



CONTACT US:
146, Avenue Louise
B-1050 Brussels
Belgium
Fax: +32 2 646 24 31
Tel: +32 2 643 33 01
Email:
administration@arbitration-adr.org

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Statistical data from the Civil Court of Brussels regarding article 1702.2 of the Belgian Judicial Code

Introduction

In accordance with article 1702.2 of the Belgian Judicial Code (the "BJC"), the chairman of the Arbitral Tribunal shall file the original copy of the award with the Office of the Civil Court.

This obligation is imposed in order to make the award enforceable in Belgium. When parties comply with the award voluntarily, failure to file the award will not be sanctioned. Under article 1710.1 of the BJC an award can only be enforced if it has been declared enforceable by the president of the Civil Court at the request of an interested party. The party against which the enforcement is requested cannot, at this stage of the proceedings, claim to be heard.

The request for enforcement shall be dismissed:

- ⇒ If the award can be appealed (some arbitration institutes include in their arbitration rules the possibility to file an appeal. In that case, a new arbitral tribunal will have to be formed), unless the arbitrators have declared their award to be provisionally enforceable notwithstanding an appeal;
- ⇒ If the enforcement is contrary to public policy;
- ⇒ If the dispute was not arbitrable;

This study represents statistical data regarding enforcement of the awards filed in 2010 with the Office of the Civil Court of Brussels. The following preliminary remarks have to be made:

- ⇒ The number of filed awards (for 2010: 648) is, as an isolated fact, irrelevant. We have already mentioned that an award needs to be filed with the Office of the Civil Court when its enforcement is requested. Some arbitration institutes tend to file their awards only when it is clear that the losing party is not willing to execute the award voluntarily.
- ⇒ The Civil Court of Brussels is without any doubt the most important Civil Court of the country, which is reflected in the amount of enforcements. The big number of the awards filed for enforcement is also due to the fact that the most important arbitral institutions have their seat in Brussels. This does not automatically lead to the conclusion that all enforcements take place in Brussels. There is always a possibility that even if the arbitral tribunal has its seat in Brussels, the award needs to be filed in a different judicial district, e.g. because the defendant is domiciled at that place.
- ⇒ The filing of the award with the Office of the Civil Court is free of charge. Registration fees are only due when the enforcement is granted.
- ⇒ This study is limited to the year 2010. There is no reason to assume statistically important variations for years 2008 or 2009. A study including the year 2011 is pointless since the year has not come to an end yet.
- ⇒ Undoubtedly it would be interesting to know whether apart from enforcement proceedings there were applications for annulment or oppositions filed against the granted enforcements. This would require further research and is outside the scope of the present study. It is deplorable to mention that annulment procedures or those contes-

ting the enforcement can take up to two years. These procedures are usually followed by an appeal. The protracted procedure and the possibility to go to appeal are a big concern for arbitration: one of the main reasons why parties choose arbitration for their dispute resolution – the speed – thereby is undermined.

cessarily correspond to the number of the awards rendered within Brussels, the study permits setting out the following market shares:

Discussion

1. The fact that the number of awards filed for enforcement is increasing throughout the years should not come as a surprise. Arbitration is gaining popularity worldwide and undoubtedly contributes to a quick and efficient out-of-court dispute settlement. The information from the Office of the Civil Court of Brussels evidences the following evolution in the number of requests to declare an award enforceable:

	French	Dutch
2006:	74	43
2007:	102	29
2008:	105	49
2009:	173	58
2010:	177	88

According to the study there have been 251 requests for enforcement in 2010, which differs from the total number for 2010 as provided by the Office of the Civil Court of Brussels. The difference in numbers is due to the fact that this study focuses on awards deposited in 2010 (648). There is a possibility that the enforcement of the awards, though deposited in 2010, have been granted by the Civil Court in 2011 and is included in our numbers, but doesn't appear in the statistics for 2010 kept by the Registrar office. The same explanation is applicable to 2009, where the enforcements granted in 2010 have not been included in our calculations. In this respect, the numbers of the Registrar office are more precise. Statistically this difference will not be of further importance in this study.

2. In 2010 all the requests for enforcement of awards were granted (251 in total). The request for enforcement needs to include following documents: a copy of the award, a copy of the arbitration clause, prove of the filing of the award with the Civil Court's office, and prove of the sending of the award via registered mail to the parties.

The enforcement procedure is relatively fast: in 75% of cases, the enforcement is granted within 50 days (in 50% of the cases even in 25 days). In 12% of cases the procedure takes more than 100 days, which is due to the fact that the Registrar office needs either to request the parties to submit lacking documents or resubmit those that have been incorrectly filed.

3. Out of 251 enforced awards, 243 were rendered by arbitration institutes (institutional arbitration) and 8 by ad hoc tribunals. Though, the number of awards filed for enforcement does not ne-

Chambre de Médiation et d'Arbitrage	68%
Institute of Arbitration	17%
Belgian Chamber for National and International Arbitration	10%
Cepina/Cepani	2%
Travel Dispute Commission	1%
Other	2%

4. When examining types of cases referred to arbitration, one can notice the lack of diversity. Below you will see data regarding the types of arbitrated cases :

a) Chambre de Médiation et d'Arbitrage	
Rental Disputes	84%
Corporate Disputes	12%
Contractual Disputes	3%
Other	1%

b) Institute of Arbitration	
Sale contracts disputes	80%
Construction disputes	7%
Rental disputes	5%
Corporate disputes	2%
Distribution disputes	2%
Other	2%

5. It is remarkable that all awards that have been filed with the Registrar office of the Civil Court of Brussels by the Chambre de Médiation et d'Arbitrage (in total 245 awards) were in French and that 95% were arbitrated by Mr. Olivier Domb, the president of the Chambre de Médiation et d'Arbitrage.

6. The Institute of Arbitration filed with the Registrar office in 2010 80 awards, of which 41 enforcements were granted (in 2010). 80% of cases were in Dutch, 19% in French and 1% in English.

7. 96% of cases arbitrated at the Belgian Chamber for National and International Arbitration in 2010 dealt with rental disputes.

8. As for the proportion between national and international awards which were



granted enforcement, 91 % of cases were national and 9 % international. To make a distinction between national and international arbitrations, the domicile of the parties was considered. If one of the parties was domiciled outside Belgium, than the arbitration case was regarded as international.

9. In respect of the composition of the arbitral tribunal, we found that in 96 % cases were resolved by a sole arbitrator. Only in 4 % the arbitral tribunal had more than 1 arbitrator (mostly 3 arbitrators, sometimes 5 arbitrators).

10. Even though Belgium neighbors countries that have important arbitration institutes, this was not reflected in the results of the present study. In 2010 only one ICC award was filed with the Civil Court of Brussels for enforcement. There was no a single investment arbitration award filed for enforcement in 2010. However, the request for enforcement of one ad hoc investment arbitration award was sought at the Civil Court of Brussels in 2009.

Conclusions

⇒ The share of enforced awards (251) is small in comparison with the total amount of judgments of the Civil Court. In order to give a complete picture, all judgments from the Brussels Justices of the Peace, Civil and Commercial Courts should be added together. An explanation that one could give to this considerable difference in number of awards and judgments is that parties having spent a lot of energy and time on obtaining the award are no longer interested in that award's enforcement, though awards are supposed to be more balanced and better meet the diverging interests of parties than judgments. Nonetheless, these reasons still do no amount to a sufficient explanation of why a losing party will be more willing to comply with an award than with a judgment.

⇒ Belgium lacks International, as contrary to national, arbitration cases (commercial as well as investment). The *Chambre de Médiation et d'Arbitrage* that rendered 68 % of the enforced awards, is the market leader, according to the conducted study. The majority of disputes concern rental and commercial matters. One might assume that the disputes dealt by other arbitration institutes involved bigger amounts than cases handled by the *Chambre de Médiation et d'Arbitrage*. However, the present study did not distinguish cases as per the amount involved because the majority of awards which needed to be enforced by the Civil Court of Brussels concerned relatively small claims.

⇒ The undeniable rapidity of arbitration in solving a dispute from the moment when the dispute arises till the stage of enforcement of the award can be an ideal solution to lower the workload for the courts and expenses for the government.

Settling sports business disputes by "med-arb" in the Court of Arbitration for Sport

by Professor Ian Blackshaw

Sport is now a global business worth more than 3% of world trade and 3.7% of the combined GNP of the twenty-seven Member States of the European Union. So, there is much at stake, both on and off the field of play!

It is not surprising, therefore, that sports-related business disputes are on the increase, especially in the present economic climate. The sporting world, in general, prefers to settle their disputes by some form of ADR (Alternative Dispute Resolution). Over its twenty-seven years of operations, the Court of Arbitration for Sport (CAS), based in Lausanne, Switzerland, is proving to be a popular and effective forum for settling sport-related business disputes by Mediation or Arbitration or a combination of the two by a process of 'Med-Arb'. Mediation serves to identify the issues and, where not successful, Arbitration to settle them.

In this article, we will take a look at the use of and some of the issues that arise in 'Med-Arb' proceedings before the CAS in such cases.

Rather than leaving questions of dispute resolution to be decided when sports disputes arise, it is advisable to include an express 'Med-Arb' clause in the Sports Agreement or Contract concerned and also to use the standard clause offered by the CAS for such purposes, which is as follows:

"Any dispute, any controversy or claim arising under, out of or relating to this contract and any subsequent of or in relation to this contract, including, but not limited to, its formation, validity, binding effect, interpretation, breach or termination, as well as non-contractual claims shall be submitted to mediation in accordance with the CAS Mediation Rules.

If, and to the extent that, any such dispute has not been settled within 90 days of the commencement of the mediation, or if, before the expiration of the said period, either party fails to participate or continue to participate in the mediation, the dispute shall, upon filing of a Request for Arbitration by either party, be referred to and finally settled by CAS arbitration pursuant to the Code of Sports-related Arbitration. When the circumstances so require, the mediator may, at his own discretion or at the request of a party, seek an extension of the time limit from the CAS President."

Such CAS 'Med-Arb' clauses are found in Sports Agreements with both elite (professional) and amateur sports persons. In fact, nowadays most athletes are professionals, even though they are supposed to be amateurs to participate in the Olympics. This, by the way, has led to the coin-

ing and use of the term 'shamateurism'! Such dispute resolution clauses are not usually found in Commercial Agreements with sports teams. They are, however, found in Sports Employment Contracts with individual sports persons, although, under some legal systems, employment disputes may not, legally speaking, be submitted to Arbitration. For example, German Labour Law does not provide for Mediation and, in fact, prohibits the settlement of individual employment disputes by Arbitration. In France, employment disputes are mostly settled through the French Courts, although Mediation within French judicial proceedings is possible with the consent of the parties in dispute. In practice, Mediation of labour disputes is quite well developed and followed.

In CAS Mediations, the confidentiality and 'without prejudice' requirements in respect of any subsequent CAS Arbitration proceedings, or, indeed, any subsequent Court proceedings, are quite all-embracing and extensive. Article 10 of the CAS Mediation Rules (part of the CAS Code of Sport-related Arbitration, Edition of July 2011) provides as follows:

"No record of any kind shall be made of the meetings. All written documents shall be returned to the party providing these upon termination of the mediation, and no copy thereof shall be retained.

The parties shall not rely on, or introduce as evidence in any arbitral or judicial proceedings:

- ⇒ views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- ⇒ admissions made by a party in the course of the mediation proceedings;
- ⇒ documents, notes or other information obtained during the mediation proceedings;
- ⇒ proposals made or views expressed by the mediator; or
- ⇒ the fact that a party had or had not indicated willingness to accept a proposal."

The wide scope of these confidentiality and 'without prejudice' requirements of CAS Mediations may be compared with those of the UK Sports Dispute Resolution Panel, which is modelled on the CAS and offers Mediation and/or Arbitration of sports disputes in the United Kingdom. Article 11.2 of the UK Sport Resolutions Mediation Procedure (Edition of July 2009) provides as follows:

"All documents (which include anything upon which evidence is recorded including tapes and computer discs) or other information produced for, or arising in relation to, the mediation will be privileged and not be admissible as evidence or discoverable in any litigation or arbitration connected with the dispute *except any documents or other information which would in any event have been admissible or discoverable in any such litigation or arbitration.*" [emphasis added]

As will be appreciated, the principle of discovery is a fundamental part of the Anglo-Saxon litigation process.

Again, under Article 12 the CAS Mediation Rules, the Settlement Agreement is "drawn up by the mediator..."

Normally, the Settlement Agreement is drawn up by the parties themselves and signed by the parties and the mediator. In fact, mediators generally prefer this course of action.

By comparison, Article 8.1 of the UK Sport Resolutions Mediation Procedure does not contain any such requirement, but, by implication, the Settlement Agreement is drawn up by the parties and signed by them or on their behalf.

Finally, it may be noticed that there is an apparent discrepancy between the English and French versions (the official languages of the CAS are French and English) of the provisions of the final paragraph of Article 13 of the CAS Mediation Rules. The English version reads as follows:

"In the event of failure to resolve a dispute by mediation, the mediator shall not accept an appointment as an arbitrator in any arbitral proceedings concerning the parties involved in the same dispute."

In other words, the mediator is absolutely forbidden to act as an arbitrator in the subsequent proceedings between the parties concerning the same dispute.

Whereas the French version, in the relevant part, reads as follows:

"..... le médiateur ne doit pas accepter une nomination en qualité d'arbitre"

In other words, the Mediator is not obliged to accept an appointment as an arbitrator in the subsequent proceedings where the attempt at CAS Mediation has failed. A reasonable interpretation of the French version leaves it open to the Mediator in the Mediation proceedings also to act as the Arbitrator in those subsequent proceedings, if he chooses to do so. However, this may well be a matter of academic interest only, because no self-respecting and professional mediator, in my view, would also wish to act as an arbitrator in such circumstances. However, where it is possible and appropriate and, of course, with the consent of the parties, who, after all are 'running the show', there are some distinct advantages of the Mediator also acting in the subsequent Arbitration proceedings – not least, in terms of time and, therefore, costs, through familiarity by the Mediator/Arbitrator of the background to and issues in the case. On the other hand, there may also be some disadvantages in terms of handling disclosures made by the parties in the dispute to the Mediator in the course of their private one-on-one meetings ('caucuses'). All forms of ADR always involve a balancing exercise!

Finally, even though we are all curious by nature, because of the confidentiality of CAS Mediations, it is not possible to know precisely how many there have been to date, and also how many of them have gone on to be settled by related Arbitration proceedings. However, as far as commercial disputes are concerned, CAS Mediations are believed to have included disputes with a sports management agency over the commercialization of a cyclist's image rights and also some financial disputes between athletes and their advertising agencies involving substantial commissions.

Is arbitration possible without a dispute?

by Jing YANG

Is it possible to request arbitration if there is no genuine dispute between the parties? Yes, it seems to be possible in China. The official website of Xian Arbitration Commission in China reports (<http://www.xaac.org/publicinfo/magazine/zazhi/>):

"The case without a genuine dispute should be terminated easily, not only saving human and material, but also legal resources. Nevertheless the arbitrators failed to proceed in the way they should have done it and intentionally converted an easy case into a difficult one. They organized many hearings, examined and reviewed the facts thoroughly."

Why would parties spend their time and money if there is no any dispute between them? Unfortunately, the available information regarding the case at hand is limited only to a report published on the official website of Xian Arbitration Commission. Neither the arbitration clause nor the award itself has been made public. Having asked for an advice from the scholars and practitioners after posting publicly available information about the case on LinkedIn, we have received more than 30 comments that will be incorporated into this article as well. The conclusions in this article will be based and limited to the facts know from public sources.

1. The official report of the Chinese case

" Having signed the Equity Assignment Agreement whereby the Respondent acquired the whole coal mining enterprise, both, Claimant and Respondent started duly performing the agreement's provisions. Later on, both parties decided to recourse to arbitration in order to consolidate their contractual relationship and confirm their own rights and obligations. They requested the tribunal to clarify their own rights in the Equity Assignment Agreement. This kind of arbitral request is a completely new subject for arbitration commissions in China. Eventually, the rights of the parties were clarified in an award issued by the tribunal. In the meantime, the tribunal required the parties to sign a committing letter to guarantee that the case could be re-arbitrated before the new tribunal composed by the arbitration commission, and the final award could be found invalid under certain conditions."

2. Dispute

2.1 What is a dispute?

The definition of a dispute in Black's Law Dictionary is a "conflict or controversy". There is hardly a model arbitration clause which will not mention the word "dispute". For example, the model ICC arbitration clause provides: "All disputes arising out of or in connection with the present contract shall be finally settled under the ICC Rules." Under UNCITRAL model clause: "any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules". The LCIA model clause states: "any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA rules". The model arbitration clause of the China International Economic and Trade Arbitration Commission (CIETAC) also refers to "any dispute arising from or in connection with this Contract..."

The case law provides a deeper insight into the notion of a dispute. In the Mavrommatis Palestine Concessions case,

the Permanent Court of International Justice (PCIJ) gave the following definition of a "dispute": "a dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between persons." In the report (1950) International Court of Justice (ICJ) Interpretation of the Peace Treaties with Bulgaria, Hungary and Romania (first phase), ICJ referred to: "a situation in which the two sides held clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations." In the case of *Hohenzollern Actien Gesellschaft v. the City of London etc.*, (1886): "all disputes" meant all disputes that might arise between the parties in consequence of the contract having been entered into.

2.2 What kind of dispute can be resolved by arbitrators?

Various arbitration authorities have held that particular arbitration clauses apply only if there is a "dispute", and that arbitration is impossible unless this requirement is satisfied. See, for example, the case *Fletcher Constr. NZ & South Pacific Ltd v. Kiwi Co-operative Dairies Ltd*, (1998) which provided: "if there is no good faith defense, then parties cannot refer to arbitration" or the case of *Bank America Trust and Banking Corp. v. Trans-Word Telecom Holdings Ltd*, XXV Y.B. Comm. (2000) where it was found that the stay of litigation was only required if there was a "real and genuine dispute" to be referred to arbitration.

"A dispute exists if there is a claim by one party against another", the drafter of the English Arbitration Act, 1996 said. As stated in *Hayter v. Nelson Home Ins. Co.* [1990], "an arbitrator's very function is to decide whether or not there is a good defense to the claimant's claims."

If there is a difference in interpretation of the facts, the law or the application of the law to facts by the parties then it can be qualified as a "dispute", whether or not their difference implies money or other claims. The author Christoph Schreuer observed in the article "What is a Legal Dispute": "the absence of an apparent difference between the parties will not negate the existence of a dispute." For example, one party seeks the specific performance of the contract, the other party recognizes it but does not take any steps to actually perform. Such situation could be regarded as a dispute between the parties. In *AGIP v. Congo* (Award of 30 November 1979, 1 ICSID Reports 306), "the Government had expropriated the Claimant's assets without compensation in violation of a prior agreement. Before the ICSID tribunal, the Government declared that there was no longer any dispute since it had recognized the principle of compensation. In fact, the Claimant did not receive any compensation. The Tribunal found that the declarations made by the Government were so lacking in precision that the continuing of the existence of the dispute was no doubt."

If there is no dispute the efficiency of arbitration as well as of litigation is very likely to be zero. One US case involved the *Automobile Insurance Co. of Hartford and Electrolux Home Products Inc.* where Electrolux agreed to pay money to settle the case without admitting liability, yet Hartford still wanted to go forward. "A federal judge in Buffalo said this week that he will not have his time wasted with a trial where the jury would have nothing to resolve." "Hartford is correct that the Court cannot force it to accept Electrolux's offer, but neither can Hartford force this court to waste its time trying a case that is effectively in default," Western District Judge Richard J. Arcara said, and he granted Electrolux's motion to dismiss for lack of subject matter jurisdiction since, with the

offer to pay the full demand, there was no live controversy ripe for litigation.

In the context of investment treaties it is quite common for arbitration clauses to encompass disputes regarding treaty's interpretation. Thus, the arbitration clause in the US - Argentine Republic BIT which entered into force on October 20, 1994, provides: "any dispute between the parties concerning the interpretation or application of the Treaty which is not resolved through consultations or other diplomatic channels, shall be submitted, upon the request of either party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law..."

2.3 Is there a dispute in this case?

In this case, the majority of scholars and practitioners whose comments we received suppose that there must be a dispute between the parties as regards the interpretation of the contract's clauses in respect of their rights and obligations, otherwise why would the parties request arbitration for something that is already clear? However, from the publicly available report, we cannot come to the same conclusion. An interesting fact should be taken into account that in the case "both parties referred to arbitration" Usually it is just one party that initiates the proceedings. If both parties agree that they need certain clarifications, then, as one of the lawyers said: "it is better to look for other methods to avoid paying arbitration fees and to avoid the risk of seeing the award set aside." Apparently if the parties fear that they may disagree with the scope of their rights and obligations under the contract in the future, it is better to seek for a declaratory judgment because usually a judge has power to interpret the law. It is not that common for an arbitrator to interpret the parties' contract without a dispute between them.

3. Declaratory awards

Generally speaking, the parties can request arbitration for whichever reason they wish in their arbitration agreement. Moreover, by going together to arbitration and asking for clarification of the rights and obligations under the contract the parties together conclude a new contract, irrespective of what the arbitration clause in their contract says. Though, in the majority of arbitration cases the claimants seek money which is called "monetary relief or damages", "declaratory reliefs" are still possible.

As noted by one of the arbitration experts: "The ICC handles arbitrations all over the world involving declaratory matters, such as determining the rights and obligations under a contract. In addition, some parties who are able to settle a dispute or come to an agreement on certain issues may ask the arbitrators to convert their agreement into an award in order to make it enforceable." Of course, declaratory awards usually involve disputes, but if there is no dispute, it means the tribunal does not have jurisdiction, and cannot issue an award.

An ICC tribunal in Paris relied on principles of French law of civil procedure in order to determine whether a request for a declaratory award was admissible. In the award of 1999 in Case N°9617 (Clunet 2005, 1291) it explained: "a declaratory action is admissible if two conditions are met: the claimant must establish that there is a grave and serious threat creating a present disturbance and the requested declaration must be such that it affords to the claimant not merely a purely theoretical satisfaction but a concrete and specific usefulness..." The similar view can be found in the report of the London Court of International Arbitration (LCIA) which provided that: "declaratory awards are commonly availa-

ble. There is no doubt that arbitrators may make declaratory awards, while restrictions also accompany with them."

Thus, review of the law of the seat of arbitration, the law of enforcement, the law governing the arbitration agreement, substantive law governing the contract, national procedural law, has to be conducted as for the question whether the tribunal actually can exercise that "agreed" declaratory power. If it is not authorized to do so, the award can be easily set aside or its enforcement might be refused. As mentioned by one of the US practitioners, "Even though there is a very liberal approach to the freedom of contract both in and outside the United States, there are still limits to arbitrability or what can be the subject of an arbitration. In the US there are recent Supreme Court decisions that for various reasons limit arbitrability pursuant to agreement and also state statutes."

4. Conclusion

Due to the limited information available from public sources regarding the case it is hard to make an objective conclusion in its respect. However, it still seems that there must have been some disagreement between the parties regarding their rights and obligations under the agreement. Otherwise, it would have been senseless for them to spend their time, efforts and money on issues that do not need any clarifications.

Please follow this discussion at http://www.linkedin.com/groups/Is-it-possible-arbitration-without-3424020.S.64948247?view=&srctype=discussedNews&gid=3424020&item=64948247&type=member&trk=eml-anet_dig-b_pd-ttl-cn&ut=0Yv8w3BLK6p4U1

Book review - Arbitragem Comercial Internacional: A Convenção de Nova Iorque e o Direito Brasileiro

by Leticia Barbosa e Silva Abdalla and Ana Gerda de Borja



Arnoldo Wald and Selma Ferreira Lemes have just published an excellent book on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") of 10 June 1958, ratified by Brazil through Decree nº 4.311 of 23 July 2002.

With a Foreword from Theophilo de Azevedo Santos, President of the ICC Brazilian Committee, and a special Note from John Beechey, President of ICC International Court of Arbitration, the work focuses on the application of the New York

Convention in Brazil and presents twelve chapters, whose authors are renowned Brazilian arbitration experts.

In the introductory chapter, Paulo Borba Casella addresses Brazil's ratification of the New York Convention, the internationalisation of law, and the relationship between interna-



tional and domestic law. According to him, the “belated but opportune” ratification of the Convention, which today has more than 140 State parties, represents an irreversible internationalisation of law and strengthens Brazil's participation in what has become “the” international system of recognition and enforcement of arbitral awards.

Nadia de Araújo and Lidia Spitz discuss the New York Convention's scope of application in the second chapter of the book. They underline that, besides the recognition and enforcement of foreign arbitral awards, the Convention applies to the recognition and enforcement of arbitration agreements on the basis of Article II.

Arnoldo Wald deals with the formal requirements applying to arbitration agreements under Articles II(1) and II(2) of the New York Convention. He examines the *travaux préparatoires* of these articles as well as their interpretation in comparative law, concluding that the requirement that the arbitration agreement be “in writing” has become more flexible within time. Furthermore, he looks at Brazilian legislation and case decisions, which, except for adhesion contracts, do not require the parties' signature in arbitration agreements. Finally, he proposes an amendment to Article 4(1) of the Brazilian Arbitration Act in order to confirm acceptance of arbitration agreements incorporated by reference.

Pedro Batista Martins studies Article II(3) of the New York Convention, in particular, the effects of the arbitration agreement, distinguishing nullity from inoperability and unenforceability. The author stresses that Article II(3) has to be interpreted in light of the principle of *Kompetenz-Kompetenz*, the principle of separability of the arbitration agreement, and the principle of *pacta sunt servanda*.

Luiz Claudio Aboim considers in his Chapter the application of Article III of the New York Convention, focusing on the national courts' obligation not to set substantially more onerous conditions on recognition or enforcement of arbitral award to which the Convention applies than those imposed on the recognition and enforcement of domestic arbitral awards. Further, he examines certain particularities of Brazilian courts, analysing, in particular, the procedure of requesting the recognition of an award in Brazil, and constitutional appeals before the Brazilian Supreme Federal Court (“STF”) against a decision by the Brazilian Superior Court of Justice (“STJ”) in recognition proceedings. He concludes by proposing the use of interim measures in order to avoid delays in those proceedings and the reform of the STJ Internal Rules.

In turn, Carmen Tiburcio and Adriana Noemi Pucci examine Article IV of the New York Convention and the consequences of the parties' failure to supply certain indispensable documents with their request for recognition of an award. They underline the need for certified translation of the arbitral award and the arbitration agreement, in case they are not in Portuguese, as well as dwell upon the requirement for the arbitration agreement to be “in writing”. Finally, they compare Article IV with similar rules under other treaties.

Four arbitration experts analyse Article V of the New York Convention and the grounds for non-recognition and refusal of enforcement of foreign arbitral awards. Eduardo Grebler, José Emilio Nunes Pinto and Lauro Gama Jr. study in details the grounds that have to be raised by the party

which objects to recognition – Article V(1) – while Eduardo Damião Gonçalves examines the grounds for refusal of recognition and enforcement which national courts can raise *ex officio* – Article V(2).

Rodrigo Garcia da Fonseca concentrates on the possibility of suspending or delaying recognition proceedings on the ground of Article VI of the New York Convention. In his view, this rule represents a compromise between the principle whereby the arbitral award must be self-executing, on the one hand, and the principle according to which parties are entitled to challenge the arbitral award and present their case before national courts, on the other.

Finally, Adriana Braghetta and Selma Ferreira Lemes write about the maximum efficiency rule under Article VII(1) of the New York Convention, in light of its *travaux préparatoires* and national courts' decisions.

The last pages of the book contain a useful selection of bibliography and STJ's leading cases on the subject.

This work represents a Brazilian approach to the New York Convention as it stands today, with a special focus on the dynamic evolution of arbitration in the domestic and international arenas.

The book is available for purchase at <http://www.livrariasaraiva.com.br/produto/3453676>

KLRCA Appoints Advisory Board

The Kuala Lumpur Regional Centre of Arbitration (KLRCA) recently announced the appointment of an Advisory Board that will be chaired by the Attorney-General of Malaysia, Tan Sri Abdul Gani Patail.

The appointment of the Board was made by the Minister in the Prime Minister's Department of Malaysia, Datuk Seri Mohamed Nazri Aziz. The Board will advise KLRCA on its strategic direction in its aim to be the preferred arbitration centre in the Asia Pacific region as well as in positioning Malaysia as an arbitration-friendly destination.

Aside from Tan Sri Gani, the Board will consist of renowned and respected Malaysian and international arbitrators. They are YBhg Tan Sri Dato' Cecil Abraham, Senior Partner, Messrs Zul Rafique & Partners; Mr Vinayak P Pradhan, Senior Dispute Resolution Partner of Skrine, Vice President of the Chartered Institute of Arbitrators, UK and Vice Chair of the International Chamber of Commerce Commission on Arbitration; Professor Philip Yang, Honorary Chairman of the Hong Kong International Arbitration Centre; Professor Robert Volterra, Messrs Volterra Fietta, UK; and Mr Sumeet Kachwaha, Partner, Messrs Kachwaha & Partners, India.

“We are delighted and honoured to have such a distinguished Advisory Board. With the direction given by the Board and the full support of the legal fraternity, KLRCA will be spurred further to drive the dispute resolution process in Malaysia to world class standards,” said the Director of KLRCA, Sundra Rajoo.

AIA Recommends to attend

The World Jurist Association's 24th Biennial Congress on the Law of the World

National Legal Cultures in a Globalized World

Prague, Czech Republic - October 23 – 28, 2011



The World Jurist Association invites you to join them for this year's Congress where they will bring together lawyers, judges, law professors and business professionals from around the world to discuss the directions, problems, challenges, and hopes for both domestic and international law.

Delegates will have the opportunity to attend numerous panel sessions covering a range of legal topics under the theme of *National Legal Cultures in a Globalized World*, as well as traditional events such as

World Law Day
International Demonstration Trial
Embassy Night

with receptions hosted by Ambassadors including Belgium, Canada, Romania, Austria China & The Philippines

Enjoy the culture and history of the Czech Republic by attending our social and cultural events including an excursion to the Pilsner Brewery, and a wine tasting of the famous Moravian variety wines. With over 1,700 cultural monuments, castles, ancient churches and palaces, the city of Prague is guaranteed to be an enjoyable experience.

To attend, please contact us at wja@worldjurist.org
Visit our website www.worldjurist.org for more information.

We hope to see you in Prague!
Speaking Opportunities Still Available!

Y-ICCA event in Buenos Aires

On 15 September, 2011 in Buenos Aires, Y-ICCA will organize an event devoted to arbitration claims under treaties and contracts

(http://www.arbitration-icca.org/YoungICCA/EventPages/YoungICCA_Buenos_Aires_2011.html).

That same day, in the afternoon, ICC's YAF and other arbitration organizations (Y-ICCA, LCIA's YIAG, ICDR's Y&I, CEA's CEA-40, ALArb and ILdeA) invite you to a seminar featuring great international speakers devoted to the production of evidence in international arbitration, which will take place at Universidad de Buenos Aires as a prologue to the IV Competencia Internacional de Arbitraje Comercial.

We look forward to seeing you there!!! Please contact Diego Brian Gosis at dgosis@rjgabogados.com.ar with any doubts, comments, and to register for these events!

II International Congress on Mediation - Restorative Justice and TRAINING, Lisbon 19 -22 October 2011

The Organizing Committee of the II International Congress on Mediation – Restorative Justice, Lisbon: 20-22nd October 2011, reports you that you can find all the updated information about the Congress at <http://www.gral.mj.pt/home/noticia/id/504>.

We emphasize specifically the **TRAINING "Mediation: Future possibilities"**, given by Jean Schmitz, on the 19th October 2011, between 09.00h and 18.00h, on the Congress venue. You will find all the details at [http://www.gral.mj.pt/userfiles/TRAINING\(1\).pdf](http://www.gral.mj.pt/userfiles/TRAINING(1).pdf)

Concerned about the Costs of International Arbitration?

Book now for *The Costs of International Arbitration Conference 27-28 September, London.*

This lively and interactive conference will provide a unique opportunity to gain valuable data and expert commentary on which factors are driving up costs and how these can be reduced. It will analyse the findings of CI Arb's survey into the costs of international arbitration, providing first-hand data from international arbitrators and counsel worldwide.

Watch interviews with some of the conference speakers including Peter Rees QC FCIArb, Doug Jones AM FCIArb, John Wright FCIArb & David Brynmor Thomas MCI Arb talking about why they think it is important to examine costs and the key issues they plan to explore at the conference.

Speakers include leading international in-house counsel, lawyers, arbitrators and experts such as; Christoph Benedict, John Ellison, Clive Freedman, Teresa Giovannini, Katherine Gurun, David Howell, Martin Hunter, Thomas Martinussen, Carole Malinvaud, Gide Loyrette Nouel AARPI, Alexis Mouree, Doug Oles, Constantine Partasides, Wolfgang Peter & Robert Webb.

This conference is a must attend event for:

- * Practitioners in international arbitration
- * Corporate counsel
- * Chief Executives and Senior Managers
- * Legal, Commercial and Finance Directors
- * Lawyers acting for international trading corporations
- * Financial and Investment Advisers
- * Arbitral Institutions
- * Policy Makers and Advisers
- * Advisers to Governments and NGOs
- * Contract Drafters

[To book, visit the conference website.](#)