INTERNATIONAL COUNCIL
FOR COMMERCIAL ARBITRATION

COMPARATIVE ARBITRATION
PRACTICE
AND
PUBLIC POLICY IN ARBITRATION

GENERAL EDITOR PIETER SANDERS
with the cooperation of the
T.M.C. Asser Institute for International Law, The Hague
# Table of Contents

**PREFACE**

**WELCOMING LETTERS AND ADDRESSES**
- Ronald Reagan  
- Mario M. Cuomo  
- Edward I. Koch  
- Robert B. von Mehren  
- Prof. Pieter Sanders

**GUEST ADDRESS**
- Hon. Sol Wachtler

**WORKING GROUP I – COMPARATIVE ARBITRATION PRACTICE**

**HYPOTHETICAL CASE**
  - by Judge Howard M. Holtzmann and Prof. Giorgio Bernini

  **I. INTRODUCTORY NOTE**
  - 19

  **II. DESCRIPTION OF THE HYPOTHETICAL CASE**
  - 22

  **III. QUESTIONS AND ANSWERS REGARDING THE HYPOTHETICAL CASE**
  - 24

  *Note Gen. Ed.:*
  The answers given by the Rapporteurs and Commentators are printed directly following the questions. In this way, an effort has been made to provide our readers with a comparative picture of the variety of views presented by Rapporteurs and Commentators from different legal systems.

  **A. Composition and Staff of the Arbitral Tribunal**
  - Questions and Answers 1–5

  **B. Legal Representation**
  - Questions and Answers 6–7

  **C. Contents of the Statements of Claim and Defense**
  - Questions and Answers 8–12

  **D. Terms of Reference**
  - Question and Answer 13

  **E. Pre-Hearing Conference**
  - Questions and Answers 14–16

  **F. Extent to Which the Arbitral Tribunal Will Initiate and Establish Procedures not Expressly Provided in the Rules**
  - Questions and Answers 17–19

Page |
-----|
ix   |
1    |
3    |
5    |
7    |
11   |
15   |
19   |
19   |
22   |
24   |
25   |
40   |
45   |
58   |
62   |
68   |
**TABLE OF CONTENTS**

G. Pre-Hearing Procedures Concerning Documents and Discovery  
   Questions and Answers 20–27  
   72
H. Submission of Further Written Statements Before the Hearing  
   Questions and Answers 28–30  
   91
I. Determination of Preliminary Issues  
   Question and Answer 31  
   94
J. Testimony of Parties  
   Questions and Answers 32–34  
   97
K. Written Statements by Witnesses  
   Questions and Answers 35–37  
   102
L. Experts  
   Questions and Answers 38–39  
   107
M. Order of Proceedings at the Hearing  
   Questions and Answers 40–41  
   111
N. Presentation of Oral Evidence  
   Questions and Answers 42–52  
   119
O. Presentation of Oral Argument  
   Questions and Answers 53–55  
   133
P. Verbatim Records and Minutes of the Hearing  
   Questions and Answers 56–57  
   137
Q. Post-Hearing Briefs  
   Question and Answer 58  
   141
R. Costs  
   Question and Answer 59  
   142
S. Awards  
   Question and Answer 60  
   145
T. Role of Arbitrators in Settlement  
   Questions and Answers 61–64  
   147

**IV. GENERAL COMMENTS OF RAPPORTEURS AND COMMENTATORS**

**RAPPORTEURS**
- Michael F. Hoellering  
  Arbitration Practice in the United States as Applied to the Hypothetical Case  
  153
- J. Martin H. Hunter  
  Hypothetical Case Study *Steelco v. Hightech*, Neutralia = England  
  155
- Sigvard Jarvin  
  Answers to the Questions of the Hypothetical Case in a Typical Civil Law Country  
  157
- Prof. Sergei N. Lebedev  
  Answers to the Questions of the Hypothetical Case from the Viewpoint of an Arbitration in the Soviet Union  
  160
# Table of Contents

**Commentators**
- Prof. Jacques El-Hakim  
  Civil Law Practice with Respect to Arab Countries  
  162
- Prof. Shin’Ishiro Michida  
  The Amicable Texture of Japanese Arbitration  
  163
- Mrs. Tinuade Oyejunkel  
  Practice of Arbitration in the African Region  
  164
- José Luis Siqueiros  
  Comments on Latin America  
  165
- Dr. habil. Tadeusz Szurzki  
  Comments on “Comparative Arbitration Practice” as presented in Four Reports  
  169

**V. Conclusion by Judge Holtzmann and Professor Bernini**  
  171

**List of Written Communications to Working Group I**  
  172

**List of Oral Interventions to Working Group I**  
  173

**Working Group II – Public Policy in Arbitration**

<table>
<thead>
<tr>
<th>Rapporteurs</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prof. Karl-Heinz Böckstiegel</td>
<td>177</td>
</tr>
<tr>
<td>Public Policy and Arbitrability</td>
<td></td>
</tr>
<tr>
<td>Judge Stephen M. Schwebel and Susan G. Lahne</td>
<td>205</td>
</tr>
<tr>
<td>Public Policy and Arbitral Procedure</td>
<td></td>
</tr>
<tr>
<td>Yves Derains</td>
<td>227</td>
</tr>
<tr>
<td>Public Policy and the Law Applicable to the Dispute in International Arbitration</td>
<td></td>
</tr>
<tr>
<td>Prof. Pierre Lalive</td>
<td>257</td>
</tr>
<tr>
<td>Transnational (or Truly International) Public Policy and International Arbitration</td>
<td></td>
</tr>
</tbody>
</table>

**Commentators**
- Prof. Ahmed S. El-Kosheri  
  Public Policy under Egyptian Law  
  321
- Prof. Horacio A. Grigera Naón  
  Public Policy and International Commercial Arbitration: An Argentine View  
  329
- Fali S. Nariman  
  Problems of Public Policy – The Indian Perspective  
  337
TABLE OF CONTENTS

Prof. Konstantin L. Razumov
Public Policy as a Condition for Recognition and Enforcement of Foreign Court Judgments and Arbitral Awards in the USSR 348

Prof. Ireneu Strenger
The Application by the Arbitrator of Public Policy Rules to the Substance of the Dispute 358

Prof. Dr. Heinz Strohhbach
International Arbitration and Public Policy. Comment on the Legal Practice in the German Democratic Republic 358

LIST OF WRITTEN COMMUNICATIONS TO WORKING GROUP II 363

LIST OF ORAL INTERVENTIONS TO WORKING GROUP II 365

LIST OF PARTICIPANTS 367

LIST OF ICCA – OFFICERS AND MEMBERS 399