los efectos nocivos.
- Los Estados tienen el derecho fundamental de regular en nombre del bienestar público.
   Este derecho no debe estar subordinado a los intereses de los inversores allí donde es ejercido de buena fe y con un propósito legítimo.

Interpretaciones de los tratados de inversión en favor de los inversores.

- Los laudos emitidos por árbitros internacionales contra Estados han incorporado en muchos casos interpretaciones excesivamente expansivas del lenguaje de los tratados de inversión.
- 6. Estas interpretaciones han dado prioridad a la protección de la propiedad y los intereses económicos de las empresas transnacionales por sobre el derecho a regular de los Estados y al derecho de los pueblos a la libre determinación. Esto es especialmente evidente en el enfoque adoptado por muchos tribunales de arbitraje con los conceptos de la nacionalidad, expropiación, tratamiento de nación más favorecida, no discriminación, y trato justo y equitativo en los tratados de inversión. Todos ellos han recibido una indebida interpretación favorable a los inversores a expensas de los Estados, sus gobiernos y las personas en cuyo nombre actúan. Esto ha constituido una importante re-orientación del equilibrio entre la protección del inversor y la regulación pública en el derecho internacional.

Osgoode Declaration (Public Statement on the International Investment Regime – 31 August 2010)

- Pro-investor interpretations of investment treaties
- Awards issued by international arbitrators against states have in numerous cases incorporated overly expansive interpretations of language in investment treaties. These interpretations have prioritized the protection of the property and economic interests of transnational corporations over the right to regulate of states and the right to selfdetermination of peoples. ... This has constituted a major reorientation of the balance between investor protection and public regulation in international law.
- The award of damages as a remedy of first resort in investment arbitration poses a serious threat to democratic choice and the capacity of governments to act in the public interest by way of innovative policy-making in response to changing social, economic, and environmental conditions.



"We pay what we really have to pay, and now they threaten us with ICSID. We have to get out of this ICSID. I repeat that we do not recognize any of the ICSID decisions, we will not acknowledge them."

> Venezuelan Government denounces agreement with CIADI **Bolivarian Republic of Venezuela** Venezuelan Law. Ministry of Popular Power for Foreign Relations Communiqué International Law. On January 24th, the Government of the Bolivarian Republic of Venezuela formally communicated, to the World Bank, its irrevocable denunciation of the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" (1966) which establishes the International Centre for the Settlement of Investment Disputes (CIADI). Fuente: CDO-MPPRE Venezuela acceded to the Convention in 1993, by order of a provisional Government that was weak and lacking popular legitimacy and pressured by transnational economic sectors that were involved in the dismantlement of Venezuela's national sovereignty. The Constitution of the Bolivarian Republic of Venezuela (1999) renders null and void, in spirit and in letter, the provisions of the Convention, when it provides in Article 151 that "in the public interest contracts, unless applicable under the nature of such contracts, a clause shall be deemed included even if not expressed, whereby any doubts and disputes which may arise concerning such contracts and which cannot be resolved amicably by the contracting parties, shall be decided by the competent courts of Venezuela, in accordance with its laws and shall

not on any grounds or for any reason give rise to any foreign claims".

Venezuelan Government denounces agreement with CIADI

Under the constitutional mandate, the Bolivarian Government has acted to protect the right of the Venezuelan people to decide the strategic directions of the economic and social life of the nation, removing it from international jurisdiction that has failed 232 times in favour of corporate interest, out of the 234 cases known throughout the nation's history.

The Government of the Bolivarian Republic of Venezuela will continue to implement policies to defend national sovereignty, particularly with regard to ownership of strategic assets, always providing just compensation to the natural and legal persons possibly concerned, according to

The Bolivarian Republic of Venezuela will continue working with the nations of the world until international institutions are no longer guardians of hegemonic interests, and contribute to the consolidation of a multipolar and balanced world, according to the founding principles of





#### российская федерация ФЕДЕРАЛЬНЫЙ ЗАКОН

#### Об арбитраже (третейском разбирательстве) в Российской Федерации

Принят Государственной Думой

15 декабря 2015 года

Одобрен Советом Федерации

25 декабря 2015 года

Глава 1. Общие положения

Статья 1. Сфера применения настоящего Федерального закона

- Настоящий Федеральный закон регулирует порядок образования и деятельности третейских судов и постоянно действующих арбитражных учреждений на территории Российской Федерации, а также арбитраж (третейское разбирательство).
- Положения статей 39 и 43, глав 9 12 настоящего Федерального закона применяются в отношении организации не только арбитража





Donald J. Trump 🧇

@realDonaldTrump

Donald J. Trump 🤣 @realDonaldTrump

While Japan and South Korea would like us to go back into TPP, I don't like the deal for the United States. Too many contingencies and no way to get out if it doesn't work. Bilateral deals are far more efficient, profitable and better for OUR workers. Look how bad WTO is to U.S.

7:49 PM - 17 Apr 2018

....Remember, NAFTA was one of the WORST Trade Deals ever made. The U.S. lost thousands of businesses and millions of jobs. We were far better off before NAFTA - should never have been signed. Even the Vat Tax was not accounted for. We make new deal or go back to pre-NAFTA!



**Follow** 

We are in the NAFTA (worst trade deal ever made) renegotiation process with Mexico & Canada.Both being very difficult, may have to terminate?

Follow

#### PROTOCOL REPLACING THE NORTH AMERICAN FREE TRADE AGREEMENT WITH THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA

The United States of America, the United Mexican States, and Canada (the "Parties"),

Having regard to the North American Free Trade Agreement, which entered into force on January 1, 1994 (the "NAFTA"),

Having undertaken negotiations to amend the NAFTA pursuant to Article 2202 of the NAFTA that resulted in the Agreement between the United States of America, the United Mexican States, and Canada (the "USMCA");

HAVE AGREED as follows:

- Upon entry into force of this Protocol, the USMCA, attached as an Annex to this Protocol, shall supersede the NAFTA, without prejudice to those provisions set forth in the USMCA that refer to provisions of the NAFTA.
- Each Party shall notify the other Parties, in writing, once it has completed the internal
  procedures required for the entry into force of this Protocol. This Protocol and its Annex
  shall enter into force on the first day of the third month following the last notification.
- Upon entry into force of this Protocol, the North American Agreement on Labor Cooperation, done at Mexico, Washington, and Ottawa on September 8, 9, 12, and 14, 1993 shall be terminated.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Buenos Aires, this 30th day of November, 2018, in triplicate, in the English, Spanish, and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES

FOR THE GOVERNMENT OF CANADA





#### Reports of Cases

#### JUDGMENT OF THE COURT (Grand Chamber)

#### 6 March 2018\*

(Reference for a preliminary ruling — Bilateral investment treaty concluded in 1991 between the Kingdom of the Netherlands and the Czech and Slovak Federative Republic and still applicable between the Kingdom of the Netherlands and the Slovak Republic — Provision enabling an investor from one Contracting Party to bring proceedings before an arbitral tribunal in the event of a dispute with the other Contracting Party — Compatibility with Articles 18, 267 and 344 TFEU — Concept of 'court or tribunal' — Autonomy of EU law)

In Case C-284/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 3 March 2016, received at the Court on 23 May 2016, in the proceedings

Slowakische Republik (Slovak Republic)

v

Achmea BV,

#### THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano (Rapporteur), Vice-President, M. Ilešić, L. Bay Larsen, T. von Danwitz, J. Malenovský and E. Levits, Presidents of Chambers, E. Juhász, A. Borg Barthet, J.-C. Bonichot, F. Biltgen, K. Jürimäe, C. Lycourgos, M. Vilaras and E. Regan, Judges,

Advocate General: M. Wathelet,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 19 June 2017,

after considering the observations submitted on behalf of:

- the Slovak Republic, by M. Burgstaller, Solicitor, and K. Pörnbacher, Rechtsanwalt,
- Achmea BV, by M. Leijten, D. Maláčová, H. Bälz and R. Willer, Rechtsanwälte, and A. Marsman, advocaat,
- the German Government, by T. Henze, acting as Agent,
- the Czech Government, by M. Smolek, J. Vláčil and M. Hedvábná, acting as Agents,

EN

ECLI:EU:C:2018:158

<sup>\*</sup> Language of the case: German,





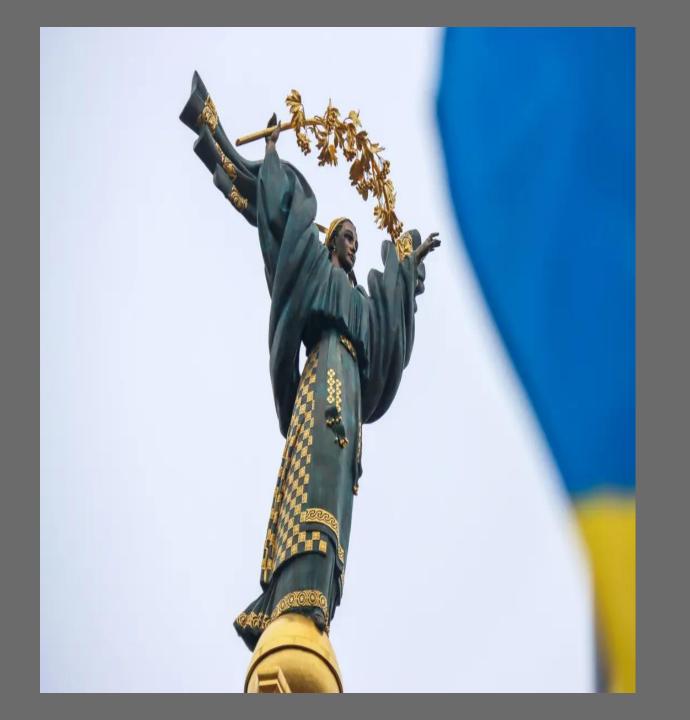
#### THE RT HON. THE LORD THOMAS OF CWMGIEDD

#### THE NATIONAL JUDGES COLLEGE, BEIJING

#### COMMERCIAL DISPUTE RESOLUTION: COURTS AND ARBITRATION

#### Thursday 6 April 2017

- It is a pleasure, and an honour, to have been invited to give this lecture at the National Judges College. I do so at a time when significant change is occurring at an ever-swifter pace. Businesses and markets are becoming ever more diverse. They are subject to rapid development as global trade and investment expands, as the potential of the digital and data era is being realised and as the benefits of artificial intelligence become available.
- 2. Courts and the legal profession are generally thought to be relatively stable institutions upholding the rule of law. If they evolve, they do so gradually over a long period of time. If courts are to fulfil their duties as a branch of the state in upholding the rule of law effectively they must, however, respond to the world around them and to the rapid pace of these fundamental changes. This is particularly important where a court is a Commercial Court, as such a court has a central role in underpinning economic prosperity and stability.
- In three lectures I have given over the past year I have tried to set out the issues facing Commercial Courts in this changing world.
  - (1) In Dubai in the United Arab Emirates, at the DIFC courts, I spoke of the importance of the Commercial Courts meeting the needs of the world of today, what I described as our global village, in its interconnected economies and the digital revolution; how this would strengthen the rule of law which underpins our prosperity and economic development. I made some tentative suggestions as to steps that could be taken to improve the legal framework for global business and markets through cooperation between Commercial Courts. I covered the need for judge led reform, the personnel and processes required to make courts successful, and the necessity to keep the law up to date.
  - (2) In Singapore,<sup>2</sup> I spoke of the way in which Commercial Courts should work together to reform court procedure and to use the opportunity of the digital revolution radically to recast procedure, to aim for a single generic code usable in



76. [76] Par exemple, il y a contradiction lorsque l'assureur à qui incombe la responsabilité de verser le capital décès n'est pas le même selon que l'on s'en tienne aux enseignements de notre Cour dans <u>l'Excelsior</u> (nouvel assureur) ou à l'opinion des arbitres majoritaires dans la sentence arbitrale sous étude (ancien assureur). Peut-on prévoir que l'interprétation retenue par les arbitres majoritaires mènera à un résultat inopportun en ce qu'il obligera les adhérents ou leurs ayants droit à faire valoir leurs droits contre le nouvel assureur devant les tribunaux de droit commun et amènera l'ancien assureur à refuser l'arbitrage ?

77. [77] Je n'arrive pas à me convaincre que ce résultat soit inopportun ni qu'il le soit au point de perturber l'ordre social. En effet, qu'il y ait arbitrage ou non, les ayants droit de l'adhérent seront, dans tous les cas, indemnisés par le nouvel assureur, comme

l'a décidé cas échéa

 78. [78 assureur strict, je n préconisé

 79. [79]
 courants ji justice éta résultera raisonnem Université

80. [80 d'expressi atteinte au un mode certains o parties<sup>36</sup> Arbitration is a fundamental right of citizens and an expression of their contractual freedom. It should not be considered as an infringement upon the monopoly of state justice. Rather, arbitration should be perceived as a means of alternative dispute resolution that, depending on the circumstances, achieves certain goals pursued by the parties – eg, speed, decision by peers, cost efficiency, etc.

81. [81] Pour ces raisons, je propose de rejeter l'appel, avec dépens.

FRANCE THIBAULT J.C.A.

Laurentienne-vie, compagnie d'assurances inc v Empire, compagnie d'assurance-vie [2000] CanLII 9001 (Quebec Court of Appeal)

#### 14. Expedited Procedure

14.1 The arbitration shall be conducted in accordance with the Expedited Procedure set out in Schedule 3 where the parties have agreed to the application of the Expedited Procedure prior to the constitution of the Tribunal. Unless the parties have agreed to a previous edition of the SIAC Rules, any agreement by the parties to the application of the Expedited Procedure under a previous rule reference shall be deemed to be an agreement for the application of the Expedited Procedure for the purpose of this rule.

#### 12. Emergency Arbitrator

12.1 Prior to the constitution of the Tribunal, a party may apply for the appointment of an Emergency Arbitrator in accordance with the procedure set out in Schedule 1.

#### 47. Early Dismissal of Claims and Defences

- 47.1 A party may apply to the Tribunal for the early dismissal of a claim or defence where:
  - (a) a claim or defence is manifestly without legal merit; or
  - a claim or defence is manifestly outside the jurisdiction of the Tribunal.
- 47.2 An application for early dismissal under Rule 47.1 shall state the facts and legal basis supporting the application.
- 47.3 The Tribunal shall determine whether the application for early dismissal under Rule 47.1 is allowed to proceed.
- 47.4 If the application for early dismissal is allowed to proceed, the Tribunal shall, after giving the parties the opportunity to be heard, make a decision, ruling, order, or award on the application, with reasons which may be in summary form. The decision, ruling, order, or award shall be made within 45 days from the date of filing the application, unless the Registrar extends the time.

#### SCHEDULE 1. EMERGENCY ARBITRATOR PROCEDURE

#### Application for Emergency Interim Relief

- A party requiring emergency interim or conservatory relief in accordance with Rule 12.1 may file an application with the Registrar for the appointment of an Emergency Arbitrator ("Application").
- An Application may be filed:
  - (a) prior to the filing of the Notice;
  - (b) concurrent with the filing of the Notice; or
  - (c) any time after the filing of the Notice or the Response but prior to the constitution of the Tribunal.



Arbitration Rules of the Singapore International Arbitration Centre

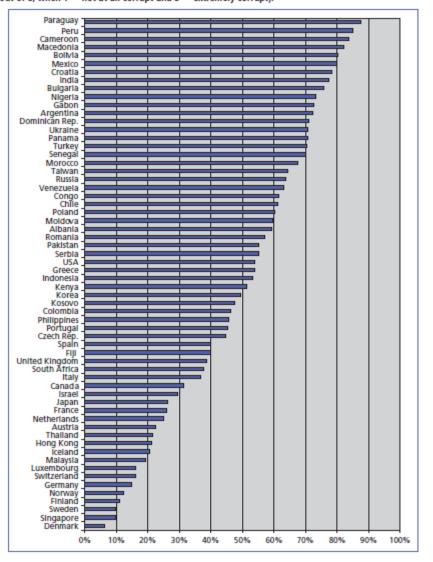
**SIAC Rules** 

7th Edition, 1 January 2025

"[F]irst, what you do we don't have to do; ... [s]econd, in many fields you are more professional than we are."

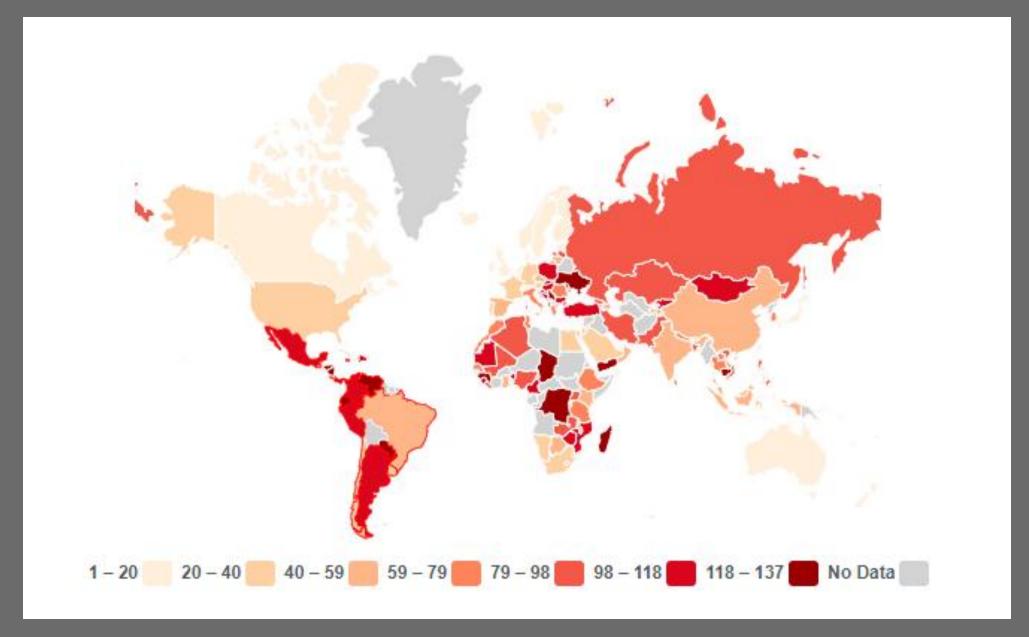
Former President of the French Cour de Cassation, Lazareff, *International Arbitration: Towards A Common Procedural Approach,* in S. Frommel & B. Rider (eds.), *Conflicting Legal Cultures in Commercial Arbitration* 31, 33 (1999).

Table 2: Percentage of respondents who described their judiciary/legal system as corrupt (i.e. gave it a score of 4 or 5 out of 5, when 1 = not at all corrupt and 5 = extremely corrupt).



Region <sup>3</sup>	Percentage of people who have had contact with the judiciary in past year	Percentage of those having contact who paid a bribe		
Africa	20%	21%		
Latin America	20%	18%		
Newly Independent States	8%	15%		
South East Europe	9%	9%		
Asia–Pacific	5%	15%		
EU / other Western European countries	19%	1%		
North America	23%	2%		

Source: Transparency International, Global Corruption Report 2007: Corruption and Judicial Systems



# UNCITRAL Model Law on International Commercial Arbitration

1985

With amendments as adopted in 2006



(New York, 1958)





- 76. [76] Par exemple, il y a contradiction lorsque l'assureur à qui incombe la responsabilité de verser le capital décès n'est pas le même selon que l'on s'en tienne aux enseignements de notre Cour dans <u>l'Excelsior</u> (nouvel assureur) ou à l'opinion des arbitres majoritaires dans la sentence arbitrale sous étude (ancien assureur). Peut-on prévoir que l'interprétation retenue par les arbitres majoritaires mènera à un résultat inopportun en ce qu'il obligera les adhérents ou leurs ayants droit à faire valoir leurs droits contre le nouvel assureur devant les tribunaux de droit commun et amènera l'ancien assureur à refuser l'arbitrage ?
- 77. [77] Je n'arrive pas à me convaincre que ce résultat soit inopportun ni qu'il le soit au point de perturber l'ordre social. En effet, qu'il y ait arbitrage ou non, les ayants droit de l'adhérent seront, dans tous les cas, indemnisés par le nouvel assureur, comme l'a décidé notre Cour, dans <u>L'Excelsior</u> et comme le stipule la convention d'arbitrage, le cas échéant.

78. [78] assureur à se strict, je ne voi préconisée par

79. [79] J courants jurispr justice étatique résultera une raisonnement Université McG

80. [80] d'expression de atteinte au mor un mode alteri certains objecti parties<sup>36</sup>.

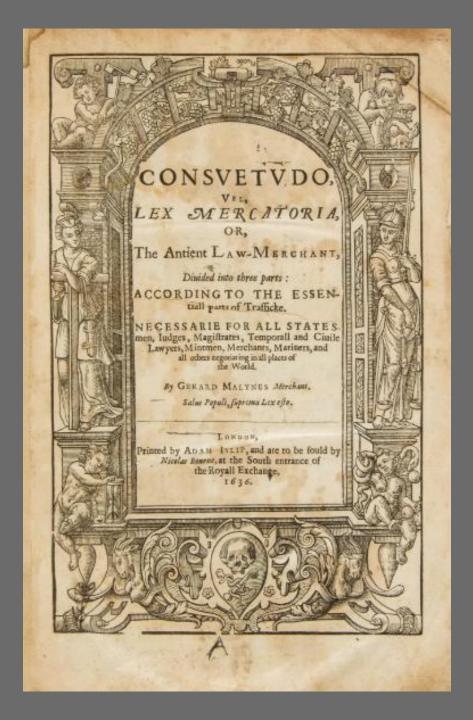
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FRANCE THIBAULT J.C.A.

Laurentienne-vie, compagnie d'assurances inc v Empire, compagnie d'assurance-vie [2000] CanLII 9001 (Quebec Court of Appeal)

Nabil ANTAKI, «L'arbitrage commercial: concepts et définitions», [1987] C.P. du N. 485.



"The second meane or rather ordinarie course to end the questions and controversies arising between Merchants, is by way of Arbitrement, when both parties do make choice of honest men to end their causes, which is voluntarie and in their own power, and therefore called Arbitrium, or free will, whence the name Arbitrator is derived: and these men (by some called Good men) give their judgments by Awards, according to Equitie and Conscience, observing the Custome of Merchants, and ought to be void of all partialitie or affection more nor lesse to the one, than to the other, having onely care that right may take place according the truth, and that the difference may be ended with brevitie and expedition."

G. Malynes, Consuetudo, vel, Lex Mercatoria (1622)

# Deutsptlege und I

#### Amtliches Brgt

bes Reichominiftern ber Buftig, bes Breubifden Juftigminifter

Dr. Frang Gürtner

Berausgeber: Banns Gerri

Dr. Frang Schlegelberger

Dr. Roland Freisler

#### Richtlinien des Meiches über Behiedegerichte

Für die Reichsbehörden sind Richtlinien ilber die Bereinbarung von Echledsgerichten erlassen worden, in benen bestimmt wird, daß grundschlich alle Streitigleiten, die such aus Verträgen des Reiches mit Privatietionen eigeben, jur Entscheidung durch die ordentslichen Gerichte gedracht werden sollen. In den Richtlinien wird derdorgediden, das nach den Erschrungen der Brazis die angebilden Vorzüge der Schiedsgerichtsbarteit, namlich größere Schnelligseit der Erledigung und geringerer Rostenauswand, ziemlich problematisch seien und insgesamt den Rachteil der im Vergleich zur ordentlichen Gerichtsbarteit dei der Schiedsgerichtsbarteit bestehenden weit größeren Rechts uns ich erheit nicht auswögen. Vom staatspolitischen Standpunkt aus sel serner zu beachten, daß eine größere Ausbednung der Schiedsgerichtsbarteit welten und sein seit größeren Wertellen Gerschiedsbarteit und zum Staten der spielten werden, daß eine größere Ausbednung der Schiedsgerichtsbarteit werten. Derschappt darstellen Werdelbarteit und zum State überhaupt darstellen werde.

unter Mautrhung von Burftaatsanwalt Br. baet brug in Peruhifchen Juftipninifterium und Bbeeregierungsent Br. Crwin Schold im Keichajoftiminifterium







#### Fünfundneunzigster Jahrgang

Justiz-Ministerial-Olatt Ar. 1—39 Preufzische Justiz Ar. 40—45 Beutsche Justiz Ar. 47 bis 54

R. v. DECKER'S VERLAG, G. SCHENCK, BERLIN W9



#### 23. Aug. 1963

ordnung § 38

Für des Nachschlagewerk! Ja 10/ Für die Pachyresse! Ja . Für die antliche Sammlung! Bein

Gesets:

56 Art. 2, 92. 100, 101; Weitsrer Verfassung Art, 103, 105; ArbSG §§ 101, 110, 111; Scenannageaetz § 2; Vereinbarung über die Tarifschiedsgerichtsbarkwit für die Beutsche Sesschiffehrt v. 10.7.1956 § 1; Vereinbarung über Anstellungebedingungen für Kapitäne in der Geutschen Sesschiffehrt von 2012 1958 § 19; Tarifvertrag für die fahrt von 27.2.1958 § 64; Esna

#### Leitsätge:

- Die in vierten Teil des ArbSS gerichteberkeit veretößt nicht oder tot SS.
- 2) Mit Erlaß einem Schiedesprachs Arbūg verliert die Schiedeslaus erguliung ihre Wirksaukeit. Die scheidung ist in einen solchen Gerichte für Arbeitseschen su

The decision to submit a matter to arbitration is contained in the fundamental right to freedom of contract under Article 2 of the German Basic Law. If submitting the matter to arbitration causes a restriction of state jurisdiction, then this is the result of a voluntary agreement by the parties, which by itself is protected by the right to free development of personality...

German Federal Labor Court, Judgment of 23 August 1963, 1 AZR 469/62, p. 6.

A. tenzelohen: 1 AZR 469/62 Urtail des BAG von 23. August 1965 LAG Hamburg

## Bundesgesetzblatt



Ausgegeben in Bonn am 23. Mai 1949.

(1) Die Wür

zu auhten und

staatlichen Gew

anverletzlichen

rechten als Gru

schaft, des Frie

(3) Die nach

umnittelbar gelt

(1) Jeder has

seiner Persönlig

derer verletza mäßige Ordnun

(2) Jeder hat liche Unversehr

unverlerzlich.

eines Gesetzes e

(1) Alle Mens

(2) Männer u

(3) Niemand

seiner Abstamm

seiner Heimat un

religiösen ader p

stiligt oder bew

(1) Die Freih

setzgebung, V

Welt.

(2) Das Deur

Nr. T

#### Grundgesetz für die Bundesrepublik Deutschland vom 23. Mai 1949.

Der Parlamentarische Rat hat am 23, Mai 1949 in Bonn am Rhein in öffentlicher Sitzung festgestellt, daß das am 8. Mai des Jahres 1949 vom Parlamentarischen Rat beschlossene Grundges er z für die Bundesrepublik Deutschland in der Woche vom 16. - 22. Mai 1949 durch die Volksvertretungen von mehr als Zweidritteln der beteiligten deutschen Länder angenommen worden ist.

Auf Grund dieser Peststellung hat der Parlamen tarische Rat, vertreten durch seine Präsidenten, das Grundgesetz ausgefertigt und verkündet.

Das Grundgesetz wird hiermit gemäß Artikel 145 Absatz 3 im Bundesgesetzblatt veröffentlicht:

#### Präambel

Im Bewußtsein seiner Verantwortung vor Gott und den Menschen.

von dem Willen beseelt, seine nationale und staatliche Einheit zu wahren und als gleichherechtigtes Gliedineinem vereinten Europa dem Frieden der Welt zu dienen, hat das Deutsche Volk

in den Ländern Baden, Bayorn, Bremen, Hamburg, Hessen, Niedersachsen, Nordrhein-Westfalen, Rheinland-Pfalz, Schleswig-Holstein, Württemberg-Baden und Württemberg-Hohenzollern,

um dem staatlichen Jehen für eine Obergangszeit eine neue Ordnung

kraft seiner verfassungsgebenden Gewalt dieses Grundgesenz der Bundesrepublik Deutschland beschlosson. Es hat auch für jene Deutschen gehandelt, denen miszuwirken versagt war.

Das gesamte Deutsche Volk bleibt aufgefordert, in freier Selbschestimmung die Binheit und Freiheit Deutschlands zu vollenden.

#### 1. Die Grundrechte

#### Arrikel 1

- (1) Die Würde des Menschen ist unantastbaf. Sie zu achten und zu schützen ist Verpflichtung aller maxlichen Gewalt.
- (2) Das Deutsche Volk bekennt sich darum zu unverletzlichen und unveräußerlichen Menschenrechten als Grundlage jeder menschlichen Gemeinschaft, des Friedens und der Gerechtigkeit in der
- (3) Die nachfolgenden Grundrechte binden Gesetzgebung, Verwaltung und Rechtsprechung als unmittelbar geltendes Recht.

#### Artikel 2

- (1) Jeder hat das Recht auf die freie Entfaltung seiner Persönlichkeit, soweit er nicht die Rechte anderer verletze und nicht gegen die verfassungsmäßige Ordnung oder das Sittengesetz verstößt.
- (2) Jeder hat das Recht auf Leben und körperliche Unversehrtheit. Die Freiheit der Person ist unverletzlich. In diese Rechte darf nur auf Grund einer Gesetzes eingegriffen werden.
- und die Freihe lichen Bekennt (2) Die ungestorte Rengunsausubung wird

Das Nähere regelt ein Bundesgesetz.

währleistet. (3) Niemand darf gogen sein Gewissen zum Kriegsdienst mit der Waffe gezwungen werden.

#### Artikel 5

(1) Jeder hat das Recht, seine Meinung in Wort, Schrift und Bild frei zu äußern und zu verbreiten und sich aus allgemein zugänglichen Quellen un-

#### LIVRE III

#### TITRE UNIQUE:

Des Arbitrages.

ART. 1003.

Toutes personnes peuvent compromettre sur les droits dont elles ont la libre disposition.

1004. On ne peut compromettre sur les dons et legs d'alimens, logement et vêtemens; sur les séparations d'entre mari et femme, divorces, questions d'état, ni sur aucune des contestations qui scraient sujettes à communication au ministère public.

1005. Le con devant les arbit signature privé 1006. Le compromis désignera les objets en litige et les noms des arbitres, à peine de nullité.

1006. Le compromis désignera les objets en litige et les noms des arbitres, à peine de nullité.

1007. Le compromis sera valable, encore qu'il ne fixe pas de délai; et, en ce cas, la mission des arbitres ne durera que trois mois, du jour du compromis.

1008. Pendant le délai de l'arbitrage, les arbitres ne pourront être révoqués que du consentement unanime des parties.

1009. Les parties et les arbitres suivront, dans la procédure, les délais et les formes établis pour les tribunaux, si les parties n'en sont autrement convenues.

1010. Les

#### CODE

DE

#### PROCÉDURE CIVILE.

ÉDITION ORIGINALE ET SEULE OFFICIELLE



A PARIS,
DE L'IMPRIMERIE IMPÉRIALE.
1806

Signé NAPOLÉON.

Par l'Empereur :

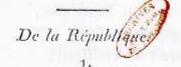
Le Secrétaire d'État, signé Hueues B. Maner. Pour extrait conforme :

Le Secrétaire-général du Conseil d'État,

Sighe J. G. Locata

#### ACTE

#### CONSTITUTIONNEL.



LA RÉPUBLIQUE FRANÇAISE est une et indivisible.

De la Distribution da Peuple.

12.

Le Peuple Français est distribué, pour l'exercice de sa souveraineté, en assemblées primaires de cantons.

3.

Il est distribué, pour l'administration et pour la justice, en départemens, districts, municipalités,

De l'Etat des Citoyens.

4.

Tout homme né et domicilié en France, âgé de vingt-un ans accomplis ;

Tout étranger âgé de vingt-un ans accom-D ij De la Justice Civile.

55.

Le code des lois civiles et criminelles est uniforme pour toute la République.

86,

Il ne peut être porté aucune atteinte au droit qu'ont les citoyens de faire prononcer sur leurs différends par des arbitres de leur choix.

#### COUR DE CASSATION (1" Ch. civ.)

20 décembre 1993

#### Municipalité de Khoms El Mergeb c/ société Dalico

- Arbitrage international. Clause compromissoire. Régle matérielle. Droit international de l'arbitrage. Autonomie. Existence et efficacité de la clause. Éléments d'appréciation. Commune volonté des parties. Référence à une loi étatique (non). Limites. Régles impératives du droit français. Ordre public international.
- CLAUSE COMPROMISSOIRE. ARBITRAGE INTERNATIONAL. AUTONOMIE. APPRÉCIATION DE SON EXISTENCE ET DE SON EFFICACITÉ. — VOLONTÉ DES PARTIES. — ABSENCE DE RÉFÉRENCE À UNE LOI ÉTATIQUE. — LIMITES. — RÉGLES IMPÉRATIVES DU DROIT FRANÇAIS. — ORDRE PUBLIC INTERNA-TIONAL.

En vertu d'une règle matérielle du droit international de l'arbitrage, la clause compromissoire est indépendante juridiquement du contrat principal qui la contient directement ou par référence, et son existence et son efficacité s'apprécient, sous réserve des règles impératives du droit français et de l'ordre public international, d'après la commune volonté des parties, sans qu'il soit nécessaire de se référer à une loi étatique.

LA COUR.

Sur les deux moyens réunis :

Attendu que par contrat signé le 15 juin 1981, le comité de la municipalité de Khoms El Mergeb, aux droits duquel est venu celui de la municipalité de Tripoli (Libye), a confié à la société danoise Dalico Contractors, des travaux de réalisation d'évacuation des eaux ; que ce contrat mentionnait comme faisant partie intégrante de la convention, outre les documents d'appel d'offres, des conditions-type « amplifiées ou amendées par une annexe » ; que l'article 32 des conditions-type également signées le 15 juin 1981, stipulait ant l'application au contrat de la loi libyenne que la juridiction des tribunaux libyens ; que la société Dalico a mis en œuvre la procédure d'arbitrage selon la clause compromissoire stipulée par référence à l'un des documents d'appel d'offre, et mentionnée dans l'annexe aux conditions-type, laquelle modifiait, notamment, l'article 32 précité ; que le comité populaire s'y est opposé en faisant valoir que le document invoqué comme étant l'annexe prévue par les conditions-type, ne comportait aucune signature et n'était pas valable au

Revue de l'arbitrage 1994 - Nº 1

#### Superior Tribunal de Justiça

#### MANDADO DE SEGURANÇA Nº 11.308 - DF (2005/0212763-0)

RELATOR IMPETRANTE : MINISTRO LUIZ FUX

TMC TERMINAL MULTIMODAL DE COROA GRANDE SPE S/A

ADVOGADO : ALESSAN

ALESSANDER LOPES PINTO E OUTRO(S)

IMPETRADO : MINISTRO DE ESTADO DA CIÊNCIA E TECNOLOGIA

EMENTA

ADMINISTRATIVO. MANDADO DE SEGURANÇA. PERMISSÃO DE ÁREA PORTUÁRIA. CELEBRAÇÃO DE CLÁUSULA COMPROMISSÓRIA. JUÍZO ARBITRAL. SOCIEDADE DE ECONOMIA MISTA. POSSIBILIDADE. ATENTADO.

 A sociedade de economia mista, quando engendra vínculo de natureza disponível, encartado no mesmo cláusula compromissória de submissão do litigio ao Juízo Arbitral, não pode pretender exercer poderes de supremacia contratual previsto na Lei 8.666/93.

2. A decisão judicial que confere efica julga extinto o processo pelo "compror pela edição de Portaria que eclipsa jurisdicional, caracteriza a figura do "ater 3.0 atentado, como manifestação cons fático da lide influente para o desat qualquer processo. Impõe-se, contud ação é proposta, as partes não se is sobre o qual gravita a lide. Nesse fruição normal da coisa ou na continu (qui continuat non attentan). Assim, como posse justificada, o usucapiente revés, há inovação no estado de fato réu que em ação reivindicatória procu

It is well recognized that arbitration does not subtract any constitutional guarantees from domestic proceedings, on the contrary, it implies fulfilling these [constitutional rights and guarantees].

benfeitorias úteis no bem, ou o demandado que violando liminar deferida aumenta em extensão a sua infringência à posse alheia. De toda sorte, é imperioso assentar-se que só há atentado quando a inovação é prejudicial à apuração da verdade. O atentado pode ocorrer a qualquer tempo, inclusive, após a condenação e na relação de execução. (Luiz Fux, in, Curso de Direito Processual Civil, 3º edição. Editora Forense, páginas 1637/1638)

4. Mandado de segurança impetrado contra ato do Ministro de Estado da Ciência e Tecnologia, ante a publicação da Portaria Ministerial nº 782, publicada no dia 07 de dezembro de 2005, que <u>ratificou</u> os termos da rescisão contratual procedida pela Nuclebrás Equipamentos Pesados S/A - NUCLEP, em 14 de junho de 2004, Ato Administrativo nº 01/2005, de 05 de setembro de 2005, do contrato administrativo de arrendamento C-291/AB -001, celebrado em 16 de dezembro de 1997, com a empresa TMC, terminal Multimodal de Coroa Grande S/A e autorizou tanto a assunção imediata pela NUCLEP, do objeto do contrato de arrendamento C-291/AB 001, conforme permissivo legal expresso no art. 80, inc. I da Lei 8.666/93, como a ocupação e

Brazilian Superior Tribunal of Justice, Judgment of 9 April 2008 No. 11.308 - DF (2005/0212763-0) ¶16

Documento: 757412 - Inteiro Teor do Acórdão - Site certificado - DJe: 19/05/2008

#### TITULO VII LA ADMINISTRACIÓN DE JUSTICIA

#### CAPITULO 1º ÓRGANO JUDICIAL

ARTICULO 201. La administración de justicia es gratuita, expedita e ininterrumpida. La gestión y actuación de todo proceso se surtirá en papel simple y no estarán sujetas a impuesto alguno.

Las vacaciones de los Magistrados, Juei interrumpirán el funcionamiento continuo de los res

ARTICULO 202. El Órgano Judicial está constr Justicia, los tribunales y los juzgados que la Ley de justicia también podrá ser ejercida por la ju determine la Ley. Los tribunales arbitrales po mismos acerca de su propia competencia.

ARTICULO 203. La Corte Suprema de Justicia e Magistrados que determine la Ley, nombrados m Gabinete, con sujeción a la aprobación del Órga de diez años. La falta absoluta de un Magistradi nombramiento para el resto del periodo respectivo

Cada Magistrado tendrá un suplente non principal y para el mismo periodo, quien lo reem a la Ley. Solo podrán ser designados suplente Judicial de servicio en el Órgano Judicial.

Cada dos años, se designarán dos Magistrados, salvo en los casos en que por razón del número de Magistrados que integren la Corte, se nombren más de dos o menos de dos Magistrados. Cuando se aumente el número de Magistrados de la Corte, se harán los nombramientos necesarios para tal fin, y la Ley respectiva dispondrá lo adecuado para mantener el principio de nombramientos escalonados.

Arbitrators are judges by the sole application of the Law, and their decisions have coercive force towards the rest of the judicial administrative community, thus giving the parties greater security that their claims, are recognized through arbitral awards, shall be honored. This legal certainty in society will promote the choice of alternative dispute resolution mechanisms, to the benefit of all: faster and expeditious justice; decongestion of courts; increased access to justice

Supreme Court of Panama, *Greenhow Associates Ltd v Refineria Panama S*A, 14 February 2005

236 P.3d 456 (2010) 123 Hawai'i 476

KONA VILLAGE REALTY, INC.; Brenda Tschida; and Robert Tschida, Respondents/Plaintiffs-Appellees,

SUNSTONE REALTY PARTNERS, XIV, LLC; and Sunstone Realty Partners, IX, LLC, Petitioners/Defendants-Appellants, and Sunstone Realty Partners, LLC; Sunstone Realty, LLC; Curtis D. Deweese, an individual; Michelle Matusek, an individual; Rick Wilson, an individual, Respondents/Defendants-Appellees.

No. 28840.

Supreme Court of Hawai'i.

Michael L. Lam and Margaret E. Parks ( petitioners/defendants-appellants.

Francis L. Jung (of Jung & Vassar), Kail

MOON, C.J., NAKAYAMA and DUFFY, Circuit Judge CRANDALL, in place of R

Sunstone Realty Partners, IX, LLC [her

Petitioners/defendants-appellants Sunst

this court to review the Intermediate Court of Appeals' (ICA) January 25, 2010 judgment on appeal, entered pursuant to its June 29, 2009 published opinion. Therein, the ICA affirmed the Circuit Court of the Third Circuit's October 8, 2007 order granting respondents/plaintiffs-appellees Kona Village Realty, Inc., Brenda Tschida, and Robert Tschida [hereinafter, collectively, Kona Village]'s motion to confirm arbitration award and denying Sunstone's motion to vacate or correct the arbitration award.

Upon careful review of the record and the papers submitted by the parties and having given due consideration to the arguments advanced and the issues raised,

IT IS HEREBY ORDERED that the ICA's January 25, 2010 judgment on appeal is affirmed based on the plain language of Hawai'i Revised Statutes (HRS) § 858A-21(b) (Supp. 2006) and public policy, as discussed infra.

The recognized autonomy of parties to enter into an agreement (which can include a provision regarding attorney's fees) is directly correlated to and stems from the constitutionally protected right of freedom of contract.

> Kona Village Realty, Inc. v. Sunastone Realty Partners XIV, LLC, 123 Haw 476, 478 (Haw 2010)

