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	Page ix
WELCOMING LETTERS AND ADDRESSES	
Ronald Reagan	1
Mario M. Cuomo	3
Edward I. Koch	5
Robert B. von Mehren	7
Prof. Pieter Sanders	11
GUEST ADDRESS	
Hon. Sol Wachtler	15
WORKING GROUP I - COMPARATIVE ARBITRATION	
PRACTICE HYPOTHETICAL CASE	
by Judge Howard M. Holtzmann and Prof. Giorgio Bernini	19
_	
I. INTRODUCTORY NOTE II. DESCRIPTION OF THE HYPOTHETICAL CASE	19
III. QUESTION OF THE HYPOTHETICAL CASE	22
HYPOTHETICAL CASE	24
	41
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	25
B. Legal Representation	
Questions and Answers 6-7	40
C. Contents of the Statements of Claim and Defense	
Questions and Answers 8–12	45
D. Terms of Reference	50
Question and Answer 13 E. Pre-Hearing Conference	58
Questions and Answers 14–16	62
F. Extent to Which the Arbitral Tribunal Will Initiate and	02
Establish Procedures not Expressly Provided in the Rules	
Questions and Answers 17–19	68

(G. Pre-Hearing Procedures Concerning Documents and	
	Discovery	70
	Questions and Answers 20-27	72
	H. Submission of Further Written Statements Before the	
	Hearing	91
	Questions and Answers 28-30	91
	I. Determination of Preliminary Issues	94
	Question and Answer 31	34
	J. Testimony of Parties	97
	Questions and Answers 32–34	31
	K. Written Statements by Witnesses	102
	Questions and Answers 35-37	102
	L. Experts	107
	Questions and Answers 38–39	107
	M. Order of Proceedings at the Hearing	111
	Questions and Answers 40-41	111
•	N. Presentation of Oral Evidence	119
	Questions and Answers 42-52	119
	O. Presentation of Oral Argument	133
	Questions and Answers 53-55	133
	P. Verbatim Records and Minutes of the Hearing	137
	Questions and Answers 56-57	137
	Q. Post-Hearing Briefs	. 141
	Question and Answer 58	. 141
	R. Costs	142
	Question and Answer 59	142
	S. Awards	145
	Question and Answer 60	143
	T. Role of Arbitrators in Settlement	147
	Questions and Answers 61-64	14/
-		
IV.	GENERAL COMMENTS OF RAPPORTEURS AND	
	COMMENTATORS	
	RAPPORTEURS	
	Michael F. Hoellering Arbitration Practice in the United States as Applied to	
	Arbitration Practice in the Office States as ripplied to	153
	the Hypothetical Case	
	J. Martin H. Hunter	•
	Hypothetical Case Study Steelco v. Hightech,	155
	Neutralia = England	
	Sigvard Jarvin Answers to the Questions of the Hypothetical Case in a	
	Answers to the Questions of the Hypothetical Sase in a	157
	Typical Civil Law Country	,
	Prof. Sergei N. Lebedev	
	Answers to the Questions of the Hypothetical Case from	160
	the Viewpoint of an Arbitration in the Soviet Union	

TABLE OF CONTENTS	vii
COMMENTATORS	
Prof. Jacques El-Hakim	
Civil Law Practice with Respect to Arab Countries	162
Prof. Shinishiro Michida	
The Amicable Texture of Japanese Arbitration	163
Mrs. Tinuade Oyekunle	
Practice of Arbitration in the African Region	164
José Luis Siqueiros	
Comments on Latin America	165
Dr. habil. Tadeusz Szurski	
Comments on "Comparative Arbitration Practice" as	
presented in Four Reports	169
V CONCLUCION BY HIDDE HOLTZMANN AND	
V. CONCLUSION BY JUDGE HOLTZMANN AND	171
PROFESSOR BERNINI	171
LIST OF WRITTEN COMMUNICATIONS TO	170
WORKING GROUP I	172
LIST OF ORAL INTERVENTIONS TO WORKING	
GROUP I	173
WORKING GROUP II – PUBLIC POLICY IN ARBITRATION	
RAPPORTEURS	
Prof. Karl-Heinz Böckstiegel	
Public Policy and Arbitrability	177
Judge Stephen M. Schwebel and Susan G. Lahne	***
Public Policy and Arbitral Procedure	205
Yves Derains	700
Public Policy and the Law Applicable to the Dispute in	
International Arbitration	227
Prof. Pierre Lalive	
Transnational (or Truly International) Public Policy and	
International Arbitration	257
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

Prof. Konstantin L. Razumov	
Public Policy as a Condition for Recognition and Enforcement	
of Foriegn 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	353
Prof. Dr. Heinz Strohbach	•
International Arbitration and Public Policy.	358
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
LICT OF LCCA OFFICERS AND MEMBERS	200