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A Path to Resources on International Commercial Arbitration 1980-1986

Joni T. Hiramoto

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A Path to Resources on International Commercial Arbitration 1980-1986

Joni T. Hiramoto†

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You are an American commercial party to a contract with a foreign corporation. The contract is for the manufacture and purchase of computerized widgets. The widgets are to be drawn to your specifications and, if they perform as envisioned, will revolutionize the canned cat food industry as we know it. The widgets arrive and are plugged in, but nothing happens. A dispute arises over whether the graphics boards for the widgets received were manufactured according to the specifications in your company's designs. The foreign corporation admits altering the design of the board, but claims that the fault is in the general design.

You are facing a long, expensive lawsuit whose outcome (thanks to judges who know nothing about computerized widgets, juries who know even less, and the possible involvement of foreign law) is uncertain. Could you have avoided this?

Thanks to recent developments in international commercial arbitration, you now have available, at the time of contracting, an opportunity to avoid the costly, slow, technology-averse judicial process. Arbitration offers numerous advantages over litigation. First, it is cheaper. Arbitration procedures are more informal, and require less paperwork and discovery, than litigation. Second, the hearings and procedures may be kept confidential, at the request of the parties. Thus, important trade secrets may remain under wraps. Third, the parties are, for the most part, in command of their collective destinies. Parties may choose the law that will govern their dispute, and may even fashion their own rules for procedure under that law. Thus, a party is not automatically subjected to unfamiliar foreign laws. The parties may select their arbitrators, or designate a neutral institution to make the selection.
for them. The parties may also designate the situs of the arbitration. Last, the parties involved in the dispute may be able to maintain ongoing business relations while the arbitration is proceeding. This is made possible by the relatively light demands the arbitration makes on the parties.

The disadvantages of arbitration stem from the informality and freedom of choice that mark its attractions. First, the lack of an extended discovery procedure may, under certain circumstances, work against one's favor. Second, the arbitral process is perceived to lack certain legal values. It is fast, but there is a sense that it lacks "rightness," or justice. It is contrary to the standard U.S. legal notion, embedded in our codes of civil procedure, which strives for justice in the procedural as much as in the substantive aspects of a dispute. Third, parties may end up in court anyway, challenging the enforceability of an arbitral award or the fairness of the arbitral procedure. Last, parties must go to greater lengths at the time of contracting to agree upon the provisions of their arbitral clauses.

Commentators note the increase in recourse to international commercial arbitration since the 1958 United Nations Convention on the Recognition and Enforcement of Arbitral Awards (hereinafter "the New York Convention"), and especially since the U.S. ratified it in 1970. The New York Convention provides the legal basis for the enforcement of most international commercial arbitral awards today. It provides for the mutual recognition and enforcement of awards and limits the defenses to confirmation of an award. The New York Convention applies to:

1. Awards made in the territory of a state other than the state where the recognition and enforcement of the award is sought, and
2. Arbitral awards not considered as domestic awards in the state where the recognition and enforcement are sought.

Article V of the New York Convention lists the specific types of defenses that may be brought against a motion made in a court for confirmation of an arbitral award. Most U.S. litigation concerning the New York Convention and 9 U.S.C. §§ 201-208 (where it is codified) turns on the judicial interpretation of these sections.

Much arbitration is administered by large, non-governmental arbitral institutions. These are organizations that rent out facilities and neutral, expert arbitrators to decide disputes. Additionally, local arbitral associations and chambers of commerce administer arbitration of smaller scale commercial disputes in many nations. These smaller institutions are often geared toward, or at least prepared to take on, international disputes. The major arbitral institutions are the American Arbitration Association (New York), the International Chamber of Commerce-Court of Arbitration (Paris), the International Centre for Settlement of Investment Disputes (Washington, D.C.), the Arbitration Institute of the Stockholm Chamber of Commerce (Stockholm), the Iran-United States Claims Tribunal (the Hague), and the London Court of International Arbitration (London). These institutions, along with many smaller arbitral organizations, schools for arbitration, research centers and
But here you are, stuck with useless widgets. Assuming you wish to know more about arbitral clauses, institutions and procedure for your next contract, you read on.

B. How to Use this Pathfinder

1. Scope of this Pathfinder

The purpose of this resource guide or pathfinder is to give the user a comprehensive list of resources available to assist in either academic or practical inquires. In view of several excellent bibliographies already compiled on the subject, covering roughly 1970-1980, see, for example, Laura Ferris Brown's bibliography on international commercial arbitration in Chapter VII, this pathfinder will concentrate on the period 1980-86. For earlier background material, consult the bibliographies contained in Chapter VII. The pathfinder includes references to classic treatises insofar as new editions of them have appeared during this time.

2. Structure of Pathfinder

This pathfinder is divided into four Sections.

Section One: Primary Materials

This lists references to the primary documents that are the bread and butter of an international arbitration in the United States or involving a party from the United States. Chapter I lists the major treaties to which the U.S. is a party and federal statutes that affect international arbitrations conducted in and sought to be enforced in the United States. Chapter II lists references for finding the in-house rules of some of the major arbitral institutions. Chapter III lays out U.S. judicial decisions interpreting the New York Convention and the Federal Arbitration Act.

Section Two: Secondary Materials

This section lists references to articles, books, and looseleaf services. Chapter IV on articles and Chapter V on books have special sections for introductory and background materials. Major treatises are included in the introductory sub-section of the chapter on books. "How To" guides are listed in special sub-sections entitled "Practice of International Arbitration." Articles or books dealing with specific defenses to the enforceability of arbitral awards are listed under "Awards."

Section Three: Past and Future Reference Materials

Chapter VII lists bibliographies, yearbooks and resources that provide references to specialized topics, or cover international arbitration generally up through 1979. Chapter VIII lists specialty journals that will enable the user to stay abreast of current developments in this field.
Section Four: Institutions and Resources
Chapter IX lists arbitral institutions, research centers, and information clearinghouses. Chapter X lists libraries that contain special resources on international commercial arbitration.

I. STATUTES AND TREATIES

A. The New York Convention


This agreement provides the legal basis for most international arbitration today. Currently 70 nations have signed it. The implementing legislation for the New York Convention is part of the Federal Arbitration Act.

Federal Arbitration Act.

B. Other Statutes and Treaties


Establishes the International Centre for Settlement of Investment Disputes (ICSID). Chapter Four, Articles 50-58, sets out the rules for arbitration, including grounds for annulment, and recognition and enforcement of an award.


Similar to New York Convention, but ratified by eight Latin American countries.

Also, numerous bilateral treaties of Friendship, Commerce and Navigation may contain clauses permitting the enforcement of arbitrations conducted abroad.


The Foreign Sovereign Immunities Act § 1605(a)(1) provides that a foreign state shall be denied immunity when, "the foreign state has waived its immunity either explicitly or by implication" (emphasis added). This
is the provision upon which the sovereign immunity defense to enforcement of an arbitral award turns.

Disputes on patent validity, infringement, or interference are made arbitrable under this federal statute. Relevant to international commercial arbitration in view of the fact that 40% of U.S. patents are issued to residents of foreign countries.

II. RULES OF MAJOR ARBITRATION INSTITUTIONS

American Arbitration Association

International Chamber of Commerce
Rules of Conciliation and Arbitration (1975) 1 Yearbook Commercial Arb. 157

London Court of International Arbitration

UNCITRAL
Model Law on International Commercial Arbitration 24 Intl Legal Materials 1302

For additional listings, see the latest Yearbook Commercial Arbitration, Consolidated Table of Contents, Part IIIA.

III. CASE LAW


1. Does Not Yield to Policy in Other Areas.

Landmark case wherein the Supreme Court held that claims involving securities (which are not arbitrable under U.S. law) may be arbitrable internationally where the contract is international. Signals decisive preference for judicial support of arbitration as means of dispute resolution. Note that in Wilko v. Swan, 346 U.S. 427 (1958), the Court had not allowed arbitration of an alleged violation of the Securities Act of 1933, on the ground that it would be against public policy.

Extended Sherk to include international antitrust arbitration.

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1. The Appendix of this issue of the International Tax & Business Lawyer reprints the rules for UNCITRAL, ICSID, AAA, ICC, and CMEA.

2. **Liberal Interpretation of What Constitutes a Foreign Award.**

*Bergeson v. Joseph Muller Corp.*, 710 F.2d 928 (2d Cir. 1983).

Held that Chapter 2 of the New York Convention empowers U.S. courts to enforce arbitral awards that are "not considered as domestic awards" under U.S. law, even if award is rendered in the U.S.

3. **Preliminary Matters:**

a. **Pre-Judgment Interest.**


Pre-judgment interest may be awarded by federal district court when asked to confirm awards under New York Convention.

b. **Pre-Arbitral Attachment of Award.**

Courts that refused to allow pre-arbitral award:

*Cooper v. Ateliers de la Motobécane S.A.*, 57 N.Y.2d 408 (1982).

Observed that pre-award attachment injects uncertainty into resolution process, which arbitration is designed to avoid. Also subjects foreign business to unfamiliar American laws, which it intended to avoid with the arbitration agreement.


Decisions upholding pre-arbitral attachment:


Court held that the New York Convention did not bar attachment pending arbitration. Criticizes the reasoning of *McCreary Tire & Rubber Co. v. CEAT S.p.A.*, 501 F.2d 1032 (3d Cir. 1974).

*Drys Shipping Corp. v. Freights*, 558 F.2d 1050 (2d Cir. 1977).

Court upheld *in rem* attachment on the theory that the arbitral agreement did not preclude traditional maritime procedure.


Court upheld maritime attachment under New York Convention as indistinguishable from attachment under state statutory and decisional law.


Maritime attachment upheld to give court jurisdiction to compel enforcement of arbitral provisions.

Court upheld pre-award attachment when defendant had created confusion as to correct corporate name and had caused previous order of attachment to be rendered against nonexistent corporation.


Pre-arbitral attachment upheld as compatible with New York Convention where basis of jurisdiction is maritime cause of action.

B. Defenses to Enforcement of Award

1. ARTICLE V(1) Express Defenses

a. Incapacity of Parties or Absence of Valid Arbitration Agreement.


Rejected defense to enforcement of award which argued that the arbitration provision violated Italian law requiring an odd number of arbitrators. Court held that the provision did not render agreement null and void under Article V(I) of the New York Convention.

b. Lack of Fair Opportunity to be Heard.

Parsons & Wittemore Overseas Co. v. Societe Generale de l'Industrie du Papier, 508 F.2d 969 (2d Cir. 1974).

Court rejected defense, advanced by the U.S., that arbitrators had violated due process by refusing to postpone a hearing because one witness could not be present. Recognized that arbitrators have a strong interest in maintaining a schedule to fulfill obligations to "parties, counsel and arbitrators scattered around the globe." 508 F.2d at 975.

c. Award Outside Scope of Arbitration.

Parsons & Wittemore Overseas Co. v. Societe Generale de l'Industrie du Papier, 508 F.2d 969 (2d Cir. 1974).

Court construed defense narrowly and created the presumption that the arbitral board did not, in fact, exceed its powers. Plaintiff Overseas claimed that arbitral board had no jurisdiction to award damages for loss of production where contract prohibited such damages. Court deferred to arbitral board and refused to reconstruct the contract in court.


Arbitrators awarded consequential damages despite contract's exclusion of such liability. Court found no action outside the scope of the arbitrator's authority.

See also,
I/S Stavborg v. National Metal Converters, Inc., 500 F.2d 424 (2d Cir. 1974). Court may overturn only if there is manifest disregard of law.

d. Improper Composition of Arbitral Tribunal/Improper Arbitral Procedure.

Imperial Ethiopian Govt. v. Baruch-Foster Corp., 535 F.2d 334 (5th Cir. 1976).

Baruch (an American corporation) asserted successfully that arbitrator, Prof. Rene David, was not impartial because twenty years earlier he had participated in drafting a new civil code for Ethiopia.


e. Award Not Yet Binding or Has Been Stayed.


Court examined the meaning of the "binding effect" of an award. The issue of a speaking award was under review in an Indian court. The court held: "The award will be considered 'binding' if no further recourse may be had to another arbitral tribunal. The fact that recourse may be had to a court of law does not prevent the award from being binding."

2. Article V(2)a: The Commercial Matters Reservation


Trial court held that it could not enforce arbitral award designed to afford compensation for an expropriation because the subject matter of the dispute was not "capable of settlement by arbitration under U.S. law." This decision was vacated by the Appeals Court, and was criticized in von Mehren, "International Arbitration Between States and Foreign Private Parties," 75 Am. J. Intl Law 476, 1981.

3. Article V(2)b: Public Policy Ground

Parsons & Wittemore Overseas Co. v. Societe Generale de l'Industrie du Papier, 508 F.2d 969 (2d Cir. 1974).

The court interpreted the public policy defense narrowly. Held that an action of arbitrators which may violate "national policy" should be distinguished from and not preclude enforcement for "public policy" reasons. 508 F.2d at 974.

Fotochrome Inc. v. Copal Co., 517 F.2d 512 (2d Cir. 1975).

The Court found no conflict between Bankruptcy Act and New York Convention that could justify nonenforcement of arbitration commenced
in Japan before bankruptcy proceedings were begun in the U.S. 517 F.2d at 516.


Public policy defense under Art. V(2)(b) of Convention only receivable when enforcement of award would violate one of the United States' "most basic notions of morality and justice." The policy against inconsistent testimony is not sufficient to invoke the defense.


The court acknowledged the viability of duress as grounds for upholding the public policy defense but held that the petitioner did not prove duress.

C. Sovereign Immunity


Contractual agreement that "any award, order or judgment pursuant to arbitration shall be [enforceable in any court in Israel or the U.S.]" operated as waiver of sovereign immunity. Court also upheld enforcement of express waiver of sovereign immunity which mentioned arbitration.


When foreign state or governmental entity is party to arbitration agreement, the agreement acts as an implicit waiver of sovereign immunity.

D. Reciprocity

Article XIV of the New York Convention provides that a "Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention." This is often interpreted to mean that a defense to enforcement may be based on the ground that arbitral awards rendered in certain states may be denied enforcement if that state expressly or in practice restricts the benefits of the Convention to its own citizens at the expense of foreign parties.


Court acknowledged the reciprocity bar to enforcement as a valid defense, but did not find that India's courts restrict the application of the New York Convention to benefit its own citizens at the expense of foreign parties.

See also,

Evidence of West Germany's declaration of enforcement of awards rendered under New York Convention sufficed to prove requisite reciprocity existed between West Germany and the U.S.

E. Federal Arbitration Act (FAA)

The FAA has generated general substantive law to be applied by state and federal courts.


Section 2 of FAA is of general application and pre-empts state laws in conflict with it. In enacting section 2, Congress declared a national policy favoring arbitration and withdrew the power of the states to require judicial resolution of claims which contracting parties had agreed to resolve by arbitration. Rejects interpretation of FAA which characterizes it as a procedural statute. The Court concluded that § 31512 of the California franchise investment law was in violation of the Supremacy Clause.


Held that the Arbitration Act creates a body of federal substantive law which was applicable in state and federal courts.


The Court held that the validity of the contract is a matter for the arbitral body, not a judge, to determine. Restricted the scope of judicial inquiry into arbitrability to examination of the arbitral clause alone. A court may not examine the rest of the contract to determine the validity of the arbitral clause. Not an international transaction in dispute, but a leading case in establishing deference to arbitral agreements.

1. FAA Defense to Enforcement: Interstate Commerce Requirement


Court acknowledged the defense that the contract did not involve interstate commerce, where claim for enforcement brought under federal and not state law.

2. Jurisdiction: Judicial Review by Agreement of the Parties


Court will review whether arbitrators' findings of fact are supportable by substantial evidence where the parties have agreed to this judicial exercise of authority even though it is beyond the power of the court granted by the Arbitration Act.
IV. ARTICLES

A. Introductions and Overviews

Discussion of the technicalities of ICSID arbitral processes, expanding recognition and authority, and quality of ICSID arbitrators.


Introduction to the ICC, its structure, function, internal procedures, and arbitral procedures.

Substantive introduction to the international commercial arbitration system, and the rise and importance of international commercial arbitration as an efficient substitute for national courts. Generous footnotes.

Basic introduction to the structure of the international arbitration system: organizations, statutes, case law.

Analysis of the importance and ramifications of the Mitsubishi decision, the Supreme Court decision that clarified the scope of Articles II and V of the New York Convention.


Description of services and facilities offered by American Arbitration Association.


From the Proceedings of the 76th Annual Meeting of the American Society of International Law.

Description of services offered by the CCIG. CCIG designates arbitrators at the request of parties. It is not a court of arbitration. Article includes text of CCIG directives.


Basic overview to international arbitration at pp. 58-67. Presents the advantages and disadvantages of choosing arbitration as the mechanism for dispute resolution. Examines the structure of the New York Convention, "the legal basis for enforcement of most international commercial arbitration awards."


B. Practice of International Arbitration

Suggests model clauses to facilitate consolidation of multiparty disputes.


Includes sample arbitration clauses for insertion in a subcontract for implementation of international projects.

Cautions parties entering into arbitration agreement to agree on certain procedural guidelines in advance. For example, the written submission of the claim and defense should follow the same format in form and structure, and the ground rules for the procedure to be used at the hearings and for submission of supporting documentary evidence should be clarified and confirmed in advance.

ICC cases demonstrate tendency to interpret force majeure clauses in a restrictive manner, similar to national courts.


Explains why a plea of sovereign immunity cannot be invoked as a bar to jurisdiction of an international arbitral tribunal.

Highlights and discusses the issues that arise at various stages of the arbitral process.

C. Specific Problems in International Commercial Arbitration


Legal and policy arguments criticizing consolidation as causing inefficiency and delay in the arbitral process.


Lynch, Mary K., "Conflict of Laws in Arbitration Agreements Between Developed and Developing Countries," 11 GA. J. INTL & COMP. L. 693, Fall 1981.

From the symposium on conflicts of law in contracts between developed and developing nations.


Corporate counsel for Klöckner replies to Jan Paulsson's earlier article in 1 J. INTL ARB. 145, March 1984.


Argument against extending Sherk doctrine to arbitrability of antitrust disputes. Written prior to U.S. Supreme Court decision in Mitsubishi v. Soler-Chrysler Plymouth.


Criticism of delocalized arbitration theory advanced by Jan Paulsson. Concludes that international commercial arbitration by the law of the forum state of the arbitration (lex loci arbitri) is justified if local judge limits the inquiry to ensure the integrity of the arbitral proceeding and the rights of third parties.


Discussion of the leading arbitration case on the duties of joint venture partners.


Draws on cases reported in the Yearbook of Commercial Arbitration. Calls for a "harmonized interpretation" of Article II by national courts. Suggests that courts give some precedential value to previous worldwide court decisions interpreting the New York Convention.


1. Awards


Hoellering, Michael F., "Interim Relief in Aid of International Commercial Arbitration," WISC. INTL L.J. 1, 1984. Notes that judicial awards of interim relief are compatible with arbitration, and that courts ought not to deny interim relief because parties have previously agreed to arbitrate disputes. From the 1984 symposium on transnational dispute resolution. Sponsored by the Wisconsin International Law Society.
Examines potential bases of authority for the enforcement of arbitral awards and looks to U.S. statutes and the Panama Treaty for statutory and treaty-based authority.


Discusses the pro-enforcement policy of U.S. courts under the New York Convention. Describes alternative enforcement mechanisms available to the courts, such as multilateral and bilateral treaties and common law principles of comity.

Examines various ways in which the law of the forum state influences the law selected by the parties. Pays special attention to English law and experience.

From the symposium on conflicts of law in contracts between developed and developing nations.

Surveys the issues involved in judicial allowance of provisional remedies. Discusses the various defenses to enforcement of the New York Convention and their effects on the availability of provisional remedies. Analyzes policy ramifications and suggests factors for judicial consideration in determining whether to grant provisional remedies. Suggests that federal courts allow provisional remedies.

The International Chamber of Commerce claims that compliance with most arbitral awards is voluntary. The author claims that this compliance is often the result of precautionary measures taken by parties and other factors which have brought legitimacy to the award in the losing parties' eyes and have, in fact, induced compliance. The author describes measures which may be taken to avoid common defenses to the enforcement of an arbitral award.
von Mehren, Robert B., "Enforcement of Arbitral Awards Under Conventions and U.S. Law," 9 YALE J. WORLD PUB. ORD. 343, Spring 1983. The author examines the framework of multilateral conventions and their usefulness in securing judicial enforcement of international arbitral awards. Discusses the American court treatment of defenses to enforcement and suggests drafting techniques to help parties avoid non-enforcement.


Note, "Express Defenses of New York Convention on Foreign Arbitral Awards," 5 N.Y.L. SCHOOL J. INTL. AND COMP. L. 103, 1984. Author discusses two situations where parties appealed to the courts for enforcement of an award. First reviews case in which parties sue in American courts to enforce foreign judgments, then examines defenses to enforcement of award.


2. Forum Selection


Effect of Arbitration Act of 1979 which was enacted to make London more attractive as a forum. The Act limited parties' right of appeal, and granted parties the possibility of agreeing to an exclusion of the right to appeal. Author notes how the Act streamlined the arbitration process and removed an element of uncertainty from arbitral proceedings.

Noles, Cindy, "Enforcement of Forum Selection Agreements in Contracts Between Unequal Parties," 11 GA. J. INTL & COMP. L. 693, Fall 1981. From the Symposium on conflicts of law in contracts between developed and developing nations.


3. Maritime Arbitration


4. Pre-arbitral Attachment


Author examines Cooper v. Ateliers de law Motobecane S.A., 442 N.E. 2d 1239 (N.Y. 1982).

Author advances the thesis that pre-award attachment is compatible with arbitration under the New York Convention. Examines the American courts' allowance of pre-award attachment in domestic cases and of maritime attachment in admiralty cases, and the U.S. policy in favor of ensuring the enforceability of arbitral awards in those cases. Suggests that the same policy applies to attachment in international commercial arbitration. Generously footnoted.

5. UNCITRAL Model Law


Analysis of the adequacy of ICC and UNCITRAL rules as applied to the Trans-Siberian pipeline dispute.

6. Regional or National Laws and Arbitral Processes


a. Australia


b. Brazil


c. Egypt

Practical guide, including appendix of fees and charges.

d. France


e. Germany

f. **Greece**


g. **India**


h. **Hong Kong**


i. **Italy**

Bernini, Giorgio, "Domestic and International Arbitration in Italy After the Legislative Reform," 5 PACE L. REV. 543, Spring 1985.


Ughi, Giovanni, "The Use of Arbitration Clauses in Governing Instruments of Corporate Entities as a Means of Settling Disputes Among Shareholders or Among Companies and Their Shareholders," 8 INTL BUS. LAW. 189, July-Aug. 1980.

j. **Oman**


k. **People's Republic of China (PRC)**


l. Spain


In English with summary in French.

m. Sweden


n. Switzerland


o. United Kingdom


V. Books

A. Introductions and Treatises


This and Pieter Sander's *Yearbook Commercial Arbitration* are the origins from which all research should emanate. Includes many primary documents accompanied by commentary. Especially helpful for a solid background in the following areas:

- Chap. IV: U.S. Arbitration Law in a Nutshell
- Chap. VI: The Laws and Rules and the Missing Link: A Uniform Arbitration Procedure

**B. Practice of International Arbitration**


A practical guide that introduces the reader to the role of the Commercial Court Committee, and the changes effective under the Act. Includes practice notes.


A practical guide for non-specialists. Includes model arbitration clauses in seven languages.
Booklet reviewing the main steps involved in London arbitration and noting the increase in London arbitrations since the passage of the 1979 Arbitration Act.

Practical handbook ("Chapter 1: How to Choose Arbitrators") combined with background material on current developments in the area. Includes section on the Iran-U.S. Claims Tribunal and numerous primary documents.


Specific Problems in International Commercial Arbitration
Includes section on international commercial arbitration as well as a variety of material on arbitration procedure in general.

Conclusions drawn from a survey of arbitrators, academicians, and business executives from thirty-six countries and four major arbitral institutions.

Includes Executive Orders, statutory materials, and case law dealing with American claims against Iran which arose after January 1981.

Comprehensive, rigorous examination of the arbitration process, theory, structure and organizations, law, and political ramifications from the agreement to the award. Includes index, full text of major treaties, and an up-to-date bibliography. Original edition in French.

An historical and theoretical approach to the topic. Good sections on sources of arbitration tradition in various regions of the world. Discussion on the impact of modern law on these early theoretical underpinnings and case studies.


Argues in favor of establishing an international arbitration tribunal to handle fiscal and tax disputes between governments.


Report of conference which examined the Model Law. Presents issues and summaries of seven working groups. 548 participants from around the world.


A collection of articles presented to Pieter Sanders for his 70th birthday. A potpourri of academic and practical subjects. Addresses a variety of jurisdictions.


Advocates a unification of judicial interpretation to improve the effects of the New York Convention, rather than a revision or supplementary protocol. Comprehensive and thoughtful.


General, theoretical treatment of the subject. A small booklet that reports the results of the First Annual Meeting of the Institute.
1. Maritime Arbitration


2. Regional or National Laws and Arbitral Processes


Practical guide to arbitration with parties from Middle Eastern or African nations.

The first comprehensive analysis of Middle Eastern commercial arbitration.


a. Australia


b. Austria

Guide to domestic and international arbitration in Austria in light of 1983 Austrian amendments.

c. Canada


d. France


e. India


f. Japan


g. Korea


h. Norway


i. Soviet Union


Examines arbitral conventions, bilateral treaties of the USSR, and measures taken by the socialist countries that comprise the Council of Mutual Economic Assistance (CMEA). In Russian, with table of contents in English.


j. Sweden


k. Switzerland


Compilation of many primary documents—rules, excerpts from bilateral treaties, Zurich statutory provisions—on arbitration. Includes a bibliography.

**D. Congresses and Conferences**

Bermuda International Arbitration Conference (2nd), Bermuda, April 19-22, 1982. Sponsored by the AAA, the Arbitrators’ Institute of Canada, and the Chartered Institute of Arbitrators.


International Commercial Arbitration Symposium, Stockholm, March 4-5, 1982. Sponsored by the Stockholm Chamber of Commerce, the AAA, the USSR Chamber of Commerce and Industry, and the Secretariat of UNCITRAL.


Four working groups: “Conventions, Treaties, and Agreements Among Institutions,” “Resolving Disputes Involving Commodities and Raw Materials,” “New Methods for Resolving International Commercial Disputes,” and “Developments in Maritime Arbitration.”


Three working groups: “Arbitration and Business,” “Arbitration and the Courts,” and “Arbitration and Technology.” A list of the papers may be found in *4 Yearbook Commercial Arbitration* 391, 1979.

Society of Maritime Arbitrators, Fifth International Congress of Maritime Arbitrators, held in New York City, October 20-23, 1981.
VI. LOOSELEAF SERVICES

Includes decisions rendered by the USSR Foreign Trade Arbitration Commission.

Part IV deals with the "Arbitral Settlement of Transnational Contract Disputes."

Includes reports of seventy-two decisions rendered by courts interpreting the New York Convention.

Much of the material pertains to international commercial arbitration in general and is not exclusively addressed to licensing issues.


Arbitration statutes, articles, and national reports organized according to country. Contains substantially the same information as the *Yearbook of Commercial Arbitration*. While the *Yearbook* is published annually, this resource is updated more frequently and gathers all reports for one topic together for convenient reference. It is thus easier to use than the *Yearbook*, but it requires periodic maintenance.

One of a trilogy of binders which comprise a set. The other two, edited by Butler, W., and Gaja, G., are also listed in this section.

This is the looseleaf edition of Dr. Martin Domke's treatise on arbitration.
VII. Bibliographies, References and Yearbooks


This is the Annual Report of the AAA General Counsel. Digests of ninety-four cases, substantial section on international arbitration that examines case law, foreign legislation, and (in Section 4) current developments in international commercial arbitration.


Brown, Laura F. “Recent Acquisitions of the Eastman Library,” *ARB. J.* 19—.

Regular column that includes special listings for international commercial arbitration.


Includes book reviews, a list of foreign periodicals, and articles (some in English).


This is where all research should begin. A major source of primary materials. Each yearbook contains cumulative tables of contents for each section.

Part I: National Reports. In-depth examination of individual countries’ arbitral procedures, laws, and practice.

Part II: Arbitral Awards. Reports of decisions by major arbitral institutions (e.g., ICC, ICSID, etc.) and by national courts.

Part III: Arbitral Rules of Major Arbitral Institutions. Includes updates on amendments and changes in rules. Also, a special section surveying awards of the Iran-U.S. Claims Tribunal.


Part V: Court Decisions on the New York Convention. Reports of decisions of national courts from countries around the globe. Not always the full text of decisions.

Part VI: Articles on Arbitration.


———. "Books Received," J. INTL ARB. 1984—. Quarterly column with detailed summaries.

VIII. **Specialty Journals**

*Arbitration Journal*

Published by the American Arbitration Association

140 West 51st Street

New York, NY 10020

Quarterly.

*Journal of International Arbitration*

P.O. Box 93

1211 Geneva 11

Switzerland

Quarterly. In addition to academic and practice-oriented articles, it contains news of upcoming conferences, news about new programs being established, and comments on recent awards and court cases from various nations.

*C. The Maritime Advisor*

One Greenwich Plaza

Greenwich, CN 06830

Monthly. Contains comprehensive summaries of arbitral awards rendered in maritime cases.
Additional listing of specialty journals may be found in the consolidated index of the *Yearbook Commercial Arbitration*, Bibliography Part III: Journals on Arbitration.

**IX. ASSOCIATIONS AND ORGANIZATIONS**

**A. International Commercial Arbitration**

1. **Australia**

Institute of Arbitrators
26 Brisbane Avenue Barton ACT 2600
P.O. Box E 139
Canberra Act 2600 Australia
Ph: (062) 73-12-22

2. **Austria**

Arbitration Center of Federal Economic Chamber
Stubenring 12, A1010 Vienna
Ph: (0222) 52-15-11

3. **Belgium**

Benelux Economic Union (BEU)
Rue de la Renence, 39
B-1000 Brussels, Belgium
Ph: (2) 513-86-80
E.D.J. Kruitbosch, Sec. Gen.


Center for Study and Practice of National and International Arbitration (Centre D'Etude et de la Pratique d'Arbitrage National et International)
8, Rue des Sols
1000 Brussels, Belgium
Ph: (2) 512-65-41
Organizes congresses and seminars. Administers national and international arbitrations. Designates Belgian arbitrators for the International Chamber of Commerce (ICC).

4. Canada

Arbitrator's Institute of Canada, Inc.
234 Ehlinston Ave. East, Suite 411
Toronto, Ontario M4P 1K5
Ph: (416) 487-8433

Canadian Arbitration, Conciliation and Amicable Composition Centre. The Institute for International Cooperation
University of Ottawa
Ottawa, KIN 6N5
Ph: (613) 232-1476

5. Colombia

Bogota Chamber of Commerce Commercial Arbitration and Mediation Center (Camara de Comercia de Bogota, Centro de Arbitraje y Conciliacion Mercantiles)
Carrera 9a, No. 16-21
Piso 40 Bogota, Colombia
Ph: 421618 and 349112

6. Denmark

Danish Institute of Arbitration
Vester Farimagsgade 29
DK—1606 Copenhagen Denmark
Ph: (01) 15-88-54
Administers national and international arbitrations.
Appointing authority under UNCITRAL Rules.

7. **Egypt**

AALCC Regional Center for Commercial Arbitration at Cairo
c/o Egyptian Society of International Law
16 Ramses Street
Cairo, Egypt

Administers international commercial arbitrations including *ad hoc* arbitrations and investment disputes. Promotes arbitration in the region. Cooperates with International Center for the Settlement of Investment Disputes (ICSID).


8. **France**

French Arbitration Committee (Comité Francais de L'Arbitrage)
5 rue de Stockholm
75008 Paris, France
Ph: (1) 293-3130
Promotes arbitration in France.
Publishes: *Revue de l'arbitrage* (French, quarterly).

Franco-Arab Chamber of Commerce
193 Rue Lauriston
75116 Paris, France
Ph: (1) 553-2012
Administers arbitration and conciliation.
Publishes: Bimonthly bulletin, Arabic and French.

Institute of International Business Law and Practice (Correspondence address:)
38 Cours Albert 1er
75008 Paris France
Carl Henrik Winquist, Chairman Exec. Committee
Established in 1978 by the ICC to promote the publication of works on the law and practice of international trade. Intended to reach both practitioners and academicians.

International Chamber of Commerce (ICC). See A(14) *infra*.

Paris Maritime Arbitration Chamber  See B(1) *infra*.

9. **German Democratic Republic**

Arbitration Court at the Chamber of Foreign Trade of the GDR (Schiedsgericht bei der Kammer für Aussenhandel der DDR)
10. Germany, Federal Republic of

Arbitration Court at the Hamburg Chamber of Commerce (Schiedsgericht der Handelskammer Hamburg)

Adolphsplatz 1
D-2000 Hamburg 11 Federal Republic of Germany
Ph: (040) 36-13-81
Designates arbitrators, administers and assists in arbitration, sometimes for the Hamburg Friendly Arbitration (at the same address). Cooperates with international organizations.

German Arbitration Committee (Deutscher Ausschuss für Schiedsgerichtswesen)
Adenauerallee 148
P.O. Box 1446
D-5300 Bonn 1 Federal Republic of Germany
Ph: (0228) 10-43-28
Administers both national and international commercial disputes.

11. Hong Kong

Hong Kong General Chamber of Commerce Arbitration Committee
Swire House, 9th floor
Chater Road Hong Kong
Ph: (5) 23-71-77
Administers international commercial arbitration.
Rules: Memorandum and Articles of Association and By-Laws, (pp. 24-44), November 4, 1976. Available in English.

12. India

Indian Council of Arbitration (CA)
Federation House
New Delhi 110001 India
Ph: 38-88-15
Administers national and international arbitration. Also aids conciliation of disputes.
Publishes: ICA Arbitration Quarterly (English).

13. International Centre for Settlement of Investment Disputes (ICSID)
1818 “H” Street, NW
Washington, D.C. 20433
Ph: (202) 477-1234
Ibrahim F.I. Shihata, Sec. Gen.
Annual Administrative Council
Publishes: News From ICSID (biannually in English); ICSID Review—Foreign Investment Law Journal (semiannual in English beginning in 1986).

Court of Arbitration
38, Cours Albert 1er
75008 Paris France
Ph: (1) 261-85-97
Michel Gaudet, Chairman
Tila Maria de Hancock, Dir.
Supervises system of ad hoc tribunals for arbitration of business disputes. Does not perform arbitral functions. The Court appoints or confirms the appointment of arbitrators, fixes the amount parties must deposit to cover cost of arbitration, fixes place of arbitration unless agreed to by parties. Conciliation offered as an optional procedure. ICC was founded in 1919. The Court was established in 1923. Administers fifty-six national committees whose members are drawn from national organizations and enterprises that are ICC members.
Available in French, English, German, Spanish, and Arabic.

15. Italy

Italian Arbitration Association (Associazione Italiana Per L'Arbitrato)
Via XX Settembre 5
00187 Rome, Italy
Ph: (6) 474-3594
Administers national and international arbitration. Appointing authority under UNCITRAL Rules.
Publishes: Rassegna dell'Arbitrato (Mainly in Italian, quarterly).

International Council for Commercial Arbitration (ICCA)
Correspondence address:
Dr. Mauro Ferrante, Sec. Gen.
c/o Italian Association of Arbitration
Via XX Settembre 5 00187 Rome, Italy
Ph: (6) 462-438
Pieter Sanders, Pres.
Biennial Symposium: May 6-9 1986, New York City
Membership active in arbitration organizations. Encourages the development of international commercial arbitration and cooperation with UN organizations and other groups. Founded in 1972. Formerly (1975) the International Committee for Commercial Arbitration. Sponsored project to refine and develop UNCITRAL model law. Membership: thirty-six.

16. Japan

Japan Commercial Arbitration Association
2-2 Marunouchi 3-chome
Chiyoda-ku, Tokyo Japan
Ph: (03) 214-06-46
Administers arbitrations, conciliations, and mediations, both national and international. Appointing authority under the UNCITRAL Rules.
Publishes: JCA Journal (Japanese, monthly); JCA Quarterly (English).

Japan Shipping Exchange, Inc. See B(2) infra.

17. Korea

Korean Commercial Arbitration Board
World Trade Center
18. **Malaysia**

AALCC Regional Centre for Arbitration at Kuala Lumpur
576 Japan Taming Sari
Kuala Lumpur Malaysia
Ph: 91-00-22

19. **The Netherlands**

Iran-United States Claims Tribunal
Parkweg 13
2585 JH The Hague, Netherlands
Ph: 31-70-52-00-34
Established in the Hague in 1981. Main function is deciding international commercial claims.

Netherlands Arbitration Institute
Oppert 34
3011 HV Rotterdam Correspondence address:
P.O. Box 22105
3303 DC Rotterdam, Netherlands
Ph: (10) 11-02-80
Administers national and international commercial arbitration.
Appointing authority under UNCITRAL Rules.
Publishes: *Tijdschrift voor Arbitrage*, (Dutch, bimonthly).

20. **Norway**

Arbitration Institute of the Oslo Chamber of Commerce
Drammensveien 30
0255 Oslo 2 Norway
  Ph: (02) 563-620
  Administers national and international arbitrations. Provides education and consultation services. Appointing authority under the UNCITRAL Rules.

21. Pakistan

Commercial Arbitration Tribunal Federation of Pakistan Chambers of Commerce and Industry
Share-a-Firdousi, Main Clifton
Karachi-6 Pakistan
  Ph: 53-2179
  Determination, settlement, and adjustment of international commercial disputes. Joint arbitration clauses with the Japan Commercial Arbitration Association (JCA) and the American Arbitration Association (AAA).

22. People's Republic of China (PRC)

Foreign Economic and Trade Arbitration Commission China Council for the Promotion of International Trade
4 Tai Ping Chiao Street
Beijing PRC
  Ph: 66-52-12
  Administers disputes arising from international trade and joint ventures.
  Available in Chinese and English.

Maritime Arbitration Chamber. See B(6) infra.

23. Poland

Arbitration Court, Polish Chamber of Foreign Trade
Trebacka 4
00-074 Warsaw
P.O. Box 361
Poland
  Ph: (22) 26-02-21
  Administers international arbitrations. Maintains education and training services.
International Court of Arbitration for Marine and Inland Navigation, Gdynia. See B(7) infra.

24. Spain

Spanish Arbitration Association (Asociacion Española de Arbitraje)
Plaza San Amaro 1
Madrid 20 Spain
Ph: (1) 270-32-32
Administers national and international arbitration. Sponsors doctorate course at the Law Faculty of Madrid University.
Organizes seminars and lectures.
Publishes: Boletin (Spanish, biannual).

Spanish Court of Arbitration (Corte Española de Arbitraje)
Claudio Coello 19-17
Madrid 20 Spain
Ph: (1) 275-34-00
Administers national and international commercial arbitration.
Organizes seminars, workshops, lectures, etc.
Publishes: Anuario de la Corte Española de Arbitraje (Spanish, annual).
Monographs on international and foreign commercial arbitration.

25. Sweden

Arbitration Institute of Stockholm Chamber of Commerce
P.O. Box 16050, S-103
22 Stockholm 16, Sweden
Ph: (08) 23-12-00
Administers arbitrations, both national and international, but does not adjudicate. Appoints one arbitrator unless parties agree to have three or more arbitrators. If parties have three or more arbitrators, each party appoints an equal number of arbitrators and the Institute appoints an arbitrator to chair the panel. Active since 1976.

26. Switzerland

Swiss Arbitration Association (Association Suisse de l'Arbitrage)
c/o Association Suisse des Banquiers
P.O. Box 4182
4002 Basel, Switzerland
Ph: (61) 23-58-88
Promotes national and international arbitration. Maintains relations with international organizations. Information clearinghouse for members.
Publishes: *Bulletin* (quarterly).

Geneva Chamber of Commerce and Industry (CCIG)
4 Boulevard du Théâtre
1204 Geneva, Switzerland
Ph: (022) 21-53-33

Janine Uzan-Spira, Sec.

Sole function is to appoint arbitrators at the request of a party. Not an arbitration court.

Rules: June 1, 1980. In French, German, and English.

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27. **United Kingdom**

Centre for Commercial Law Studies, School of International Arbitration
Queen Mary College
University of London
London E1 4NS England

Prof. R.M. Goode, Dir.

Offers a one-year, full-time course in arbitration law and practice for the Master of Laws degree. Established in 1985. Intended primarily for postgraduate lawyers but hopes to develop course for scientists and engineers as well.

Chartered Institute of Arbitrators
69-75 Cannon Street
London EC4N 5BH England
Ph: (01) 236-87-61

Maintains international panel of arbitrators. Organizes seminars and congresses, and trains arbitrators.

Administers arbitration through London Court of International Arbitration, located at same address.

Publishes: *Arbitration* (quarterly).


International Bar Association (IBA), Business Law Section, Committee on Procedures for Settling Disputes
2 Harewood Pl.
Hanover Square
London WIR 2HB England

Madeline May, Exec. Dir.

Conventions: 1986 Sept. 14-19 New York City
1988 Sept. 14-19 Buenos Aires

Federation of national bar associations and individual members of the legal profession. Promotes uniformity in appropriate fields of the law, and the legal aspects of principles and aims of the United Nations.
Publishes: *International Business Lawyer* (11/yr.).
*International Legal Practitioner* (quarterly).
Also numerous books on commercial topics.

London Court of International Arbitration (LCIA)
69-75 Cannon Street
London EC4N 5BH England
Ph: (01) 236-87-61
Jointly controlled by City of London, London Chamber of Commerce and Industry, and Chartered Institute of Arbitrators.

London Maritime Arbitrators Association. See B(3) *infra*.

28. United States

American Arbitration Association (AAA)
140 West 51st Street
New York, NY 10020
Ph: (212) 484-4000
Robert Coulson, Pres.
Annual Spring Meeting, New York City.
Provides administrative services for arbitrating, negotiating disputes, and administration of elections. Maintains panels of arbitrators and mediators for referral. Conducts workshops, seminars, and conferences.
Private, non-profit corporation.
Active since 1926. Staff of 450.
*Arbitration Times* (quarterly).
*Lawyer's Arbitration Letters & Digest of Court Decisions.*
*Newsletters of the World Arbitration Institute.*
Affiliated with the Inter-American Commercial Arbitration Comm.

Inter-American Commercial Arbitration Committee (IACAC)
1889 "F" Street, NW Rm 860-D
Washington, D.C. 20006
Ph: (202) 293-1455
Charles R. Norberg, Dir. Gen.
Next biennial meeting: 1987
Members are commercial parties, lawyers, investors, etc., interested in trade in twenty-four American countries. Negotiates arbitration or adjustment of international trade controversies.
National Academy of Arbitrators
Office of Secretary, Graduate School of Business Administration
University of Michigan
Ann Arbor, MI 49109
Ph: (313) 763-9714
Dallas L. Jones, Sec.-Treas.
Society of Maritime Arbitrators. See B(4) infra.

World Arbitration Institute
140 West 51st Street
New York, NY 10020
Ph: (212) 484-4117
Rosabel E. Everard Goodman, Dir.

29. Union of Soviet Socialist Republics (USSR)

Foreign Trade Arbitration Commission, USSR Chamber of Commerce and Industry
6 Kuibyshev Street
101000 Moscow, USSR
Ph: 221-54-37
Publishes: Merchant Shipping and Maritime Law (Russian).
Maritime Arbitration Commission See B(5) infra.

B. Maritime Arbitral Associations.

1. France

Paris Maritime Arbitration Chamber (Chambre Arbitrale Maritime De Paris)
73, Boulevard Haussmann
75008 Paris, France
Ph: (1) 704-53-41
Secretariat: 18, rue du Général Appart
75116 Paris, France
Administers maritime arbitration.

2. Japan

The Japan Shipping Exchange, Inc.
Mitsui Rokugokan, No. 8
Muromachi 2-chome, Nihonbashi
Chuo-ku, Tokyo
Ph: (03) 279-1651
Arbitrates and mediates disputes both national and international. Drafts
standard forms of maritime contracts.
Available for consultation and advice.
Publishes: Shipping (monthly, in Japanese); Maritime Law Journal (bi-
monthly, in Japanese); Bulletin of the Japan Shipping Exchange (in Eng-
lish); Award Book on Tokyo Maritime Arbitration (in Japanese).
Available in Japanese and English.

3. United Kingdom

The London Maritime Arbitrators Association
The Baltic Exchange
14-20 St. Mary Ave.
London EC3A 8BU England
Ph: (01) 633-55-01
Assists and encourages London arbitrations. Recommends members as
arbitrators.

4. United States

Society of Maritime Arbitrators
26 Broadway
New York, NY 10004
Ph: (212) 483-0614
Donald E. Zubrod, Pres.
Annual seminar
Contractual disputes involving all movements by water, shipbuilding,
and repair.
Publishes: The Arbitrator (quarterly).
5. **Union of Soviet Socialist Republics**

USSR Chamber of Commerce and Industry, Maritime Arbitration Commission
6 Kuibyshev Street
101000 Moscow, USSR
Ph: 221-54-37
Administers arbitrations in field of merchant navigation.
Publishes: *Merchant Shipping and Maritime Law* in Russian.

6. **People’s Republic of China**

China Council for the Promotion of International Trade, Maritime Arbitration Commission
4 Tai Ping Chiao Street
Beijing, PRC
Ph: 66-52-12
Administers arbitration for international maritime disputes.
Available in Chinese and English.

7. **Poland**

International Court of Arbitration for Marine and Inland Navigation, Gdynia
U1 Pulaskiego 6
81-368 Gdynia, Poland
Administers conciliation and arbitration for international commercial disputes concerning marine and inland navigation.
Appointing authority under UNCITRAL Rules.

X. **LIBRARIES AND SPECIAL COLLECTIONS**

A. **New York**

American Arbitration Association
Eastman Arbitration Library
140 West 51st Street
New York, NY 10020
Ph: (212) 484-4127

Special Collection: Arbitration rules of trade associations, chambers of commerce, and arbitral institutions throughout the world; arbitration statutes; Union catalog of arbitration. Open to public.
B. Washington, D.C.

American Society of International Law Library
223 Massachusetts Ave., NW
Washington, D.C. 20008
Ph: (202) 265-4313
Open to public.

Washington College of Law Library
American University
4400 Massachusetts Ave., NW
Washington, D.C. 20016
Ph: (202) 686-2625

Foreign Claims Settlement Comm. of U.S.
1111 20th Street, NW Room 401
Washington, D.C. 20579
Ph: (202) 653-5883
Decisions of the Commission.

Georgetown University Law Library
600 New Jersey Ave., NW
Washington, D.C. 20001
Ph: (202) 642-8033
Open to public; usage fee for attorneys.

International Monetary Fund Law Library
700 19th Street, NW
Washington, D.C. 20431
Ph: (202) 477-6148
International conflict of laws.

Johns Hopkins School of
Advanced International Studies
1740 Massachusetts Ave., NW
Washington, D.C. 20036
Ph: (202) 785-6269
International economics and law.

Library of Congress - Law Division
James Madison Memorial Bldg. Rm 240
Washington, D.C. 20540
Ph: (202) 287-5065
International economics and law.

American - British Law Division
James Madison Memorial Bldg. Rm 235
Washington, D.C. 20540
Ph: (202) 287-5077
Congressional use only.

European Law Division
James Madison Memorial Bldg. Rm 240
Washington, D.C. 20540
Ph: (202) 287-5088
Continental Europe excluding Portugal and Spain.

Far Eastern Law Division
James Madison Memorial Bldg. Rm 235
Washington, D.C. 20540  
Ph: (202) 287-5085

Hispanic Law Division  
James Madison Memorial Bldg. Rm 235  
Washington, D.C. 20540  
Ph: (202) 287-5070  
Includes Spain, Portugal, Philippines, Puerto Rico.

Near Eastern & African Law Division  
James Madison Memorial Bldg. Rm 240  
Washington, D.C. 20540  
Ph: (202) 287-5070

National Law Center  
George Washington Law Library  
716 - 20th Street NW  
Washington, D.C. 20052  
Ph: (202) 676-6646  
International and comparative law.

U.S. Dept. of Commerce Law Library  
14th & Pennsylvania Ave., NW Rm 1894  
Washington, D.C. 20230  
Ph: (202) 377-5517  
Open to public.

U.S. Dept. of State Law Library  
Department of State  
Washington, D.C. 20520  
Ph: (202) 632-0372  
Open to public with permission.

U.S. Dept. of State Office of Legal Adviser  
Department of State Rm 6422  
Washington, D.C. 20520  
Ph: (202) 632-4130  
Not open to public. Searches done on fee basis.

World Bank Law Library  
1818 "H" Street, NW  
Washington, D.C. 20433  
Ph: (202) 477-2128  
Special collection: international arbitration materials.

Open to public; permission required.

C. The Netherlands

T.M.C. Asser Institute for International Law  
International Commercial Arbitration Library  
P.O. Box 30461  
2500 GL The Hague, Netherlands  
Includes complete collection of judicial decisions interpreting the New York Convention.