

# RESOLUTIONS OF THE FIFTH INTERNATIONAL CONGRESS ON ARBITRATION IN NEW DELHI, JANUARY 10, 1975

*AP*

## I

RESOLVED that the Congress

Expresses its gratitude to Shri Fakhruddin Ali Ahmed, President of India, for having himself inaugurated the Congress and for supporting the use of arbitration as a way of solving disputes which may arise in the course of international commercial transactions;

Thanks the Indian Council for Arbitration, its President Mr. K. K. Birla, and its Secretary, Mr. N. Krishnamurthi, for having with faultless organization facilitated the work of the Congress and having offered fraternal hospitality to the delegates and accompanying persons all of whom it has welcomed so warmly.

## II

RESOLVED that the Congress

Thanks the International Council for Commercial Arbitration (originally the International Organizing Committee, later known as the International Committee for Commercial Arbitration) for having, since the Fourth International Arbitration Congress held at Moscow in 1972, organized the Interim Meeting held at London in 1974 and this Congress;

Takes note of the report made to it of the adoption by the International Council for Commercial Arbitration at a meeting on January 6, 1975 of a "Statement of Purposes and Procedures" which will be included in the published Proceedings of the Congress;

Encourages the International Council for Commercial Arbitration to pursue its work in promoting international arbitration by all appropriate means;

Takes note of a report that the International Council for Commercial Arbitration will issue a "Yearbook" which will provide a central medium for the international dissemination of the fruits of arbitration research, and urges that the "Yearbook" be given wide circulation in all nations and among all circles concerned with international commercial arbitration.

### III

RESOLVED that the Congress

Believing in the extremely important role which the UN Convention on Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, is able to play in ensuring the effectiveness of international commercial arbitration,

Wholeheartedly welcoming the appeal of the Sixth Session of the UN Commission on International Trade Law (April 1973) endorsed by the Resolution of the General Assembly of the United Nations (A/Res/3108 xxviii) that the countries which have not yet ratified or acceded to the said convention shall "consider the possibility of adhering thereto,"

Being convinced that it would be in accord with the action of the UN and with objective needs of eliminating obstacles which hinder normal development of world trade,

Calls on arbitration institutions and other organizations active in the field to work to the fullest extent of their powers for the widespread adoption of the 1958 Convention, as well as for all conceivable perfecting of the manner in which it is applied in the member countries.

### IV

WHEREAS

The United Nations Commission on International Trade Law (UNCITRAL) requested its Secretariat to prepare draft Rules for optional use in *ad hoc* arbitration relating to international trade and to submit such Rules for the Commission's Eighth Session (April, 1975); and

The Commission requested that such Rules be prepared in consultation (*inter alia*) with centers of international commercial arbitration, and consequently its Secretariat invited the International Council for Commercial Arbitration (ICCA) to establish a representative group for consultation in the preparation of the Rules; and

Following extensive consultation with the above group, a preliminary draft of such Rules was issued by the Secretary-General on November 4, 1974, and was made available for consultation at this Congress; and

Views expressed in the further consultation during this Congress will be communicated to the Commission and will be given consideration in the further elaboration of the proposed Rules:

BE IT RESOLVED that the Congress

Believes that the preparation by UNCITRAL of such Rules is a valuable project that will facilitate arbitration and thereby will aid world trade:

Appreciates the opportunity for consultation in the preparation of the Rules, and supports UNCITRAL's current program for widespread consultation, with special reference to the views of parties who will make use of arbitration in all countries, including both developing and developed.

Endorses the principles of the preliminary draft of the Rules and encourages UNCITRAL, in the light of comments made on this draft, to finalize the Rules and make them available for use at the earliest possible date.

## V

RESOLVED that the Congress

Supports the following recommendations made by its Working Party which considered the development of practices which may be commonly acceptable for presenting evidence in international arbitration proceedings:

1. It is desirable to formulate for the benefit of parties and arbitrators, guidelines for presenting evidence in international commercial arbitration.
2. It is suggested that ICCA undertake the task of framing such guidelines, which should be consonant with the UNCITRAL Arbitration Rules in the form finally adopted.
3. In framing the guidelines, consideration should be given to such matters as distinguishing between different types of evidence, collection of evidence, and methods of introducing and receiving evidence, including modes of examining witnesses and presenting expert opinions.
4. In framing the guidelines consideration should be given to the problems arising out of the refusal by a party to the arbi-

tration to produce evidence on grounds of state security, confidentiality, professional privilege, etc.

The Congress is confident that potential areas of fundamental agreement can be found and that effective guidelines can be established.

## VI

RESOLVED that the Congress

Notes with pleasure the growing readiness of governments and state controlled bodies, as well as of inter-governmental organizations, to stipulate in their international business contracts with foreign private parties to recourse to arbitration for the settlement of disputes.

Notes with satisfaction that, in the spirit of the message to it by the Chief Justice of India, States normally carry out arbitral agreements and proceed with arbitration on a basis of equal footing, especially with respect to the selection of independent arbitrators, the international character of the procedure and the law to be applied.

Notes with particular gratification that in recent times there appears to have been no claim of immunity by any state made with a view to avoiding the institution of agreed arbitration proceedings and that claims of immunity from enforcement seem to be rare.

Suggests that it is desirable to underline the distinction between contracts which are entered into with private foreign parties by a government itself and by state-controlled bodies, since the latter types of contract is to be treated as dealing between private parties. Hence, should acts of governments interfere with such contracts between state-controlled bodies and private foreign parties the consequences of such interference are normally a matter to be decided on the basis of the applicable rules of law and according to the circumstances of each case.

In view of the ever growing importance of arbitration between governments and private parties the Congress feels it highly desirable that the studies undertaken on this matter should be continued on the basis of research into the factual situation throughout the world and trusts that all circles concerned will lend their full cooperation in this task.

## VII

RESOLVED that the Congress

Strongly reaffirms the great value of arbitration, not only for traditional types of disputes arising in international trade, but also in

connection with long-term contracts of the type which are now so often used to implement international commercial transactions for scientific, technical and industrial development. Such long-term transactions are becoming increasingly important in world trade and are also a significant factor in establishing conditions which assist in maintaining world progress.

Notes that one of the principal problems in connection with long-term contracts is the question of whether arbitrators have the power to fill gaps and resolve deadlocks which may arise during the life of the agreement. Such gaps may occur when parties postpone specific agreement on certain points because of lack of complete information when a contract is first formed; when unforeseen or unforeseeable events occur due to changes in economic, technical or political conditions; when inevitably vague expressions are used in the contract; and when parties to joint ventures disagree on the conduct of their joint enterprise. Reports received by the Congress indicate that the power of arbitrators to fill such gaps in a binding manner varies in different nations and under different legal systems. Such differences may be minimized by overcoming the stress on theoretical speculation and dogmatic construction and getting closer to reality.

Recognizes that agreement by the parties to widen the scope of arbitration to fill such gaps and break such deadlocks can be of great practical assistance in forming and performing long-term contracts. Such agreement must be expressed by a drafting technique which is appropriate to meet difficulties that may arise under different national laws.

To this end, the Congress urges that the comparative law studies on this subject which have been so fruitfully begun during the deliberations in New Delhi be continued in order that information concerning the law and practice in this regard can be collected and disseminated and so that methods to utilize this valuable function of arbitration may be further developed. The Congress therefore suggests that ICCA sponsor and encourage such studies with the aim of reaching a practical result, as, for example, the preparation of model clauses.

## VIII

### RESOLVED that

The Sixth International Congress on Arbitration shall be held at Mexico City in 1978, on a date and with a theme to be determined by the International Council for Commercial Arbitration

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